

Scottish Adult Disability Living Allowance

Equality Impact Assessment

November 2024

Equality Impact Assessment (EQIA)

Title of Policy: Scottish Adult Disability Living Allowance

Summary of aims and desired outcomes of policy:

Aim - The aim of the policy is to replace Disability Living Allowance, currently delivered in Scotland by the Department for Work and Pensions on behalf of Scottish Ministers, with a form of assistance to be known as Scottish Adult Disability Living Allowance to facilitate a safe and secure transfer of awards from the Department for Work and Pensions to Social Security Scotland.

The draft Disability Assistance (Scottish Adult Disability Living Allowance) Regulations 2025 set out the eligibility criteria and how Social Security Scotland will deliver Scottish Adult Disability Living Allowance on behalf of Scottish Ministers. The regulations also make provision for the case transfer process for people in Scotland who currently receive Disability Living Allowance.

Outcome - Like Disability Living Allowance, Scottish Adult Disability Living Allowance is intended to help disabled people meet the additional costs of living with a disability or health condition. This will be a closed benefit only available to people transferring from the DWP to Social Security Scotland.

Disability Living Allowance will continue to be delivered during a transition period by the Department for Work and Pensions under the terms of an Agency Agreement to ensure the safe and secure transfer to Scottish Adult Disability Living Allowance.

The Scottish Government recognises social security as a human right and has designed Social Security Scotland's services with the people who use them so that everyone is treated with dignity, fairness and respect.

This policy is closely aligned with the Healthier, Wealthier and Fairer Strategic Objectives, and contributes to the following National Outcomes:

- We respect, protect and fulfil human rights and live free from discrimination;
- We tackle poverty by sharing opportunities, wealth, and power more equally;
- We live in communities that are inclusive, empowered, resilient and safe.

Directorate: Social Security Directorate,

Division: Social Security Policy Division,

Team: Carer Benefits and Case Transfer Unit

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1. Executive Summary

The Social Security (Scotland) Act 2018 (the 2018 Act) sets out the broad framework for the delivery of the Scottish Government's social security benefits.¹ On 1 April 2020, executive and legal competence for disability benefits, including Disability Living Allowance, Personal Independence Payment and Attendance Allowance was transferred to Scottish Ministers and the Scottish Parliament.

The Scottish Government has now replaced Disability Living Allowance for children with Child Disability Payment, and Personal Independence Payment with Adult Disability Payment for eligible people in Scotland. We intend to replace Attendance Allowance with Pension Age Disability Payment from 2024 and Disability Living Allowance for adults with Scottish Adult Disability Living Allowance from 2025. Disability Living Allowance for adults is currently being delivered by the Department for Work and Pensions on behalf of the Scottish Government under the terms of an Agency Agreement.

Scottish Adult Disability Living Allowance will be delivered by Social Security Scotland on behalf of Scottish Ministers. Like Disability Living Allowance for adults under the Department for Work and Pensions, Scottish Adult Disability Living Allowance will be a closed benefit, meaning it will not be available to new applicants. It will only be available to those whose awards are transferring from Disability Living Allowance for adults.

The draft Disability Assistance (Scottish Adult Disability Living Allowance) Regulations 2025 set out the eligibility criteria and how Social Security Scotland will deliver Scottish Adult Disability Living Allowance. Section 31 of the 2018 Act sets out the legal basis on which Scottish Ministers make regulations for the rules and structures of disability assistance.

The regulations also make provision for the transfer of responsibility for delivering disability benefits for adults who receive Disability Living Allowance in Scotland, from the Department for Work and Pensions on behalf of Scottish Ministers to Social Security Scotland.

Additionally, the regulations will include provision to change the disability benefit of these people from Disability Living Allowance to Scottish Adult Disability Living Allowance. We refer to this process as "case transfer".

The case details and relevant supporting information for these clients will also transfer to Social Security Scotland. Based on estimates provided by the Scottish Government's Communities Analysis Division, there are anticipated to be around 66,000 people with awards of Disability Living Allowance in scope for transfer by the time Scottish Adult Disability Living Allowance is launched in Spring 2025.²

Scottish Ministers have set out a number of case transfer principles which we have used to guide the development of our approach to case transfer. The principles are:

- **Correct payment at the correct time** – ensuring that the case transfer process is designed so that clients will receive the same amount for the Scottish benefit as they received for the corresponding UK benefit. A safe and secure transfer is the priority.

¹ [Social Security \(Scotland\) Act 2018](#)

² [DWP Stat-Xplore](#)

- **No re-applications** - we will not require clients to apply for their new benefit as part of the case transfer. We will work with Department for Work and Pensions to move clients automatically to Social Security Scotland and the corresponding new Scottish benefit.
- **No face to face Department for Work and Pensions re-assessments** - we will, wherever possible, ensure that no-one will be subject to a face to face re-assessment by Department for Work and Pensions when new applications for Adult Disability Payment are open across Scotland.
- **Complete as soon as possible** – Scottish Ministers have been clear that they want to complete the transfer of cases as soon as is possible in a way that will be safe and secure, and not create unacceptable risks for clients.
- **Clear communication with clients** – we will inform our clients the date their case will be transferred and will keep them informed at the various stages of the case transfer process.

The public sector equality duty is a legislative requirement which states that the Scottish Government must assess the impact of applying a proposed new or revised policy or practice on groups with protected characteristics. Policies should reflect that different people have different needs. Equality legislation covers the protected characteristics of age, disability, gender reassignment, pregnancy and maternity, race, religion and belief, sex, sexual orientation as well as marriage and civil partnership.

This Equality Impact Assessment has identified potential impacts on people in receipt of Disability Living Allowance in Scotland, as a result of replacing Disability Living Allowance with Scottish Adult Disability Living Allowance and transferring their awards.

It was found that, overall, the Scottish Government's policy has a number of improvements on the existing process which would have a positive impact on people in Scotland with protected characteristics. Where areas of improvement have been identified, the Scottish Government has made changes to better meet the needs of people living in Scotland.

2. Key Features of Scottish Adult DLA

Scottish Adult Disability Living Allowance will be a disability benefit for adults who were in receipt of Disability Living Allowance as administered by the Department for Work and Pensions at the point of case transfer. Like Disability Living Allowance, Scottish Adult Disability Living Allowance is intended to help disabled people meet the additional costs of living with a disability or health condition.

There are two distinct groups in scope for transfer to Scottish Adult Disability Living Allowance:

- **Disability Living Allowance '65+'**
People who were over the age of 65 when Personal Independence Payment was introduced in 2013 (i.e. born on or before 8 April 1948) received a commitment from the Department for Work and Pensions that they could continue to receive Disability Living Allowance for as long as they are eligible to do so. These individuals have never been in scope for transfer to Personal Independence Payment or Adult Disability Payment, and have continued to have any change in their circumstances managed by the Department for Work and Pensions under the Disability Living Allowance rules.

- **‘Working Age’ Disability Living Allowance**

This group consists of those in receipt of Disability Living Allowance who were born after 8 April 1948 and have not yet transferred either to Personal Independence Payment (before 1 April 2020) or to Adult Disability Payment. This cohort are understood to have long-standing, persistent needs – the fact that they remain on Disability Living Allowance suggests that they have not reported a significant change in their circumstances since 2013. Until Scottish Adult Disability Living Allowance is introduced, individuals in this group who report a relevant change of circumstances will continue to transfer to Adult Disability Payment.

Scottish Adult Disability Living Allowance is required as a new benefit primarily for those in the ‘65+’ group, to uphold the commitment that they could continue to receive Disability Living Allowance for as long as they remain eligible. Since the introduction of Scottish Adult Disability Living Allowance provides the opportunity to provide a like-for-like transfer for those in the ‘Working Age’ group, we also intend to introduce transfer to Scottish Adult Disability Living Allowance for these clients’ awards.

As part of the commitment to a safe and secure transfer, Scottish Ministers do not propose to make significant changes to the existing Disability Living Allowance eligibility criteria when introducing Scottish Adult Disability Living Allowance.

Examples of this include the replication of the qualifying periods for those under and over the ‘relevant age’ and capping the rate of the mobility component for clients over the State Pension age. This aligns Scottish Adult DLA with Pension Age Disability Payment (PADP) for those who are over pension age, and Adult Disability Payment for those under pension age and aims to ensure reasonable parity amongst those in the same age group who are receiving different disability benefits.

In addition, by maintaining the current eligibility criteria, individuals in Scotland who are eligible for passported benefits and premiums from the UK Government will have seamless access to this vital support. This will provide security to people in Scotland when Scottish Adult Disability Living Allowance is rolled out. There is more detail explaining this approach in the [‘Relevant Age’ section](#).

There are some key changes along with a number of practical administrative differences between Scottish Adult Disability Living Allowance and Disability Living Allowance which Scottish Ministers expect to have a positive impact for disabled people in Scotland. These differences have been developed through the commitments under the Social Security Charter.³

The Scottish Government recognises social security as a human right and has designed Social Security Scotland’s services with the people who use them so that everyone is treated with dignity, fairness and respect. The Scottish Government is committed to continually improving Scottish disability benefits by continuing to engage with disabled people and stakeholders to identify areas for further improvement in future.

2.1 Special Rules for Terminal Illness

A client is eligible under the Department for Work and Pensions’ Special Rules for End of Life if they are expected to have less than 12 months to live.

³ [Social Security Scotland Charter](#)

As with our other disability benefits, our definition of terminal illness will support recognition of a wider number of illnesses and conditions through Scottish Adult Disability Living Allowance than can be accounted for under the current definition in the UK Government system.

This is because the UK Government's time-limited definition of terminal illness is able to recognise individuals with malignant illnesses at the end of life, but is less effective in recognising individuals with other degenerative life-limiting conditions, as it can be harder to determine the projected length of life for these illnesses. In these circumstances, individuals with such conditions sometimes may not meet the definition of terminal illness in the UK Government system.

We included provision in the 2018 Act to introduce a new definition of terminal illness that differs from the current UK Government definition. It removes the arbitrary 12 month timescale currently used by the Department for Work and Pensions. Instead, the judgement as to whether a person should be considered terminally ill for the purposes of determining eligibility for Scottish Adult Disability Living Allowance will be made by clinicians, based on guidance prepared by the Chief Medical Officer.⁴

The Scottish Government's new definition allows medical professionals, including registered nurses, to use their clinical judgement when determining whether an individual has a condition which can reasonably be expected to result in their death. This means that individuals who would otherwise not be entitled to Disability Living Allowance through Special Rules will be able to do so under the Scottish Government definition as part of Scottish Adult Disability Living Allowance, thereby having a positive impact on those with protected characteristics in Scotland.

In considering the approach to case transfer for those who are terminally ill to Social Security Scotland, Scottish Ministers were keen to prioritise that individuals are able to access the highest available rate of benefit as soon as possible. Therefore, for those in the '65+' group, when reporting that they are newly terminally ill, individuals will first have their eligibility considered under the Department for Work and Pensions' Special Rules for End of Life to ensure a decision is made as soon as possible. For those who receive a negative decision, they will undergo expedited (~4 weeks) case transfer to Social Security Scotland, to assess whether they meet the more generous Scottish Special Rules for Terminal Illness.

For those in the 'Working Age' group of Disability Living Allowance, the Department for Work and Pensions were unable to support this solution. Therefore, as with previous case transfers, a report that a client in Scotland has become newly terminally ill will trigger their expedited case transfer to Scottish Adult Disability Living Allowance.

People under the State Pension age who are terminally ill will automatically receive the highest rate of both components of Scottish Adult Disability Living Allowance. This aligns Scottish Adult DLA recipients with those of other Scottish disability benefits such as Adult Disability Payment. Those over State Pension age will receive the highest rate of the care component to maintain parity with others of the same age in receipt of PADP. There will be no award reviews for either age group.

2.2 Ongoing awards and reviews

⁴ [Guidance for Doctors and Nurses Completing Benefits Assessment under Special Rules in Scotland \(BASRiS\) form for Terminal Illness – Advice from the Chief Medical Officer](#)

For many people in the DWP system, having an award end date for their disability benefit can be extremely stressful, particularly for individuals whose conditions are unlikely to change over time and who are consequently subject to unnecessary reviews of entitlement.

Our case transfer process will aim to align a client's initial Scottish Adult Disability Living Allowance review process within the timeframes of when their Disability Living Allowance award would have been reviewed.

Those clients with indefinite awards of Disability Living Allowance, which is the overwhelming majority of Disability Living Allowance clients in Scotland, will therefore also receive an indefinite award of Scottish Adult Disability Living Allowance when they transfer.

However, whenever an individual reports a change of circumstances that is likely to impact their entitlement, this prompts an unscheduled review. These unscheduled reviews consider both the appropriate rates and components for the award, as well as whether (and if so, when) the award should be reviewed in the future. This is to ensure that the person keeps receiving the award that is most suitable for them.

Setting a review date, as well as deciding that an indefinite award would be most suitable for the individual, is done using a person-centred, holistic approach. If a person's needs are likely to change in the future, a review date will be set for a time when their needs are likely to have changed. For example, if an individual reports a new health condition that is likely to deteriorate over time, it may be appropriate to set a review date for a time where their needs can be expected to have changed in a way that means that their award won't be right for them anymore. However, if it is highly unlikely that a person's needs are going to change in a way that would impact their entitlement, the case manager will award an indefinite award. Based on the characteristics of the Scottish Adult Disability Living Allowance cohort, we expect that, where people in receipt of an indefinite award will undergo an unscheduled review after reporting a change of circumstance, the majority will receive an indefinite award again.

All our award reviews, i.e. both scheduled and unscheduled reviews, are light-touch. This will help to reduce the potential stress and anxiety associated with approaching an award review. By continuing entitlement while a review is taking place, disabled people will continue to receive the assistance they are entitled to until a Case Manager has made a new determination.

Light-touch reviews will make the process easier and less stressful for individuals. This means that Case Managers will only require supporting information in specific scenarios, are able to, if needed, gather supporting information for the person whose award is being reviewed and consider existing information and previous determinations to avoid asking unnecessary questions. Case Managers will be empowered to request case discussions with practitioners and access guidance to further reduce the need for intrusive questions.

Having a light-touch review process is more appropriate, particularly where an individual's needs are unlikely to have changed significantly. 66% of respondents to the Consultation on Disability Assistance agreed with this approach alongside general agreement from Experience Panels.^{5,6}

⁵ [Disability assistance in Scotland: Scottish Government's response to consultation](#)

⁶ [Social Security experience panels: decision making and reviewing an award – main report](#)

Additionally, when asked if review periods should be between 5-10 years for individuals with conditions unlikely to change, 58% of respondents to the consultation agreed. This will help to cut down on the number of unnecessary award reviews that disabled people not on an indefinite award will need to go through, and as a result, reduce stress and anxiety, thereby having a positive impact on individuals.

2.3 Re-determinations and appeals

We want to ensure that no one is disadvantaged by time limits for challenging a determination. In response to feedback from the Disability Assistance consultation, Experience Panels and the Disability and Carers Benefits Expert Advisory Group, Scottish Ministers have set the time limit for requesting a re-determination to 42 calendar days across the Scottish Government's disability benefits. This is an increase on the month time limit that is set for requesting a mandatory reconsideration by the Department for Work and Pensions.⁷ Most respondents (77%) to the consultation on Adult Disability Payment agreed with this approach. This will provide individuals with additional time to seek advice or gather supporting information which might be required before requesting a re-determination. This is likely to be particularly beneficial for disabled people who live in remote or rural areas which make gathering such advice and information more difficult.

If an individual is not able to request a re-determination within 42 calendar days, they can ask for this time limit to be extended if they have good reason. The 2018 Act provides for an extension of up to a year for late re-determination requests. Guidance will ensure that, where an individual requests a late re-determination, their request is considered in a holistic and person-centred manner, taking account of their circumstances.

In the Consultation on Disability Assistance, it was proposed that Social Security Scotland be allowed 40-60 days to carry out a re-determination. 60% of respondents agreed with this proposed approach. However, some stakeholders felt that this was an excessive period for someone to be left without clarity over their award level or eligibility.

Given the concerns raised in the consultation, and subsequent stakeholder engagement, we settled on 56 calendar days for Social Security Scotland to undertake a re-determination. It may be necessary to gather supporting information on behalf of the individual, and this information may take some time to obtain.

This will be beneficial as it will ensure that disabled people and their families or carers will have certainty about how long Social Security Scotland has to complete a re-determination. Similarly, by enabling individuals to appeal directly to the First-tier Tribunal should Social Security Scotland be unable to complete the re-determination process within the prescribed timescale, this will further reduce any uncertainty and make people feel more confident in challenging a determination they do not agree with.

2.4 Short-term Assistance

We have committed to providing Short-term Assistance where Social Security Scotland has made a determination to reduce or stop an on-going Scottish Government benefit and that determination is subject to a request for re-determination or an appeal. During the Parliamentary passage of the 2018 Act, the inclusion of Short-term Assistance was welcomed by stakeholders and supported by Parliament.

⁷ [Disability assistance in Scotland: Scottish Government's response to consultation](#)

As with the Scottish Government's other disability benefits, Short-term Assistance will be available for those with an award of Scottish Adult Disability Living Allowance. This applies both to determinations that reduce or end an ongoing Scottish Adult Disability Living Allowance award and where someone's award is transitioning from Scottish Adult Disability Living Allowance to Adult Disability Payment.

The intention of Short-term Assistance is to ensure people are not discouraged from challenging a review of their award determination or from accessing administrative justice, by having to manage, for a period, with a reduced income. Short-term Assistance is not available in the UK Government system. Providing support in this way is another example of Scottish Ministers removing barriers in the Scottish social security system.

Short-term Assistance will be available until the First-tier Tribunal for Scotland has made a determination. It is non-recoverable except in cases of fraud or error. Where a person is eligible, the value of Short-term Assistance will be the difference between the longstanding award paid prior to the reduction and the new level of award. This includes when that amount is now nil because entitlement to the individual's award has stopped.

The proposal that Short-term Assistance should not be recoverable, except in cases of fraud or error, was also met with approval by 87% of respondents to the Disability Assistance consultation.⁸ This will ensure that, should a re-determination or appeal be unsuccessful, there will not be any overpayments that individuals will need to worry about repaying. This will help to prevent a further reduction in household income should the re-determination or appeal be unsuccessful, something which was stressed by respondents.

Short-term Assistance for Scottish Adult Disability Living Allowance will be processed in the same way as for Pension Age Disability Payment, Adult Disability Payment and Child Disability Payment in terms of eligibility, value and form.

Scottish Ministers believe that this strikes the right balance of supporting disabled people in seeking administrative justice, and to ensure that individuals are not discouraged from challenging a review of their award due to facing a reduced income. Short-term Assistance is not available for clients on Disability Living Allowance under Department for Work and Pensions, and its' introduction for Scottish Adult Disability Living Allowance aligns with the Scottish Government's human rights-based approach to social security in Scotland.

2.5 Eligibility criteria

A number of key changes for Scottish Adult Disability Living Allowance have been set out above, including the introduction of the Scottish Government's definition of terminal illness and provision of Short-term Assistance. However, we do not propose making significant changes to the existing Disability Living Allowance eligibility criteria.

In line with our case transfer principles, we will ensure that individuals with an award of Disability Living Allowance do not need to apply for Scottish Adult Disability Living Allowance when their case is transferred from Disability Living Allowance. Significant change to the eligibility criteria from Disability Living Allowance would risk some people losing out on their award and risk confusion and disruption for individuals by having two different sets of eligibility criteria and rules, whilst undertaking a significantly complicated case transfer process.

⁸ [Disability assistance in Scotland: Scottish Government's response to consultation](#)

Eligibility to Disability Living Allowance also provides individuals with entitlement to various UK Government benefits and premiums, usually referred to as 'passporting'. Throughout the consultation on Disability Assistance, people consistently raised concerns about maintaining other support that they are entitled to because of their disability benefit award. While the passporting of benefit entitlements is not the sole reason for Scottish Ministers' approach to safe and secure transfer, the Scottish Government recognises that these entitlements are crucial to disabled people in Scotland. Considerable analysis and consultation has been undertaken to test and fully understand the limits of passporting. We now have agreement from Department for Work and Pensions to treat Scottish Adult Disability Living Allowance in the same way as Disability Living Allowance to enable clients to automatically access additional reserved payments without any further decision-making process. For that to happen, it is generally accepted that this requires Scottish Adult Disability Living Allowance eligibility criteria to be broadly replicated for Disability Living Allowance.

What Social Security Scotland delivers on day one is not the limit of the Scottish Government's aspirations. Scottish Ministers are committed to continually improving disability benefits by continuing engagement with disabled people and stakeholders to identify areas for further improvement in future. It should be noted however that Scottish Adult Disability Living Allowance is fundamentally about providing consistency for people whose awards have transferred from Disability Living Allowance for adults. It is therefore unique in that it is not intended to be a long term benefit and is therefore less likely to significantly change.

2.6 Decision-making process

While Scottish Adult Disability Living Allowance will be closed to new applications, and based on data from Stat-Xplore, we expect that over 99% of the clients in scope for transfer are in receipt of indefinite awards. There are a handful of cases who require scheduled reviews and clients may also trigger unscheduled reviews by reporting a change of circumstances. Case Managers will be empowered to speak to individuals who have indicated that they are willing to be called to gain additional information or to clarify details of their application and supporting information. Supporting information will be used by Case Managers as a resource to support the decision-making process. This information, along with information in review forms, will be approached from a position of trust.

From engagement with the Child Poverty Action Group, it is understood that although many adults in receipt of disability benefits are able to manage their own affairs, it is likely that they may require support from family or a caregiver with aspects such as the review process.

It is also important to consider that many in this cohort may be particularly isolated and vulnerable. Most clients are on indefinite awards, and the fact that those in the 'Working Age' group have not reported a substantial change of circumstances to trigger their transfer to Personal Independence Payment in the 11 years since it was introduced indicates that their needs are persistent. Since many are not subject to scheduled reviews, their interaction with Department for Work and Pensions is likely to be minimal.

Data shows that in the younger half of the working age cohort, learning difficulties is the most common main disabling condition. Psychosis and psychoneurosis are also amongst the top 5 main disabling conditions listed. From this we could infer that a substantial number of people in this cohort will face additional barriers to engaging with Social

Security Scotland and making truly informed decisions about their benefits – for example whether or not to request a move to Adult Disability Payment (more information about this in [section 2.8](#) below).

The Scottish Government will ensure that individuals can request a third party representative with ease to support them in their engagement with Social Security Scotland. Individuals may choose to provide consent for a family member, close friend or a welfare rights advisor to act as a third party representative when interacting with Social Security Scotland. DWP appointees will continue to be recognised, although Social Security Scotland will carry out additional checks post-transfer to ensure that any appointee remains appropriate for that particular individual.

Alternatively individuals can request a referral or self-refer to the Independent Advocacy Service provided by VoiceAbility who can offer support when dealing with Social Security Scotland. Scottish Ministers believe this strikes the right balance to encourage people, particularly those who are over the State Pension age, to gain support from independent trusted sources when required, while also maintaining their financial independence.

2.7 Supporting Information

Social Security Scotland are committed to considering all supporting information as equally valid. However, for new applications there is normally an expectation that one piece of supporting information will come from a professional source such as a medical report or a letter from a support worker.

Scottish Adult Disability Living Allowance does not have new applications, instead entitlement will initially be based on the information provided by the Department for Work and Pensions at the point of transfer. This information will be used for reviews and other decision making where it remains relevant.

However, there will be instances, for example when an individual has reported a significant change to their health condition, that further supporting information may be required. Depending on the significance and kind of change reported, a piece of supporting information from a professional source may be sought by Case Managers.

This will be used to support the decision-making process by assisting Case Managers in their understanding of an individual's level of need, condition or disability alongside utilising internal Decision Making Guidance. Where an individual does not have supporting information to hand, Social Security Scotland will use a collaborative approach with the individual to assist in gathering supporting information from a professional and/or their wider support network.

In instances where supporting information is not available, Case Managers can make a determination of an individual's entitlement to Scottish Adult Disability Living Allowance with no supporting information from a professional, or from their wider support network. Where it is reasonable that this information is not available, Social Security Scotland will consider this when making a determination. This could be due to the individual's health, condition or personal circumstances. Examples include, if an individual has had a recent hospital stay, if they have been unable to receive the support they need from an advocate or support worker, or where they may have lost contact with their support network, including health and social care professionals.

Case Managers will then utilise other decision-making tools, such as case discussions with a health or social care practitioner to assist in using their discretion when making a determination, based on the balance of probabilities.

Case discussions with a health or social care practitioner can assist Case Managers through advising on aspects such as the side effects of a particular medication, how a disability or health condition will typically affect someone, or the way in which two conditions may interact. This will help Case Managers to make an informed decision regarding an individual's entitlement to Scottish Adult Disability Living Allowance. Practitioners are registered health or social care professionals employed by Social Security Scotland who will have access to a range of resources and professionals with expertise in conditions more likely to affect older people, such as dementia.

The decision-making process will ensure that Case Managers have access to support from in-house practitioners who understand the needs of older people from their clinical and social care background, ensuring that they are able to make the right determination at the first opportunity. This process will similarly help ensure Case Managers develop an informed understanding of the person's needs and condition(s) when deciding the appropriate award review period.

2.8 No mandatory moves to Personal Independence Payment or Adult Disability Payment

We have decided to allow all adults still in receipt of Disability Living Allowance, regardless of their age when Personal Independence Payment was introduced, to remain on Scottish Adult Disability Living Allowance for as long as they are eligible to do so. Clients who were born after 8 April 2013 will, once they have transferred to Scottish Adult Disability Living Allowance, have the option to apply for Adult Disability Payment if they wish to do so.

There were a number of reasons to diverge from current Department for Work and Pensions policy. Firstly, clients told us about the stress and anxiety transitioning to a new benefit with new eligibility criteria entails.⁹ Allowing individuals to make informed decisions based on their own personal circumstances and professional advice is our preferred approach as we feel it better reflects our user centred approach and our values of dignity and respect. For more information regarding this, please see the ['Age' section](#) below.

Data from the Department for Work and Pensions' Stat-Xplore service, indicates that 47% of adults received a higher award when their award was re-assessed from Disability Living Allowance to Personal Independence Payment. However around 35% would receive a lower or no award at reassessment.¹⁰ As this is based on the reassessment rates under the Department for Work and Pensions, it may not be accurate for Scottish Adult Disability Living Allowance to Adult Disability Payment reassessments. However, as the Scottish benefits were based on the rules of the Department for Work and Pensions equivalent, this is deemed to be the best comparison in absence of figures on Disability Living Allowance to Adult Disability Payment re-assessment rates. This does reflect that some people who would be better off on Adult Disability Payment may choose not to apply, because they do not wish to face the stress and anxiety of an uncertain outcome. We believe this is a choice people should be enabled to make for themselves, with the support of advice services if they wish.

⁹ [Analysis of written responses to the consultation on social security in Scotland](#)

¹⁰ [Personal Independence Payment: Official Statistics to October 2023](#)

The Scottish Government are committed to increasing the awareness and take-up of benefits and other sources of financial and practical help, and have allocated £12.3 million for 2023-24.

Welfare Advice and Health Partnerships (WAHP) are an important example of such Scottish Government initiatives – placing welfare rights advisors in up to 180 GP surgeries in Scotland’s most deprived areas, as well as in remote and rural locations. WAHP practices can refer patients directly to an in-house welfare rights officer for advice on increasing income, social security eligibility, debt resolution, housing, and employability issues as well as helping with representation at tribunals.

This vital support reaches people who have not engaged with traditional advice services, and ensures that Scottish households are supported to claim the benefits they are entitled to, challenge benefit decisions, maximise their incomes, resolve issues relating to employment, housing and much more.

3. Who was involved in this Equality Impact Assessment?

This Equality Impact Assessment has been developed based on extensive processes for engaging on the development of impact assessments for Scottish disability benefits to date, involving officials from within the Scottish Government and with a range of external stakeholders, as well as the wider public.

In July 2016, the Scottish Government launched a public consultation to support the development of a framework that would become the Social Security (Scotland) Bill.¹¹ This received more than 200 responses to questions relating to disability benefits with an even split between organisational and individual responses. In particular, comments were invited on a partial Equality Impact Assessment which represented the Scottish Government’s work on the impact of social security policy on people with protected characteristics prior to the consultation.

There were 521 formal written responses submitted overall, of which 241 were from organisations and 280 from individual respondents. Of the 241 organisational responses, 81 were received from stakeholder groups relating to children and young people, equalities and human rights, disability and long term conditions, and carers. The independent analysis of the responses along with the Scottish Government response were published on 22 May 2017.¹² In addition, the Equality Impact Assessment that was published alongside the Social Security (Scotland) Bill in 2017 was used to inform this Equality Impact Assessment for Scottish Adult Disability Living Allowance.¹³

The Consultation on Disability Assistance was published on 5 March 2019. In line with the principles of dignity, fairness and respect, the Scottish Government sought the views of the people of Scotland on the proposed disability assistance benefits to replace those delivered by the Department for Work and Pensions. The consultation closed on 28 May 2019, having received 263 replies, of which 74 were from stakeholder organisations and 189 were from individuals. An analysis of responses was published in October 2019.¹⁴

¹¹ [Consultation on Social Security in Scotland](#)

¹² [Analysis of written responses to the consultation on social security in Scotland](#)

¹³ [Social Security \(Scotland\) Bill: equality impact assessment](#)

¹⁴ [Disability assistance in Scotland: analysis of consultation responses](#)

Targeted consultation with stakeholders representing people with protected characteristics was undertaken during the consultation period.

In December 2022, the Disability and Carers Benefits Expert Advisory Group (DACBEAG) shared advice on Scottish Adult Disability Living Allowance with the Scottish Government.¹⁵ The Scottish Government has also held engagement sessions to gain insight from specific stakeholder for Scottish Adult Disability Living Allowance, including with the [Ill Health and Disability Benefits Stakeholder Reference Group](#) (IHDBSRG) and welfare rights advisors from the Child Poverty Action Group.

4. The Scope of the Equality Impact Assessment

This Equality Impact Assessment considers the impact of introducing Scottish Adult Disability Living Allowance on disabled people, many of whom are over the State Pension age and have one or more other protected characteristic. State Pension age is currently 66 years of age, and is planned to gradually increase to 67 years of age by 2028.¹⁶

Data Sources

- Scottish Health Survey
- Scotland's census 2011
- NRS Mid-year population estimates
- Social Security Experience Panel findings
- Responses to the Consultation on Disability Assistance in Scotland
- Advice from the Disability and Carer Benefits Expert Advisory Group
- Department for Work and Pensions Stat-Xplore statistics
- Statistics and Projections from the Scottish Government's Communities Analysis Division
- Scottish Government and Social Security Scotland publications
- Third Sector Publications

5. Data – key findings

In November 2023 there were around 77,000 individuals having an entitlement to Disability Living Allowance in Scotland.¹⁷ 38,700 of these were in the 'working age' cohort and 38,882 in the '65+' cohort.

As it is a closed benefit, the population of Scottish Adult Disability Living Allowance is likely to decrease over time due to natural outflow of clients as a result of moves to Adult Disability Payment, improvements in health conditions, and deaths. By 2029 there are expected to be 41,000 remaining individuals with entitlement to Scottish Adult Disability Living Allowance.¹⁸

In the mid-2021 Population Estimates, people aged 65 and over accounted for 20% of the Scottish population.¹⁹ This is an increase since the time of the 2011 Census, whereby this age group accounted for around 17% of the population.

¹⁵ [Disability and Carers Benefits Expert Advisory Group](#)

¹⁶ [State Pension Age Timetable](#)

¹⁷ [DWP Stat-Xplore](#)

¹⁸ [Scotland's Economic and Fiscal Forecasts – December 2023](#)

¹⁹ [Mid-2021 population estimates Scotland](#)

Data from the Papworth Trust found that women are slightly more likely than men to be disabled in the United Kingdom.²⁰ 23% of women are noted as having a disability, compared to 19% of men.

A report by the Women's Budget Group has found that women are twice as likely to rely on social security as men.²¹ This higher percentage of disabled women compared to men is reflected in the ratio of those in receipt of Disability Living Allowance. About 44% of Disability Living Allowance recipients are men, compared to 56% who are women.²² This may in part be explained by the differences in life expectancy in Scotland. Between 2019 and 2021, life expectancy in Scotland was 76.6 years for men and 80.8 years for women.²³

As of November 2023, around 65% of those entitled to Disability Living Allowance are over State Pension age.

5.1 Working Age Cohort

The 'working age' cohort includes people up to 74 years of age (i.e. those who were under 65 in 2013). 72% of the working age cohort is over 50 years of age. As a result of Disability Living Allowance being closed to new claims from 2013, we understand the average age of clients will be significantly higher than for Adult Disability Payment.

49% of the working age cohort is male and 51% is female. There are proportionately more males at the younger end of the working age cohort (under 50), and more females in the older age ranges (50 to 74).

In the working age cohort, the most common main disabling condition listed for the younger age groups is learning difficulties. Between 50 and 59 psychosis is listed most commonly as the main disabling condition. Over the age of 60 the most common main disabling condition is arthritis.

As of November 2023, 30% of the working-age cohort is over State Pension age.

5.2 DLA 65+ cohort

The Disability Living Allowance 65+ cohort is now all 75 years old or older. 40% of this cohort is male and 60% is female. Women outnumber men at all ages in this cohort. By some distance, the most common main disabling condition listed for the 65+ cohort is arthritis.

Overall, this Equality Impact Assessment has found that the introduction of Scottish Adult Disability Living Allowance will have a positive impact on the people of Scotland, including individuals who fall under the following protected characteristics.

6. Age

As Scottish Adult Disability Living Allowance spans across both working and pension age groups, there is a need to consider the intersectionality between age and disability.

²⁰ [Papworth Trust – Disability in the United Kingdom – Facts and Figures 2018](#)

²¹ [Women's Budget Group – Social Security, Gender and Covid-19](#)

²² [DWP Stat-Xplore](#)

²³ [Life Expectancy in Scotland 2019-2021](#)

The Scottish Government intends to align the age criteria for Scottish Adult Disability Living Allowance with Disability Living Allowance, so there will be no upper age limit.

It will be important for individuals to understand that if they are receiving Scottish Adult Disability Living Allowance prior to reaching State Pension age, they will continue to receive this after reaching State Pension age so long as they remain entitled.

6.1 The 'Relevant Age'

Disability Living Allowance is made up of two components; a care component and a mobility component. To be considered eligible for either of these components the needs arising from the individual's health condition must have lasted and be expected to last a set period of time known as the "qualifying period". When assessing how long a condition has already impacted the needs of an individual, this is known as the "backwards test", and when assessing how long a condition is likely to continue to impact the needs of an individual this is known as the "forwards test".

The 'relevant age' for Scottish Adult DLA is:

- pensionable age
- or, if higher, 65.

For adults under the relevant age, the "backwards test" seeks to establish if the needs arising from the individual's health condition have been present for 3 months or more, while the "forwards test" seeks to establish if these needs are likely to be present for 6 months or more from the date the award starts.

For adults over the relevant age, the "backwards test" for the **care component** seeks to establish if the needs arising from the individual's health condition have been present for 6 months or more.

For adults over the relevant age, the qualifying periods for the **mobility component** remain the same as those below the relevant age, however there is also a further requirement that the individual have been in receipt of that rate of the mobility component consistently since before they reached the relevant age.

Because Scottish Adult Disability Living Allowance is intended to act as a replacement benefit for Disability Living Allowance, it is important that they are closely aligned as part of the Scottish Government's commitment to a safe and secure case transfer. In practice this means that Scottish Adult Disability Living Allowance will continue to treat the working age and State Pension Age groups differently, as described above.

For clients who reach State Pension age on Disability Living Allowance under the Department for Work and Pensions, the mobility component is capped at the rate the client received prior to reaching the State Pension age, unless the change of circumstances occurred before this. This means that if a client is in receipt of the lower rate of the mobility component when they reach the State Pension age, and their mobility needs increase after this time, they are not eligible to increase their award to the higher rate of the mobility component. Similarly, if a client does not receive any rate of the mobility component prior to reaching the State Pension age, they will not be able to receive it after this time.

A similar rule also applies to those who receive the low rate of the care component of Disability Living Allowance. Beyond the State Pension Age, an individual cannot newly

become eligible for the low rate care component, only the middle and high rates will be available. Those who reach the State Pension Age with an existing award of the low rate care component can increase or maintain their award, however if their needs decrease and later increase they will need to qualify for the middle rate of the care component to become eligible.

We anticipate that many of those who are over or approaching State Pension Age (referred to as the 'relevant age' under Social Security Scotland) will already be expecting any change of circumstance in their health condition to be assessed using the qualifying periods that have long been established by the Department for Work and Pensions.

We feel that an extended 'backwards test' would account for longer recovery times in the older population from short-term conditions, which would not ordinarily make them eligible to receive a disability benefit. This longer recovery period is not associated with any specific disability or health condition, but with natural ageing.

We also acknowledge that decreased mobility and additional care needs are associated with natural ageing in the older population, and restrictions on the rates/components which clients can newly qualify for is intended to account for this. It is also intended to provide some alignment with the rules for Pension Age Disability Payment. There is no mobility component available under Pension Age Disability Payment, nor is there a lowest rate of the care component. Maintaining this restriction on people in receipt of Scottish Adult Disability Living Allowance creates parity between those on Scottish Adult Disability Living Allowance and Pension Age Disability Payment, whilst maintaining the entitlement that people on Scottish Adult Disability Living Allowance had before they reached the relevant age.

Additionally, by retaining the Disability Living Allowance rules on qualifying periods, it brings Scottish Adult Disability Living Allowance in line with previous case transfers and is consistent with Pension Age Disability Payment and Adult Disability Payment rules.

6.1.1 Mobility component

Because the terms '65+' and 'working age' relate to recipients' age in 2013, this means that some in the 'working age' cohort are now at or above State Pension age. Normally, when someone above State Pension age is receiving Adult Disability Payment, Personal Independence Payment, or Disability Living Allowance and they report a change of circumstances or have a review, they cannot have the mobility component of their award increased or have the mobility component awarded for the first time. This will also be the case in Scottish Adult Disability Living Allowance.

However, as part of the transition from Disability Living Allowance to Personal Independence Payment, anyone in the 'working age' group can make a Personal Independence Payment application at any time and can avail themselves of the whole Personal Independence Payment mobility component (considering its different eligibility rules), even if they did not transition from Disability Living Allowance until after they reached 65. The Department for Work and Pensions intends to complete the required transition from Disability Living Allowance to Personal Independence Payment for the working age group by the end of 2025, at which point this policy will no longer have effect.

From the launch of Scottish Adult Disability Living Allowance, we intend to have similar provision in our regulations. This will allow those in the 'working age' group who apply for Adult Disability Payment to be treated as though they are under State Pension age for

their first full determination of entitlement to Adult Disability Payment, and be able to have the mobility component of their award increased or awarded for the first time. We do not however intend to leave this provision in place permanently, as this would see individuals in the 'working age' that are above State Pension treated more favourably than analogous groups over pension age, such as the '65+' group. For example, someone receiving the lower rate of the mobility component of Scottish Adult Disability Living Allowance could receive the enhanced rate of Adult Disability Payment in their first full determination, whereas they would only ever be able to receive the lower rate of Scottish Adult Disability Living Allowance if they remained on the benefit.

We therefore propose to limit such increases in the mobility component when those in 'working age' group who are of State Pension age apply for Adult Disability Payment immediately through the Scottish Adult Disability Living Allowance regulations. We will also provide for a clear 2 year grace period after case transfer where these individuals can have the mobility component of their award increased, or awarded for the first time, when they move to Adult Disability Payment. The end of this grace period would then prevent individuals who are of State Pension age from having the mobility component of their award increased or awarded for the first time through a move to Adult Disability Payment.

We intend to provide for this grace period as, due to the high-profile criticism of the Disability Living Allowance to Personal Independence Payment transition, some individuals may have avoided moving from Disability Living Allowance to Personal Independence Payment due to concerns about this journey, and may not have asked to move from Disability Living Allowance to Adult Disability Payment due to anxieties around the case transfer process. These individuals may be more likely to move to Adult Disability Payment once they are in the devolved system receiving Scottish Adult Disability Living Allowance, due to our commitment to treat people with dignity, fairness, and respect.

A grace period of two years will allow individuals time to adjust to being on Scottish Adult Disability Living Allowance, and to consider, with the help of independent advice, whether they would be better off on Adult Disability Payment, with a cut-off date providing clarity as to when they must make this decision by.

We propose that the two year grace period should begin once all Disability Living Allowance awards have moved to Scottish Adult Disability Living Allowance, so that a clear cut-off date can be communicated to clients. While this will see those whose awards transfer at an earlier point provided slightly longer than others to make a decision to move to Adult Disability Payment, we consider that this is fair given that we will still provide a full two years to make this decision, as well as the benefit that this approach can be more clearly communicated to all clients.

Data from DWP Stat-Xplore service shows around 11726 DLA recipients between the ages of 66 and 74 – these are the people over State Pension age who are still part of the working age cohort. Of these, 68% are already in receipt of higher rate mobility component, so the provision discussed above would not benefit them. Around 23% are receiving lower rate mobility and 9% no mobility component at all. These last two groups may have an incentive to consider a move to Adult Disability Payment if they wanted to access mobility component for the first time or at an increased rate. This amounts to just under 10% of the total working age cohort. Crucially, these are people who have been receiving benefit without reporting any significant change for over ten years, and may therefore understandably feel anxious about the change, and require support to engage with Social Security Scotland and understand these new rules. This reinforces our

commitment to encouraging people to seek advice and support prior to making a decision to claim Adult Disability Payment.

6.1.2 DLA 65+ cohort

Clients from the Disability Living Allowance 65+ group will not be able to transition to Adult Disability Payment. This is because the Scottish Government has agreed to honour the commitment made by the Department for Work and Pensions to this group of clients that they would be able to remain on Disability Living Allowance as long as they remained eligible. The Disability Living Allowance 65+ cohort is not eligible to apply for Personal Independence Payment under the Department for Work and Pensions. All changes in circumstance for those who were born before 8 April 1948 are managed under Disability Living Allowance rules.

We considered whether to allow the Disability Living Allowance 65+ cohort to be able to transition to Adult Disability Payment after they have transferred to Scottish Adult Disability Living Allowance. However, this would represent a significant change in policy approach from what is currently delivered under the Department for Work and Pensions and may be confusing to clients. This could lead to some clients incorrectly making a claim for Pension Age Disability Payment, where they would not have access to the mobility component, or the low rate of the care component, and therefore could result in financial hardship for these clients.

Through our user research and stakeholder engagement, we have not heard of any particular appetite within the Disability Living Allowance 65+ cohort to have the option to claim Adult Disability Payment, and the expectation has been that any replacement benefit for Disability Living Allowance under Social Security Scotland would be, on the whole, consistent with what is delivered by Department for Work and Pensions.

We believe this approach will have a positive impact as it guarantees consistency and security for this group of vulnerable people. It remains consistent with the long-standing policy established by the Department for Work and Pensions and ensures that people in Scotland are not unfairly disadvantaged compared to counterparts in the same age cohort elsewhere in the United Kingdom.

7. Disability

The Scottish Government believes that the changes being made with Scottish Adult Disability Living Allowance will have a positive impact on disabled people in Scotland.

Social Security Scotland will create a range of stakeholder resources for Scottish Adult Disability Living Allowance and content in accessible formats. These resources will be proactively supplied to relevant stakeholder organisations through the National Engagement Team for organisations to distribute to people in local communities. Materials will be translated into British Sign Language, braille, and easy read formats. This will ensure that people can access and understand all the information relating to Scottish Adult Disability Living Allowance in a format that works best for them.

7.1 Supporting information

It is anticipated that our approach to supporting information as described in [section 2.7](#) above will have a positive impact on disabled people. Through previous policy impact evaluations, we have gathered feedback from stakeholders, including applicants for

disability benefits, indicates that our approach to supporting information has helped to reduce stress and anxiety for individuals.²⁴ This policy will allow for a consistent approach for those reporting changes to their condition, thereby ensuring the appropriate level of assistance is awarded through a robust decision-making process that embodies the values of dignity, fairness and respect. It is envisaged that by having one piece of supporting information from a professional, Social Security Scotland will be better equipped to make the right determination in the first instance, thereby reducing the likelihood of requiring a re-determination.

7.2 Award reviews

Our light-touch reviews are designed to minimise stress and anxiety for disabled people. Social Security Scotland will tailor reviews for each person to ensure that they are suitable to their needs, take account of their preferences and deliver an appropriate determination for each individual. This will have a positive impact, particularly for those who are in receipt of lower rates of Scottish Adult Disability Living Allowance, as a light touch review will ensure that individuals have an opportunity to tell Social Security Scotland if their needs have increased.

Our case transfer process will ensure that wherever possible after the launch of Scottish Adult Disability Living Allowance, a client's Disability Living Allowance award will be selected for transfer to Scottish Adult Disability Living Allowance before their award is subject to a review that could lead to a face-to-face assessment with the Department for Work and Pensions. We will also aim to align a client's Scottish Adult Disability Living Allowance review date with the timeframes their Disability Living Allowance award would have been reviewed as far as possible. This will ensure continuity of client experience and allow their future review date to be set in line with the principles discussed above.

7.3 Short-term Assistance

The introduction of Short-term Assistance, as outlined in [section 2.4](#) above, is anticipated to have a positive impact on disabled people by removing a financial barrier to challenging a review of their award determination.

7.4 Qualifying period

The qualifying periods for Disability Living Allowance will be replicated as part of Scottish Adult Disability Living Allowance, as set out above. However, for people with a terminal illness, this qualifying period will not apply.

It is understood that some people have concerns about the impact of this rule on those who require financial assistance. Therefore, the Scottish Government undertook an analysis of qualifying periods for other disability benefits when establishing a policy position.²⁵

We believe that the qualifying periods prior to payment of Scottish Adult Disability Living Allowance are appropriate, due to the need to establish whether an individual's support needs are because of a short-term illness or constitute a long-term disability. By retaining the Disability Living Allowance rules on these qualifying periods, it brings Scottish Adult Disability Living Allowance in line with previous case transfers ensuring consistency

²⁴ [Disability Benefits Evaluation - Supporting Information](#)

²⁵ [Disability Assistance qualifying periods: policy position paper](#)

between Scottish Adult Disability Living Allowance and Pension Age Disability Payment and Adult Disability Payment.

When applying the qualifying period, Social Security Scotland will ensure that the impact of unpredictable and fluctuating conditions on individuals is taken into consideration as part of a person centred approach.

7.5 Terminal illness

As of May 2023 there were 327 people (accounting for 0.40% of total cases) with entitlement to Disability Living Allowance who had their main condition or disability listed as a terminal illness in Scotland.²⁶ However, under Disability Living Allowance at present, for those in the 'working age' group, a report that an individual has become newly terminally ill would trigger their transfer to Adult Disability Payment. Therefore, we would anticipate this prevalence to be higher once the equivalent cohort is transferred to Scottish Adult Disability Living Allowance, both as a result of this change of circumstances being managed under Scottish Adult Disability Living Allowance rules, and the more generous Scottish Special Rules for Terminal Illness.

It is anticipated that the new definition of terminal illness within Scottish Government disability benefits will support the recognition of a wider number of illnesses and conditions than under the UK Government definition. Our analysis suggests that the Scottish Government approach as outlined in [section 2.1 above](#) will result in a positive impact for those reporting a terminal illness during the case transfer period.

7.6 Alternative accommodation rules

7.6.1 Hospitals and care homes

Many disabled people and people with long-term health conditions experience stays in hospital, sometimes for a lengthy period. As with the current Disability Living Allowance rules, Scottish Adult Disability Living Allowance will continue to be paid to an individual in hospital or a publicly funded care home for 28 days. Beyond 28 days, payment of Scottish Adult Disability Living Allowance will be reduced to £nil for both the care and mobility component (hospitals) and for the care component only (care homes).

The intention of Scottish Adult Disability Living Allowance is to provide financial assistance to mitigate the costs that individuals and their families incur because of a health condition or disability. The purpose of the '28 day rule' is to ensure that longer term periods in alternative accommodation are not subject to funding duplication, by receiving Scottish Adult Disability Living Allowance while the costs of that care are being covered. Usually when an individual is in hospital, their additional care needs are met by the NHS.

The situation is different for Child Disability Payment, which is not stopped when a child or young person undergoes a stay in hospital for longer than 28 days. This is because, when children are in hospital they continue to require care and support, usually from a parent or guardian, over and above that which is provided in clinical settings because of their young age. Adult inpatients are not expected to need this kind of pastoral input, and NHS staff are expected to meet essential care needs.

The 28 day window ensures that people cared for in temporary respite do not lose access to payments as well as recognising that where care placements break down or periods

²⁶ [DWP Stat-Xplore](#)

within alternative accommodation end at an early stage, the individual does not experience the additional disruption of losing access to Scottish Adult Disability Living Allowance.

It is important to note that there is an exception to this rule for those who are residing in a hospice and have a terminal illness. In these circumstances, an individual's payment of Scottish Adult Disability Living Allowance will continue, and the 28 day rule will not apply. This will have a positive impact by ensuring that people who are already in extremely difficult circumstances will not see their income reduce as a result of residing in a hospice.

7.6.2 Legal detention

Under the UK Government system, different approaches have been taken to legal detention for disability benefits. Payments for those receiving Disability Living Allowance are stopped the day after an individual enters legal detention. However, for those who are later acquitted or receive a non-custodial sentence, clients are entitled to any arrears of Disability Living Allowance for the period they were in legal detention. For those receiving Personal Independence Payment, all individuals continue to receive their full benefit for 28 days from when they entered legal detention, however clients are not entitled to any arrears for time spent in legal detention.

Other forms of Scottish disability assistance for adults, including Adult Disability Payment, Pension Age Disability Payment, and the care component of Child Disability Payment align with the Personal Independence Payment approach. We intend to align Scottish Adult Disability Living Allowance rules with those for other forms of Scottish disability assistance. Paying the first 28 days to all clients upon entering legal detention results in more people benefitting from support during their transition, assisting with the wind-down of any contracted assistance which is in place for the individual.

We do not believe it is appropriate to tie someone's disability benefit payment to their custodial sentence, as the sentence they receive does not impact their care or mobility needs or the care they should be receiving. Instead, as is the case where people are in other forms of alternative accommodation, payment should be reduced because they should be receiving the care they need in that accommodation. The 28 day period is intended to smooth this transition and to account for only small amounts of time spent in this accommodation.

It is important to further note that when an individual enters legal detention, they will continue to have an entitlement to Scottish Adult Disability Living Allowance beyond the first 28 days, however, their award will be reduced to £nil from 28 days after they enter legal detention. The median time spent on remand in Scotland is just 21 days²⁷, meaning that many will be released from legal detention before their benefit is nil-rated.

An individual whose award is reduced to £nil due to being in legal detention is not entitled to Short-term Assistance. By reducing the award to £nil during this period, when an individual leaves legal detention they will be able to have their reward re-instated if they continue to be eligible. Therefore, individuals will be able to access their financial support again with relative ease.

7.6.3 Linked short stays

Where an individual undergoes frequent short stays (i.e. less than 29 days) in hospital, their payment of Scottish Adult Disability Living Allowance will be unaffected. People are

²⁷ [Scottish Prison Population Statistics 2022-23](#)

entitled to continue receiving their entitlement for the first 28 days of a hospital stay to meet any outstanding additional costs incurred prior to their hospital stay. Decision Making Guidance will assist Social Security Scotland in applying linking rules where an individual spends two or more separate periods in hospital.

Although payment will stop after 28 days of an individual being in a publicly funded hospital or care home, entitlement is unaffected. Therefore, if and when an individual leaves such accommodation, payments will resume, subject to continuing to meet the eligibility criteria for Scottish Adult Disability Living Allowance.

8. Gender reassignment

There is no robust data relating to the proportion of people in Scotland to whom the gender reassignment protected characteristic applies. However, the Scottish Government recognises that a potential barrier to trans and non-binary people accessing disability assistance is a requirement for individuals to provide their gender when making an application. This is often discriminatory as individuals are asked to tick a box to indicate their gender. This tends to involve a male-female binary which does not apply to individuals whose gender does not fit into one of these categories, such as individuals who are non-binary, agender or genderfluid.

During our engagement with individuals, those who had undergone gender reassignment discussed feelings of being 'outed' by this process as they had to reiterate that they had changed gender and often felt disparaged by assessment staff. They also expressed frustration that the system could not cope with their attempts to amend their existing identity information, such as name and gender, within the current system.

It is anticipated overall though that Scottish Adult Disability Living Allowance will have a positive impact on this group. Information on an individual's gender is not required to make a determination of entitlement for Scottish Adult Disability Living Allowance.

Our systems have been designed to allow individuals to identify as 'male', 'female' or 'other', and whilst there will not be any new applications for Scottish Adult Disability Living Allowance, those with existing claims will be able to request to update their gender identity in our systems. Agency staff will be recruited who embody values of dignity and respect and all training for new staff will include awareness of equality, diversity and inclusivity, and be underpinned by human rights principles.

9. Pregnancy and maternity

While many of the clients in scope for transfer to Scottish Adult Disability Living Allowance are over State Pension age, there remain a large number to whom this protected characteristic may apply.

We do not currently have any data on the number of people in the Disability Living Allowance who are pregnant or have children. However, joint research carried out by Engender and Inclusion Scotland looked at the issues facing disabled women. Part of this research highlighted perceptions of disabled women regarding their ability to parent or whether they should become pregnant. Respondents also discussed the fear of having their children removed from their care due to the perception that they were not able to adequately care for them.

Engender cited instances where a disabled woman was able to carry out tasks relating to caring for children which resulted in them being judged as not entitled to disability benefits. The example provided detailed how a mother was able to prepare a meal for her child but not herself, requiring another person to do it. Because she was able to make a meal for her child, she was deemed not to be entitled to assistance. When asked what improvements could be made, key amongst them was a need for equalities training.

People employed by Social Security Scotland will be required to undertake equality training in-line with our commitment to delivering a service based on the values of dignity, fairness and respect. We will also trust what clients tell us about their needs during the application process and during consultations where they take place. This will help to ensure that individuals who fall within the protected characteristics, including pregnancy and maternity, do not experience discrimination when making an application for assistance or engaging with Social Security Scotland more broadly.

10. Race

Just under 4% of Scotland's population belong to minority ethnic groups, and 7% of the total population communicate in home languages other than English. Although there are not statistics showing the number of people within Scotland who are in receipt of disability benefits and who belong to minority ethnic groups, it is known that they generally make up 3.7% of those with a reported learning disability or developmental disorder.²⁸

There are particular barriers for individuals from minority ethnic groups in applying for disability benefits, especially those with English as a second language, as there may be difficulties in accessing or understanding their entitlements due to language or other communication barriers. In particular, participants in Experience Panels stated that they were not confident in using online resources or other materials because, while they felt they could speak English conversationally, they did not feel comfortable making sense of the complicated and technical language often used by authorities.²⁹

To address this, work has been undertaken with ethnic minority groups alongside the main Experience Panels as part of the Benefit Take-up Strategy. Experience Panel engagements with people who use English as a second language also showed that there is often an assumption around the most commonly translated languages.

There is an expectation that Social Security Scotland will mirror provision by other public sector organisations, and speakers of less common languages have shared that they will generally opt for letters in English, on the assumption that there are no materials available in their home language. This removes individual agency, forcing some individuals to rely on support to apply, and creating a barrier to take-up. Additionally, many individuals have also expressed concerns that they would misinterpret information and, as a result, they would be sanctioned or prosecuted because of language barriers.

Social Security Scotland will ensure that appropriate communication support is provided to meet individual needs both for accessibility and for language barriers. This includes the use of translator services during telephone calls and translation of decision reports when a determination of entitlement is made.

Social Security Scotland will create a range of Scottish Adult Disability Living Allowance stakeholder resources and content in accessible formats. These resources will be

²⁸ [2011 census | Scotland's Census](#)

²⁹ [Social Security Experience Panels: Ethnic Minorities](#)

proactively supplied to relevant stakeholder organisations through the National Engagement Team for organisations to distribute to people in local communities. Social Security Scotland proactively translate materials into 12 languages used in communities across Scotland. These include: British Sign Language, Urdu, Polish, Arabic, Ukrainian, Romanian, as well as braille and easy read formats. Materials in other languages are available on request.³⁰

Social Security Scotland's communications team will work with community radio and foreign language press to provide messaging on Scottish Adult Disability Living Allowance to communities. In some circumstances, printed marketing materials may not be the right way to engage with these communities and where this is the case, Social Security Scotland will provide an engagement approach through work carried out by the National Engagement and Local Delivery teams.

10.1 Gypsy/Traveller community

Within the broader classification of ethnic minority, just over 4,000 people in Scotland (0.1% of the population) identified their ethnic group as 'White: Gypsy/Traveller'.³¹ Although there are not statistics held on the number of Gypsy/Traveller people who receive disability benefits under the current system, the census showed that 28% of Gypsy/Travellers reported having a life limiting long-term health problem or disability, compared to 20% of the general population. It is thus more likely that this group will need to access disability benefits, but also likely that this group may experience additional barriers to accessing benefits.

The Scottish Government was also informed anecdotally that the Gypsy/Traveller community operate within the 'cash economy' and that they are more likely to have a post office account than a bank account. This can be problematic in terms of receiving payments. The payment method of Scottish Adult Disability Living Allowance will be important for some people, and particularly the Gypsy/Traveller community. To address this, payments can be made to Post Office and Credit Union accounts, and can be redeemed at one of 2850 PayPoint outlets in Scotland.

10.2 Refugees

The ethnic minority population also includes refugees. People with refugee status are eligible for benefits such as disability benefits, but typically experience additional barriers in comparison to the general population in accessing them. Specific research has been undertaken with this group as part of the Experience Panels to highlight barriers and challenges in accessing social security by Mobile Populations.³²

Participants felt stigmatised, misunderstood, judged and discriminated against by government officials under the current system. Refugees highlighted the need to learn more English to access services and interact effectively with government officials to be a barrier. It was highlighted that many refugees have a strong reliance on translators and interpreting services to communicate with government officials.

Social Security Scotland will ensure that individuals who require the use of translator services during telephone calls have access to this support. Decision reports when a determination of entitlement is made will be translated for individuals who require this

³⁰ [Social Security Scotland - Translation and interpretation services available for benefits information](#)

³¹ [2011 census | Scotland's Census](#)

³² [Social Security Experience Panels - Seldom Heard Programme Research - Mobile Populations](#)

information in another language. Social Security Scotland staff will also undertake training in inclusive communications to ensure individuals can interact in ways that work for them. This approach will help to reduce the stigma felt by refugees in their interactions with Scotland's social security system.

Participants felt that they could not find correct information on benefits and eligibility from official government channels under the UK Government system. Many perceived the social security system to be complex and difficult to understand. It was also noted by some participants that they encountered barriers in accessing information and application processes that are online, because they did not have internet access or digital services.

As previously noted, Social Security Scotland will proactively provide stakeholder organisations with Scottish Adult Disability Living Allowance resources. This approach should help to mitigate barriers in accessing information and for refugees and other Mobile Populations.

10.3 Residence and presence

The current rules for Disability Living Allowance set out that an individual would be required to be present for 104 out of the previous 156 weeks. For other benefits, Scottish Government policy has been to reduce the past presence test from 104 out of 156 weeks to 26 out of 52 weeks. For Scottish Adult Disability Living Allowance, as it is a closed benefit, only intended as a replacement for Disability Living Allowance, it was determined that it would be best to ensure consistency with the residence rules for other Scottish benefits. At the point of case transfer, the residence information which is shared by the Department for Work and Pensions is assumed to be correct, however we wish to be able to confirm these in future.

Scottish Ministers have previously legislated to ensure those settling in Scotland from Afghanistan, Ukraine, Sudan, Lebanon, Israel and Palestinian territories are exempt from having to satisfy the habitual residence and past presence tests. These provisions will also be included as part of the Scottish Adult Disability Living Allowance regulations.

The inclusion of these provisions in those disability benefits which are open to new applications will have a positive impact on disabled people who have settled in Scotland from areas of conflict by ensuring that they have access to benefits at the earliest possible opportunity, therefore assisting with the additional costs relating to their care needs as a result of a disability or health condition.

10.4 Terminal illness

It is known that there is a low uptake of palliative and end of life care services for Black, Asian and Minority Ethnic groups in the United Kingdom. This was also identified in the 'Palliative and end of life care for BAME groups in the United Kingdom' report,³³ which identified 45 literature reviews in this area. Some suggested factors for low uptake included a lack of referrals, lack of knowledge about services or the impact of family and religious values interacting with the idea of palliative and hospice care.

It is likely that some of the reasons for a low uptake of palliative care could also lead to a low uptake in disability benefits when terminally ill. As population projections are suggesting that people are living longer, this may present a challenge to those who are

³³ [Marie Curie Cancer Care – Report: Palliative and end of life care for Black, Asian and Minority Ethnic \(BAME\) groups in the UK](#)

terminally ill from minority ethnic groups in receipt of Scottish Adult Disability Living Allowance.

There is some evidence that ethnic minority groups can vary in the extent to which individuals would wish to know about their terminal diagnosis. This has been highlighted in a cross-cultural study involving some East Asian countries.³⁴ The research around this is not specific to any particular age group. The terminal illness policy has been developed in a way that is supportive of individuals from minority ethnic groups where explicit knowledge of a terminal diagnosis may be considered not to be in the best interests of the individual.

The Scottish Government has worked with people with lived experience to refine the way that terminal illness is spoken about. Scottish Ministers' commitment to accessible communication includes making sure that language barriers are not created for people who communicate in languages other than English.

The Chief Medical Officer's guidance contains important information for practitioners to support sensitive communication with individuals relating to their diagnosis. It also makes allowance for situations where sharing the terminal diagnosis with the individual would be harmful to them.

To support terminally ill people, it will also be possible for a third party to report on behalf of the client, and this will similarly be supportive of individuals where explicit knowledge of a terminal diagnosis is deemed not in their best interests. In these ways the terminal illness policy is supportive of those from minority ethnic groups.

Figures for terminally ill people are not collected by ethnic group. As the numbers are small, caution would be needed as release of these statistics could identify individuals. To mitigate this, we will invite individuals to complete a voluntary equalities survey to collect data on the ethnicity of people transferring from Disability Living Allowance. This should lead to collection of better data which can be used to inform changes to Scottish Adult Disability Living Allowance, and where relevant, terminal illness policy.

11. Religion and belief

According to data published by the Scottish Surveys Core Questions in 2019, 50.7% of respondents identified as having no religion, while 46.4% identified as Christian (Church of Scotland, Roman Catholic or other Christian). 1.1% identified as Muslim, with 1.7% belonging to other religions.³⁵

The Scottish Government has not identified any particular barriers resulting from Scottish Adult Disability Living Allowance which may affect people with the protected characteristic of religion and belief.

12. Sex

There is evidence that gender inequalities are likely to have become even more pronounced in light of the COVID-19 pandemic. When healthcare systems come under

³⁴ [National Library of Medicine – A Cross-Cultural Study on Behaviours When Death is Approaching in East Asian Countries](#)

³⁵ [Scottish Surveys Core Questions 2019](#)

pressure, it becomes increasingly likely that women will take on further caring responsibilities.³⁶

Although some disabilities and health conditions have a different impact on men and women, Social Security Scotland's approach to decision-making is guided by the social model of disability and will be person-centred through the values of dignity, fairness and respect. People employed by Social Security Scotland will be required to undertake equalities training which will help to ensure that people receiving Scottish Adult Disability Living Allowance do not face discrimination, including discrimination on the basis of sex.

13. Sexual orientation

In 2019, around 3% of people in Scotland identified their sexual orientation as 'lesbian', 'gay', 'bisexual' or other.³⁷ This is likely to be an under-report, as younger people are more likely to self-identify their sexual orientation in surveys than older people.³⁸ In 2021, 17% of those who identified as gay, lesbian or bisexual had experienced discrimination, compared to 8% who identified as straight.³⁹

A report by the Equality Network found that disabled people who identify as LGBT were more likely to experience discrimination than LGBT people without a disability. 59% of disabled LGBT people had experienced prejudice or discrimination within the last month at the time of publication in 2015, compared to 47% of non-disabled LGBT individuals.⁴⁰

The Scottish Government is committed to engaging with this group to build a service that meets their needs. 9% of Social Security Experience Panel members identify as lesbian, gay or bisexual and have been actively involved in the design of Social Security Scotland's services.⁴¹

Social Security Scotland staff will embody the values of dignity, fairness and respect. All training for staff will include inclusivity awareness and be underpinned by human rights principles.

14. Marriage and civil partnership

There is not a requirement to impact assess against this protected characteristic unless the policy or practice relates to work, for example Human Resource policies and practices. However, the Scottish Government has not identified any particular barriers resulting from Scottish Adult Disability Living Allowance which may affect people with the protected characteristic of marriage or civil partnership.

15. Recommendations and Conclusion

This Equality Impact Assessment process has identified that overall, the introduction of Scottish Adult Disability Living Allowance to replace Disability Living Allowance will have a positive impact for people in Scotland with protected characteristics. These impacts include:

³⁶ [The Covid-19 Outbreak and Gender: Key Advocacy Points from Asia and the Pacific](#)

³⁷ [Scottish Surveys Core Questions 2019](#)

³⁸ [Sexual Orientation in Scotland 2017 – A summary of the Evidence Base](#)

³⁹ [Scottish Household Survey 2021 – Telephone Survey: key findings](#)

⁴⁰ [The Scottish LGBT Equality Report 2015](#)

⁴¹ [Social Security Experience Panels: Who is in the panels? – 2020 Update – Full Report](#)

- Those reporting changes of circumstances or having a scheduled review of their Disability Living Allowance award will benefit from transfer to a similar DLA based benefit while also benefitting from an improved decision-making process that starts from a position of trust and supports individuals to receive the right determination at the first opportunity.
- Communication materials will be accessible, and information about Scottish Adult Disability Living Allowance will be available in multiple languages and in accessible formats.
- Awards of Scottish Adult Disability Living Allowance will be ongoing and those who require reviews will receive light touch reviews, alleviating some of the worry caused by the review process.
- Terminally ill people will be assessed using the Scottish Government's definition of terminal illness, which removes arbitrary timescales and is based on clinical judgement.
- When an individual disagrees with their award review, they will have access to Short-term Assistance during the re-determination and appeals process. This is non-recoverable and will mitigate a drop in the level of household income while reducing anxiety for those seeking administrative justice.

The Scottish Government is aware that groups who share protected characteristics may face difficulties in accessing or understanding their entitlements due to language or other communication barriers. Scottish Ministers are committed to mitigating these barriers both within Social Security Scotland and by ensuring that the independent advocacy service will be available to signpost people to third sector organisations where necessary. Interpreter services and assistance to complete application forms will be available.

The Act and the Charter recognise that social security is a human right, which informs all the Scottish Government's work. The creation of a social security charter acts as a bridge between the principles in the Act and everyday delivery of social security in Scotland to improve the experience of individuals. In this way the Scottish Government will invest in the people of Scotland, making a positive difference to the lives of all.

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