

Consultation on Adult Disability Payment

December 2020

Consultation on Adult disability Payment

Overview

The Scottish Government is consulting on the draft regulations for Adult Disability Payment. Adult Disability Payment is a new Scottish benefit which will replace Personal Independence Payment and be delivered by Social Security Scotland. This form of assistance is provided to disabled individuals between the ages of 16 and state pension age to mitigate the additional costs of living with a disability or health condition.

Why We Are Consulting

The purpose of this consultation is to gather views on the policy and draft regulations and identify any gaps, issues or unintended consequences. We are also asking questions on some specific points about the effects of these regulations. We would like to gather views from a range of organisations and individuals to ensure we have identified the best solutions. In addition to asking questions about the draft regulations we are also asking for views on the potential impacts of Adult Disability Payment on different groups and also on businesses.

The Scottish Government is now seeking the views of any organisation or individual with an interest in these matters to ensure what is being proposed will meet the needs of clients in the Scottish social security system. We will also be running some virtual events during the consultation period to promote and encourage stakeholders to take part.

What Happens Next

The Scottish Government will review the responses to the consultation and, if required, adjust the draft regulations in light of the feedback. In accordance with the Social Security (Scotland) Act 2018, the draft regulations will then be scrutinised by the independent Scottish Commission on Social Security. The regulations will be revised as needed following the Commission's report and then laid in draft for approval by the Scottish Parliament.

Ministerial Foreword



I am delighted to launch this consultation on the regulations for Adult Disability Payment. Adult Disability Payment will replace Personal Independence Payment for disabled people of working age in Scotland, and will represent a significant milestone in the development of the Scottish social security system. This consultation reflects our commitment to designing Disability Assistance in partnership with disabled people and disabled people's organisations so that we can make meaningful changes to the way in which our new benefits are delivered.

In the short time since our Consultation on Disability Assistance in 2019, the world as we know it has changed remarkably, with the Scottish Government and our public sector partners having to manage considerable challenges as a result of Covid-19. No one could have anticipated then the impact this would have on our plans for delivering Disability Assistance, or the difficult decision that would need to be taken to delay our replacement for Personal Independence Payment.

Despite these challenges, work has continued with building a new social security system that treats disabled people with fairness, dignity and respect. I remain grateful to the members of the Disability and Carer Benefits Expert Advisory Group (DACBEAG) and the Ill Health and Disability Benefits Stakeholder Reference Group for their steadfast support during these unprecedented times, and to our wider stakeholders for their continuing and sustained interest in our plans.

I recognise the considerable interest in talking about our approach in detail, and that disabled people need to have confidence in a system that works for them, not against them. I am confident that what we have set out in the regulations will reflect that.

We believe that we can make bold choices to create a real difference to the whole client journey – a journey that has trust embedded throughout, and reflects our core values. I fully recognise the distress and anxiety that people describe when talking about the dreaded brown envelope, assessments and having to repeatedly tell their story. I am determined that we will listen, we will learn and we will do better.

The regulations, of course, only tell part of the story. Much emphasis has been placed on how this new benefit will be delivered. The regulations form the foundation for a new relationship between disabled people and the social security system. It is important that we hear your views to help us ensure we are getting the details right. Your opinion matters to us, and I would like your help in shaping this new benefit.

Thank you in advance for taking the time to share your views.

Shirley-Anne Somerville MSP

Cabinet Secretary for Social Security and Older People

Introduction

The Social Security (Scotland) Act 2018 enables the Scottish Government to provide non-means tested Disability Assistance, equivalent to that currently provided by Disability Living Allowance, Personal Independence Payment and Attendance Allowance. This document sets out the Scottish Government's proposed policy approach to replacing Personal Independence Payment with Adult Disability Payment.

The Disability Assistance in Scotland Consultation ran from March to May 2019 and sought views on our overarching proposals for the delivery of devolved Disability Assistance. There was a great deal of engagement with the consultation which received over 250 responses from a range of stakeholder organisations and individuals. The feedback was broadly positive and a majority of respondents agreed with most of the proposals set out in the consultation.

Having published our response in October 2019, we entered a period of intense development, drawing on the feedback to design the client journey through the Adult Disability Payment application process. As has been of central importance throughout, we repeatedly sought the views of those with experience of the current benefit system. The invaluable input of the Disability and Carers Benefit Expert Advisory Group has also influenced the policy we are now consulting on.

Our overriding commitment throughout the devolution of social security has been ensuring the safe and secure transition to Scottish Disability Assistance. We have consistently communicated that when Adult Disability Payment is first delivered, it will be with largely the same eligibility criteria as provided by the current Personal Independence Payment framework and this is reflected in these draft regulations. At the same time, this has not limited our aspirations and Adult Disability Payment will be delivered in-keeping with our values of dignity, fairness and respect. Significant changes to both the application and decision making processes will contribute to the fundamentally different experience clients of Social Security Scotland can expect.

Aims of Adult Disability Payment

Adult Disability Payment will be provided to disabled adults to mitigate the additional costs of living with a disability or health condition. This includes physical or mental disabilities and health conditions which have a

significant adverse effect on an individual's daily activities that is not short-term. Individuals between the ages of 16 and state pension age will be eligible to apply for Adult Disability Payment.

In reflecting the Scottish Government's approach to social security, Adult Disability Payment is intended to be person centred, taking into account the specific needs of each client. This should bring about a marked improvement in the experience of disabled people in interacting with the social security system.

The regulations provide detailed rules relating to Adult Disability Payment, including eligibility, what assistance is available, the value of the payment and the making of applications and determinations. Comprehensive staff guidance will explain how the regulations should be interpreted and applied. It will also set out processes not detailed in the regulations such as the mechanics of the application and decision making process. While creating this guidance we will be engaging with stakeholders and taking on board their feedback.

About the Consultation

An outline of the Adult Disability Payment regulations can be found at Annex B. This consultation asks questions on whether the draft regulations (at Annex C) will achieve the aims of Adult Disability Payment, and also seeks feedback on certain policy approaches. We would like to gather views to ensure we have identified the best solutions and that they are in line with the principles of dignity, fairness and respect.

Who might be affected by the Adult Disability Payment draft regulations?

Social Security Scotland will accept new applications from disabled people and those with long term health conditions aged between 16 and state pension age. Based on existing data relating to Personal Independence Payment, we estimate that approximately 4,700 people will apply for Adult Disability Payment each month. Over 300 000 people in Scotland are expected to be in receipt of Personal Independence Payment when applications for Adult Disability Payment open in Scotland and will begin transferring to Social Security Scotland through a carefully managed process.

Individuals who care for people eligible for Adult Disability Payment might also be affected as entitlement to Adult Disability Payment can be relevant

to entitlement to certain benefits for carers. Lastly, Disabled People's Organisations and Welfare Rights Organisations which provide advice and advocacy in relation to disability benefits will likely be impacted. Further details of who may be affected by the regulations can be found in the draft Impact Assessments at Annexes D, E, F and G. We are also consulting on these and encourage you to share your views.

What comments are requested and by when?

If you wish to respond electronically, please use the Scottish Government's consultation hub, Citizen Space (<https://consult.gov.scot/social-security/adult-disability-payment-regulations/>). The list of questions can also be found at Annex K. To request a version of the consultation in Braille, please e-mail nathan.gale@gov.scot or phone 07557 810132. All responses should be submitted to us by Monday 15 March 2021.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form (Annex I) and send to

Adult Disability Payment Consultation
Disability Benefits Policy Team
Social Security Policy
Victoria Quay
Edinburgh
EH6 6QQ

Annexes

- Annex A: Policy Approaches Underpinning the draft Disability Assistance for Working Age People regulations
- Annex B: Outline of the draft Disability Assistance for Working Age People regulations
- Annex C: Draft Disability Assistance for Working Age People regulations
- Annex D: Draft Equalities Impact Assessment results summary
- Annex E: Draft Children's Rights and Wellbeing Impact Assessment (CRWIA) summary
- Annex F: Draft Business and Regulatory Impact Assessment summary
- Annex G: Draft Islands Communities Impact Assessment
- Annex H: Draft Fairer Scotland Duty Summary
- Annex I: Respondent Information Form
- Annex J: Consultation process
- Annex K: Consultation questions

Annex A: Policy Approaches Underpinning the draft Disability Assistance for Working Age People regulations

Key policy differences

1. We have bold ambitions for Adult Disability Payment and have identified a number of ways to provide disabled people with a fundamentally different experience of accessing the social security system. While the eligibility rules for Adult Disability Payment will remain largely the same, there are a number of key areas of policy which differ from Personal Independence Payment, including:

- All awards will be made on a rolling basis, with no set date for an award ending. In cases where there it is unlikely that a client's condition will improve there will be at least five years between Light-Touch reviews. Work is underway to establish parameters that could be put in place for the provision of indefinite awards for certain clients whose needs are very unlikely to change.
- The introduction of Short-Term Assistance (STA), a new form of assistance that ensures that clients can continue to receive their previous payment amount until the conclusion of any re-determination or appeal challenging the decision to reduce or stop the award;
- Extending the time limit for requesting a re-determination of a decision to 42 calendar days, to allow individuals time to access support with the process;
- A new definition of terminal illness, removing the requirement that a person must reasonably be expected to die within 6 months and instead using the clinical judgement of doctors and registered nurses involved in the individual's care.

2. There are also a range of proposed operational and administrative measures that will ensure that Adult Disability Payment is delivered in a way that is consistent with the values of social security in Scotland.

These include:

- The provision of a range of application channels which clients can select based on preference including online, paper applications and face to face;
- A local delivery service that will provide support and information to clients and stakeholders at a community level;

- We will use existing supporting information to make a determination about Adult Disability Payment for the majority of clients and consultations will only be carried out where it is the only way to obtain the information needed to make a decision;
- There will be no assessments like those carried out under the Department for Work and Pensions, as we will no longer conduct any functional examinations;
- Consultations will be carried out by people who are 'suitably qualified' to do so and employed by Social Security Scotland;
- Clients with mental health conditions and learning disabilities will discuss their needs with practitioners who have an appropriate understanding of their condition or disability;
- We will take a multi-channel approach to how consultations take place, such as by phone or video call, removing the need for the majority of clients to travel to unfamiliar places.

Improved application and decision making process

3. Through our engagement with disabled people we have learnt that the Personal Independence Payment application process can be a cause of great anxiety and distress. We have received consistent feedback that the application form is confusing, individuals feel that it is designed to 'catch them out', and takes an unreasonable amount of time and effort to complete. We are significantly re-designing the Adult Disability Payment application form and testing it to ensure clients understand what is being asked of them and why. Carrying out testing with experienced decision makers is also enabling us to develop the application form in ways that enable clients to provide the most relevant and useful information to inform robust decision making.

4. We want clients to be able to provide or direct us to the supporting information which will best assist a determination to be made about their entitlement. That is why we have focussed on gathering supporting information, making use of information which already exists in the public sector where possible.

Changes to activities, descriptors and scoring criteria

5. The Scottish Government has committed to delivering Adult Disability Payment safely and securely, ensuring that people's payments are protected during this transition period as we commence delivery. We must ensure that people continue to receive the payments they are entitled to.

6. We have undertaken extensive consultation on the existing Personal Independence Payment framework. Stakeholders and individuals told us that there are many improvements that could be made to the existing activities, descriptors and scoring criteria.

7. The two particular elements highlighted in the consultation as causing concern were the 20, 50 and 200 metre descriptors used to assess mobility, and the 50% rule which is applied to the majority of descriptors. A series of descriptors relating to the distance in metres an individual can walk determine eligibility for the mobility component of Personal Independence Payment, with the enhanced rate provided to clients who are unable to walk more than 20 metres. The proportion of time during which an individual satisfies a descriptor must amount to 50% of the days in a month.

8. We have considered carefully whether we should implement changes to these rules when we begin delivery of Adult Disability Payment. There are a number of challenges associated with this that would risk safe and secure transition and could result in a poor experience for clients, including:

- Other wide ranging issues have been raised with the current system, impacting individuals with mental health conditions, learning disabilities, sensory disabilities, epilepsy, MS, fluctuating conditions in general, those whose mobility is affected, those who are Deaf or hard of hearing. Making changes to the mobility or 50% rules in isolation could further embed unfairness into the framework resulting in a system which is disproportionately improved for clients with certain conditions, over others;
- Making such changes may understandably cause clients to end their award with Department for Work and Pensions early and make a new application to Social Security Scotland. If a significant number of clients chose to do this when we begin delivery of Adult Disability Payment, it would overwhelm the agency's ability to deliver Adult Disability Payment to the high standards that clients rightly expect;
- Making changes to the eligibility criteria before case transfer has completed will involve a much more involved decision making process than is currently planned for clients transferring from Department for Work and Pensions to

Social Security Scotland, which would cause a significant risk to the delivery of the case transfer process;

- Giving Social Security Scotland the opportunity to begin delivering Adult Disability Payment before wider changes are made will provide access to improved data to consider the impact of possible future changes to the eligibility criteria, including ensuring that we do not inadvertently disentitle clients who are currently in receipt of an award; and
- If the changes we made increased entitlement to Adult Disability Payment, the Department for Work and Pensions would need to agree that it would continue to provide automatic access to passported benefits and premiums. This does not necessarily prevent us from making changes to the framework, but we need to take the time necessary to develop alternative criteria and secure agreement from the Department for Work and Pensions.

9. For these reasons, we do not consider it safe to make any significant changes to the activities, descriptors and supporting eligibility criteria in these regulations. However, this has not stopped us from making a number of significant changes to both policy and to the administrative aspects of the delivery of Adult Disability Payment, to ensure that the Scottish social security system better meets the needs of the people of Scotland.

10. Additionally, we have made some minor changes to a number of the activities, descriptors and definitions to reflect significant case law which has shaped the way Personal Independence Payment is delivered. This will ensure that developments made through the tribunals system for Personal Independence Payment are carried over into Adult Disability Payment so that it operates in the way currently intended.

11. In the longer term, in order to address the many reported concerns with the existing framework, subject to being re-elected in May 2021, we will commence a substantial independent review of Adult Disability Payment in summer 2023, a year after this form of assistance is rolled out nationwide.

Independent review of Adult Disability Payment

12. The Scottish Government plans to establish a group to undertake the review with its members and chair drawn from outside the Scottish Government. The group will also secure input from people with lived

experience. The review will not be limited to specific aspects of Adult Disability Payment, such as the mobility rules. It will be wide ranging to allow consideration of the suitability all of the activities, descriptors and supporting criteria, for example, the reliability criteria and 50% rule.

13. The review will commence in summer 2023, providing the opportunity for Social Security Scotland to administer Adult Disability Payment for a full year so the necessary data and feedback from individuals can influence the recommendations. The Scottish Government will then make the independent report and recommendations publically available to allow for transparency, scrutiny and visibility. We understand that stakeholders are eager for changes to be made as soon as possible and are committed to implementing reforms as quickly as is achievable once case transfer is complete.

20 metre rule – improved decision making

14. We know that the mobility criteria are a source of great concern for both clients and other stakeholders. They have raised concerns about the high bar which must be met in order to qualify for the enhanced rate – being unable to walk more than 20 meters – which is thought to be too short a distance. Additionally the criteria have been criticised for failing to recognise the needs of individuals with a range of disabilities and health conditions, particularly those who experience fluctuations in how their mobility is impacted.

15. We are however confident that the improvements being made to the decision making process, including the replacement of the assessments undertaken previously by Department for Work and Pensions with consultations carried out by Social Security Scotland, will bring about a marked improvement. The following measures will all contribute to that commitment:

- Supporting information

16. In order to inform determinations of entitlement to Adult Disability Payment, we will aim to collect one piece of supporting information from a formal source, such as confirmation of a diagnosis or letter from a support worker. It need only be sufficient to determine, on the balance of probabilities, that the individual's condition is consistent with the general care and mobility needs detailed on their application. This is a marked departure from the current system which requires formal supporting

information to evidence each and every difficulty that the client reports experiencing. This can present particular challenges in relation to mobility as information from formal sources might not fully reflect the impact a client's condition has on their mobility from day to day.

17. Additionally, we know that useful insight into a client's daily life can often be provided by their informal support network – including family, friends, or unpaid carers. Social Security Scotland will ensure that equal consideration will be given to all sources of information. Details of this will be provided in the staff guidance documents which will accompany the finalised regulations.

- Applying the reliability criteria

18. In order for a determination to be made that a client is able to undertake any of the Adult Disability Payment daily living or mobility activities, they must be able to do so reliably. The reliability criteria require consideration to be given to the client's ability to complete an activity safely, to an acceptable standard, repeatedly and in a reasonable time.

19. Our engagement with clients, stakeholders and those with experience of delivering the Department for Work and Pensions assessment service is that these criteria are often not properly applied and this may particularly impact on decisions made about clients' mobility. It is also felt that there is a lack of clear and accessible guidance for clients applying for Personal Independence Payment. This means that these matters may not be addressed in applications.

20. We plan to address this barrier by providing transparency regarding the Adult Disability Payment criteria and guidance which facilitates clients to provide the most relevant information about how their condition affects them. In conjunction with comprehensive guidance and training for case managers, decisions about mobility should take full account of how the client experiences moving around, rather than simply being a tick box exercise.

- No physical examinations

21. There will be no assessments like those carried out under the Department for Work and Pensions, as we will no longer conduct any functional examinations, for example musculoskeletal examinations, testing limb strength, etc.

22. Our review of the current Personal Independence Payment assessment process concluded that such functional examinations did not meet our values of fairness, dignity and respect. It also concluded that examinations did not provide the kind of reliable information a case manager needs to make an informed decision.

- Transparency of informal observations

23. We know that the current approach of assessors not discussing their informal observations with clients, or any assumptions they draw from them, is not in keeping with our values of dignity, fairness and respect. This can also lead to inaccurate conclusions being made in Department for Work and Pensions assessment reports. The elements of Scottish Government policy relating to informal observations intended to improve decisions about mobility are:

- Informal observations must be restricted to the consultation itself – observations cannot be made outside of that discussion, for example (where a consultation takes place in person) the person’s journey to and from the location;
- All clients must be informed of any observations made during the consultation and what inferences the practitioner conducting the consultation draws from them;
- The client, or person accompanying them, must be given the opportunity to respond to the observations.

Transfer from Child Disability Payment to Adult Disability Payment

24. We have not included detailed regulations within the draft in relation to how clients will transfer from Child Disability Payment to Adult Disability Payment. We are aiming to design this process in such a way that it places as little burden on the client as possible. A key improvement we are making elsewhere when a client submits a new application is to use existing supporting information to make a determination. We are considering how this principle can be applied to clients moving from Child Disability Payment to Adult Disability Payment. We will further refine these regulations when the feasibility of this approach has been fully considered and before the regulations are submitted to the Scottish Commission on Social Security for scrutiny.

Annex B: Outline of the Disability Assistance for Working Age People regulations

1. The legislative framework for Scottish social security is intended to be simple and accessible. The Social Security (Scotland) Act 2018 sets out an over-arching legislative framework and describes the different types of assistance the Scottish Government should provide. The draft Disability Assistance for Working Age People (Scotland) Regulations describe the detailed criteria, rules and processes for delivery of Adult Disability Payment.

Part 1: Introductory and Interpretation (regulations 1 and 2)

2. These provisions set out when the regulations will come into force, and will include details of when a pilot scheme will commence delivery. They also provide interpretations for the key terms used throughout the regulations. Specific terms defined through case law have been added here to ensure that existing Personal Independence Payment case law is reflected in the interpretation of these regulations, for example, the definition of aid or appliance. Other terms and phrases used specifically in other provisions have been defined within the relevant regulation itself. An additional interpretation section has been included at Schedule 1 in relation to the activities and descriptors.

Q 1: Do you agree the regulations reflect this policy intent?

YES/NO/DON'T KNOW

Q 2: If you have any further comments please provide them here.

Part 2: Disability Assistance for Working Age People Overview (regulation 3)

3. This regulation provides that a client is entitled to Adult Disability Payment when they meet the following eligibility rules:
 - the daily living component criteria;
 - the mobility component criteria;
 - the required period condition;
 - the residence and presence conditions; and
 - the age criteria.
4. Adult Disability Payment will consist of a daily living component and a mobility component and a person may be entitled to either component or both.

5. The provisions make clear that unless otherwise stated individuals will require to make an application. They also indicate that there are special rules on entitlement relating to both age and terminal illness to be found later in the regulations.
6. The provisions here further describe circumstances where a person cannot be entitled to Adult Disability Payment. These are where the client is in receipt of Child Disability Payment , Disability Living Allowance, Personal Independence Payment, or Armed Forces Independence Payment.
7. Additionally, a person who is, in terms of regulation 20 of the draft, habitually resident outside of the UK is not entitled to the daily living component unless the United Kingdom is the competent state for them. Regulation 20 more extensively covers how persons falling within this category may be identified and the international instruments which apply in this regard

**Q 3: Do you agree the regulations reflect this policy intent?
YES/NO/DON'T KNOW**

Q 4: If you have any further comments please provide them here.

Part 3: Eligibility – Daily Living Component and Mobility Component (regulations 4 – 9)

Daily Living Component and Mobility Component (regulations 4 and 5)

8. These regulations prescribe that an individual is entitled to the daily living and/or mobility component of Adult Disability Payment at the standard rate if (a) their ability to carry out the daily living and/or mobility activities is limited by their physical or mental health condition or conditions, and (b) they meet the required period condition.
9. They also prescribe that an individual is entitled to the daily living and/or mobility component at the enhanced rate if (a) their ability to carry out the daily living and/or mobility activities is severely limited by their physical or mental health condition or conditions, and (b) they meet the required period condition.

10. Where a person meets the eligibility criteria for both the standard and enhanced rate of a component, they will be awarded the enhanced rate.
11. It is additionally stated that the daily living and mobility activities may be found in schedule 1, and that the rates of payment may be found in regulation 33.

**Q 5: Do you agree the regulations reflect this policy intent?
YES/NO/DON'T KNOW**

Q 6: If you have any further comments please provide them here.

Determination of ability to carry out activities (regulation 6)

12. This provision explains that the determination about a person's ability to carry out daily living or mobility activities will be assessed with reference to any aid or appliance that the person could reasonably be expected to wear or use, regardless of whether they actually do or not.
13. For example, a client with a disability which impacts on their balance could reasonably be expected to use a grab rail to reduce their risk of falling when getting in and out of the bath. However, if the client also has arthritis in their hands which causes pain and affects their ability to grip, then it would not be reasonable to expect them to use a grab rail.
14. The regulations state that a person can carry out an activity (as set out in Schedule 1) if they can do so:
 - Safely - this means in a manner unlikely to cause harm to them or to another person, either during or after completion of the activity. This includes consideration of the likelihood and severity of the consequences of the harm;
 - To an acceptable standard – this means to a standard that is reasonably expected for the activity, taking account of the impact on the individual of carrying out the activity to that standard;
 - Repeatedly – this means as often as the activity is reasonably required to be completed; and
 - Within a reasonable time period – this means no more than twice as long as the maximum period that an individual without

a physical or mental health condition or conditions would normally take to complete the same activity.

Scoring for daily living and mobility activities (regulations 7 and 8)

15. These regulations prescribe that the score a person obtains in relation to daily living and mobility activities will be determined by adding together the number of points scored under each activity. Only points scored in the daily living activities will count toward the daily living component and likewise only those scored for mobility activities will count toward the mobility component.
16. A person will have limited ability to carry out daily living or mobility activities where they obtain a score of at least 8 points and will be awarded the standard rate. A person will have severely limited ability to carry out daily living or mobility activities where they obtain a score of at least 12 points and will be awarded the enhanced rate.

Scoring: further provision (regulation 9)

17. This is the regulation which details the “50% rule”. The regulations prescribe that the descriptor which applies to a person in relation to each activity listed in schedule 1 is the descriptor which is satisfied on at least 50% of the days of the required period. If two or more descriptors are each satisfied on over 50% of the days, the descriptor which scores the higher or highest number of points will be awarded.
18. The regulation also prescribes that where no descriptor is satisfied on over 50% of the days of the required period, two or more descriptors which are satisfied less than 50% of the time can be added together to amount to over 50% of the time. The points for the descriptor which are satisfied for a greater proportion of the period will then be allocated. If, however, both or all of the descriptors are satisfied for the same proportion of the total period, the descriptor which has the highest number of points will be used.
19. A descriptor is satisfied on a day in the required period if the descriptor has been satisfied for any part of the day which is not minimal or fleeting.

**Q 7: Do you agree the regulations reflect this policy intent?
YES/NO/DON'T KNOW**

Q 8: If you have any further comments please provide them here.

Part 4: The qualifying period conditions (regulations 10 – 13)

The required period condition: daily living component and mobility component (regulation 10 and 11)

20. These regulations define the required period condition which must be satisfied to be eligible for each of the components of Adult Disability Payment. This is the requirement that for the 13 weeks leading up to the “relevant date” (as later defined in the regulations) the individual must have limited or severely limited ability to carry out the daily living or mobility activities. The same must also be likely for the 39 weeks after that date.

The relevant date (regulation 12)

21. This regulation defines the relevant date for the purpose of the required period condition. Where the individual has made an application for Adult Disability Payment and a decision about it has not been made, the relevant date will usually be the date of the application. The date of the application is the date that the initial registration is completed online, or over the phone, to make an application. If when the application is made, the 13 week period described above has not yet been met, then the relevant date will be the date on which that condition will have been met.

22. Where the individual has already got an award of either or both components, the relevant date will be the date of that award.

23. This regulation is, however, subject to the following regulation, when payment is sought after an interval.

The relevant date: after an interval (regulation 13)

24. This regulation makes provision for individuals who have applied for Adult Disability Payment and had a previous award of Adult Disability Payment or Personal Independence Payment, which ended no more than 2 years before the date of the new application. The previous award must be for the same component or components (daily living and/or mobility) as the new application. The new application must also relate to a disability or health condition which is substantially the same as that on the basis of which the previous

award was made, or relate to a new disability or health condition which has developed because of it. The regulation broadly provides that the relevant date, for the purposes of the required period condition, will not take account of the interval between the end of the previous award and the date on which the new application is made. This essentially means that the 13 week qualifying period condition does not apply.

25. This regulation also provides that where the previous award was of Personal Independence Payment, it is to be treated as an award of Adult Disability Payment, ensuring that the provision will apply for those coming to Adult Disability Payment after an interval having previously been in receipt of Personal Independence Payment.

Q 9: Do you agree the regulations reflect this policy intent?

YES/NO/DON'T KNOW

Q 10: If you have any further comments please provide them here.

Part 5: Residence and Presence Conditions (regulations 14 – 21)

Residence and presence conditions (regulation 14)

26. The residence and presence conditions require that individuals must on any day:
- Be ordinarily resident in Scotland;
 - Be habitually resident in the Common Travel Area (comprising the United Kingdom, Ireland, the Isle of Man, and the Channel Islands);
 - Not be subject to immigration control; and
 - Have been present in the United Kingdom for not less than 104 weeks out of the previous 156 (the 'past presence' test).

The rest of the regulations within this part then go on to detail circumstances in which all or part of these conditions may not apply, as follows.

Absence from the United Kingdom (regulation 15)

27. This regulation provides that an individual may remain entitled to Adult Disability Payment where they are temporarily absent from the United Kingdom for the first 13 weeks of that absence, for any reason. An absence is defined to be temporary too if, at the beginning, it is unlikely to exceed 52 weeks.
28. This regulation also provides that if a person has applied at a time when they have not been present in the United Kingdom for the required time (the 'past presence' test), but they will meet that condition no later than 13 weeks after making the application, a determination can be made that they are entitled to Adult Disability Payment from the day that the condition is satisfied.

Absence from the United Kingdom including medical treatment (regulations 16)

29. This regulation provides that an individual may remain entitled to Adult Disability Payment for the first 26 weeks of an absence from the United Kingdom, where the absence is solely in connection with medical treatment for a disability or condition which the client had before leaving the United Kingdom.

Absence from the United Kingdom in special cases (regulation 17)

30. This regulation provides that an individual may also be treated as meeting the 'past presence' test where that individual is outside of the United Kingdom, in their capacity as a member of Her Majesty's forces, an aircraft worker, a mariner or in employment in connection with continental shelf operations. This is provided that the individual can demonstrate a genuine and sufficient link to Scotland. Each of these capacities is defined further within the regulation. This also applies to clients who are related to someone (as defined in the regulation) who is outside of the United Kingdom in such a capacity.

Serving members of Her Majesty's forces and their family members - further provision (regulation 18)

31. This regulation provides that individuals abroad, in their capacity as a serving member of the United Kingdom armed forces or a civil servant should be treated as meeting the requirements to be ordinarily resident in Scotland, habitually resident in the Common

Travel Area, and having met the 'past presence' test, provided that the individual can demonstrate a genuine and sufficient link to Scotland. This also applies to clients who are related to someone (as defined in the regulation) who is outside of the United Kingdom in such a capacity.

Persons habitually resident in the United Kingdom (regulation 19)

32. This regulation dis-applies the residence and presence conditions where the individual is ordinarily resident in Scotland and habitually resident in the United Kingdom, provided that Title III of Part 2 of the withdrawal agreement (coordination of social security systems) applies, and the individual can demonstrate a genuine and sufficient link to Scotland.

Persons habitually resident outside the United Kingdom (regulation 20)

33. This regulation dis-applies the residence and presence conditions where an individual satisfies the conditions set out within this regulation. The set of conditions which shall apply will depend on where the individual is habitually resident. This regulation ensures that the provision on social security co-ordination in Title III of Part 2 of the EU withdrawal agreement is given effect to, along with that in Part III of the EEA EFTA separation agreement, Part 3 of the Swiss citizens' rights agreement, the agreement constituted by the exchange of letters set out in the schedule of the Family Allowances, National Insurance and Industrial Injuries (Gibraltar) Order 1974, and the convention on social security between the UK and Ireland.

Refugees (regulation 21)

34. This regulation provides that individuals who have been granted refugee status or humanitarian protection are also exempted from the 'past presence' test.

**Q 11: Do you agree the regulations reflect this policy intent?
YES/NO/DON'T KNOW**

Q 12: If you have any further comments please provide them here.

Part 6: Entitlement under Special Rules Relating to Age (regulations 22 – 25)

Age Criteria (regulation 22)

35. This section provides that only individuals who have reached age 16 are eligible for Adult Disability Payment. This regulation provides that individuals who are the relevant age (being state pension age) are not eligible for Adult Disability Payment for any period after they reach that age. This is, however, subject to the following regulation.

Persons of pensionable age: exceptions (regulation 23)

36. This regulation provides that existing entitlement to Adult Disability Payment can continue once a person reaches the relevant age. It also provides that an award can be made to individuals who applied for Adult Disability Payment before the relevant age but had not received a determination prior to reaching that age.

Adult disability payment after an interval and after reaching the relevant age (regulation 24)

37. This section makes changes to the way Regulation 13 (applications after an interval) operates for clients who have reached the relevant age. One key difference is that the interval between entitlement ending and a new application being made is reduced to 1 year. The other is that clients are only eligible for the enhanced rate of the mobility component of Adult Disability Payment if they were entitled to that same rate of the component under their previous award. Otherwise, they must be entitled to the mobility component at the standard rate.

Determination of an award after the person has reached the relevant age (regulation 25)

38. This regulation applies to individuals who have reached the relevant age and are in receipt of the mobility component of Adult Disability Payment. If a new determination of entitlement requires to be made, the mobility component may only continue to be awarded at the same rate, provided eligibility is based on substantially the same condition or conditions as the previous award. It cannot, however, be increased. It may be reduced if the individual no longer meets the eligibility criteria for the standard or enhanced rate. The regulation also provides that if an individual who has reached the relevant age

had a mobility component award that ended no more than one year prior to the award being re-determined, the previous mobility component can be reinstated.

Q 13: Do you agree the regulations reflect this policy intent?

YES/NO/DON'T KNOW

Q 14: If you have any further comments please provide them here.

Part 7: Entitlement Under Special Rules Related to Terminal illness (regulation 26)

Terminal Illness (regulation 26)

39. This regulation provides that individuals who are terminally ill and whose entitlement to Adult Disability Payment is to be determined. This can be on the basis of either a new application for Adult Disability Payment or a change in circumstances. These individuals are entitled to the enhanced rate of the daily living and mobility components of Adult Disability Payment. This is regardless of how long the individual has been terminally ill.
40. The regulation also dis-applies the requirements to otherwise satisfy the daily living and mobility component criteria, including the required period conditions. It further dis-applies the 'past presence' test under the residence and presence requirements.
41. Individuals who meet the definition of having a terminal illness, as defined in the 2018 Act, are entitled to Adult Disability Payment from the date at which an appropriate healthcare professional makes a clinical judgement that they meet the definition, the date the client's application for Adult Disability Payment is made, or the day of notification of change in circumstances (whichever is earlier).
42. If a clinical judgement is dated **up to** 26 weeks prior to the date the individual's application or notification of change in circumstances is received, entitlement can only begin up to a maximum of 26 weeks before the date the application is received.
43. If the clinical judgement is dated **more than** 26 weeks prior to the date the client's application or notification of change in circumstances is received, an appropriate healthcare professional is required to confirm the judgement is still accurate, in order for entitlement to

begin up to a maximum of 26 weeks before the date the application or notification of change in circumstances is received.

44. Entitlement cannot begin under these provisions before these regulations come into effect.
45. An individual is regarded as having a terminal illness if an appropriate healthcare professional makes a clinical judgement that they have a progressive disease that can reasonably be expected to cause their death, having taken account of the guidance prepared and made available by the Chief Medical Officer in terms of the 2018 Act.
46. In the circumstance though of persons habitually resident in an EEA State or Switzerland, the regulation provides that the appropriate healthcare professional need not take account of the Chief Medical Officer's guidance where it is not reasonable to do so.
47. The regulations define who can act as an 'appropriate healthcare professional'. This may be a registered medical practitioner (doctor) or a registered nurse, who is involved in the diagnosis or care of the patient, and acting in their professional capacity. A definition is also provided for when a person is habitually resident outside of the United Kingdom in terms of regulation 20 of the draft, to ensure that they additionally have equivalent qualifications in the place in which they are resident, and are a member of the professional body the General Medical Council or Nursing and Midwifery Council in that place.
48. Provision is also made that where an individual has an award of Child Disability Payment under special rules for terminal illness, no further clinical judgement will be required. Additionally, the provisions to be included within these regulations managing transfer of individuals from Child Disability Payment to Adult Disability Payment will apply.
49. Finally, this regulation also provides that if, due to a change in circumstances, a person who has been receiving Adult Disability Payment for a period is then determined to be entitled to receive it at a higher rate for that period, they will be paid the difference between what they have been paid and what the new rate determined.

**Q 15: Do you agree the regulations reflect this policy intent?
YES/NO/DON'T KNOW**

Q 16: If you have any further comments please provide them here.

Part 8: Payability when person is residing in certain accommodation or is detained in custody (regulations 27 – 32)

Care home residents (regulation 27)

This regulation sets out how admission to a care home impacts the ongoing payment of the daily living component of Adult Disability Payment. Where such forms of alternative accommodation are publicly funded, the care needs of the individual are met by those funds and so the daily living component is deemed not to be required.

An individual will therefore not receive any payment in respect of the daily living component of Adult Disability Payment from the day after they have been resident in a care home for 28 days. The regulation also includes provisions to dis-apply this condition if the individual is under 18 and being looked after by a local authority, as defined in the regulation.

Hospital in-patients (regulation 28)

50. This regulation provides that when a person is undergoing medical or other treatment as an in-patient at a hospital or similar institution they will not receive payment of either component of Adult Disability Payment from the day after they have been resident in the hospital for 28 days. This does not apply however, if the individual was under the age of 18 on the day on which they entered the hospital or similar institution.

Exceptions: care homes and hospitals (regulation 29)

51. This regulation provides that the stoppage of payments does not take effect for the first 28 days of a period of time in a care home or hospital. It also provides that the stoppage will not apply where the individual is residing in a hospice and is terminally ill, and the Scottish Ministers have been informed of this.

52. This regulation also provides for certain exclusions from the 28 day rule where services are paid:

- Entirely from the funds of the individual to whom the services are provided;

- Partly out of the resources of the individual for whom the services are provided and partly out of the resources of another person (other than a local authority) or from a charity; or
- Entirely out of the resources of another person (other than a local authority) or from a charity.

Legal Detention (regulation 30)

53. This regulation provides that when an individual is undergoing legal detention within the United Kingdom, if they are aged 18 or over they will not receive payment of either component of Adult Disability Payment from the day after they have been detained for 28 days. If they are aged 16 or 17, they will not receive payment of the daily living component from the day after they have been detained for 28 days. It also provides that if an individual is legally detained on the day their entitlement to Adult Disability Payment starts they will not receive payment of either component of Adult Disability Payment until they are no longer detained.

54. After the conclusion of criminal proceedings if an individual is detained in a hospital or similar institution in the United Kingdom because they have a mental disorder they will be entitled to payment of either or both component of Adult Disability Payment. That is unless the individual satisfies one of the conditions set out in the regulation.

Periods of residence (regulation 31)

55. This section describes how periods of time spent in a care home, hospital and legal detention are to be calculated for the purpose of making a decision to stop or start payment of Adult Disability Payment.

56. For the purpose of calculating the 28 day period, both the day that someone enters these establishments and the day that they leave that accommodation are not to be counted as part of the calculation.

57. Where an individual takes leave from an establishment, both the day that the individual leaves and the day the individual returns to the accommodation are not to be counted as days resident in that form of accommodation.

58. Where immediately following one period of residence, the individual then commences another period of residence (which may be in a different kind of establishment to the first period), the earlier period of residence is deemed to end on the day the individual leaves the establishment.
59. Where an individual enters or returns to an establishment either by transferring from another care home, hospital or from legal detention, the day of transfer is counted as a day of residence in an establishment.
60. This regulation also clarifies that for hospitals and care homes, a period of residence may comprise two or more separate periods, provided that there is no more than 28 days between each period. For legal detention, however, there may be up to one year between periods if they can be combined.
61. Finally, this regulation provides that where an individual's payment of Adult Disability Payment has stopped as a result of this Part, when the period of residence ends they will receive a determination without needing to make an application, in order to determine their new entitlement.

Payment of Adult Disability Payment between two periods of residence (regulation 32)

62. This regulation applies when a person has taken a period of leave from a care home, hospital or legal detention. It requires that where leave is taken from a care home, the Scottish Ministers make a determination without application in respect of the daily living component of Adult Disability Payment in respect of the period of leave, where the individual has notified them of the leave and expects to return to the establishment within 28 days. Where leave is taken from legal detention or a hospital, the Scottish Ministers are required to make a determination without application in respect of both components of Adult Disability Payment in respect of the period of leave, where the individual has notified them of the leave and expects to return to the establishment within 28 days
63. If the leave comes ahead of the end of the period specified (if any) in the individual's notice of determination that the individual received before they entered the establishment, then the determination made

for their period of leave must be at the same rate of the daily living component as at that earlier determination.

64. The period of leave begins on the day that the person goes on leave and ends on the day after the day they return to the establishment. Additionally, the regulation provides that if the person leaves the establishment permanently, they are no longer to be taken to be on leave when they have notified the Scottish Ministers and received a determination without application on that basis.

**Q 17: Do you agree the regulations reflect this policy intent?
YES/NO/DON'T KNOW**

Q 18: If you have any further comments please provide them here.

Part 9 – Short Term Assistance

This part will make provision for Short Term Assistance in relation to Adult Disability Payment. Policy is not yet settled on this matter and no draft provisions are included for the purposes of this consultation.

Part 10 – Making of Applications and Payments (regulations 33 – 37)

Rate of Adult Disability Payment and Making Payments (regulation 33)

65. This section describes the weekly payment rates for Adult Disability Payment. These are the 2020/21 rates, which will be subject to yearly uprating before the regulations come into force:

Daily living component

- the standard rate, £58.70;
- the enhanced rate, £87.65.

Mobility component

- the standard rate, £23.30
- the enhanced rate, £62.25.

66. This regulation also provides that for any week that the individual is entitled to the daily living component of Adult Disability Payment and also Constant Attendance Allowance within the meaning of section 61 of the Social Security Act 1975, the amount of Adult Disability Payment is to be reduced by the amount of Constant

Attendance Allowance. When the amount of Constant Attendance Allowance is equal to or greater than the amount of Adult Disability Payment, then Adult Disability Payment should be paid at £0.

67. This regulation also provides that Adult Disability Payment is only to be given in the form of money, except when the later regulation in relation to deduction decisions applies (see regulation 48).

Making Payments (regulation 34)

68. This regulation provides that where Adult Disability Payment is paid in respect of an individual, the Scottish Ministers may pay someone else (where appropriate) and the payment is to be used for the benefit of the client. If it is no longer appropriate to continue to pay such a person, then they may cease paying it to that person and pay it instead to someone else.

When an application is treated as made and beginning of entitlement to assistance (regulation 35)

69. Here, the regulations provide that an application is to be treated as made on the day that it is received by the Scottish Ministers. It also provides that Scottish Ministers may, in certain situations, treat an application as having been made on a date that is different to the date it is received. This is important to ensure that, for instance, applications made in advance of meeting certain criteria are determined with an entitlement date set on the date those criteria will be met, rather than making a determination that the client is not entitled and requiring them to make a new application for assistance at a later date.

70. The regulation then details when entitlement should be taken to begin. In most cases the date of entitlement is to be identified on the basis of the following:

- where an application is made within 8 weeks of the day on which the full name and date of birth (“the required data”) is submitted entitlement begins on that date;
- where an application is made outwith the period of 8 weeks from the day on which the required data is submitted entitlement begins on the day that the Scottish Ministers identify;
- If, however, the Scottish Ministers are satisfied that there is a good reason why the application was made outwith the 8 week

period, they may treat it as having been made within that period.

71. Where an individual is in legal detention, these rules of entitlement must take account of the fact that the application is to be treated as made on the day after the day when that individual's detention ends.

72. This regulation finally defines the period covered by an application for Adult Disability Payment. Section 38(3) of the 2018 Act provides that once a person has made an application in relation to a period and a determination of entitlement has been made, they cannot make another application for that type of assistance in respect of the same period. For Adult Disability Payment the period depends on when the application has been treated as made. If that is on the day that it is received by the Scottish Ministers, then the period begins on that day and ends on the day that the determination of entitlement is made. If alternatively, the application is treated as made on another day identified by the Scottish Ministers then the period is deemed to begin on the day before the determination is made and ends on the day on which the determination is made.

Time of Payment (regulation 36)

73. Adult Disability Payment will be paid 4-weekly in arrears or, for clients applying under special rules for terminal illness, weekly in advance.

Continuing Eligibility (regulation 37)

74. Entitlement to Adult Disability Payment may be made on the basis that the individual has ongoing entitlement to assistance.

Q 19: Do you agree the regulations reflect this policy intent?

YES/NO/DON'T KNOW

Q 20: If you have any further comments please provide them here.

Part 11: Qualifications and Experience Necessary to Carry out Assessments (regulation 38)

75. Where an assessment (known as a consultation) is necessary to determine entitlement to Adult Disability Payment, it will be carried out

by a practitioner. The following requirements will apply for someone to be a practitioner:

- They have been employed for a cumulative period of at least two years, in the direct provision to individuals of health care or social care services;
- Where the assessment will involve consideration of the individual's mental health condition or conditions, their employment in the provision of health care or social care services was directly provided to individuals with mental health conditions
- Where the assessment will involve consideration of the individual's learning disability or disabilities, their employment in the provision of health care or social care services was directly provided to individuals with learning disabilities.

Q 21: Do you agree the regulations reflect this policy intent?

YES/NO/DON'T KNOW

Q 22: If you have any further comments please provide them here.

Part 12: Determinations of entitlement to Adult Disability Payment without application (regulations 39 – 43)

Consideration of entitlement after specified period (regulation 39)

76. This regulation provides for a determination without application to be made at the point where an individual's award of Adult Disability Payment is to be reviewed. The 'light touch review' date will have been set at the time the award was made and the client's entitlement to Adult Disability Payment continues while the review is being carried out. Information on the review process will be set out in guidance.

Other situations requiring a determination without an application (regulation 40)

77. A determination without an application being received from an individual must be made by the Scottish Ministers in the following circumstances:

- a) The required data has been submitted in order to construct a record for the individual (ie. their name and date of birth), but no application is subsequently received;

- b) Whilst they are already in receipt of Adult Disability Payment, during the period of that determination, the Scottish Ministers become aware that:
- i. There is a change of circumstances which could possibly result in a change in the level of Adult Disability Payment paid to the individual, or require it to stop;
 - ii. The individual has died;
 - iii. A determination about the individual's entitlement was made in ignorance of, or by mistake as to, a material fact which existed at the time the determination was made;
 - iv. There is an alteration of the level of Personal Independence Payment which an individual was in receipt of immediately before transferring to Adult Disability Payment, by way of a revisions, supersession or appeal;
 - v. A person has been admitted to a care home, hospital, legal detention for a period of 28 days or more;
 - vi. The individual has a liability to Scottish Ministers for assistance given in error;
 - vii. As a result of the individual having received Personal Independence Payment at an incorrect rate elsewhere in the United Kingdom before transferring to Scotland, the individual is liable for overpayment of Personal Independence Payment;
 - viii. The a clinical judgement has been made that the individual is terminally ill;
 - ix. As a result of the eligibility criteria for Adult Disability Payment having been altered, the individual's entitlement may have changed;
 - x. Where an individual has been on leave from a hospital, care home or legal detention and notify the Scottish Ministers that they have left the establishment permanently;
 - xi. That the individual is no longer resident in a care home, hospital or legal detention, and so their entitlement requires to be redetermined.
- c) The Scottish Ministers are informed that an individual in respect of whom Adult Disability Payment is payable has transferred to Scotland from another part of the United Kingdom, or from another part of the United Kingdom to Scotland.

Determination following official error – underpayments (regulation 41)

78. Scottish Ministers must make a determination without application where they have previously made a determination of entitlement to

Adult Disability Payment, and they establish that due to an official error the determination was incorrect resulting in the individual not receiving the award they were entitled to, or receiving a lower award. The official error in the case of an underpayment is an error made by the Scottish Ministers or a Minister of the Crown which was not materially contributed to by anyone else.

79. This provision will also extend to cases of underpayment of short-term assistance (the provisions for which have not yet been drafted within the regulations).

Determination following error – overpayments (regulation 42)

80. This provision is similar to that for underpayments, however a determination without application must be made in this case where due to error, the determination resulted either in the individual receiving an award to which they were not entitled or a higher award than they were entitled to. Additionally, 'error' in this case is not limited to errors by the Scottish Ministers or a Minister of the Crown which was not materially contributed to by anyone else. It also extends to also include where an error was made wrongly, correctly but on the basis of incorrect information or an assumption which proves to be wrong, or where a new determination has not been made after an assumption on the basis of which an earlier determination was made has provide to be wrong.

81. This provision will also extend to cases of overpayment of short-term assistance (the provisions for which have not yet been drafted within the regulations).

When changes in entitlement take effect (regulation 43)

82. This provision describes the point in time at which determinations made as a result of a determination without application are applied in a range of scenarios.

83. In the case of an increase in the rate of award of Personal Independence Payment that the individual received at the point of transferring to Scotland as part of a cross-border move, changed entitlement begins on the date of the individual's first determination of entitlement to Adult Disability Payment.

84. Where the determination was previously based on an official error or error, the changed entitlement will begin on the date that the Scottish Ministers become aware of the official error, error or facts material to the earlier determination.
85. In the case of a determination without application other than in these two scenarios, the changed entitlement begins on the day when:
- Where the determination was made in connection with a change in circumstances, which the individual reports within four weeks of the change occurring, the date the individual qualifies for a higher rate of the daily living or mobility component;
 - Where the individual reports the change after four weeks but before 56 weeks, on the date when the individual reports the change; or
 - In any other case, the date on which the Scottish Ministers make the determination.
86. Where the Scottish Ministers consider it would be unjust not to do so, they may set an earlier date, except where the change has resulted from a change in the law. This is consistent with the principle that the law is generally not intended to have retrospective effect.
87. Where the amount of Adult Disability Payment payable is decreased, or entitlement ceases, the change in entitlement begins:
- Where the individual has notified the Scottish Ministers of a change of circumstances, on the date of the determination; or
 - in all other cases, on the date of the change in circumstances, or if that is not known, the date on which the Scottish Ministers became aware of the change.
88. Discretion is afforded for both scenarios above to alter the date on which the change in entitlement takes effect where in all the circumstances the Scottish Ministers consider that it would be unjust not to do so.

Q 23: Do you agree the regulations reflect this policy intent?

YES/NO/DON'T KNOW

Q 24: If you have any further comments please provide them here.

Part 13 - Periods in respect of a re-determination request

Periods in respect of a re-determination request (regulation 44)

89. This regulation prescribes the period for requesting a re-determination of entitlement as 42 days, starting from the day after Scottish Ministers make a determination of entitlement.

90. It prescribes the period for Scottish Ministers to make a re-determination of entitlement as 56 days, beginning with the day Scottish Ministers receive the request for a re-determination.

**Q 25: Do you agree the regulations reflect this policy intent?
YES/NO/DON'T KNOW**

Q 26: If you have any further comments please provide them here.

Part 14: Provision of vehicles (regulation 45)

91. The Scottish Government has introduced the Accessible Vehicle and Equipment Scheme - an accreditation framework that allows accredited providers of accessible cars, scooters and powered wheelchairs to receive the direct transfer of the mobility component of Adult Disability Payment.

92. Where an individual (or someone who has authority to act on their behalf) enters into a lease agreement for an accessible vehicle, the mobility component of their Adult Disability Payment award will be transferred directly to the provider to pay for the vehicle lease. These leases will be zero-rated for VAT purposes, will be at significantly lower rates than the mainstream market, and no clients will be required to undergo a credit check to access credit.

93. It sets out that the transfer of the mobility component should stop if the lease agreement is brought to an end.

94. It defines an 'authorised provider of vehicles' as a supplier of vehicles for disabled people accredited as part of the Scottish Government's Accessible Vehicle and Equipment Scheme framework.

**Q 27: Do you agree the regulations reflect this policy intent?
YES/NO/DON'T KNOW**

Q 28: If you have any further comments please provide them here.

Part 15 – Transfer from Child Disability Payment to Adult Disability Payment

95. This part will make provision for transfer of individuals from receiving Child Disability Payment to Adult Disability Payment. Policy is not yet settled on this matter and no draft provisions are included for the purposes of this consultation.

Part 16 – Transfer of Cases between Scotland and the rest of the United Kingdom

96. This part will make provision for transfer of cases between Scotland and the rest of the United Kingdom. Policy is not yet settled on this matter and no draft provisions are included for the purposes of this consultation.

Part 17 – Liability for Overpayment (regulation 46 and 47)

Liability for assistance given in error (regulation 46)

97. This regulation sets out the rules relating to recovery of overpayments. It provides that an individual's Adult Disability Payment (or, as the case may be, Short Term Assistance) may be given in whole or part by way of a deduction from their liability for overpayment. The individual's agreement to the deduction and the amount deducted is required, unless agreement is unreasonably withheld.

98. The term 'reasonable level' in this provision takes into account the individual's financial circumstances. Liability is limited to the difference in value between what was actually paid, and what should have been paid had the error not been made. Where assistance is given in a form other than money, its value is what giving that assistance cost the Scottish Ministers.

Determination to effect a deduction decision (regulation 47)

99. This regulation describes how Scottish Ministers must make a determination without an application of an individual's entitlement to

Adult Disability Payment or Short Term Assistance, or both, where it is possible for the individual to be paid by way of deduction, or they have previously been paid by way of deduction and this may no longer be appropriate.

100. It sets out that a determination without application may be made to:

- Increase or decrease the amount of a deduction;
- Amend the length of the period that deductions are to apply; or
- Stop making deductions.

101. It also sets out that a client may:

- Withdraw their agreement to deductions;
- Request to increase the amount deducted;
- Request to decrease the amount deducted; or
- Request to amend the length of the period the deductions are to apply.

102. Where any of these actions are taken by the client, the Scottish Ministers will make a determination without an application on the matter.

Q 29: Do you agree the regulations reflect this policy intent?

YES/NO/DON'T KNOW

Q 30: If you have any further comments please provide them here.

Part 18 – Pilot Scheme

103. This part will make provision for the Pilot Scheme for Adult Disability Payment. Policy is not yet settled on this matter and no draft provisions are included for the purposes of this consultation.

Part 19 – Consequential Amendments

104. This part will make provision for any consequential amendments to be made within these principal regulations. Policy is not yet settled on this matter and no draft provisions are included for the purposes of this consultation.

Schedule 1 – Adult Disability Assistance Determination

105. This schedule provides the tables detailing the activities, descriptors and scores to be allocated for each of the Daily Living Activities (Part 2) and Mobility Activities (Part 3) for Adult Disability Payment. These are drawn from the Activities and scores allocated for Personal Independence Payment. There are some changes to reflect significant developments in case law which have effected how the criteria has been applied for Personal Independence Payment. Part 1 of the Schedule offers interpretations of the terms relevant to the activities and descriptors.

Q 31: If you have any comments on Schedule 1 please provide them here.

Schedule 2 – Members of Her Majesty’s Forces: Excluded Persons

106. This schedule defines the persons who are excluded from the definition of Members of Her Majesty’s forces, for the purposes of the regulations.

Q 32: If you have any comments on Schedule 2 please provide them here.

A third schedule may also be added in later versions of the regulations, relating to the provisions on Short Term Assistance and the Pilot Scheme.

Q 33: If you have any comments about the proposed review of Adult Disability Payment please provide them here.

Q 34: If you have any comments about the impact assessments please provide them here.

Q 35: If there is anything else you would like to tell us about the regulations, impact assessments or Adult Disability Payment in general, please do so here.

Annex C: Draft Disability Assistance for Working Age People regulations

DRAFT REGULATIONS FOR CONSULTATION

The Disability Assistance for Working Age People (Scotland) Regulations

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PART 1 — INTERPRETATION

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SCHEDULE 2 — MEMBERS OF HER MAJESTY’S FORCES: EXCLUDED PERSONS

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 13(3), 31(2), 36(2), 41(4)(a), 43(5), 51, 52 and 95 of the Social Security (Scotland) Act 2018 (1), and all other powers enabling them to do so.

(1) 2018 asp 9 (“the 2018 Act”). Schedules 5 and 10 of the 2018 Act, respectively make provision about the exercise of power under sections 31 and 36. The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). The Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

In accordance with section 97(2) of that Act, the Scottish Ministers have informed the Scottish Commission on Social Security (“the Commission”) of their proposals, notified the Scottish Parliament that they have done so and made their proposals publicly available by such means as they consider appropriate.

They have laid a response to the Commission’s report on the proposals for the regulations before the Scottish Parliament in accordance with section 97(9)(a) of that Act.

In accordance with section 96(2) of that Act, a draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament.

PART 1

Introductory and Interpretation

Citation and Commencement

1.—(1) These regulations may be cited as the Disability Assistance for Working Age People (Scotland) Regulations .

(2) These regulations come into force for the purposes of Part X (pilot scheme) and Part X of schedule X on [date] and for all other purposes on [date].

Interpretation

2. In these Regulations—

“the 2018 Act” means the Social Security (Scotland) Act 2018;

“aid or appliance” —

(a) means —

(i) any object or device which a client needs to perform a function; or

(ii) any object or device which improves, provides or replaces the individual’s impaired physical or mental function, and

(b) can include an object or device which a person without a disability might choose to use for the same function;

(c) in relation to managing toilet need includes, but is not limited to, the use of incontinence pads; and

(d) includes a prosthesis;

“Armed Forces Independence Payment” means the disability benefit paid in accordance with article 24A of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011;

“assessment” means an assessment in terms of section 54 of the 2018 Act;

“Child Disability Payment” means Child Disability Payment in terms of the Disability Assistance for Children and Young People (Scotland) Regulations 2021;

“component” means the daily living component or mobility component of Adult Disability Payment;

“descriptor” means a descriptor in column 2 of the tables in Parts 2 and 3 of Schedule 1;

“determination” or “determination of entitlement” means a determination of an individual’s entitlement to assistance under section 37 or 49 of the 2018 Act,

“Disability Living Allowance” means disability living allowance under section 71 of the Social Security Contributions and Benefits Act 1992(2);

“legal detention” means detention in legal custody within the meaning of section 295 of the Criminal Procedure (Scotland) Act 1995(3) but does not include detention under—

(2)

(3) 1995 c.46. Section 295 was amended by section 24(2) of the Criminal Justice (Scotland) Act 2003 (2003 asp 7).

(e) section 59A of that Act, or

(b) section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003⁽⁴⁾;

“needs” where used in relation to an item or function, means that it is reasonably required, though it may not have been available or provided;

“medical treatment” means medical, surgical or rehabilitative treatment (including any course or diet or other regimen) and references to a person receiving or submitting to medical treatment are to be construed accordingly;

“Personal Independence Payment” means the disability benefit paid in accordance with section 77 of the Welfare Reform Act 2012;

“relevant date” means the date under regulations 12 and 13;

“previous award” means an award of either or both components to which an individual has ceased to be entitled;

“recipient” means the individual to whom Adult Disability Payment is paid,

“re-determined” means re-determined under section 43 of the 2018 Act, and “re-determination” is to be construed accordingly;

“Title III of Part 2 of the withdrawal agreement (coordination of social security systems)” means Title III of Part 2 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community⁽⁵⁾.

PART 2

Disability Assistance for Working Age People

Overview

3.—(1) An individual is entitled to Adult Disability Payment in accordance with these Regulations if they meet the eligibility rules which comprise—

- (a) the daily living component criteria in regulation 4;
- (b) the mobility component criteria in regulation 5;
- (c) the required period condition in regulations 10 and 11;
- (d) the residence and presence conditions in regulation 14, and
- (e) the age criteria in regulation 22.

(2) Paragraph (1) is subject to the special rules relating to age found in Part 6 and the special rules relating to terminal illness found in Part 7 of these Regulations.

(3) Adult Disability Payment is to consist of a daily living component and a mobility component.

(4) An individual’s entitlement to Adult Disability Payment may be an entitlement to either component or both of them.

(5) An individual must make an application for Adult Disability Payment other than in circumstances where a determination without application is to be made.

(6) An individual is not entitled to Adult Disability Payment whilst being entitled to Child Disability Payment, Disability Living Allowance, Personal Independence Payment or Armed Forces Independence Payment.

(7) An individual to whom regulation 20 applies is not entitled to the daily living component for a period, unless during that period—

⁽⁴⁾ 2003 asp 13.

⁽⁵⁾ 2019/C 384 I/01.

- (a) the United Kingdom is competent for payment of sickness benefits in cash to that individual for the purposes of Chapter 1 of Title 3 of one of relevant EU regulations as defined in regulation 20, or
- (b) in terms of regulation 20(3)(a)(ii), the United Kingdom is competent for payment of long term care benefits to the individual.

PART 3

Eligibility: Daily Living Component and Mobility Component

Daily Living Component

- 4.**—(1) An individual is entitled to the daily living component at the standard rate if—
- (a) the individual’s ability to carry out daily living activities is limited by the individual’s physical or mental health condition or conditions; and
 - (b) the individual meets the required period condition.
- (2) An individual is entitled to the daily living component at the enhanced rate if—
- (a) the individual’s ability to carry out daily living activities is severely limited by the individual’s physical or mental health condition or conditions; and
 - (b) the individual meets the required period condition.
- (3) For the purpose of these regulations—
- “daily living activities” are the activities set out in column 1 of the table in Part 2 of Schedule 1;
- “the standard rate” means the weekly rate prescribed in regulation 33(1)(a);
- “the enhanced rate” means the weekly rate prescribed in regulation 33(1)(b).
- (4) Whether a person has limited or severely limited ability to carry out daily living activities is to be determined in accordance with regulation 7.

Mobility Component

- 5.**—(1) An individual is entitled to the mobility component at the standard rate if—
- (a) the individual’s ability to carry out mobility activities is limited by the individual’s physical or mental health condition or conditions; and
 - (b) the individual meets the required period condition.
- (2) A individual is entitled to the mobility component at the enhanced rate if—
- (a) the individual’s ability to carry out mobility activities is severely limited by the individual’s physical or mental health condition or conditions; and
 - (b) the individual meets the required period condition.
- (3) For the purpose of these regulations—
- “mobility activities” are the activities set out in column 1 of the table in Part 3 of Schedule 1;
- “the standard rate” means the weekly rate prescribed in regulation 33(2)(a);
- “the enhanced rate” means the weekly rate prescribed in regulation 33(2)(b).
- (4) Whether a person has limited or severely limited ability to carry out mobility activities is to be determined in accordance with regulation 8.

Determination of ability to carry out activities

- 6.**—(1) An individual’s ability to carry out an activity is to be determined—
- (a) on the basis of the individual’s ability whilst wearing or using any aid or appliance which the individual normally wears or uses; or
 - (b) as if the individual were wearing or using any aid or appliance which the individual could reasonably be expected to wear or use.
- (2) Where an individual’s ability to carry out an activity is to be determined, they are to be determined to satisfy a descriptor on the basis of whether they can do so—
- (a) safely;
 - (b) to an acceptable standard;
 - (c) repeatedly; and
 - (d) within a reasonable time period.
- (3) Where an individual has been determined as having severely limited ability to carry out activities, they are not to be treated as also having limited ability in relation to the same activities.
- (4) In this regulation —
- (a) “safely” means in a manner unlikely to cause harm to the individual or to another person, either during or after completion of the activity, with consideration given to—
 - (i) the likelihood of harm; and
 - (ii) the severity of the consequences of that harm;
 - (b) “to an acceptable standard” means to a standard that is reasonably expected for the activity, taking account of the impact on the individual of carrying out the activity to that standard;
 - (c) “repeatedly” means as often as the activity being considered is reasonably required to be completed; and
 - (d) “reasonable time period” means no more than twice as long as the maximum period that an individual without a physical or mental health condition or conditions which limits that individual’s ability to carry out the activity in question would normally take to complete that activity.

Scoring for daily living activities

- 7.**—(1) The score an individual obtains in relation to daily living activities is determined by adding together the number of points (if any) awarded for each activity listed in column 1 of the table in Part 2 of Schedule 1 (“the daily living activities table”).
- (2) For the purpose of paragraph (1), the number of points awarded to an individual for each activity listed in column 1 of the daily living activities table is the number shown in column 3 of the table against whichever of the descriptors set out in column 2 of the table for the activity applies to the individual under regulation 9.
- (3) For the purposes of regulation 4, an individual has —
- (a) limited ability to carry out daily living activities where they obtain a score of at least 8 points and no more than 11 points in relation to daily living activities; and
 - (b) severely limited ability to carry out daily living activities where they obtain a score of at least 12 points in relation to disability living activities.

Scoring for mobility activities

- 8.**—(1) The score an individual obtains in relation to mobility activities is determined by adding together the number of points (if any) awarded for each activity listed in column 1 of the table in Part 3 of Schedule 1 (“the mobility activities table”).
- (2) For the purpose of paragraph (1), the number of points awarded to an individual for each activity listed in column 1 of the mobility activities table is the number shown in column 3 of the table against whichever

of the descriptors set out in column 2 of the table for the activity applies to the individual under regulation 9.

- (3) For the purposes of regulation 5, an individual has —
- (a) limited ability to carry out mobility activities where they obtain a score of at least 8 points and no more than 11 points in relation to mobility activities; and
 - (b) severely limited ability to carry out mobility activities where they obtain a score of at least 12 points in relation to mobility activities.

Scoring: further provision

9.—(1) The descriptor which applies to an individual in relation to each activity in the tables referred to in regulations 7(2) and 8(2) is—

- (a) where one descriptor is satisfied on over 50% of the days of the required period, that descriptor;
- (b) where two or more descriptors are each satisfied on over 50% of the days of the required period, the descriptor which scores the higher or highest number of points; and
- (c) where no descriptor is satisfied on over 50% of the days of the required period but two or more descriptors (other than a descriptor which scores 0 points) are satisfied for periods which, when added together, amount to over 50% of the days of the required period—
 - (i) the descriptor which is satisfied for the greater or greatest proportion of days of the required period; or,
 - (ii) where both or all descriptors are satisfied for the same proportion, the descriptor which scores the higher or highest number of points.

(2) For the purposes of paragraph (1), a descriptor is satisfied on a day in the required period if—

- (a) the descriptor has been satisfied for any part of the day which is not minimal or fleeting; and
- (b) it is likely that, if the individual had been subject to a determination on that day, they would have satisfied that descriptor.

(3) In paragraphs (1) and (2), “required period” means—

- (a) in the case where entitlement to adult disability payment falls to be determined, the period of 13 weeks ending with the relevant date together with—
 - (i) in relation to an application after an interval for the purpose of regulation 13 the period of 39 weeks beginning with the date on which that application is made;
 - (ii) in relation to any other application, the period of 39 weeks beginning with the day after the relevant date.
- (b) in the case where adult disability payment has been awarded to an individual—
 - (i) during the period of 13 weeks following a determination of entitlement under an application for the purpose of regulation 13, the period of 13 weeks ending with the relevant date together with, for each day of the award, the period of 39 weeks beginning with the day after that date;
 - (ii) in any other case, for each day of the award, the period of 13 weeks ending with that date together with the period of 39 weeks beginning with the day after that date.

PART 4

Required Period Condition

Required Period Condition: daily living component

10.—(1) An individual meets the required period condition for the purposes of regulation 4(1) (daily living component at the standard rate) where—

- (a) if the individual had been subject to a determination at every time in the period of 13 weeks ending with the relevant date, it is likely that the Scottish Ministers would have determined at that time that the individual had limited ability to carry out daily living activities; and
 - (b) if the individual were to be subject to a determination at every time in the period of 39 weeks beginning with the day after the relevant date, it is likely that the Scottish Ministers would determine at that time that the individual had limited ability to carry out daily living activities.
- (2) An individual meets the required period condition for the purposes of regulation 4(2) (daily living component at the enhanced rate) where—
- (a) if the individual had been subject to a determination at every time in the period of 13 weeks ending with the relevant date, it is likely that the Scottish Ministers would have determined at that time that the individual had severely limited ability to carry out daily living activities; and
 - (b) if the individual were to be subject to a determination at every time in the period of 39 weeks beginning with the day after the relevant date, it is likely that the Scottish Ministers would determine at that time that the individual had severely limited ability to carry out daily living activities.

Required Period Condition: mobility component

11.—(1) An individual meets the required period condition for the purpose of regulation 5(1) (mobility component at the standard rate) where—

- (a) if the individual had been assessed at every time in the period of 13 weeks ending with the relevant date, it is likely that the Scottish Ministers would have determined at that time that the individual had limited ability to carry out mobility activities; and
- (b) if the individual were to be assessed at every time in the period of 39 weeks beginning with the day after the relevant date, it is likely that the Scottish Ministers would determine at that time that the individual had limited ability to carry out mobility activities.

(2) An individual meets the required period condition for the purposes of regulation 5(2) (mobility component at the enhanced rate) where—

- (a) if the individual had been assessed at every time in the period of 13 weeks ending with the relevant date, it is likely that the Scottish Ministers would have determined at that time that the individual had severely limited ability to carry out mobility activities; and
- (b) if the individual were to be assessed at every time in the period of 39 weeks beginning with the day after the relevant date, it is likely that the Scottish Ministers would determine at that time that the individual had severely limited ability to carry out mobility activities.

The relevant date

12. Except where paragraph (2) or (3) of regulation 13 applies, the relevant date is—

- (a) where the individual has made an application for adult disability payment which has not been determined, the date of that application or, if later, the earliest date in relation to which, if the individual had been assessed in relation to their ability to carry out daily living activities or, as the case may be, mobility activities, at every time in the previous 13 weeks, it is likely that the Scottish Ministers would have determined at that time that the individual has limited ability or, as the case may be, severely limited ability to carry out those activities; and
- (b) where the individual has an award of either or both components, each day of that award.

The relevant date: Adult disability payment after an interval

13.—(1) Paragraphs (2) and (3) apply where—

- (a) an individual makes an application for adult disability payment (“the new application”);
- (b) that individual had a previous award of—
 - (i) Adult Disability Payment, or
 - (ii) Personal Independence Payment

- which ended not more than 2 years before the date on which the new application is made;
- (c) the previous award referred to in sub-paragraph (b) consisted of the same component as the one to which the individual is entitled (or would be entitled if they met the required period condition) under the new application; and
 - (d) the Scottish Ministers determine that the entitlement under the new application results from—
 - (i) substantially the same physical or mental health condition or conditions for which the previous award was made; or
 - (ii) a new physical or mental health condition or conditions which developed as a result of a condition for which the previous award was made.
- (2) In relation to determination of entitlement under the new application—
- (a) the relevant date for the purposes of regulations 10(1)(a) and (2)(a) and 11(1)(a) and (2)(a) is the date on which the previous award ended; and
 - (b) regulations 10(1)(b) and (2)(b) and 11(1)(b) and (2)(b) have effect in relation to the new application as if, for the words ‘the relevant date’ there were substituted ‘the date on which the new application for adult disability payment is made’.
- (3) Where an individual is awarded either or both components under the new application, in relation to continued entitlement to that component or, as the case may be, those components, for the period of 13 weeks following the date of the new application—
- (a) the relevant date for the purposes of regulations 10(1)(a) and (2)(a) and 11(1)(a) and (2)(a) is the date on which the previous award ended; and
 - (b) regulations 10(1)(b) and (2)(b) and 11(1)(b) and (2)(b) have effect in relation to that award as if, for the words ‘the relevant date’ there were substituted ‘each day of the award’.
- (4) For the purposes of this regulation—
- (a) an award of Personal Independence Payment under paragraph (1)(b)(ii) is to be treated as though it were an award of Adult Disability Payment, and
 - (b) that award may have been made whilst the person was ordinarily resident in—
 - (i) Scotland, or
 - (ii) any other part of the United Kingdom.
- (5) This regulation is subject to regulation 24.

PART 5

Residence and Presence Conditions

Residence and presence conditions

- 14.** An individual satisfies the residence and presence conditions if on any day that individual—
- (a) is ordinarily resident in Scotland,
 - (b) is habitually resident in the Common Travel Area,
 - (c) is not a person to whom section 115(9) of the Immigration and Asylum Act 1999⁽⁶⁾ applies, within the meaning of section 115(3) of that Act for the purposes of entitlement to Adult Disability Payment, and
 - (d) has been present in the United Kingdom for a period of, or periods amounting in aggregate to, not less than 104 weeks out of the 156 weeks immediately preceding that day.

⁽⁶⁾ 1999 c.33

Absence from United Kingdom

15.—(1) Where an individual is temporarily absent from the United Kingdom, they are treated as present in the United Kingdom for the purposes of regulation 14(d) for the first 13 weeks of absence.

(2) The individual is temporarily absent if, at the beginning of the period of absence, their absence is unlikely to exceed 52 weeks.

(3) Where an individual—

- (a) does not meet the presence condition set out in paragraph (1)(d) on the date the application is received by the Scottish Ministers,
- (b) will meet that condition, unless there is a change of circumstances, on a date (“the later date”) not later than 13 weeks after the application was received, and
- (c) does meet that condition on the later date,

the Scottish Ministers may make a determination that the individual is entitled to Adult Disability Payment from the later date .

Absence from United Kingdom to receive medical treatment

16.—(1) Where the individual is temporarily absent from the United Kingdom, they are treated as present in United Kingdom for the purposes of regulation 14(d) for the first 26 weeks of that absence, where—

- (a) their absence is solely in connection with arrangements made for their medical treatment for a disease or physical or mental health condition before the individual left the United Kingdom; and
- (b) the arrangements referred to in paragraph (1)(a) relate to medical treatment—
 - (i) outside the United Kingdom;
 - (ii) during the period whilst the individual is temporarily absent from the United Kingdom, and
 - (iii) by, or under the supervision of, a person appropriately qualified to carry out that treatment.

(2) In this regulation, “temporarily absent” has the same meaning as in regulation 15(2).

Absence from United Kingdom in special cases

17.—(1) Where an individual is absent from the United Kingdom, they are treated as present in the United Kingdom for the purposes of regulation 14(d) where—

- (a) they are abroad in the capacity of—
 - (i) a member of Her Majesty’s forces;
 - (ii) an aircraft worker; or
 - (iii) a mariner; or
- (b) they are in employment prescribed or the purposes of section 120 (employment at sea (continental shelf operations)) of the Social Security Contributions and Benefits Act 1992(7) in connection with continental shelf operations; or
- (c) they are living with a person mentioned in paragraph (1)(a)(i) and are the spouse, civil partner, son, daughter, step-son, step-daughter, father, father-in-law, step-father, mother, mother-in-law or step mother of that person,

and they can demonstrate a genuine and sufficient link to Scotland.

(2) In this regulation and in regulation 18, “a member of Her Majesty’s forces” means a member of “the regular forces” or “the reserve forces” as defined in section 374 of the Armed Forces Act 2006(8), other than a person who is specified in Schedule 2, who is—

- (a) over the age of 16; and
- (b) not absent on desertion.

(7)
(8)

(3) In this regulation—

“aircraft worker” means a person who is employed under a contract of service either as a pilot, commander, navigator or other member of the crew of any aircraft, or in any other capacity on board an aircraft where—

- (a) the employment in that other capacity is for the purposes of the aircraft or its crew or of any passengers or cargo or mail carried on that aircraft; and
- (b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the aircraft is in flight,

but does not include a person who is in employment as a member of Her Majesty’s forces;

“mariner” means a person who is in employment under a contract of service either as a master or member of the crew of any ship or vessel or in any other capacity on board any ship or vessel where—

- (a) the employment in that other capacity is for the purposes of that ship or vessel or the crew or any passengers or cargo or mail carried by the ship or vessel; and
- (b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the ship or vessel is on voyage,

but does not include a person who is in employment as a member of Her Majesty’s forces.

Serving members of Her Majesty’s forces and their family members – further provision

18.—(1) An individual is treated as meeting the residence and presence conditions set out in regulations 14(a), (b) and (d) for any period where that individual—

- (a) is outside of Scotland or the Common Travel Area, or both, in their capacity as a—
 - (i) serving member of her Majesty’s forces, or
 - (ii) civil servant, or
- (b) is living with a person mentioned in paragraph (a) of this regulation and are the spouse, civil partner, son, daughter, step-son, step-daughter, father, father-in-law, step-father, mother, mother-in-law or step-mother of that person,

and they can demonstrate a genuine and sufficient link to Scotland.

(2) In this regulation, “civil servant” means a person employed in the civil service of the state.

Persons habitually resident in the United Kingdom

19.The residence and presence conditions set out in regulation 14 do not apply where on any day—

- (a) the individual is—
 - (i) habitually resident in the United Kingdom, and
 - (ii) ordinarily resident in Scotland,
- (b) Title III of Part 2 of the withdrawal agreement (coordination of social security systems) applies to the individual, and
- (c) the individual can demonstrate a genuine and sufficient link to Scotland.

Persons habitually resident outside the United Kingdom

20.—(1) The residence and presence conditions set out in regulation 14 do not apply in relation to the daily living component where an individual—

- (a) satisfies the conditions in paragraph (2) on the day the application is made, if the individual has rights arising from a relevant EU regulation, or
- (b) satisfies the conditions in paragraph (3) on the day the application is made, if the individual has rights arising from the UK-Ireland convention mentioned in that paragraph.

(2) The conditions referred to in paragraph (1)(a) are that the applicant must—

- (a) be an individual—

- (i) to whom the rules set out in a relevant EU regulation apply by virtue of—
 - (aa) Title III of Part 2 of the EU withdrawal agreement,
 - (bb) Part 3 or Article 23(4) of the Swiss citizens’ rights agreement (as defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020⁽⁹⁾), or
 - (cc) Title III of the EEA EFTA separation agreement (as defined in that section), or
 - (dd) the agreement constituted by the exchange of letters set out in the schedule of the Family Allowances, National Insurance and Industrial Injuries (Gibraltar) Order 1974⁽¹⁰⁾, and
 - (ii) in respect of whom the United Kingdom is, as a result, competent for payment of sickness benefits in cash,
 - (b) be resident in—
 - (i) Switzerland,
 - (ii) an EEA state, or
 - (iii) Gibraltar,
 - (c) have a genuine and sufficient link to Scotland, and
 - (d) meet the other conditions prescribed in these Regulations.
- (3) The conditions referred to in paragraph (1)(b) are that the applicant must—
- (a) be an individual—
 - (i) to whom the convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland signed at Dublin on 1 February 2019⁽¹¹⁾ as modified from time to time in accordance with any provision of it, applies, and
 - (ii) in respect of whom the United Kingdom is, as a result, competent for payment of long term care benefits,
 - (b) be resident in Ireland,
 - (c) have a genuine and sufficient link to Scotland, and
 - (d) meet the other conditions prescribed in these Regulations.
- (4) The reference in paragraph (2)(c) to an individual’s link to Scotland being sufficient is to it being sufficiently close that if the individual were not entitled to Adult Disability Payment, paragraph (2) would be incompatible with the applicable agreement mentioned in that paragraph.
- (5) The reference in paragraph (3)(c) to an individual’s link to Scotland being sufficient is to its being sufficiently close that if the individual were not entitled to Adult Disability Payment, paragraph (3) would be incompatible with the convention mentioned in that paragraph.
- (6) In this regulation—
- “EEA State” means—
- (a) any member state of the European Union or
 - (b) any other state that is party to the agreement on the European Economic Area signed at Oporto on 2 May 1992⁽¹²⁾, together with the Protocol adjusting that Agreement signed at Brussels on 17 March 1993⁽¹³⁾, as modified or supplemented from time to time,
- “EU law” has the meaning given by subsection (9) of section 126 of the Scotland Act 1998⁽¹⁴⁾ or, if that subsection has been repealed, the meaning given by that subsection immediately before its repeal⁽¹⁵⁾,
- “relevant EU Regulation” means one of the following Regulations—

(9)
 (10)
 (11)
 (12)
 (13)
 (14)
 (15)

- (a) Council Regulation (EC) No 1408/71 of 14 June 1971⁽¹⁶⁾ on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community,
- (b) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004⁽¹⁷⁾ on the coordination of social security systems.

Refugees

21.—(1) Regulation 14(d) does not apply in relation to a determination for Adult Disability Payment where an individual has—

- (a) been granted refugee status or humanitarian protection under the immigration rules; or
- (b) leave to enter or remain in the United Kingdom as the dependant of a person granted refugee status or humanitarian protection under the immigration rules.

(2) For the purposes of this regulation, “immigration rules” means the rules laid before Parliament under section 3(2) of the Immigration Act 1971⁽¹⁸⁾.

PART 6

Entitlement under special rules relating to age

Age Criteria

22.—(1) An individual is eligible to receive Adult Disability Payment if they are at least 16 years of age.

(2) An individual is not entitled to either the daily living component or the mobility component of Adult Disability Payment for any period after the person reaches the relevant age.

(3) In paragraph (1), “the relevant age” means pensionable age (within the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995).

(4) Where an individual was born on 29 February, their birthday is to be taken to fall on 28 February in a year which is not a leap year.

(5) Paragraph (2) is subject to the exceptions provided in regulation 23.

Persons of pensionable age: exceptions

23. Regulation 22(2) does not apply where the individual has reached the relevant age if they—

- (a) were entitled to an award of either or both components of either Adult Disability Payment or Personal Independence Payment on the day preceding the day on which they reached the relevant age; or
- (b) made a application for Adult Disability Payment or Personal Independence Payment before reaching the relevant age and that application was not determined before they reached that age, but an award of either or both components would be made in respect of the individual but for regulation 22(2).

Adult disability payment after an interval and after reaching the relevant age

24.—(1) Where an individual has reached the relevant age and makes a new application in the circumstances set out in regulation 13 the following exceptions apply.

(2) The exceptions referred to in paragraph (1) are—

- (a) regulation 22(2) does not apply;

⁽¹⁶⁾
⁽¹⁷⁾
⁽¹⁸⁾

- (b) the reference to ‘2 years’ in regulation 13(1)(b) is to be read as ‘1 year’;
- (c) where the individual is assessed as having severely limited ability to carry out mobility activities for the purposes of the new application—
 - (i) the individual is entitled to the enhanced rate of the mobility component only if they were entitled to that rate of that component under the previous award; and
 - (ii) where the individual is not entitled to the enhanced rate of that component because of paragraph (2)(c)(i), they are entitled to the standard rate of that component provided that they were entitled to that rate of that component under the previous award; and
- (d) where the individual is assessed as having limited ability to carry out mobility activities for the purposes of the new application, they are entitled to the standard rate of the mobility component only if they were entitled to that component, at either rate, under the previous award.

Determination of an award after the person has reached the relevant age

- 25.**—(1) Subject to paragraph (2), regulation 22(2) does not apply where—
- (a) the individual has ongoing entitlement to an award (“the original award”) of either or both components of Adult Disability Payment or Personal Independence Payment pursuant to an exception in regulation 23 or 24; and
 - (b) the Scottish Ministers are making a subsequent determination of their entitlement by way of a determination without an application.
- (2) Where the original award includes an award of the mobility component and the determination without application is being made where—
- (a) it appears to the Scottish Ministers that the individual’s circumstances have changed, or
 - (b) the Scottish Ministers have new information available to them about the individual’s physical or mental health condition or conditions ,
- the restrictions in paragraph (3) apply in relation to the determination.
- (3) The restrictions referred to in paragraph (2) are—
- (a) where the original mobility component award is for the standard rate then, regardless of whether the award would otherwise have been for the enhanced rate, the Scottish Ministers—
 - (i) may only make an award for the standard rate of that component; and
 - (ii) may only make such an award where entitlement results from substantially the same condition or conditions for which the mobility component in the original award was made.
 - (b) where the original mobility component award is for the enhanced rate, the Secretary of State may only award that rate of that component where entitlement results from substantially the same condition or conditions for which the mobility award was made.
- (4) Where the original award does not include an award of the mobility component but the individual had a previous award of that component, for the purpose of this regulation entitlement under that previous award is to be treated as if it were under the original award provided that the entitlement under the previous award ceased no more than 1 year prior to the date on which the determination takes or would take effect.

PART 7

Entitlement under special rules relating to terminal illness

Terminal Illness

- 26.**—(1) This regulation applies to a person —
- (a) who is terminally ill; and
 - (b) whose entitlement to adult disability payment is to be determined.

(2) A person to whom this regulation applies is entitled to both the daily living component and the mobility component at the enhanced rate.

(3) Paragraph (2) applies—

- (a) regardless of the period of time for which the individual has had the terminal illness,
- (b) regardless of any period of time spent by the individual in a hospital or hospice while in receipt of the assistance, and
- (c) to an individual who—
 - (i) makes a new application under section 38 of the 2018 Act, or
 - (ii) notifies a change of circumstances under section 56 of the 2018 Act with the effect that this regulation applies to that individual.

(4) Regulations 4, 5 and 14(d) do not apply to a person to whom this regulation applies.

(5) Subject to paragraph (6) or (7), the entitlement referred to in paragraph (2) begins either on the day the application is made, the day of notification of the change in circumstances or on the date of the clinical judgement made in accordance with paragraphs (8) and (9) (“the judgement”), whichever is the earlier.

(6) Where a judgement mentioned in paragraph (5)—

- (a) is dated not more than 26 weeks earlier than the date of receipt of the application or notification of the change of circumstances, an individual’s entitlement can only begin—
- (b) up to a maximum of 26 weeks prior to the date of receipt of the application, and
- (c) on or after the day these Regulations come into force.

(7) Where a judgement mentioned in paragraph (5)—

- (a) is dated more than 26 weeks earlier than the date of receipt of the application or notification of the change in circumstances, and
- (b) an appropriate healthcare professional confirms that the judgement is still accurate by making a judgement in accordance with paragraphs (8) and (9),
an individual’s entitlement can only begin—
- (c) up to a maximum of 26 weeks prior to the date of receipt of the application or notification of the change in circumstances, and
- (d) on or after the day these Regulations come into force.

(8) For the purposes of this regulation a person is to be regarded as having a terminal illness for the purpose of determining entitlement to Adult Disability Payment if it is the clinical judgement of an appropriate healthcare professional that the individual has a progressive disease that can reasonably be expected to cause an individual’s death.

(9) Subject to paragraph (10), an appropriate healthcare professional exercising the judgement described in paragraph (8) must take account of the guidance prepared and made publically available by the Chief Medical Officer of the Scottish Administration in accordance with paragraph 1(3) of schedule 5 of the 2018 Act.

(10) Where regulation 20 applies to the individual, an appropriate healthcare professional mentioned in paragraph 11(b) need not take account of the guidance mentioned in paragraph (8) where it is not reasonable to do so.

(11) In this regulation, “an appropriate healthcare professional” means—

- (a) a registered medical practitioner or a registered nurse who is—
 - (i) involved in the diagnosis or care of the patient, and
 - (ii) acting in their professional capacity, or
- (b) where regulation 20 applies to the individual, a person who—
 - (i) has equivalent qualifications to a registered medical practitioner or a registered nurse in the place in which the individual is resident,
 - (ii) is a member of the professional body equivalent to the General Medical Council or Nursing and Midwifery Council in that place, and

(iii) meets the requirements of sub-paragraph (a)(i) and (ii).

(12) If a person who is terminally ill in terms of regulation 9 of the Disability Assistance for Children and Young People (Scotland) Regulations 2021⁽¹⁹⁾ is to be transferred from Child Disability Payment onto Adult Disability Payment, then—

- (a) regulation X will apply,
- (b) the judgement they have previously received under regulation 9 of the Disability Assistance for Children and Young People (Scotland) Regulations 2021 will apply, and
- (c) no further judgement will be required in terms of paragraphs (8) and (9) of this regulation.

(13) In paragraph (2), “the enhanced rate” for the daily living component and mobility component are the rates prescribed in regulation 33.

(14) Where an individual has received Adult Disability Payment for a period and a determination is subsequently made that the individual is entitled to Adult Disability Payment at a higher rate for that period under this regulation, any payment of Adult Disability Payment to be made for that period will be reduced by any Adult Disability Payment already paid to that individual for that period.

PART 8

Payability when a person is residing in certain accommodation or is detained in custody

Care home residents

27.—(1) Subject to paragraph (3) and regulation 29, the value of the daily living component of adult disability payment that is to be given to the individual is to be £0 on and after the day on which—

- (a) they become resident of a care home, and
- (b) the circumstances of their residence are such that any of the costs of any qualifying services provided for the individual are borne out of public or local funds by virtue of any of the enactments specified in paragraph (2).

(2) For the purpose of paragraph (1)(b), the specified enactments are—

- (a) Part 3 of the National Assistance Act 1948⁽²⁰⁾ (Local Authority Services);
- (b) sections 59 and 59A of the Social Work (Scotland) Act 1968⁽²¹⁾ (provision of residential and other establishments by local authorities and maximum period for repayment of sums borrowed for such provision and grants in respect of secure accommodation for children respectively);
- (c) the Mental Health Act 1983⁽²²⁾;
- (d) the Community Care and Health (Scotland) Act 2002⁽²³⁾;
- (e) the Mental Health (Care and Treatment) (Scotland) Act 2003⁽²⁴⁾;
- (f) Part 1 of the Care Act 2014⁽²⁵⁾ (care and support);
- (g) any other enactment relating to persons under a disability or to young persons or to education or training except—
 - (i) section 49 of the Education (Scotland) Act 1980⁽²⁶⁾ (power of education authorities to assist persons to take advantage of educational facilities) or section 73 of that Act (power of Scottish Ministers to make grants to education authorities and others);

(19)
(20)
(21)
(22)
(23)
(24)
(25)
(26)

- (ii) section 65 of the Further and Higher Education (Scotland) Act 1992⁽²⁷⁾ (administration of funds by HEFCW);
- (iii) section 4 of the Further and Higher Education (Scotland) Act 2005⁽²⁸⁾ (general duty of Scottish Ministers to provide support for funding of higher education) or section 11 of that Act (administration of funds);

(3) Subject to paragraph (4), paragraph (1) does not apply in the case of an individual—

- (a) who has not reached the age of 18 and to whom—
 - (i) section 93(4)(a)(ii) of the Children (Scotland) Act 1995 (interpretation: children in need of care and attention due to impaired health and development) applies because the individual’s health is likely to be significantly impaired, or further impaired, without provision of services for them; or
 - (ii) section 93(4)(a)(iii) of the Children (Scotland) Act 1995 (interpretation: children in need of care and attention due to disability) applies; or
- (b) who is accommodated outside the United Kingdom if the costs of any qualifying services are borne wholly or partly by a local authority pursuant to their powers under section 25 of the Education (Additional Support for Learning) (Scotland) Act 2004 (attendance at establishments outwith the United Kingdom).

(4) Paragraph (3)(a) only applies during any period in which the local authority looking after the individual places them in a private dwelling with a family, or with a relative of the individual, or with some other suitable person.

(5) In this regulation, “care home” means an establishment that provides accommodation together with nursing or personal care.

(6) The following are “qualifying services” for the purposes of paragraph (1)(b)—

- (a) accommodation;
- (b) board;
- (c) personal care;
- (d) such other services as may be prescribed.

Hospital in-patients

28.—(1) Subject to paragraph (3) and regulation 29, the value of either component of adult disability payment that is to be given to an individual is to be £0 on or after the day on which—

- (a) they begin undergoing medical or other treatment as an in-patient at a hospital or similar institution, and
- (b) the circumstances are such that any of the costs of the treatment, accommodation and any related services provided for them are borne out of public funds in terms of paragraph (2).

(2) For the purposes of paragraph (1), the costs of treatment, accommodation or any related services are borne out of public funds if the individual is undergoing medical or other treatment as an inpatient in—

- (a) a hospital or similar institution under—
 - (i) the National Health Service Act 2006;
 - (ii) the National Health Service (Wales) Act 2006; or
 - (iii) the National Health Service (Scotland) Act 1978; or
- (b) a hospital or similar institution maintained or administered by the Defence Council.

(3) This regulation does not apply if the individual was under the age of 18 on the day on which they entered the hospital or similar institution referred to in this regulation to begin their current period as an inpatient.

⁽²⁷⁾
⁽²⁸⁾

Exceptions: care homes and hospitals

29.—(1) Subject to the following paragraphs, regulation 27(1) or 28(1) do not apply to an individual in respect of the first 28 days of any period during which the individual is someone to whom that regulation applies.

(2) Where, on the day on which the individual’s entitlement to adult disability payment commences, they meet the conditions set out in regulation 27(1)(b) or regulation 28(1)(b), paragraph (1) does not apply to the individual in respect of any period of consecutive days, beginning with that day, on which the individual continues to satisfy that condition.

(3) Regulation 27 or 28 does not apply where the individual is residing in a hospice and is terminally ill, and the Scottish Ministers have been informed that they are terminally ill—

- (a) on an application for adult disability payment, or
- (b) in writing in connection with an award of, or an application for, or an application for a re-determination or a supersession of an award of, adult disability payment.

(4) In paragraph (3), “hospice” means a hospital or other institution whose primary function is to provide palliative care for persons resident there who are suffering from a progressive disease in its final stages, other than—

- (a) a health service hospital in England (within the meaning of section 275 of the National Health Service Act 2006⁽²⁹⁾);
- (b) a hospital in Wales vested in—
 - (i) an NHS trust;
 - (ii) a Local Health Board; or
 - (iii) the Welsh Ministers,for the purpose of functions under the National Health Service (Wales) Act 2006⁽³⁰⁾;
- (c) a national health service hospital in Scotland (within the meaning of section 108(1) of the National Health Service (Scotland) Act 1978⁽³¹⁾);
- (d) a hospital maintained by the Defence Council; or
- (e) an institution similar to a hospital mentioned in any of the preceding sub-paragraphs of this paragraph.

(5) Regulation 27(1) does not apply to a case where, during any period the total cost of the qualifying services are met—

- (a) out of the resources of the person for whom the qualifying services are provided, or partly out of that person’s own resources and partly with assistance from another person or charity; or
- (b) on that person’s behalf by another person or a charity.

(6) In this regulation—

“NHS trust” means a body established under section 18 of the National Health Service (Wales) Act 2006⁽³²⁾;

“Local Health Board” means a body established under section 11 of that Act⁽³³⁾; and

“charity” is to be construed as if these Regulations were an enactment to which section 7 of the Charities Act 2011⁽³⁴⁾ (application in relation to Scotland) applied.

Legal Detention

30.—(1) Where an individual is undergoing legal detention within the United Kingdom—

(29)
(30)
(31)
(32)
(33)
(34)

- (a) where the individual is aged 18 or over, the value of either component that is to be given to the individual is to be £0,
- (b) where the individual is aged 16 or 17, the value of the daily living component that is to be given to the individual is to be £0.

(2) Subject to paragraph (3), paragraph (1) does not apply on respect of the first 28 days of any period during which the individual is a person to whom that paragraph would otherwise apply.

(3) Where, on the day on which the individual's entitlement to adult disability payment commences, they are a person to whom paragraph (1) applies, paragraph (2) does not apply to the individual in respect of any period of consecutive days, beginning with that day, on which the individual continues to be a person to whom that paragraph applies.

(4) Paragraph (1) does not apply to the individual in respect of any period after the conclusion of criminal proceedings as a result of which the individual is detained in a hospital or similar institution in the United Kingdom as a person suffering from mental disorder unless the individual satisfies either of the conditions set out in paragraph (5).

(5) The conditions referred to in paragraph (4) are—

- (a) the individual is—
 - (i) detained under section 45A of the Mental Health Act 1983⁽³⁵⁾ (power of higher courts to direct hospital admission) or section 47 of that Act⁽³⁶⁾(removal to hospital of persons serving sentences of imprisonment, etc) and
 - (ii) being detained on or before the day which the Secretary of State has certified to be the individual's release date within the meaning of section 50(3) of that Act⁽³⁷⁾; or
- (b) the individual is being detained under—
 - (i) section 59A of the Criminal Procedure (Scotland) Act 1995⁽³⁸⁾ (hospital direction); or
 - (ii) section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003⁽³⁹⁾ (transfer of prisoners for treatment of mental disorder).

(6) For the purposes of this regulation—

- (a) “hospital or similar institution” means any place (not being a prison, a detention centre a young offenders institution or remand centre and not being at or in any such place) in which persons suffering from mental disorder are or may be received for care or treatment;
- (b) criminal proceedings against any person are deemed to be concluded upon that person being found in terms of section 53F of the Criminal Procedure (Scotland) Act 1995 to be unfit for trial.

(7) Paragraph (1) of this regulation does not apply to an individual where—

- (a) the individual is undergoing legal detention outside United Kingdom; and
- (b) in similar circumstances in United Kingdom, the individual would have been excepted from the application of that paragraph by virtue of the operation of any provision of this regulation.

Periods of Residence

31.—(1) In this regulation, a “period of residence” is a period during which an individual—

- (a) meets the condition in regulation 27(1) (care home residents);
- (b) meets the condition in regulation 28(1) (hospital in-patients);
- (c) is a person who is undergoing legal detention.

(2) Subject to paragraph (3), for the purposes of regulations 27, 28 and 30, a period of residence—

⁽³⁵⁾
⁽³⁶⁾
⁽³⁷⁾
⁽³⁸⁾
⁽³⁹⁾

- (a) begins on the day after the day on which the individual enters a care home, hospital or similar institution or commences a period of imprisonment or legal detention; and
- (b) ends on the day before the day on which the individual leaves a care home, hospital or similar institution or on which a period of imprisonment or legal detention ends.

(3) Where an individual who is resident in a care home or hospital, or is undergoing legal detention takes a period of leave from the home, the days on which the individual begins and returns from leave are not to be counted as days in the home or hospital.

(4) Where, immediately following a period of residence for the purpose of paragraph (a), (b) or (c) of paragraph (1), the individual commences another period of residence for the purpose of any of those subparagraphs, the earlier period of residence is deemed to end on the day on which the individual leaves the care home, hospital or similar institution or, as the case may be, on which the period of detention ends.

(5) Where an individual enters or returns to a care home, legal detention or hospital as a result of transfer from a hospital, hospice or another care home, the day of transfer is to be counted as day in the care home or hospital.

(6) Subject to paragraph (7), for the purposes of regulation 29(1) and 30(2), the period of residence may comprise two or more separate periods, provided that there is no more than 28 days between each period.

(7) Paragraph (6) is, where the periods referred to in sub-paragraph (a) of that paragraph are both or all periods to which regulation 30(2) applies, to have effect as if—

- (a) the words “subject to paragraph (7) “ and “regulation 29(1)” were omitted; and
- (b) the reference to “28 days” in that paragraph read “one year”.

(8) Where an individual has been in receipt of £0 for either or both components of Adult Disability Payment, in terms of regulation 27(1), 28(1) or 30(1)—

- (a) the rate of payment will cease to be £0 where the period of residence ends, and
- (b) the individual will receive a determination without an application in terms of regulation 40(1)(b)(xi).

Payment of Adult Disability Payment between two periods of residence

32.—(1) This regulation applies to an individual to whom regulation 31(3) applies, who takes leave from a care home, hospital or legal detention.

(2) Where the individual takes leave from a care home, the Scottish Ministers must make a determination without application in respect of the daily living component of Adult Disability Payment for the period of leave in respect of an individual—

- (a) to whom regulation 31(3) applies,
- (b) who takes leave from the care home or hospital, or from legal detention
- (c) who notifies the Scottish Ministers of that leave, and
- (d) who expects to return to the care home within 28 days of the date of taking leave.

(3) Where the individual takes leave from a hospital or legal detention, the Scottish Ministers must make a determination without application in respect of the both components of Adult Disability Payment for the period of leave in respect of an individual—

- (a) to whom regulation 31(3) applies,
- (b) who takes leave from the care home or hospital, or from legal detention
- (c) who notifies the Scottish Ministers of that leave, and
- (d) who expects to return to the hospital or legal detention within 28 days of the date of taking leave.

(4) Where the individual is taking leave on a date before the end of the period specified (if any) in the individual’s notice of determination under section 40 of the Social Security (Scotland) Act 2018, which was made before the individual entered the care home, hospital or legal detention, the determination in paragraph (2) or (3) must be at the same rate of the daily living component as at that earlier determination, before regulation 31(3) applied.

(5) The period of leave mentioned in paragraphs (2) or (3) begins with the day on which the person goes on leave and ends on the day after the day on which the person returns to the care home, hospital or legal detention.

(6) Where an individual leaves a care home, hospital or legal detention permanently they are no longer to be taken to be on leave within the meaning of paragraph (1) where—

- (a) they notify the Scottish Ministers of that fact, and
- (b) a determination without application has been made under regulation 40(1)(b)(x).

PART 9

Short Term Assistance

[these provisions are to be added in a later draft]

PART 10

Making of Applications and Payments

Rate of Adult Disability Payment

33.—(1) The weekly rates of the daily living component for the purposes of regulation 4 are~~(40)~~—

- (a) the standard rate, £58.70; and
- (b) the enhanced rate, £87.65.

(2) The weekly rates of the mobility component for the purposes of regulation 5 are—

- (a) the standard rate, £23.30
- (b) the enhanced rate, £62.25.

(3) For any week where an individual is entitled to—

- (a) the daily living component of Adult Disability Payment, and
- (b) payment of Constant Attendance Allowance within the meaning of section 61 of the Social Security Act 1975~~(41)~~,

the amount of Adult Disability Payment paid is reduced by the amount of Constant Attendance Allowance paid.

(4) For the purposes of calculating the reduction in paragraph (3), where the amount of Constant Attendance Allowance is equal to or greater than the amount of Adult Disability Payment, the value of the Adult Disability Payment that is to be given to the individual is to be £0.

(5) Adult Disability Payment is only to be given in the form of money, except as provided for by regulation 46.

Making Payments

34.—(1) Where Adult Disability Payment is payable in respect of an individual, the Scottish Ministers may, where they consider it appropriate, make the payment to another person to be used for the benefit of the individual.

(2) Where the Scottish Ministers consider, for any reason, that it is no longer appropriate for a particular person who falls within paragraph (1) to continue to receive the payment, they may cease making payment to that person and pay it instead to another person.

(40) The rates specified here are correct at the time of drafting for this consultation; however they are updated annually and so will be adjusted for the latest figures at the time of coming into force.

(41)

When an application is to be treated as made and beginning of entitlement to assistance

35.—(1) An application for Adult Disability Payment is to be treated as made—

- (a) on the day it is received by the Scottish Ministers, or
- (b) if applicable, on the day identified by the Scottish Ministers in accordance with paragraph (2).

(2) If, before making a determination on the basis of an application, the Scottish Ministers consider that the individual in respect of whom the application is made—

- (a) would not satisfy the requirement in regulation 4 (daily living component), 5 (mobility component), 10 (required period condition: daily living component) or 11 (required period condition: mobility component), if the application were treated as made on the day it was received, and
- (b) would be likely to satisfy those requirements if the application were treated as made at a later date, the Scottish Ministers may treat the application as having been made on the day on which those requirements become satisfied.

(3) Subject to paragraph (7) where, on the basis of an application, a determination is made that an individual is entitled to Adult Disability Payment, the date of entitlement is to be identified in accordance with paragraphs (4) to (6).

(4) Where an application is made within 8 weeks of the day on which the full name and date of birth of an individual (“the required data”) is submitted for the purpose of making an application for Adult Disability Payment by the individual to the Scottish Ministers, entitlement begins on the latter of—

- (a) the day on which the required data was submitted, or
- (b) the day identified in accordance with paragraph (2).

(5) Subject to paragraph (6), where an application is made outwith the 8 week period described in paragraph (4), they may treat it as having been made in accordance with paragraph (2).

(6) Where the Scottish Ministers are satisfied that there is a good reason why an application was made outwith the 8 week period described in paragraph (4), they may treat the application as having been made within that period.

(7) Where an individual in legal detention makes an application for Adult Disability Payment, the application is to be treated as made on the day after the day when that individual’s detention ends.

(8) For the purposes of section 38(3) of the 2018 Act, the period covered by an application for Adult Disability Payment—

- (a) under paragraph (1)(a)—
 - (i) begins on the day on which the application is treated as having been made, and
 - (ii) ends on the day on which the determination of entitlement is made,
- (b) under paragraph (1)(b)—
 - (i) is deemed to begin on the day before the determination is made provided that the requirements are satisfied, and
 - (ii) ends on the day on which the determination is made.

Time of Payment

36. Where an award of Adult Disability Payment is made, the Scottish Ministers are to pay assistance—

- (a) 4 weekly in arrears, or
- (b) where regulation 26 applies, weekly in advance.

Continuing Eligibility

37. An individual’s entitlement to Adult Disability Payment may be made on the basis that the individual has ongoing entitlement to that assistance.

PART 11

Qualifications and Experience Necessary to Carry out Assessments

Qualifications and experience necessary to carry out Assessments

38.—(1) Where an assessment is required in order to determine whether an individual is entitled to receive Adult Disability Payment, this must be carried out by a practitioner who meets the requirements in paragraph (2).

(2) A practitioner is suitably qualified to carry out an assessment of an individual if—

- (a) they have been employed for a cumulative period of at least two years, in the direct provision to individuals of health care or social care services;
- (b) where the assessment will involve consideration of the individual's mental health condition or conditions, their employment in the provision of health care or social care services under paragraph (2)(a) was directly provided to individuals with mental health conditions; and
- (c) where the assessment will involve consideration of the individual's learning disability or disabilities their employment in the provision of health care or social care services under paragraph (2)(a) was directly provided to individuals with learning disabilities.

PART 12

Determinations of entitlement to Adult Disability Payment without application

Consideration of entitlement after specified period

39. The Scottish Ministers must make a determination of an individual's entitlement to Adult Disability Payment, without receiving an application, after the end of the period specified (if any) in the individual's notice of determination under section 40 of the Social Security (Scotland) Act 2018.

Other situations requiring a determination without an application

40.—(1) The Scottish Ministers must make a determination of an individual's entitlement to Adult Disability Payment, without receiving an application where—

- (a) the required data in order to construct a record for the individual has been received in terms of regulation 35(4), but no subsequent application has been made;
- (b) during the period specified in the individual's notice of determination under section 40 of the Social Security (Scotland) Act 2018, the Scottish Ministers become aware—
 - (i) of a change of circumstances which would possibly result in an alteration to the rate of Adult Disability Payment payable or the cessation of entitlement to Adult Disability Payment in respect of the individual;
 - (ii) that the individual has died,
- (iii) that a determination of the individual's entitlement was made—
 - (aa) in ignorance of, or
 - (bb) as a result of a mistake as to,
a material fact which existed at the time of the determination, subject to the provisions of regulations 41(1) and 42(1),
- (iv) of an alteration of the rate of award of Personal Independence Payment of which the individual was in receipt immediately before transferring to Adult Disability Payment in accordance with regulation X as a result of a decision made pursuant to—

- (aa) a revision under regulation 3 of the Social Security and Child Support (Decisions and Appeals) Regulations 1999,
- (bb) a supersession under regulation 6 of those Regulations, or
- (cc) an appeal under section 12 of the Social Security Act 1998;
- (v) that the person has been admitted to a care home or hospital, or legally detained, for more than 28 days ;
- (vi) that the individual has a liability to the Scottish Ministers under section 63 of the 2018 Act (liability for assistance given in error);
- (vii) that, as a result of the individual receiving payment of Personal Independence Payment at an incorrect rate in another part of the United Kingdom, before transferring to Scotland in accordance with regulation X, the individual is liable for overpayment of Personal Independence Payment.
- (viii) that a clinical judgement has been made in terms of regulation 26(8) and (9) that they have a terminal illness;
- (ix) that as a result of the eligibility criteria for Adult Disability Payment being altered, the individual’s entitlement may have changed;
- (x) the individual has notified the Scottish Ministers that they have left a care home, hospital or legal detention, meaning that they are no longer to be taken to be on leave within the meaning of regulation 32;
- (xi) that the individual is no longer resident in a care home or in hospital or legal detention, and therefore a new determination is required in terms of regulation 31(8),
- (c) they are informed that an individual in respect of whom Adult Disability Payment is payable, has transferred—
 - (i) to Scotland from another part of the United Kingdom in terms of regulation X, or
 - (ii) from Scotland to another part of the United Kingdom in terms of regulation X;

(2) Paragraphs (1)(b) and (1)(c) apply only where the Scottish Ministers have previously made a determination of the individual’s entitlement to Adult Disability Payment.

Determination following official error – underpayments

41.—(1) The Scottish Ministers are to make a determination of an individual’s entitlement to Adult Disability Payment or short-term assistance, without receiving an application, where—

- (a) they have previously make a determination of the individual’s entitlement to Adult Disability Payment or short-term assistance (“the original determination”), and
- (b) they establish that, due to an official error, the original determination was incorrect resulting in the individual—
 - (i) not being given an award of Adult Disability Payment or short-term assistance to which they were entitled, or
 - (ii) being given a lower award than that to which they were entitled,
- (c) the Scottish Ministers are not considering a request for a re-determination of the original determination, and
- (d) the individual has not appealed to the First-tier Tribunal for Scotland against the original determination.

(2) In making a re-determination required by paragraph (1) the Scottish Ministers are to use—

- (a) the information provided in the application that led to the original determination, and
- (b) any other information they have obtained in connection with that application.

(3) In this regulation, “official error” means an error made by the Scottish Ministers or a Minister of the Crown that was not materially contributed to by anyone else.

Determination following error – overpayments

42.—(1) The Scottish Ministers are to make a determination of an individual’s entitlement to Adult Disability Payment or short-term assistance, without receiving an application, where—

- (a) they have previously made a determination of the individual’s entitlement to Adult Disability Payment or short-term assistance (“the original determination”), and
- (b) they establish that, due to an error, the original determination was incorrect resulting in the individual being given—
 - (i) an award of Adult Disability Payment or short-term assistance to which they were not entitled, or
 - (ii) a higher award than that to which they were entitled,
- (c) the Scottish Ministers are not considering a request for a re-determination of the original determination, and
- (d) the individual has not made an appeal to the First-tier Tribunal for Scotland or Upper Tribunal against the original determination, that has not yet been determined.

(2) In making a re-determination required by paragraph (1) the Scottish Ministers are to use—

- (a) the information provided in the application that led to the original determination,
- (b) any other information they have obtained in connection with that application, and
- (c) any other information available to them that is relevant to their consideration of whether the individual is entitled to Adult Disability Payment or short-term assistance.

(3) In this regulation references to an “error” are to—

- (a) an error in the performance of a function conferred by these Regulations or the 2018 Act, including a determination being made—
 - (i) wrongly, or
 - (ii) correctly but on the basis of—
 - (aa) incorrect information, or
 - (bb) an assumption which proves to be wrong, or
- (b) a new determination not being made after an assumption on the basis of which an earlier determination was made has proved to be wrong.

When changes in entitlement take effect

43.—(1) Where, as a result of a determination without an application, the amount of Adult Disability Payment payable in respect of an individual is increased, the changed entitlement—

- (a) in the case of a determination under regulation 40(1)(b)(iv), there is an increase in the rate of Personal Independence Payment which an individual was in receipt at the time of transferring to Adult Disability Payment in accordance with regulation X, begins on the date of the first determination of entitlement to Adult Disability Payment,
- (b) in the case of a determination without an application under any other provision within regulation 40(1), begins —
 - (i) where determination was made in connection with a change in circumstances which the individual has notified to the Scottish Ministers within 4 weeks of the change occurring, on the date on which the individual first satisfied the requirements for a higher rate of the care or mobility component,
 - (ii) where the determination was made in connection with a change in circumstances which the individual has notified to the Scottish Ministers after 4 weeks but before 56 weeks of the change occurring, the date on which the individual notified the change, or
 - (iii) in any other case, on the date on which the determination was made by the Scottish Ministers.
- (c) in the case of an earlier determination which was based on official error or error within the meaning of regulation 41 or 42 or on ignorance of, or as a result of a mistake as to, facts material to the

determination, begins on the date the Scottish Ministers become aware of the official error, error or the facts material to the earlier determination.

(2) Where the Scottish Ministers consider that in all the circumstances it would be unjust not to do so, they may fix an earlier date under paragraph (1)(a), (b) or (c).

(3) Where, as a result of a determination without an application, the amount of Adult Disability Payment payable in respect of an individual is decreased, or entitlement ceases, the change in entitlement begins—

- (a) where the individual has notified the Scottish Ministers of the change of circumstances, on the date of the determination, or
- (b) in all other cases, on the date of the change in circumstances or, if that is not known, the day on which the Scottish Ministers became aware of the change in circumstances.

(4) Where the Scottish Ministers consider that in all the circumstances it would be unjust not to do so, they may fix an earlier date under paragraph (3).

PART 13

Periods in respect of a re-determination request

Periods in respect of a re-determination request

44.—(1) The period prescribed for requesting a re-determination of an individual's entitlement to Adult Disability Assistance under section 41 of the 2018 Act is 42 days beginning with the day after the day on which the individual was informed of the determination in terms of section 40 of the 2018 Act by the Scottish Ministers.

(2) The period prescribed for making a re-determination of an individual's entitlement to Adult Disability Assistance under section 43 of the 2018 Act is 56 days beginning with the day that the request for a re-determination is received by the Scottish Ministers.

PART 14

Provision of vehicles

Payment of mobility component to authorised providers of vehicles for individuals with disabilities

45.—(1) Where—

- (a) the enhanced rate of the mobility component of Adult Disability Payment is paid in respect of an individual, and
- (b) the recipient of the component has entered into an agreement with an authorised provider of vehicles for persons with disabilities, for the hire or hire-purchase of a vehicle,

the Scottish Ministers may pay that component (in whole or in part) to the provider with the consent of the individual, to meet the individual's liability under the agreement.

(2) The Scottish Ministers must cease to make payments in accordance with paragraph (1) in the event that the agreement is brought to an end in accordance with the terms of the agreement.

(3) For the purposes of this regulation, "authorised provider of vehicles" means a supplier of vehicles for persons with disabilities approved under an accreditation scheme run by the Scottish Ministers.

PART 15

Transfer from Child Disability Payment to Adult Disability Payment

[details to be added in a later draft]

PART 16

Transfer of cases between Scotland and the rest of the United Kingdom

[details to be added in a later draft]

PART 17

Liability for overpayment

Liability for assistance given in error

46.—(1) Where an individual has a liability to the Scottish Ministers under section 63 of the 2018 Act, or under regulation 42, the individual’s payment of Adult Disability Payment or short-term assistance, or both, may be given in whole or in part by way of deduction, at a reasonable level, from that liability either—

- (a) with the agreement of the individual, or
- (b) without the individual’s agreement, where the individual has unreasonably refused to agree to the assistance being given in that form.

(2) For the purpose of sub-paragraph (1), “reasonable level” means a level that is reasonable having regard to the financial circumstances of the individual.

(3) For the avoidance of doubt, the individual’s liability under sub-paragraph (1) is limited to the difference in value between—

- (a) the assistance that was given, and
- (b) the assistance, if any, that would have been given had the error not been made.

(4) If assistance was given in a form other than money, its value for the purposes of this regulation is what giving it cost the Scottish Ministers (excluding any administration costs).

(5) In this regulation, references to an error are to—

- (a) an error in the performance of a function conferred by virtue of these Regulations, including a determination made correctly but on the basis of—
 - (i) incorrect information, or
 - (ii) an assumption which proves to be wrong,
- (b) a new determination not being made after an assumption on the basis of which an earlier decision was made has proved to be wrong.

Determination to effect a deduction decision

47.—(1) The Scottish Ministers are to make a determination of an individual’s entitlement to Adult Disability Payment or short-term assistance or both, without receiving an application, where the circumstances in sub-paragraphs (2) and (3) apply.

(2) This sub-paragraph applies where regulation 46—

- (a) allows Adult Disability Payment or short-term assistance to be given to the individual by way of deduction, or
- (b) previously allowed Adult Disability Payment or short-term assistance to be given to the individual by way of deduction, and the Scottish Ministers consider that may no longer be appropriate.

(3) This sub-paragraph applies where the Scottish Ministers have decided to—

- (a) vary the amount of Adult Disability Payment or short-term assistance to be given by way of deduction (including introducing a deduction, where the full amount of Adult Disability Payment or short-term assistance was previously given as money),

- (b) vary any period for which the individual’s Adult Disability Payment or short-term assistance is to be given by way of deduction, that may have been specified in a previous determination of the individual’s entitlement; or
- (c) cease making deductions, and instead give the individual’s Adult Disability Payment or short-term assistance in the form of money.

(4) The Scottish Ministers are to make a determination, without receiving an application, where an individual who is receiving Adult Disability Payment or short-term assistance by way of deduction under a previous determination of entitlement notifies the Scottish Ministers that the individual—

- (a) withdraws their agreement to their Adult Disability Payment or short-term assistance being given by way of deduction,
- (b) wishes for the Scottish Ministers to increase the amount of their Adult Disability Payment or short-term assistance that is given by way of deduction,
- (c) wishes the Scottish Ministers to decrease the amount of their Adult Disability Payment that is given by way of deduction (including ceasing the deduction), or
- (d) wishes the Scottish Ministers to amend the length of any period referred to in sub-paragraph (3)(b).

(5) Where a determination is made in pursuance of sub-paragraph (1), references in these Regulations to the day on which the application is made are to be read as references to the day on which the determination is made.

PART 18

Pilot Scheme

[details to be added in a later draft]

PART 19

Consequential Amendments

[details to be added in a later draft]

Name

A member of the Scottish Government

St Andrew’s House,
Edinburgh

Date

SCHEDULE 1

Regulation 1

ADULT DISABILITY ASSISTANCE DETERMINATION

PART 1

INTERPRETATION

48. In this schedule—

“aided” means with—

- (a) the use of an aid or appliance; or
- (b) supervision, prompting or assistance;

“assistance” means physical intervention by another person and does not include speech;

“assistance dog” means a dog trained to guide or assist a person with a sensory impairment;

“basic verbal information” means information in the individual’s native language conveyed verbally in a simple sentence and excludes information that is not communicated orally or received aurally;

“basic written information” means signs, symbols and dares written or printed standard size text in the individual’s native language;

“bathe” includes get into or out of an unadapted bath or shower;

“communication support” means support from a person trained or experienced in communicating with in general, or the individual in particular, with specific communication needs, including interpreting verbal information into a non-verbal form and vice versa;

“complex budgeting decisions” means decisions involving—

- (a) calculating household and personal budgets;
- (b) managing and paying bills; and
- (c) planning future purchases;

“complex verbal information” means information in the individual’s native language conveyed verbally in either more than one sentence or one complicated sentence and excludes information that is not communicated orally or received aurally;

“complex written information” means more than one sentence of written or printed standard size text in the individual’s native language;

“cook” means heat food at or above waist height;

“dress and undress” includes put on and take off socks and shoes;

“engage socially” means—

- (a) interact with others in a contextually and socially appropriate manner;
- (b) understand body language; and
- (c) establish relationships;

“follow the route of a journey” means for an individual to navigate and make their way along a planned route to a planned destination;

“manage incontinence” means manage involuntary evacuation of the bowel or bladder, including using a collecting device or self-catheterisation, and clean oneself afterwards;

“manage medication” means take medication which either improves the individual’s symptoms or health, or, where failure to do so is likely to result in a deterioration in the individual’s health;

“manage therapy” means undertake therapy which either improves the individual’s symptoms or health, or, where a failure to do so is likely to result in a deterioration in the individual’s health;

“medication” means medication to be taken at home which is prescribed or recommended by a registered—

- (a) doctor;
- (b) nurse;
- (c) pharmacist; or
- (d) health professional who is registered by the Health Professions Council,

“monitor a health condition” means—

(a) detect significant changes in the individual’s health condition which are likely to lead to a deterioration in the individual’s health; and

(b) take action advised by a—

(i) registered doctor;

(ii) registered nurse; or

(iii) health professional who is registered by the Health Professions Council,

without which the individual’s health is likely to deteriorate;

“orientation aid” means a specialist aid designed to assist disabled people to follow a route safely;

“prepare”, in the context of food, means make food ready for cooking or eating;

“prompting” means reminding, encouraging or explaining by another person;

“psychological distress” means distress related to an enduring mental health condition or an intellectual or cognitive impairment;

“read” includes read signs, symbols and words but does not include read Braille;

“simple budgeting decisions” means decisions involving—

(a) calculating the cost of goods; and

(b) calculating change required after a purchase;

“simple meal” means a cooked one-course meal for one using fresh ingredients;

“social support” means support from a person trained or experienced in assisting people in general, or the individual in particular, to engage in social situations;

“stand” means stand upright with at least one biological foot on the ground;

“supervision” means the continuous presence of another person for the purpose of ensuring an individual’s safety;

“take nutrition” means—

(a) cut food into pieces, convey food and drink to their mouth and chew and swallow food and drink; or

(b) take nutrition by using a therapeutic source;

“therapeutic source” means parenteral or enteral tube feeding, using a rate-limiting device such as a delivery system or feed pump;

“therapy” means therapy to be undertaken at home which is prescribed or recommended by a—

(a) registered—

(i) doctor;

(ii) nurse; or

(iii) pharmacist; or

(b) health professional regulated by Health Professions Council;

but does not include taking or applying, or otherwise receiving or administering, medication (whether orally, topically or by any other means), or any action which, in the individual’s case, falls within the definition of “monitor a health condition”;

“toilet needs” means—

(a) getting on and off an unadapted toilet;

(b) evacuating the bladder and bowel; and

(c) cleaning oneself afterwards; and

“unaided” means without—

(a) the use or aid of an appliance; or

(b) supervision, prompting or assistance.

PART 2
DAILY LIVING ACTIVITIES

<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Descriptors</i>	<i>Column 3</i> <i>Points</i>
1. Preparing food.	a. Can prepare and cook a simple meal unaided.	0
	b. Needs to use an aid or appliance to be able to either prepare or cook a simple meal.	2
	c. Cannot cook a simple meal using a conventional cooker but is able to do so using a microwave.	2
	d. Needs prompting to be able to either prepare or cook a simple meal.	2
	e. Needs supervision or assistance to either prepare or cook a simple meal.	4
	f. Cannot prepare and cook food.	8
2. Taking nutrition.	a. Can take nutrition unaided.	0
	b. Needs— (i) to use an aid or appliance to be able to take nutrition; or (ii) supervision to be able to take nutrition; or (iii) assistance to be able to cut up food.	2
	c. Needs a therapeutic source to be able to take nutrition.	2
	d. Needs prompting to be able to take nutrition.	4
	e. Needs assistance to be able to manage a therapeutic source to take nutrition	6
	f. Cannot convey food and drink to their mouth and needs another person to do so.	10
3. Managing therapy or monitoring a health condition.	a. Either— (i) does not receive medication or therapy or need to monitor a health condition; or (ii) can manage medication or therapy or monitor a health condition unaided.	0
	b. Needs any one or more of the following— (i) to use an aid or appliance to be able to manage medication;	1

	(ii) supervision, prompting or assistance to be able to manage medication;	
	(iii) supervision, prompting or assistance to be able to monitor a health condition.	
	c. Needs supervision, prompting or assistance to be able to manage therapy that takes no more than 3.5 hours a week.	2
	d. Needs supervision, prompting or assistance to be able to manage therapy that takes more than 3.5 but no more than 7 hours a week.	4
	e. Needs supervision, prompting or assistance to be able to manage therapy that takes more than 7 but no more than 14 hours a week.	6
	f. Needs supervision, prompting or assistance to be able to manage therapy that takes more than 14 hours a week.	8
4. Washing and bathing.	a. Can wash and bathe unaided.	0
	b. Needs to use an aid or appliance to be able to wash or bathe.	2
	c. Needs supervision or prompting to be able to wash or bathe.	2
	d. Needs assistance to be able to wash either their hair or body below the waist.	2
	e. Needs assistance to be able to get in or out of an unadapted bath or shower.	3
	f. Needs assistance to be able to wash their body between the shoulders and waist.	4
	g. Cannot wash and bathe at all and needs another person to wash their entire body.	8
5. Managing toilet needs or incontinence	a. Can manage toilet needs or incontinence unaided.	0
	b. Needs to use an aid or appliance to be able to manage toilet needs or incontinence.	2
	c. Needs supervision or prompting to be able to manage toilet needs.	2
	d. Needs assistance to be able to manage toilet needs.	4

	e. Needs assistance to be able to manage incontinence of either bladder or bowel.	6
	f. Needs assistance to be able to manage incontinence of both bladder and bowel.	8
6. Dressing and undressing.	a. Can dress and undress unaided.	0
	b. Needs to use an aid or appliance to be able to dress or undress.	2
	c. Needs either—	2
	(i) prompting to be able to dress, undress or determine appropriate circumstances for remaining clothed; or	
	(ii) prompting or assistance to be able to select appropriate clothing.	
	d. Needs assistance to be able to dress or undress their lower body.	2
	e. Needs assistance to be able to dress or undress their upper body.	4
	f. Cannot dress or undress at all.	8
7. Communicating verbally.	a. Can express and understand basic and complex verbal information unaided.	0
	b. Needs to use an aid or appliance to be able to speak or hear.	2
	c. Needs communication support to be able to express or understand complex verbal information.	4
	d. Needs communication support to be able to express or understand basic verbal information.	8
	e. Cannot express or understand verbal information at all even with communication support.	12
8. Reading and understanding signs, symbols and words.	a. Can read and understand basic and complex written information either unaided or using spectacles or contact lenses.	0
	b. Needs to use an aid or appliance, other than spectacles or contact lenses, to be able to read or understand either basic or complex written information.	2

	c. Needs prompting to be able to read or understand complex written information.	2
	d. Needs prompting to be able to read or understand basic written information.	4
	e. Cannot read or understand signs, symbols or words at all.	8
9. Engaging socially with other people face to face.	a. Can engage socially with other people unaided.	0
	b. Needs prompting to be able to engage socially with other people.	2
	c. Needs social support to be able to engage socially with other people.	4
	d. Cannot engage socially with other people due to such engagement causing either— (i) overwhelming psychological distress to the individual; or (ii) the individual to exhibit behaviour which would result in substantial risk of harm to the individual or another person.	8
10. Making budgeting decisions.	a. Can manage complex budgeting decisions unaided.	0
	b. Needs prompting or assistance to be able to make complex budgeting decisions	2
	c. Needs prompting or assistance to be able to make simple budgeting decisions.	4
	d. Cannot make any budgeting decisions at all.	6

PART 4

MOBILITY ACTIVITIES

<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Descriptors</i>	<i>Column 3</i> <i>Points</i>
1. Planning and following journeys	a. Can plan and follow the route of a journey unaided.	0
	b. Needs the presence or prompting of another person to be able to undertake any journey to avoid overwhelming psychological distress to the individual.	4

	c. For reasons other than psychological distress, cannot plan the route of a journey.	8
	d. For reasons other than psychological distress, cannot follow the route of an unfamiliar journey without another person, assistance dog or orientation aid.	10
	e. Cannot undertake any journeys at all because it would cause overwhelming psychological distress to the individual .	10
	f. For reasons other than psychological distress, cannot follow the route of a familiar journey without another person, an assistance dog or an orientation aid.	12
2. Moving around.	a. Can stand and then move more than 200 metres, either aided or unaided.	0
	b. Can stand and then move more than 50 metres but no more than 200 metres, either aided or unaided.	4
	c. Can stand and then move unaided more than 20 metres but no more than 50 metres either aided or unaided.	8
	d. Can stand and then move using an aid or appliance more than 20 metres but no more than 50 metres, either aided or unaided.	10
	e. Can stand and then move more than 1 metre but no more than 20 metres, either aided or unaided.	12
	f. Cannot, either aided or unaided, — (i) stand; or (ii) move more than 1 metre.	12

SCHEDULE 2

Regulation 17

MEMBERS OF HER MAJESTY'S FORCES: EXCLUDED PERSONS

49. The following persons are not members of Her Majesty's forces for the purpose of these Regulations—

- (a) subject to paragraph 2, any person who is serving as a member of any naval force of Her Majesty's forces and who locally entered that force at a naval base outside the United Kingdom;
- (b) any person who is serving as a member of any military force of Her Majesty's forces and who entered that force, or was recruited for that force, outside the United Kingdom, and the depot of whose unit is situated outside of the United Kingdom;
- (c) any person who is serving as a member of any air force of Her Majesty's forces and who entered that force, or was recruited for that force, outside the United Kingdom, and is liable under the terms of engagement to serve only in a specified part of the world outside the United Kingdom.

50. Paragraph 1(a) does not include any person who —

- (a) has previously been an insured person under Part 1 of the National Insurance Act 1965⁽⁴²⁾; or
- (b) is paying or has previously paid one or more of the following classes of contribution under the Social Security Act 1975⁽⁴³⁾ or the Social Security Contributions and Benefits Act 1992⁽⁴⁴⁾ —
 - (i) primary Class 1;
 - (ii) Class 2; or
 - (iii) Class 3.

⁽⁴²⁾1965, c.38. Part 1 of this Act was repealed with savings by the Social Security Act 1973 (c. 38), section 100(1) and (2)(b) and Schedules 26 and 28 and by the Social Security (Consequential Provisions) Act 1992 (c. 6), Schedules 1 and 3.

⁽⁴³⁾1975, c.14. Section 1(2) lists the Classes of contributions. This Act was repealed by the Social Security (Consequential Provisions) Act 1992, Schedule 1.

⁽⁴⁴⁾ 1992, c.4. Section 1(2) lists the Classes of contributions.

Annex D: Draft Equalities Impact Assessment results summary

<p>Title of Policy</p>	<p>Disability Assistance for Working Age People (Scotland) Regulations</p>
<p>Summary of aims and desired outcomes of Policy</p>	<p>The Social Security (Scotland) Act 2018 (the 2018 Act) sets out the broad framework for the delivery of devolved social security in Scotland. On 1 April 2020, the Scottish Ministers took executive and legal competence for disability benefits, including Disability Living Allowance for Children, Attendance Allowance and Personal Independence Payment.</p> <p>These benefits will continue to be delivered during a transition period by the Department for Work and Pensions under the terms of an Agency Agreement with the Scottish Government to ensure the safe and secure devolution of disability benefits.</p> <p>The Scottish Government intends to replace Disability Living Allowance for Children, Personal Independence Payment and Attendance Allowance with new forms of assistance under the 2018 Act. These new benefits will be delivered by Social Security Scotland on behalf of Scottish Ministers.</p> <p>The Disability Assistance for Working Age People (Scotland) Regulations set out how we will deliver our replacement for Personal Independence Payment; Adult Disability Payment. This was</p>

	<p>formerly known as Disability Assistance for Working Age People. It will replace Personal Independence Payment for people living in Scotland, accepting new applications from individuals between the ages of 16 and state pension age.</p> <p>The regulations set out the detailed rules surrounding entitlement to Adult Disability Payment.</p> <p>This policy is closely aligned with the Healthier, Wealthier and Fairer Strategic Objectives, and contributes to the following National Outcomes:</p> <ul style="list-style-type: none"> • 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; and • We grow up loved, safe and respected so that we realise our full potential.
Directorate: Division: team	<p>Social Security Directorate Social Security Policy Division Disability Benefits Policy Unit</p>

Executive summary

The Social Security (Scotland) Act 2018 (the 2018 Act) sets out the broad framework for the delivery of devolved social security in Scotland. On 1 April 2020, the Scottish Ministers took executive and legal competence for disability benefits, including Disability Living Allowance

for Children , Attendance Allowance and Personal Independence Payment.

These benefits will continue to be delivered during a transition period by the Department for Work and Pensions under the terms of an Agency Agreement with the Scottish Government to ensure the safe and secure devolution of disability benefits.

The Scottish Government intends to replace Disability Living Allowance for Children, Personal Independence Payment and Attendance Allowance with new forms of assistance under the 2018 Act. These new benefits will be delivered by Social Security Scotland on behalf of Scottish Ministers with determinations carrying a right of appeal to the First-Tier Tribunal for Scotland's Social Security Chamber.

The Scottish Government intends to launch disability assistance for new applicants first. This includes individuals who are not in receipt of a United Kingdom or Scottish Government disability benefit. Transfer of existing Department for Work and Pensions clients to Social Security Scotland will take place at a later point without clients needing to make a new application. Clients will be no worse off at the point of transfer, and Social Security Scotland will honour the client's award review date.

The Disability Assistance for Working Age People (Scotland) Regulations sets out how we will deliver our replacement for Personal Independence Payment; Adult Disability Payment . This was formerly known as Disability Assistance for Working Age People. It will replace Personal Independence Payment in Scotland and accept new applications from people between the ages of 16 and state pension age. The Social Security (Scotland) Act 2018 (the 2018 Act) sets out the broad framework for the delivery of devolved social security in Scotland. On 1 April 2020, the Scottish Ministers took executive and legal competence for disability benefits, including Disability Living Allowance for Children , Attendance Allowance and Personal Independence Payment.

These benefits will continue to be delivered during a transition period by the Department for Work and Pensions under the terms of an Agency Agreement agreed with the Scottish Government to ensure the safe and secure devolution of disability benefits.

The Scottish Government intends to replace Disability Living Allowance for Children, Personal Independence Payment and Attendance

Allowance with new forms of assistance under the 2018 Act. These new benefits will be delivered by Social Security Scotland on behalf of Scottish Ministers with determinations carrying a right of appeal to the First-Tier Tribunal for Scotland's Social Security Chamber.

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. Policies should reflect that different people have different needs. Equality legislation covers the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex and sexual orientation.

This Equality Impact Assessment has identified potential impacts on disabled people in Scotland as a result of replacing Personal Independence Payment with Adult Disability Payment. It was found that, overall, our policy would have a positive impact on people in Scotland with protected characteristics. Where areas of improvement have been identified, we have made changes to better meet the needs of people living in Scotland.

These changes build on the 2018 Act's framework of a new system that is underpinned by dignity, respect and a human rights based approach to delivering social security for the people of Scotland. This impact assessment is one of a package to accompany the regulations. The others are: Business and Regulatory Impact Assessment (BRIA); Island Community Impact Assessment (ICIA) Children's Rights and Wellbeing Impact Assessment (CRWIA); and the Fairer Scotland Duty Assessment.

Background

As part of the Scottish Government's commitment to a safe and secure transition of powers, we do not propose to make significant changes to the existing Personal Independence Payment eligibility criteria for Adult Disability Payment. However, we have set out several differences between Adult Disability Payment and Personal Independence Payment which we expect to have a positive impact on disabled people in Scotland.

The policy background to the Regulations and further information about the specific provisions are fully described in this consultation document at Annex A and B.

The Scope of the Equality Impact Assessment

This Equality Impact Assessment considers the impact on disabled people above the age of 16 who have one or more protected characteristics of the introduction of Adult Disability Payment to replace Personal Independence Payment.

Key Findings

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

Age

As of July 2020, 3,380 people under age 18 were entitled to Personal Independence Payment in Scotland.

In the current system, children in Scotland entitled to Disability Living Allowance for Children were previously invited to apply for Personal Independence Payment before they turn 16. This means that they may have had to undergo what is experienced by many as a stressful Personal Independence Payment assessment just before their 16th birthday. We have recently introduced legislation which has allowed us to extend awards of Disability Living Allowance for Children for individuals in Scotland to age 18 through the Personal Independence Payment (Transitional Provisions) Amendment (Scotland) Regulations 2020. Although people in receipt of Personal Independence Payment receive, on average, awards that are 32% higher than DLA awards, under the current administration, 22% of Personal Independence Payment applicants are unsuccessful. This is expected to have a positive impact on young people in Scotland, as detailed in our impact assessments on the topic.

We were told by parents in our focus groups that for some 16 year olds, an impending face-to-face assessment was so stressful that their children refused to attend, which meant a loss of part of the household's income due to passported benefits, such as Carer's Allowance, also stopping.

We believe that our approach to disability assistance will have a positive impact on this group. Firstly, because we are extending Child Disability

Payment, our replacement for Disability Living Allowance for Children, to age 18 for children entitled to Child Disability Payment immediately before their 16th birthday, young people will continue to be entitled to Child Disability Payment assistance for an additional two years before they will be required to apply for Adult Disability Payment. That does not however stop clients moving from Child Disability Payment to Adult Disability Payment before age 18 should they wish to. It will be important for clients to be aware that as Child Disability Payment and Adult Disability Payment are two different forms of assistance with different criteria they may not be entitled to Adult Disability Payment, in spite of being in receipt of Child Disability Payment. Further, if in making a determination in relation to Adult Disability Payment, information comes to light which suggests the client may have experienced a change of circumstances, an unscheduled review of their Child Disability Payment entitlement may be commenced. Clients may therefore decide to remain on Child Disability Payment until 18.

Individuals applying for disability assistance for the first time who are 16 and above will apply for Adult Disability Payment. This will ensure that clients will not be required to apply for another benefit a short time after being awarded Child Disability Payment.

We have also made changes to the application process for all forms of disability assistance, including Adult Disability Payment, which will help to reduce stress and anxiety for clients. Firstly, we are utilising a new approach to gathering supporting information. Case managers within Social Security Scotland will, if requested, help clients gather existing supporting information from public sector sources. This could include formal sources (such as confirmation of a diagnosis from a GP) or informal sources (accounts of the needs of the client from a family member or carer). In many cases, a case manager will only seek one source of formal supporting information to make a decision regarding an individual's entitlement to Adult Disability Payment.

Case managers will also have access to practitioners of Social Security Scotland who, alongside conducting client consultations, will be able to provide specialist advice if required during case discussions. This might include 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 approach will allow case managers to make an informed decision regarding an individual's entitlement to Adult Disability Payment. It will also help to ensure that it is only when there is

no other practicable way to gather accurate information about a client's needs that they will be invited to attend a client consultation.

This will reduce the stress and anxiety young people have reported experiencing in the current system as, in the majority of cases, consultations will not be required to make a determination of entitlement. Where a consultation is required, we have worked to improve the process and make sure that practitioners who carry out consultations are suitably qualified to do so, reducing the risk of clients experiencing stress and anxiety.

9.6% of all working age and older people described having a condition which limited their day-to-day activities "a lot" in the 2011 census. We know that the older population is more likely to be affected by disabling conditions: 7% of those aged 16-64 describe having a condition which limits their day-to-day activities a lot but this rose to 27.6% of those aged 65 and above.

Adult Disability Payment will continue to be available to individuals over state pension age where they are in receipt of Adult Disability Payment when they reach that age or where no more than one year has lapsed since their award ended. Individuals over who have reached the relevant age and have not had a previous award of Personal Independence Payment or Adult Disability Payment will apply for Attendance Allowance, or Pension Age Disability Payment when that is introduced in Scotland to replace Attendance Allowance.

Disability

We have made many changes which we believe will have a positive impact on disabled people in Scotland.

By the end of October 2019 more than 1.4 million Disability Living Allowance reassessment applications for Personal Independence Payment had been cleared in Great Britain with 39% (556,000) leading to award increases, 14% (200,000) remaining unchanged, and 47% leading to a reduction or disallowance (603,000).

Detailed research by the Scottish Government in 2017 showed that the biggest impact was felt by individuals receiving the highest rate for both care and mobility components – between 2013 and 2016, 6,400 people lost financial support of up to £7,000 per year as a result of the transfer from Disability Living Allowance to Personal Independence Payment.

Since Personal Independence Payment was introduced, figures show that 25% undergoing the transfer in Scotland have lost entitlement to disability benefits entirely according to a report published by the Scottish Government earlier this year. The most recent figures from Department for Work and Pensions estimate that, in Scotland, 22% of cases are disallowed.

New applications for Personal Independence Payment make up roughly 57% of Personal Independence Payment awards in Scotland and have a 46% success rate. These new applications make up 67% of assessments carried out in Scotland. Despite this, new applications are less likely to result in entitlement with more than half of all applications (at the time of the report, this accounted for 160,000 cases in Scotland) being 'disallowed'. This accounted for 81% of all instances of disallowed cases in Scotland.

According to participants in our Experience Panels, the most negative part of applying for Personal Independence Payment was attending face-to-face assessments with one participant stating that it was "honestly one of the most traumatic experiences of my adult life".

For many, the experience of undergoing a face-to-face assessment was extremely stressful and anxiety inducing with some participants stating that it had an impact on their health. Additionally, when we engaged with parents to discuss their children moving from child to adult disability benefits, many told us that their teenage children refused to attend a Department for Work and Pensions face-to-face assessment entirely because of this fear and anxiety, resulting in a loss to the household income.

When consultations will take place

We have previously committed to reducing the number of face-to-face assessments that will be carried out by Social Security Scotland. We are doing this by improving the process of gathering supporting information and decision making. Face-to-face assessments will be replaced with client consultations. Clients will only be invited to participate in a consultation if it is the only practicable way to gather information about their needs.

Before inviting a client to a consultation, case managers within Social Security Scotland will work with clients to gather supporting information, including doing so on their behalf, if requested. Case managers will seek

only one source of formal supporting information (for example provided by a GP, social worker, nurse or support worker). They will also use informal sources of information such as accounts from carers or family members who are able to give an accurate account of the needs of the client. This way, we will help to ensure that people are not disadvantaged by a lack of formal supporting information. It is only when there is no other way to gather sufficient information about the needs of a client that they will be invited to attend a consultation. This will help to ensure that individuals are not invited to attend a consultation unnecessarily which will reduce potential stress and anxiety.

Social Security Scotland Practitioners

A key theme throughout engagement with our Experience Panels was that there was no trust in the assessment process, assessors or the contractors that are responsible for carrying out assessments. It was generally felt that more knowledgeable assessors would lead to more accurate reports, higher quality assessments and fairer outcomes for clients.

Consultations will be carried out by health and social care practitioners of Social Security Scotland who will be suitably qualified to do so as required by the 2018 Act. Practitioners will have experience in the provision of health and social care and be able to evidence experience working in a relevant role for at least two years. A proportion of practitioners will also have particular experience in mental health and learning disabilities as recommended by the Disability and Carers Benefits Exper Advisory Group.

This is particularly important given that, according to Department for Work and Pensions data, a large proportion of clients, some 108,081 in Scotland, have mental health conditions such as anxiety or depression, or global learning disabilities. Suitably qualified practitioners will help to ensure that, when a client is invited to attend a consultation, they are able to engage in the discussion with someone who has an appropriate understanding of their disability or health condition.

The consultation process

A significant change we are making is to take a multi-channel approach to how consultations take place, such as by phone or video call, removing the need for clients to travel to unfamiliar assessment centres in the majority of cases. While we expect it will be helpful for many

clients, we understand that a telephone consultation will not be the best option for everyone and we know that clients have valid concerns over the way telephone assessments have been carried out by Department for Work and Pensions in recent months because of Covid-19.

Where a client is not able to express themselves over the phone or is uncomfortable doing so, we will work with the client to find alternative ways of carrying out a consultation. Clients will also be able to request a face to face consultation if they feel it is the best way of articulating the impact of their condition or disability. Social Security Scotland will continue to provide in-person consultations when required to meet a client's access needs, either by a practitioner attending the client's home, or at a local partnership location, such as a GP surgery.

Social Security Scotland will discuss with clients invited for a consultation the most suitable way for it to be carried out, to ensure their particular needs are met. This will help to address some of the difficulties outlined by our Experience Panels members who highlighted how difficult traveling to a Department for Work and Pensions face-to-face assessment could be, particularly if they had to travel a large distance or had a disability which made attending a Department for Work and Pensions assessment difficult or impossible which, consequently, made an already stressful experience worse.

A telephone consultation carried out by a practitioner from Social Security Scotland will be substantially different from Department for Work and Pensions telephone assessments: for example, clients will not face the same pressures to explain or 'prove' their disability or condition, as exemplified by our commitment to abolish functional examinations.

There are many reasons for doing this. Firstly, Adult Disability Payment supports disabled people or those with long term health conditions that can vary over days, weeks or months while an examination can only offer a view at a single point in time. Obtaining an informed understanding of the impact of a condition or disability on a client will always involve several sources of information, and the additional value of an examination will, for many people, be questionable. There are other ways of understanding the nature of a client's needs such as confirmation of a diagnosis or the level of support they require .

Where the client has provided information in the course of a discussion, we believe it is undignified to then ask the client to prove a lack of function through a test. In the Scottish Government system, the

consultation will allow the time needed for a client to give the additional information required. Practitioners will come from a position of trust in the client when discussing how the client's health conditions or disability affect their daily life.

There are also many conditions which do not have associated functional examinations within the Personal Independence Payment assessment. These include epilepsy, any conditions affecting internal organs such as Crohn's Disease, heart failure, kidney failure, tinnitus, cluster headaches, and cystic fibrosis. Removing the functional examinations from our consultations will promote a consistent service where no client is disproportionately scrutinised simply because they have a disability which is easier to examine than others. This will contribute towards clients with varying disabilities or health conditions being treated equally.

The consultation will be an objective discussion between a client and a practitioner, based on a position of trust. A case manager may not require information about every descriptor and will indicate to the practitioner which descriptors they are unclear on so the practitioner will not ask unnecessary questions by rote. This will lessen the likelihood of clients feeling as if the consultation is designed to "catch them out" and further help to reduce stress and anxiety.

We are also changing how informal observations will be handled during consultations. Engagement with our Experience Panels highlighted that, while many found the assessment better than they expected, this changed when they received a copy of the report. This is because they felt assessors had not accurately reported the conversation or felt that the observations they had made were inaccurate. They were also not given a chance to contest these observations. Respondents to our 2019 Consultation on Disability Assistance went on to say that informal observations could be 'inappropriate' for certain conditions such as autism or mental health conditions.

Consideration of responses and advice from Disability and Carer Benefits Expert Advisory Group has informed our approach to informal observations. Firstly, practitioners will be provided with specific guidance, training and resources regarding informal observations. Clients must also be made aware of what informal observations are, why they are being made, and the impact they will have. All informal observations will also be made known to the client so that they have the opportunity to respond. This will be beneficial as it will allow us to be as transparent as possible during the consultation process by ensuring that

clients are aware of what is going on and reduce the likelihood of practitioners making inaccurate assumptions.

The proposal to record consultations was approved of by 72% of participants in our Experience Panels. When asked why, many cited the lack of trust in the Department for Work and Pensions assessment process. A large majority of respondents to our Consultation on Disability Assistance were also in favour of consultations being recorded.

Recording consultations will help to improve trust in our system by ensuring that decision making is transparent. Having a record of what was said during the consultation was seen as beneficial for individuals by Experience Panel participants as it allows individuals whose disability or health condition have an effect on their memory to have a record of what was said. We also recognise that some people may not wish for their consultation to be recorded. Individuals will be able to opt out should this be the case.

Our new definition of terminal illness

As of July 2020, there were 3,134 individuals in Scotland accessing Personal Independence Payment under Special Rules for Terminal Illness.

It is anticipated that the new definition of terminal illness will support recognition of a wider number of illnesses and conditions than can be accounted for under the current definition in the reserved system. Engagement with stakeholders has indicated that this is because the current time limited definition of terminal illness is able to recognise individuals with malignant illnesses or neoplasms (cancers) at the end of life, but is weaker in recognising individuals with other degenerative conditions as it can be harder to predict length of life for these illnesses. In these circumstances, individuals with such conditions do not meet the definition of terminal illness in the reserved system.

We can see this comparing cause of death among adults in Scotland from 2018. From the Department for Work and Pensions data available, around 80% of individuals applying for Personal Independence Payment who have a terminal illness in 2018 in Scotland identified their main disabling condition as malignant diseases. However, when we compare this with deaths in Scotland that could be due to terminal illness (i.e. excluding accidental and intentional deaths), malignant illnesses only

accounted for around 40% of deaths of working age people. These figures indicate that it is reasonable to deduce that a much smaller percentage of people with a non-malignant terminal illness are currently accessing reserved disability benefits through special rules than those with malignant diseases.

Our new definition will allow 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 Adult Disability Payment through Special Rules Terminal Illness will be able to do so under our new definition, thereby having a positive impact on the protected characteristic of disabled people in Scotland.

Award duration and reviews

Between June 2016 and July 2020, 17% of awards reviewed led to increases, 15% to decreases, 44% remained the same, and 24% were disallowed. This does not include instances where a client has requested a mandatory reconsideration or appealed a decision. Including all instances of mandatory reconsiderations (involving reviews, change of circumstances, new applications and reassessments from Disability Living Allowance), it is estimated that mandatory reconsiderations take place in a fifth of cases in Scotland. Around 10% of the aforementioned appealable decisions result in appeals. United Kingdom-wide, 76% of appeals received a decision in favour of the client in 19-20.

We know that, for many people in the current system, the end of their award for disability benefits can be extremely stressful, particularly for individuals whose conditions are unlikely to change over time and who are consequently subject to unnecessary reassessments of entitlement.

Making awards rolling, subject to reviews, will help to reduce stress and anxiety associated with coming to the end of entitlement to assistance by removing the perception of reaching a financial cliff edge. By continuing entitlement while a review is taking place, we will ensure that disabled individuals continue to receive the assistance they are entitled to until a case manager has made a new determination.

The process for reviewing awards will be light-touch, providing a balance between respecting the needs of the individual and robust decision-making. Having a light-touch review process is more appropriate, particularly where a client's needs are unlikely to have changed significantly. 66% of respondents to our Consultation on Disability Assistance agreed with this approach alongside general agreement from our Experience Panels.

Additionally, when asked if awards 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 reviews of awards disabled people will need to go through and, as a result, the stress and anxiety experienced because of said unnecessary reviews, thereby having a positive impact on individuals who fall under this protected characteristic.

Re-determinations, appeals and short-term assistance

The Consultation on Disability Assistance set out the rights already provided to individuals through the Social Security (Scotland) Act 2018 with regards to requesting a re-determination or appeal. When asked to comment on our proposals, a majority of respondents (58%) agreed. However, some organisations held differing views.

When asked if 31 days was long enough to request a re-determination, some of the feedback provided suggested that accessing support or advice on challenging a decision can be time consuming and individuals may need longer than 31 days to do so. There was an emphasis on the need to take into account individual circumstances. We also noted concerns raised by a small number of respondents that a short timescale may deter individuals from challenging a decision. Similar concerns were raised in our Experience Panels.

We want to ensure that no one is disadvantaged by time limits for challenging a decision. In response to the feedback in the consultation and our Experience Panels, we have extended the time limit for requesting a re-determination to 42 calendar days. Key stakeholders have agreed with this change. 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.

We proposed to give Social Security Scotland 40-60 days to reconsider a decision, as it may be necessary to collect supporting information on behalf of the individual, and this information may take some time to obtain. A majority (60%) 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 concerns raised in the consultation, and subsequent stakeholder engagement, we have determined that Social Security Scotland will have 56 calendar days (8 weeks) to undertake a re-determination. If a re-determination is not completed by the end of this period, an individual can appeal directly to the First-Tier Tribunal (FtT) for Scotland.

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 FtT should Social Security Scotland be unable to complete the re-determination process within the timescale, this will further reduce any uncertainty and, consequently, make people feel more confident in challenging a decision they do not agree with.

During this time, individuals will continue to be entitled to the new rate of Adult Disability Payment, where an award has been made. This will help to alleviate some of the worry expressed by participants in our experience panels who raised the point that challenging a decision can have a financial impact, particularly in cases where mandatory reconsiderations in the current system have taken a long time.

We are also introducing support for individuals during the re-determinations and appeals processes through Short Term Assistance. The purpose of Short Term Assistance is to ensure that an individual is not discouraged from challenging a decision or accessing administrative justice by having to manage, for a period, with a reduced income.

It will do this by ensuring that, if a mistake has been made by Social Security Scotland, disabled people will continue to receive the payments they would have been entitled to should the mistake not have been made. This will allow individuals and their families and carers to continue to meet the additional costs of having a disability while their award of Adult Disability Payment undergoes a re-determination or appeal.

During the Parliamentary passage of the Social Security (Scotland) Act 2018, the inclusion of Short Term Assistance was welcomed by

stakeholders and supported by Parliament. When asked for views on Short Term Assistance in the Consultation on Disability Assistance in Scotland, respondents were overall in favour of our proposals with some concerns raised that, originally, Short Term Assistance was not intended to be available for individuals residing outside of Scotland. This has since been changed, allowing individuals living outside of the United Kingdom to apply for Short Term Assistance if they are in receipt of a qualifying benefit such as Adult Disability Payment. We recognise the complexities involved in this and will need to carry out further work to understand the impacts.

Our proposal that Short Term Assistance should not be recoverable was also met with approval (87%). 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.

When engaging on the topic with our Experience Panels, Short Term Assistance was seen as beneficial as it would make it more likely for people to challenge a decision by Social Security Scotland with particular emphasis on Short Term Assistance reducing financial pressure and giving people more confidence in challenging a decision. This will help to ensure that disabled people continue to access the assistance they are entitled to and feel confident in accessing administrative justice.

Marriage and civil partnership

Although the Scottish Government does not require assessment against this protected characteristic unless the policy or practice relates to work, for example Human Resource policies and practices, we have not identified any particular barriers resulting from our policy approach which may affect people with the protected characteristic of marriage or civil partnership.

Pregnancy and maternity

We do not currently have any data on the number of disabled people that fall under this protected characteristic. 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 proceeded to discuss instances where a disabled women was able to carry out tasks relating to caring for children which resulted in them not be 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. 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.

Race

Just under 4% of Scotland's population belong to minority ethnic groups, and 7% of our total population communicate in home languages other than English. Just over 4,000 people in Scotland (0.1% of the population) identified their ethnic group as "White: Gypsy/Traveller". Although we do not have statistics showing the number of people within Scotland who are in receipt disability benefits and who belong to minority ethnic groups, we know that they generally make up 3.7% of those with a reported learning disability or developmental disorder.

The 2011 census found that, for the general population, "White" people are more likely to say their day to day activities are limited "a lot" or "a little" by their long-term health conditions, compared to their share in the population. This is not true for any of the other ethnic categories apart from "Caribbean or Black" respondents aged 0-24 who are slightly more likely to say their day-to-day activity is limited "a little".

There was a wide variation between men and women in different ethnic groups. Women from the three groups Bangladeshi, Pakistani and Gypsy/Traveller recorded higher rates of 'health problem or disability' than women from the "White: Scottish" ethnic group, while men from only two ethnic groups, "Pakistani" and "Gypsy/Traveller", recorded higher rates of "health problem or disability" than men from the "White: Scottish" ethnic group. Additionally, findings from Department for Work and Pensions's race disparity audit found that Black women (29%) were more likely to have experienced anxiety or depression than White women (21%) and were less likely to seek treatment. This is the same regardless of gender with 7% of Black adults in the United Kingdom compared to 14% of White adults reporting receiving treatment at the time of the report.

We are aware that 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 our 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. To address this, work has been undertaken with ethnic minority groups alongside the main Experience Panels as part of our 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 told us 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 participants also expressed concern that they would misinterpret information and, as a result, they would be sanctioned or prosecuted because of language barriers.

The ethnic minority population also includes refugees. Scotland has resettled 3,180 people under the Vulnerable Persons Resettlement Scheme and Vulnerable Children Resettlement Scheme since Q1 of

2014. Refugees are eligible for benefits such as disability benefits, but typically experience additional barriers to the general population in accessing them. We have undertaken specific engagement with this group to understand better some of the barriers to applying disability benefits.

The issue of language presented a very real challenge for the Syrian refugees in our focus groups who could speak or understand very little English. This was exacerbated by lack of (Syrian) Arabic interpreters at advocacy and/or third sector organisations within their geographical area.

We were told during our engagements with Vulnerable Person Resettlement Scheme Syrian refugees that accurate information about eligibility to disability benefits was difficult to access, with some being told that refugees are not entitled to benefits at all. All spoke of a lack of knowledge of the benefit system, a fear of government officials and insurmountable challenges presented by language and dialect.

Many reported having their initial disability applications rejected, or receiving a lower rate than they expected. Some indicated that embarking on the appeal process might have been to their financial detriment, with the significant threat of no award presenting an insurmountable risk.

Our approach

Social Security Scotland will create a range of Adult Disability Payment stakeholder resources and content in accessible formats that will be proactively supplied to relevant stakeholder organisations through the National Stakeholder Engagement team, for organisations to distribute to people in local communities. The languages we proactively translate materials into were selected through stakeholder consultation. These are: British Sign Language, Farsi, Mandarin, Cantonese, Urdu, Gaelic, Polish, Arabic, braille and easy read formats, and materials in other languages are available on request.

Social Security Scotland communications will work with community radio and foreign language press to provide messaging on Adult Disability Payment 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 we will provide an engagement approach

through work carried out by the National Stakeholder Engagement and Local Delivery functions.

We were also informed anecdotally that Gypsy/Travellers 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. We recognise that the payment method will be important for some people and in particular Gypsy/Traveller communities. In addition to Post Office and Credit Union accounts, payments can be made using iMovo which is a secure digital voucher system that can be delivered to individuals in several media (SMS, email). These can be redeemed at one of 2850 PayPoint outlets in Scotland. This has also been found to be useful for young adults who have not yet opened a bank account.

There is a greater likelihood that Gypsy/Travellers will not be registered at a medical practice or accessing other services compared to people within the general population. This means that formal supporting information may be unavailable. The new approach to gathering supporting information and decision-making, described above, will be beneficial to individuals in these circumstances

Furthermore, Social Security Scotland will continue to work with experts who have experience of benefit take-up in specific communities, such as Black Asian Minority Ethnic women and Gypsy/Travellers. The purpose will be to monitor and provide management information to effectively target take-up activity, produce take-up resources for Social Security Scotland staff and stakeholders, and liaise with and support stakeholders and frontline staff with take-up activities. Our specific approach will draw on best practice from take-up initiatives and campaigns undertaken across Scotland and elsewhere in the United Kingdom.

Terminal illness

It is known that there is a low uptake of palliative and end of life care services for British and Minority Ethnic groups. This was found to be a 'common theme' in the 45 studies included in 'Palliative and end of life care for BAME groups in the United Kingdom'. Potential explanatory factors for the low uptake included lack of referrals, lack of knowledge about services or about what palliative care involves and religious traditions and family values in conflict with the idea of palliative / hospice

care. It is likely that some of the reasons for low uptake of palliative care could also lead to low uptake of disability assistance when terminally ill.

There is some evidence that ethnic groups can vary in the extent to which individuals would wish to know about their terminal diagnosis. This issue is discussed in relation to Chinese families and also in a cross cultural study involving some East Asian countries.

Our approach to terminal illness has been developed in a way that is supportive of clients from minority ethnic groups where explicit knowledge of a terminal diagnosis may be considered not to be in the best interests of the patient. The Chief Medical Officer 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 patient would be harmful to them. To support terminally ill clients it will also be possible for a third party to complete the application form and this will similarly be supportive of clients where explicit knowledge of a terminal diagnosis is deemed not in their best interests. In these ways, the terminal illness policy is supportive of clients from minority ethnic groups.

We do not have data for individuals who are terminally ill disaggregated by ethnic group. As the numbers are small, caution would be needed to prevent the identification of individuals. To mitigate this, although the provision of diversity information is not compulsory it will form part of the application process. This should lead to collection of better data which can be used to inform future work on Adult Disability Payment and, where relevant, our overall approach to terminal illness.

Religion and belief

According to latest data published by Scottish Surveys Core Question in 2019, 50% of respondents identified as having “no religion” while 47% identified as Christian (“Church of Scotland”, “Roman Catholic” or “other Christian”), 2% as Muslim, and 2% as an “other religion”.

Once age was taken into account, in comparison to those with no religious affiliation, a lower proportion of “other” religious groups reported good/very good general health and a higher proportion reported having a limiting long-term condition. “Other Christians” reported a higher level of good/very good general health than the “no religion” reference group.

We have not identified any particular barriers resulting from our policy approach which may affect people with the protected characteristic of religion and belief.

Sex

Data from the Paperworth Trust found that women make up a small majority of disabled people in the United Kingdom (23% of females compared to 19% of males). A report by the Women's Budget Group has also found that, overall, women are twice as likely to rely on social security as men. The higher percentage of female compared to male disabled people can also be seen when examining data from Department for Work and Pensions who, as of July 2020, reported 124,186 male and 149,717 female clients entitled to Personal Independence Payment in Scotland.

Within these groups, the largest proportion of clients entitled to Personal Independence Payment had a 'psychiatric disorder', totalling 108,081. There were slightly more male (56,559) than female (51,521) clients though this was not always the case when looking at individual conditions. Within the category of 'psychiatric disorders', there were significantly more male clients with a behavioural or learning disability such as autistic spectrum disorders (7,324 male compared to 2,128 female), Attention Defecit Hyperactivity Disorder/Attention Defecit Disorder (1,813 male compared to 412 female) while female clients were significantly more likely to report a mental health condition with the largest proportion experiencing mixed anxiety and depression (21,675 female compared to 15,698 male).

We also know from engagement with stakeholders that there are specific issues which arise for disabled women. In their response to our Consultation on Disability Assistance, Engender highlighted, in particular, that women are far more likely to experience domestic violence and abuse and that this is compounded for disabled women.

Engender also highlighted that, for many women who attend Department for Work and Pensions face-to-face assessments, they face specific barriers due to assessors making assumptions based on stereotypical gendered roles. They noted that there has not been enough research conducted on the topic to provide a detailed analysis. This was linked to research examining the gendered history of 'incapacity benefits' which demonstrates that patterns of awards tended to punish women who engaged in household labour because it was viewed as potential work

activity for women while men undertaking similar activities did not face such scrutiny. The research further linked this to Department for Work and Pensions data which shows that men are more likely to be awarded the enhanced rate of the daily living component (52%) compared to women (46%).

Our approach to making decisions will be person-centred and based on 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 clients do not face discrimination, including discrimination on the basis of sex. If practitioners think a client being able to carry out certain tasks is relevant they will be required to discuss this with the client so that they are able to gain an accurate idea of the client's needs rather than making assumptions.

Sexual orientation and gender reassignment

In 2017, 2.4% of people in Scotland identified their sexual orientation as "Lesbian, Gay, Bisexual or other." A report by the Equality Network found that Lesbian, Gay, Bisexual, Transgender/Transexual (LGBT+) disabled people were more likely to experience discrimination than LGBT+ non-disabled people with 59% reporting experiencing prejudice or discrimination within the last month at the time of the report compared to 47% of non-disabled LGBT+ individuals.

There is no robust data relating to the proportion of people in Scotland to whom the gender reassignment protected characteristic applies. However, we recognise 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 often involves a male-female binary which does not apply to individuals whose gender does not fit neatly into one of these boxes 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.

Some people we engaged with who had undergone a Personal Independence Payment assessment in the current system reported experiencing homophobia/ transphobia by assessors. They also spoke of dismissive and disrespectful attitudes towards their shared living arrangements with same-sex partners.

Our application form has been designed to allow for individuals to identify as 'male', 'female' or 'other'. Agency staff will be recruited who embody values of dignity and respect and all training for new staff will include LGBT+ awareness and be underpinned by human rights principles. It is anticipated that these measures will have a positive effect on people applying for Adult Disability Payment from these protected groups

Recommendations and Conclusion

This Equality Impact Assessment process has identified that overall, the introduction of Adult Disability Payment to replace Personal Independence Payment has the potential to have a positive impact for people in Scotland with protected characteristics.

The potential positive impacts identified include:

- replacing Department for Work and Pensions private sector health assessments with client consultations undertaken by practitioners of Social Security Scotland with experience in the provision of health and social care, including a proportion with specific experience in mental health and learning disabilities;
- significantly reducing the number of face-to-face consultations that will need to be carried out due to our improved approach to gathering supporting information, decision making and, where a consultation is necessary, undertaking the majority of these by phone;
- making it easier for individuals with a terminal illness to be entitled to Adult Disability Payment through Special Rules Terminal Illness by allowing medical practitioners to use their clinical judgement and removing the six month time limit from our definition of terminal illness;
- helping to reduce the stress and anxiety experienced due to the perception of reaching a financial cliff edge by making rolling awards;
- alleviating some of the worry that can be caused in the review process by making longer awards and using a light-touch review process when client's conditions are unlikely to have changed;
- reducing stress and anxiety as a result of requesting a re-determination by providing certainty around how long a re-determination

will take alongside providing a way to appeal directly to the FtT should Social Security Scotland be unable to do so within the specified timescale; and

- helping to encourage individuals to seek administrative justice should they believe Social Security Scotland has made a mistake through Short Term Assistance, mitigating a drop in the level of household income while also protecting people by making Short Term Assistance non-recoverable.

Annex E: Draft Children's Rights and Wellbeing Impact Assessment (CRWIA) summary

Introduction

25. The Social Security (Scotland) Act 2018⁴⁵ (the 2018 Act) sets out the broad framework for the delivery of devolved social security in Scotland. On 1 April 2020, the Scottish Ministers took executive and legal competence for non-means tested disability benefits, including Disability Living Allowance for Children, Attendance Allowance and Personal Independence Payment.

26. These benefits will continue to be delivered during a transition period by the Department for Work and Pensions under the terms of an Agency Agreement with the Scottish Government to ensure the safe and secure transfer of United Kingdom disability benefits to Scotland.

27. The Scottish Government intends to replace Disability Living Allowance for Children, Personal Independence Payment and Attendance Allowance with new forms of assistance under the 2018 Act. These new benefits will be delivered by Social Security Scotland on behalf of Scottish Ministers with determinations carrying a right of appeal to the First-Tier Tribunal for Scotland's Social Security Chamber.

28. The Disability Assistance for Working Age People (Scotland) Regulations set out how we will deliver our replacement for Personal Independence Payment; Adult Disability Payment. It will replace Personal Independence Payment for people living in Scotland between the ages of 16 and state pension age.

29. This Child Rights and Wellbeing Assessment sets out the Scottish Government's analysis of the impact of the policies described in the consultation document on children and young people's wellbeing who may be affected by the implementation of Adult Disability Payment. In this context it is considering the impact of Adult Disability Payment on 16-18 year olds. It also considers the wider impact on children living in families where an adult receives Adult Disability Payment.

30. The delivery of Adult Disability Payment in Scotland is anticipated to have a broadly positive impact on children's rights and welfare. We are delivering person centred disability assistance rooted in the values of

⁴⁵ <http://www.legislation.gov.uk/asp/2018/9/contents/enacted>

providing disabled people and their families with dignity, fairness and respect.

31. The Scottish Government has developed policy related to Adult Disability Payment through engagement with people with lived experience of accessing disability benefits, third sector stakeholders, and other interested parties. This consultation will seek feedback on how the policy intent has been reflected in the draft Disability Assistance for Working Age People (Scotland) regulations.

Who was involved in assessing the Child Rights and Wellbeing impact?

32. In July 2016 the Scottish Government launched a public consultation to support the development of a framework that would become the 2018 Act. The questions relating to disability benefits received over 200 responses with an even split between organisational and individual respondents.

33. The Scottish Government has set up Social Security Experience Panels with over 2,400 people across Scotland registered as panel members when the Panels opened in 2017. The Panels involve people with lived experience of the benefits that are coming to Scotland. In July 2019 recruitment to the Experience Panels was reopened. We have been working with relevant stakeholders to specifically target groups which were previously underrepresented, including young people.

34. The Consultation on Disability Assistance built on the work of the Experience Panels and was published on 5 March 2019. It sought the views of the people of Scotland on the three proposed disability assistance benefits, including Adult Disability Payment.⁴⁶ The consultation closed on 28 May 2019, having received 263 replies, of which 74 were from stakeholder organisations and 189 from individuals.

35. The Scottish Government has also undertaken ongoing consultation with stakeholders through our independent Disability and Carers Benefits Expert Advisory Group (DACBEAG) as well as the Ill Health and Disability Benefits Stakeholder Reference Group. DACBEAG is chaired by Dr Jim McCormick and comprises individuals with significant practical experience of the United Kingdom social security

⁴⁶ <https://www.gov.scot/publications/social-security-consultation-disability-assistance-scotland/>

system, from a range of professional backgrounds. It is independent of the Scottish Government.

36. The Ill Health and Disability Benefits Stakeholder Reference Group was set up in March 2016 to inform and influence the development of policy options relating to devolved Disability Assistance. This group has advised on the potential impact of policy decisions as well as user and stakeholder engagement.

37. In addition to the above, the views of people with lived experience have been captured through a range of user research and stakeholder engagement activities held throughout Scotland. These events have provided stakeholders the opportunity to feed into the early development of policy discussions, raising awareness of the consultation and further exploring their views.

38. The stakeholder engagements, expert advisory groups and events held with people with lived experience as well as the public consultations have helped to identify the potential impact of Adult Disability Payment on other Scottish Government policy areas as well as on children and young people's wellbeing.

Data

39. The latest Scottish Health Survey covering the calendar year 2019 reports that among young people aged 16-24, around 22% have a limiting longstanding illness⁴⁷.

40. The mid-year population estimates showed that as of 30 June 2019 there were almost 108,000 people aged 16 or 17 in Scotland⁴⁸. At the same time there were around 3,700 16-17 year olds receiving Personal Independence Payment⁴⁹, accounting for 3.4% of this demographic. For context, there were almost 201,000 working age Personal Independence Payment recipients among over 3.5 million people of working age (including 16 and 17 year olds). Personal Independence Payment recipients account for 5.7% of this wider group.

41. In the financial year 2019-20 there were around 2,800 applications to Personal Independence Payment for 16 or 17 year olds in Scotland.

⁴⁷ <https://www.gov.scot/publications/scottish-health-survey-2019-supplementary-tables/>

⁴⁸ NRS Scotland Mid-Year Population Estimates (2019) <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/mid-year-population-estimates/mid-2019>

⁴⁹ Department for Work and Pensions Stat-Xplore (accessed 07 October 2020)

Given that Child Disability Payment will extend to 16 and 17 year olds there will no longer be automatic reassessment at these ages. However, new clients will be able to apply for Adult Disability Payment from 16. Of the aforementioned 2,800, 650 were new applications to Personal Independence Payment, and a similar number can expect to be received when Adult Disability Payment opens to new applications⁵⁰. Additionally, Child Disability Payment clients may elect to apply for Adult Disability Payment once they reach 16.

42. In the latest Personal Independence Payment caseload information to the end of July 2020, there are around 3,200 people in Scotland of all ages that have received a Personal Independence Payment award under the Terminal Illness Special Rules⁵¹. A very small number of these are aged 16 or 17 (figures suggest there are around 20 young people at GB level).

United Nations Convention on the Rights of the Child (UNCRC)

43. The policy intent has been assessed against the relevant UNCRC articles:

Article 3 - Best Interests of the Child: Social Security Scotland has been developed around the principles of dignity, fairness and respect, transparent decision making, a person centred approach and routed in the belief that social security is a human right. Adult Disability Payment will have these principles embedded both in the policy and in the way in which the assistance is delivered. This will help to ensure that all decisions made by Social Security Scotland are made with consideration of the best interests of the young person, both when they are the recipient and where the recipient is a family member of the young person.

Article 6 - Life, Survival and Development: Adult Disability Payment is intended to mitigate the additional costs disabled people, including disabled young people, incur in meeting their care and mobility needs. Mitigation of these additional costs is anticipated to provide young people with funding to access community resources, education and social activities, develop skills and new experiences and to have a good quality of life. Once young people are in receipt of Adult Disability Payment they have the security of the continuity that comes with a form of assistance available, as long as they remain eligible, for the rest of

⁵⁰ Department for Work and Pensions Stat-Xplore (accessed 20 November 2020)

⁵¹ Department for Work and Pensions Stat-Xplore (accessed 20 November 2020)

their adult lives. This is particularly valuable at a time when young people are experiencing many other transitions which can be the source of a great deal of stress and anxiety for them and their families.

Article 12 - Respect for the views of the child: Adult Disability Payment has been developed through consultation with and input from people with lived experience of the current social security system, including young people, their families and carers through our Social Security Experience Panels. This policy will impact the lives of disabled people including young people and their contribution is crucial in shaping a successful policy.

Article 23 - Children with a Disability: Adult Disability Payment will ensure that individuals, including young people, who receive it are more likely to be able to live a full life, to be as independent as possible and to be able to engage in the community. By ensuring that some of the additional costs incurred as a result of additional care or mobility requirements are mitigated, eligible disabled young people will have the option to engage in more activities of their choosing.

Article 26 - Social Security: Adult Disability Payment has been developed for adults in Scotland. This includes young people aged 16 and 17 years old. We have engaged with individuals and stakeholders to make changes that improve both the rules and the client experience of applying for, and receiving, Adult Disability Payment. These changes will ensure that the application process is easily accessed by those who are eligible, that take up amongst eligible individuals, including young people. Increases, and that, throughout engagement with Social Security Scotland, individuals are treated with dignity, fairness and respect.

Article 27 - Adequate Standard of Living: The key policy intent of Adult Disability Payment is to provide individuals with payments to help mitigate the costs they incur as a result of a disability or long term condition. Adult Disability Payment will not be means-tested. Young people in receipt of Adult Disability Payment will be able to use it to pay for things such as care, access to community resources, transport, social activities, and any other goods or services of their choosing.

Getting it right for every child (GIRFEC) wellbeing indicators

The Children and Young People (Scotland) Act 2014 introduced a range of indicators used to measure children and young peoples' wellbeing. Our assessment of Adult Disability Payment against this framework is:

Healthy: Adult Disability Payment will improve the health of disabled adults, including young people, by ensuring that increased financial support is provided to them, contributing towards the additional costs of care and transport.

Achieving: The provision of the mobility and daily living components of Adult Disability Payment directly contribute to enabling disabled individuals including young people to engage in activities of their choosing including education, development opportunities and social activities.

Active: As outlined above, the provision of daily living and mobility components of Adult Disability Payment will provide the funds to enable individuals including young people to engage in community activities of their choosing, ensuring that they have the option to choose to engage in community based activities and resources.

Respected: The principle of respect for the dignity of individuals is at the heart of the new Scottish social security system and specified in the Social Security (Scotland) Act 2018. Adult Disability Payment will further embed these principles, recognising that disabled individuals, including young people, have the right to engage in activities of their choosing and providing funds to enable them to purchase the services or equipment they need to help them do so. The administration of the assistance has been designed to ensure that people are treated with dignity and respect and provided with a service that takes account of, and meets, their needs.

Responsible: Social Security Scotland will pay Adult Disability Payment directly to young people aged 16 and 17, where they are able to manage their own affairs. The young person will decide on how this money should be used with support from their parents or carers where appropriate. Where there is a requirement for an appointee, or a young person is subject to a guardianship order, Social Security Scotland can pay Adult Disability Payment to the relevant person acting on the young person's behalf.

Specific policy impacts

Young People Aged 16-18

44. As part of the implementation of Child Disability Payment we are intending to increase eligibility from age 16 to 18 for young people in

receipt of Child Disability Payment prior to their 16th birthday. This will ensure that young people and their families do not have to undergo a stressful and anxiety provoking reassessment process at age 16, a time when many young people undergo a transition to adult services. This policy measure is likely to have a broadly positive impact and is supported by stakeholders as a desirable permanent change to the eligibility rules for the Child Disability Payment.

45. By enabling applications for Adult Disability Payment from age 16, young people who are not already receiving disability assistance are able to access this through a route which offers continuity into adulthood. This prevents 16 or 17 year olds applying for Child Disability Payment and then, after a short period, requiring them to apply for Adult Disability Payment. This would add a further transition for young people to navigate which is what we are seeking to avoid by extending eligibility of Child Disability Payment to age 18. This avoidance of a further transition is particularly important as young people aged 16 and 17 are already undergoing a period of significant change transferring from child to adult services. This policy measure is likely to have a positive impact on young people and is supported by stakeholders.

Other policy divergences that will support individuals including children and young people.

46. As part of the Scottish Government's commitment to a safe and secure transition of powers, we do not propose to make significant changes to the eligibility criteria of Adult Disability Payment.⁵² However, we have set out several points of divergence between Adult Disability Payment and Personal Independence Payment which we expect to have a positive impact on disabled people in Scotland. These are described in this consultation document at Annex A.

Conclusion

47. The development of Adult Disability Payment and how it will be delivered has been informed by engagement with a range of stakeholders and people with lived experience of the current benefit system. The policy intent of Adult Disability Payment is to provide payments to contribute to the additional care and mobility costs resulting from a disability or long term condition. The provision of this assistance is intended to enable people to mitigate these costs, and to mitigate

⁵² <https://www.gov.scot/publications/social-security-case-transfer-policy-position-paper/>

societal barriers to ensure they are able to live a life of their own choosing.

48. Policy measures outlined above are anticipated to be broadly positive in relation to the impact on children's rights and wellbeing. This is both directly where a young person is an Adult Disability Payment client and also for the children of parents who are an Adult Disability Payment client.

49. Based on the evidence gathered, previous consultative engagement with users and stakeholders, and assessment of the demographic makeup of current Personal Independence Payment recipients, the Scottish Government does not consider that Adult Disability Payment infringes upon the rights of the child as set out in the articles of the UNCRC. The assessed impacts of the policy make a positive contribution to the rights and wellbeing of young people who are eligible to receive Adult Disability Payment as set out in the assessment of the policy against UNCRC articles outlined above.

50. The Scottish Government has assessed Adult Disability Payment against the indicators of wellbeing as set out by the Children and Young People (Scotland) Act 2014 and has concluded that the policy is likely to have a positive impact against each of the indicators, for young people who meet the eligibility rules and for the children of adults who are awarded Adult Disability Payment.

Consultation

51. While we have identified that Adult Disability Payment will have some positive impacts on the groupings outlined above, we are keen to seek out opportunities to promote improved rights and wellbeing for young people. This consultation therefore seeks the views of stakeholders, the public and a range of groups with a specific interest in child policy development.

Annex F: Draft Business and Regulatory Impact Assessment summary

Title of Proposal

Disability Assistance for Working Age People (Scotland) regulations

Purpose and intended effect

Background

The Social Security (Scotland) Act 2018 (the 2018 Act) sets out the broad framework for the delivery of devolved social security in Scotland. On 1 April 2020, the Scottish Ministers took executive and legal competence for disability benefits, including Disability Living Allowance for Children, Attendance Allowance and Personal Independence Payment.

These benefits will continue to be delivered during a transition period by the Department for Work and Pensions under the terms of an Agency Agreement agreed with the Scottish Government to ensure the safe and secure devolution of disability benefits.

The Scottish Government intends to replace Disability Living Allowance for Children, Personal Independence Payment and Attendance Allowance with new forms of assistance under the 2018 Act. These new benefits will be delivered by Social Security Scotland on behalf of Scottish Ministers with determinations carrying a right of appeal to the First-Tier Tribunal for Scotland's Social Security Chamber.

The Scottish Government intends to launch disability assistance for new applicants first. This includes individuals who are not in receipt of a United Kingdom or Scottish Government disability benefit. Transfer of existing Department for Work and Pensions clients to Social Security Scotland will take place at a later point without clients needing to make a new application. Clients will be no worse off at the point of transfer, and Social Security Scotland will honour the client's award review date.

The Disability Assistance for Working Age People (Scotland) regulations sets out how we will deliver our replacement for Personal

Independence Payment; Adult Disability Payment. This was formerly known as Disability Assistance for Working Age People. It will replace Personal Independence Payment in Scotland for people between the ages of 16 and state pension age.

Policy Objectives

The policy background to the regulations and further information about the specific provisions are fully described in this consultation document at Annex A and B.

This impact assessment is one of a package to accompany the regulations. The others are: Business and Regulatory Impact Assessment (BRIA); Equality Impact Assessment (EQIA); and the Fairer Scotland Duty Assessment.

Rationale for Government intervention

The assessment of the Disability Assistance for Working Age People (Scotland) regulations and Adult Disability Payment overall in relation to Business and Regulatory impact was undertaken using the five principles of Better Regulation, as follows:

Proportionate: The Scottish Government will look to identify and minimise any indirect impacts, for example administrative burdens, on local government, private businesses or third sector organisations as a result of the introduction of Adult Disability Payment.

The equivalent United Kingdom benefit, Personal Independence Payment, will reduce in caseload as Adult Disability Payment is delivered by the Scottish Government and cases are later transferred to Social Security Scotland. This will likely lead to a neutral impact in the longer term on the administrative burdens on other public agencies, private businesses and third sector organisations.

In the short term, there may be additional work for public agencies and some third sector organisations as they make arrangements for their staff to incorporate knowledge of the replacement benefit into their current systems. Social Security Scotland has committed to undertaking much of the administrative responsibility, as far as possible, on behalf of people accessing disability assistance, including Adult Disability Payment, and intends to create data sharing processes with relevant public bodies.

It is anticipated that this will reduce the burden of providing information to individuals that public agencies currently undertake when applying for disability benefits, by creating formal data sharing agreements and processes with one Agency, Social Security Scotland.

There is also expected to be a neutral impact on medical professionals as a result of our new definition of terminal illness. They will still be expected to use their clinical judgement to determine whether an individual has a terminal illness with the primary difference being that, instead of a DS1500 form, they will be required to fill out a Benefits Assistance Under Special Rules in Scotland (BASRiS) form as evidence. There may be some short-term effects as medical professionals adjust to using the BASRiS form and taking a different approach but, overall, this should not place additional burdens on medical staff.

Consistent: Adult Disability Payment builds on the Social Security (Scotland) Act 2018 framework of a new system that is underpinned by dignity, fairness and respect.

Adult Disability Payment will be delivered on an entitlement basis to eligible people. Decision-making will be person-centred and operational guidance for case managers within Social Security Scotland will be created in line with the rules within the regulations which will provide a framework for consistent decision making across all applications. This includes guidance provided to practitioners of Social Security Scotland which will be utilised to should a client be invited to attend a consultation.

Where possible the Disability Assistance for Working Age People regulations and the associated policies have been aligned with those for Child Disability Payment to provide a consistent approach for clients, and services who will support them, to make applications for disability assistance and navigate Scotland's social security system.

Accountable: All decisions made relating to an application for disability assistance will be provided to clients in a communication method that meets their needs. All information used, and rationale for the decision, will be included within this communication to ensure that clients are informed of how the decision relating to their application was assessed.

The Social Security Charter sets out, in plain and clear English, what people are entitled to expect from the Scottish social security system, including how they should be treated and how their application will be processed. Complaints regarding Social Security Scotland can be directed to the Scottish Public Services Ombudsman.

We will ensure that clients understand their right to have their decision re-determined by Social Security Scotland and to request an appeal to the First Tier Tribunal (FtT) if they are unsatisfied with the outcome of the re-determination. This includes their right to appeal directly to the FtT if Social Security Scotland is unable to complete the re-determination process before 56 days have elapsed.

Individuals will also be made aware of the existence of Short-Term Assistance (STA) which can be applied for during re-determinations and appeals on ongoing awards of Adult Disability Payment. This will help to ensure that individuals are not discouraged from challenging a decision they do not agree with or seeking administrative justice by having to manage, for a time, with reduced income.

Transparent: We will develop a communications strategy for each form of disability assistance, including Adult Disability Payment. This will aim to ensure that clients and their families or carers, the third sector, local government, education and health sectors and advice providers are aware of the benefit, know how to apply and understand the eligibility criteria. Where a decision is made that a client is not entitled to assistance, Social Security Scotland will provide a reason why, as set out in the Social Security (Scotland) Act 2018, to ensure that decisions are understood and that our processes are as transparent as possible.

We will publish guidance on Adult Disability Payment in a way that takes account of differing communication needs, so that entitlement is clearly understandable. Social Security Scotland will create a bank of Adult Disability Payment stakeholder resources and content in accessible formats that will be proactively supplied to relevant stakeholder organisations through the National Stakeholder Engagement team, for organisations to distribute to people in local communities. The languages we proactively translate materials into were selected through stakeholder consultation. These are: BSL, Farsi, Mandarin, Cantonese, Urdu, Gaelic, Polish, Arabic, braille and easy read formats.

Social Security Scotland will produce communication materials in other languages on request. Social Security Scotland communications will work with community radio and foreign language press to provide messaging on Adult Disability Payment to communities. In some circumstances printed marketing materials may not be the right way to engage with communities and where this is the case we will provide an engagement approach through work carried out by the National Stakeholder Engagement and Local Delivery functions.

We published the first Benefit Take-Up Strategy (October 2019) under the provision of the Social Security (Scotland) Act 2018. The strategy sets out Scottish Ministers' work supporting benefit take-up to date. It also introduces a series of new activities and initiatives aimed at increasing awareness of and access to Scottish benefits and supporting those who are eligible to apply.

These include new funding streams for benefit take-up and income maximisation, establishing a Take-up Stakeholder Reference Group to provide advice and support in the implementation of this strategy, developing a Take-up Stakeholder Toolkit, and two roundtable events to be held in 2020 which will be co-designed with important organisations to explore solutions to issues such as stigma, barriers to access, and the human rights-based approach.

We are also working to ensure that client consultations are as transparent as possible. This includes recording consultations as standard (with the client having the ability to opt out should they choose) so that a record of the conversation is kept. This recording can be used should a client challenge a decision or appeal a decision at the First-tier Tribunal for Scotland.

We have also considered how informal observations should be applied in client consultations. Practitioners will be provided with specific guidance, training and resources regarding informal observations. Clients must also be made aware of what informal observations are, why they are being made, and the impact they will have. All informal observations will also be made known to the client so that they have the opportunity to challenge or comment on the observation. This will provide a transparent consultation service by ensuring that clients are aware of what is being reported and recorded.

Targeted only where needed: Adult Disability Payment is intended to help mitigate the additional costs of having a disability. The rules for

the benefit will be set out in these regulations and each new application will undergo an application process which will assess eligibility for Adult Disability Payment in a way that is consistent with the principles of dignity, fairness and respect.

As of July 2020, there were 273,901 people in Scotland entitled to Personal Independence Payment. This accounts for roughly 7.8% of the population between the ages of 16 and 65.

We have not previously published forecasts for new applications to Adult Disability Payment but Department for Work and Pensions outturn information shows that new applications for Personal Independence Payment (clearances) have been relatively stable at around 58,000 cases per year, amounting to 4,800 applications per month on average, although there is variation from month to month. It should be noted that this will not account for any differences resulting from Covid-19 which suppressed applications and decision making, particularly in April 2020.

Case managers will, where authorised, help clients gather supporting information through the previously mentioned data-sharing agreements. We are not looking to gather an exhaustive list of sources of formal information. It need only be sufficient to determine, on the basis of probabilities, that an individual meets the eligibility criteria for Adult Disability Payment. It is only when there is no other way to gather accurate information about the needs of a client that they will be invited to attend a client consultation.

The Social Security (Scotland) Act 2018 sets out the duty on Scottish Ministers to promote uptake of benefits for eligible individuals, and the Act requires Ministers to set out in parliament a benefit uptake strategy. Increased benefit uptake is likely to have a positive impact on businesses and the economy because more individuals will be in receipt of benefits which will be used to purchase a range of goods and services.

It is expected that the introduction of Adult Disability Payment could cause additional requests for information and support from existing advice services. However, it is anticipated that by introducing a system that has been designed in partnership with advice agencies, key stakeholders and individuals with experience of the current system, Social Security Scotland will be equipped to support individuals. This

should lessen the impact on advice services in their provision of complex welfare rights casework support for individuals.

Consultation

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. 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 Business and Regulatory Impact Assessment.

There were 521 formal written responses submitted, of which 241 were from organisations and 280 from individual respondents. The 241 organisational responses included stakeholder groups representing human rights, disability and long term conditions organisations covering a variety of disabilities and conditions, and carers. The independent analysis of the responses along with the Scottish Government response were published on 22 February 2017⁵³ in addition to the Business and Regulatory Impact Assessment that was published alongside the Social Security (Scotland) Bill was used to inform the partial Business and Regulatory Impact Assessment for these regulations.

The Scottish Government has set up Social Security Experience Panels with over 2,400 people across Scotland registered as panel members when the Panels opened in 2017. The Panels involve people with lived experience of the benefits that are coming to Scotland.

The Consultation on Disability Assistance built on the work on the Experience Panels and 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 three proposed disability assistance benefits, including Adult Disability Payment.⁵⁴ The consultation closed on 28 May 2019, having received 263 replies, of which 74 were from stakeholder organisations and 189 from individuals.

⁵³ <https://www.gov.scot/publications/analysis-written-responses-consultation-social-security-scotland/>

⁵⁴ <https://www.gov.scot/publications/social-security-consultation-disability-assistance-scotland/>

The Scottish Government has also undertaken ongoing consultation with stakeholders through our independent Disability and Carers Benefits Expert Advisory Group (DACBEAG) as well as the Ill Health and Disability Benefits Stakeholder Reference Group. DACBEAG is chaired by Dr Jim McCormick and comprises individuals with significant practical experience of the United Kingdom social security system, from a range of professional backgrounds. It is independent of the Scottish Government. The Group's role is to advise Scottish Ministers on specific policy options for disability assistance and carers benefits due to be delivered in Scotland.

The Ill Health and Disability Benefits Stakeholder Reference Group was set up in March 2016 to inform and influence the development of policy options relating to devolved Disability Assistance. This group has advised on the potential impact of policy decisions as well as user and stakeholder engagement.

In addition to the above, the views of people with lived experience have been captured through a range of user research and stakeholder engagement activities held throughout Scotland. These events have provided stakeholders the opportunity to feed into the early development of policy discussions, raising awareness of the consultation and further exploring the views of stakeholders and service users in more depth. The events have also provided the Scottish Government opportunity to engage specifically with particular groups that would be impacted by the proposed policy.

Options

Option 1 - Do Nothing

The transfer of powers to Scotland to make provision for Adult Disability Payment is set out in the Scotland Act 2016 and Social Security (Scotland) Act 2018. Therefore, not taking over powers from the Department for Work and Pensions was not considered to be a viable option.

There are not considered to be any benefits to this option.

If the Department for Work and Pensions were to stop making Personal Independence Payment payments to Scottish applicants and the Scottish Government did not provide a benefit to replace

this provision, then up to 300,000⁵⁵ people entitled to Personal Independence Payment would be worse off as they would no longer receive a payment. This number is forecast to increase over time

Option 2 - Introduce Adult Disability Payment on same basis as Department for Work and Pensions including how it is delivered:

The Scottish Government could have replicated Personal Independence Payment with no changes made to eligibility, application process or integration with other benefits. However, this would have been inconsistent with the Social Security principles set out in the Social Security (Scotland) Act 2018 and would not have fitted with wider Scottish Government policy on disability assistance.

It would have left a benefit being administered that clients found stressful and lacking transparency, and one leading to a high level of inaccurate decisions and lack of support for clients.

Option 3: Introduce Adult Disability Payment (recommended option):

The Scottish Government will make first payments of Adult Disability Payment when it launches a pilot in spring 2022, with full rollout by summer 2022 incorporating all of the improvements set out above.

Sectors and groups affected

The impact of Adult Disability Payment is going to be dispersed across the country and sectors of the economy. To estimate the cost of Adult Disability Payment, it is possible to look at estimates of the cost of Personal Independence Payment when the Scottish Government took executive competence as estimated by the Scottish Fiscal Commission's forecasts conducted earlier this year. They estimated that the cost of Personal Independence Payment would be £1.583 billion in 2020/21. This rises to £1.65 billion in 2021/2022 and £1.714 in 2022/23.⁵⁶

⁵⁵ Personal Independence Payment at July 2020: summary statistics

⁵⁶ <https://www.fiscalcommission.scot/forecast/scotlands-economic-and-fiscal-forecasts-february-2020/>

Scottish Firms Impact Test

Scottish businesses, including the third sector, responded to A New Future for Social Security consultation during summer 2016. Responses were received from 14 private businesses and 5 business organisations all of which requested that their responses remain anonymous.

Stakeholder events were also run in tandem with the Consultation on Disability Assistance between 5 March and 28 May 2019 to obtain as wide a view as possible on the forthcoming Scottish social security system. Views were received from many different types of interested stakeholder organisations, such as Child Poverty Action Group in Scotland, Citizens Advice Scotland, the Scottish Association for Mental Health (SAMH), Engender, CEMVO Scotland, Rights Advice Scotland, LEAD Scotland, MND Scotland, National Deaf Children's Society, Royal Blind and Scottish War Blinded, the National Association of Welfare Rights Advisers, Down's Syndrome Scotland, Royal College of Paediatrics and Child Health, Scotland, One Parent Families Scotland, Children's Hospices Across Scotland (CHAS), The Poverty Alliance, Epilepsy Scotland and Glasgow Disability Alliance.

It is expected that the introduction of these regulations could cause additional requests for information and support from existing advice services. As a new benefit, this may result in additional pressure on advice agencies as they become familiar with it. The Scottish Government will continue to engage with the advice services sector as the programme to implement the social security system in Scotland progresses.

The Scottish Government does not believe that the introduction of Adult Disability Payment will have an adverse impact on the competitiveness of Scottish companies or the third sector within Scotland, the United Kingdom, or elsewhere in Europe or the rest of the world. The change does not directly or indirectly limit the number of suppliers, nor does it limit the ability of suppliers to compete or reduce suppliers' incentives to compete vigorously. Additionally the Scottish Government does not expect there to be any significant impact on the operational business of local authorities or health boards as a result of introducing this provision.

There may be some impact on public sector agencies and third sector organisations operating in Scotland in relation to the way the new

Social Security Scotland agency delivers the devolved benefits compared to the status quo. These changes are unlikely to place significant demands on third sector organisations providing advice and support for people receiving and enquiring about social security payments and should not require a significant change to their operations.

Competition Assessment

The Scottish Government does not believe that Adult Disability Payment will have an adverse impact on the competitiveness of Scottish companies or the third sector within Scotland, the United Kingdom, or elsewhere in Europe or the rest of the world. Adult Disability Payment does not directly or indirectly limit the number of suppliers, nor does it limit the ability of suppliers to compete or reduce suppliers' incentives to compete vigorously. Additionally the Scottish Government does not expect there to be any significant impact on the operational business of local authorities or health boards as a result of introducing Adult Disability Payment.

Any procurement required to support the administration of Adult Disability Payment will be subject to the Public Contracts Scotland (2015) regulations and the Procurement Reform (Scotland) Act 2014, which together provide a national legislative framework for sustainable public procurement which supports Scotland's economic growth through improved procurement practice.

The Motability Scheme is currently the only national scheme that is open to eligible clients in receipt of the higher rate mobility component of Personal Independence Payment that can take advantage of certain tax exemptions that makes running a heavily discounted scheme financially sustainable. In ensuring that there is a devolved equivalent, we anticipate that the impact upon the existing supply chain of accessible vehicles and equipment will be nominal.

The Scottish Government has launched the Accessible Vehicles and Equipment Scheme to ensure that individuals in Scotland who receive a qualifying rate of disability assistance will be able to lease a range of cars, scooters and powered wheelchairs directly from a choice of accredited providers.

Accreditation under the Accessible Vehicles and Equipment Scheme is intended to allow other suppliers to join the Scheme – the Scheme does not directly or indirectly limit the number of suppliers, nor does it limit the ability of suppliers to compete or reduce suppliers' incentives to compete vigorously. Potential suppliers have a mechanism to request a review of a decision to refuse accreditation.

Social Security Scotland will arrange to pay the qualifying part of an individual's disability assistance to the accredited provider for the duration of a lease. Individuals who select the scheme to meet their mobility needs will not be subject to a credit check and will have access to a range of affordable choices directly from providers.

In the current system, assessments are carried out by private companies who do so on behalf of Department for Work and Pensions. Their assessors then produce reports which are used by Department for Work and Pensions decision makers to determine entitlement to Personal Independence Payment. In Scotland, this is carried out by Independent Assessment Services (formerly ATOS) or Capita.

We are replacing health assessments with client consultations. Consultations will be carried out by health and social care practitioners in Social Security Scotland. There is therefore no need to put any contracts out to tender.

- **Will the measure directly or indirectly limit the number or range of suppliers?**
No
- **Will the measure limit the ability of suppliers to compete?**
No
- **Will the measure limit suppliers' incentives to compete vigorously?**
No
- **Will the measure limit the choices and information available to consumers?**
No

Legal Aid Impact Test

Clients applying for Adult Disability Payment will have a right to request a re-determination of their entitlement by Social Security Scotland, and have a right of appeal to the First-Tier Tribunal for Scotland's Social Security Chamber.

It is not envisaged that there will be any greater demands placed on the legal aid system as a result of implementing this change, principally because the caseload is unlikely to change significantly. Legal assistance is available to individuals and is subject to a financial eligibility test based on the "disposable income" and "disposable capital" of the applicant.

It is a demand led budget and will continue to be available to individuals to appeal an entitlement decision to the First-tier Tribunal, to the Upper Tribunal, the Court of Session or Supreme Court. The Scottish Government does not expect any new impact on the legal aid budget, and expects legal assistance through the statutory scheme of Advice and Assistance, and Advice by Way of Representation will continue.

It is also expected that as a result of the extensive consultation and co-designed service design process, the decision making quality of Social Security Scotland will be improved and reduce appeals to tribunal by clients as a result.

Enforcement, sanctions and monitoring

On-going stakeholder engagement with key organisations – such as Child Poverty Action Group in Scotland, Citizens Advice Scotland, DACBEAG, and our Ill Health and Disability Benefit Stakeholder Reference Group – will provide the Scottish Government with an opportunity to monitor the impact of the changes made by these regulations.

The Communities Analysis Division within the Scottish Government will also run a comprehensive evaluation programme to consider the impact of the changes made by these regulations, with a full suite of equalities data for new applicants.

The Social Security (Scotland) Act 2018 places a duty on the Scottish Ministers to report annually to the Scottish Parliament on the performance of the Scottish social security system during the previous financial year. The report is to describe what the Scottish Ministers have done in that year to meet the expectations on them set out in the Social Security Charter.

The Scottish Ministers have also committed to engaging with, and reporting regular progress to, the Islands Strategic Group to ensure that those representing the interests of island communities and others with experience of the current system, are fairly represented in the development and delivery of the Scottish social security system.

Implementation and delivery plan

The Scottish Government intends to begin accepting applications from new clients from spring 2022, and at a later date, existing Department for Work and Pensions clients will transfer to Social Security Scotland without having to make a new application. Social Security Scotland will handle all aspects of the client's case to minimise stress and anxiety.

A communications strategy will be developed in advance of the launch of Adult Disability Payment, which will aim to ensure that individuals, their families and carers, the third sector, local government, health sector and advice providers are aware of the introduction of Adult Disability Payment, and understand the eligibility criteria. We will develop the communications strategy so that it will be linked in with wider Scottish Government initiatives for improving outcomes for disabled people.

Post-implementation review

As outlined above, the Communities Analysis Division within the Scottish Government will run a comprehensive evaluation programme to consider the impact of the changes made by these regulations, with a full suite of equalities data for new applicants.

Summary and recommendation

In summary, the Scottish Government has identified evidence that the introduction of Adult Disability Payment will constitute an investment into the Scottish economy. It is anticipated that these funds will be

used to pay for care, goods and services and therefore businesses could benefit from the introduction of Adult Disability Payment.

Any impact to businesses as a result of these regulations should be positive or neutral. The Scottish Government have worked closely with stakeholders to develop the policy and will continue to do so until Adult Disability Payment opens for new applications, the transfer process of clients from Department for Work and Pensions to Social Security Scotland, and beyond.

Annex G: Draft Islands Communities Impact Assessment

Island Communities Impact Assessment (ICIA): Disability Assistance for Working Age People (Scotland) regulations

Introduction

1. The importance of island-proofing was recognised in the "Empowering Scotland's Island Communities prospectus" published in June 2014. The principle of island-proofing is one of building a broad-based islands awareness into the decision making process of all parts of the public sector.

2. The Islands (Scotland) Act 2018⁵⁷ places a duty on the Scottish Ministers and other relevant authorities, including a number of public authorities, to have regard to island communities in exercising their functions, and for the Scottish Ministers this will also include the development of legislation. This duty is often referred to as 'island-proofing'.

3. The Scottish Government recognises the importance of island-proofing and committed to island-proofing the Social Security (Scotland) Act 2018⁵⁸ (the 2018 Act), in advance of the Islands Act placing a formal requirement to do so. The Scottish Government is also committed to island-proofing the legislation required in support of the devolution of social security powers to Scotland.

4. If the Scottish Ministers are of the opinion that any piece of proposed legislation is likely to have an effect on an island community which is significantly different from its effect on other communities, then the duty to island-proof legislation requires the Scottish Ministers to:

- describe the likely significantly different effect of the legislation;
- assess the extent to which the Scottish Ministers consider that the legislation can be developed in such a manner as to improve or mitigate, for island communities, the outcomes resulting from the legislation; and
- set out the financial implications of steps taken under this subsection to mitigate, for island communities, the outcomes resulting from the legislation.

⁵⁷ <http://www.legislation.gov.uk/asp/2018/12/enacted>

⁵⁸ <http://www.legislation.gov.uk/asp/2018/9/contents/enacted>

Executive Summary

5. This ICIA has considered the potential effects of the Disability Assistance for Working Age People (Scotland) regulations and how they impact on people living in island communities, presented below in the **Key findings** section. The findings here are based on desk research, engagement with and feedback from disabled people with lived experience of the current social security system⁵⁹, and the Consultation on Disability Assistance.⁶⁰ This ran between 5 March and 28 May 2019 and received 263 replies, of which 74 were from stakeholder organisations and 189 were from individuals.

6. This in turn led to targeted consultation with stakeholders representing people with protected characteristics which was undertaken during the consultation period in 2019, including disabled people from island and remote communities.

7. We are extending the ICIA by considering rurality and remoteness in the same spirit of the Act to gauge evidence whether the policy and regulations will impact rural/remote communities differently to other communities.

8. We have concluded that there will not be any new unique impacts on islands communities as a result of the provisions in these regulations, and nor will there be a specific financial impact for island communities in isolation resulting from the provisions.

Policy Background

9. The policy background to the regulations and further information about the specific provisions are fully described in this consultation document at Annex A and B.

9. This impact assessment is one of a package to accompany the regulations. The others are: Business and Regulatory Impact Assessment (BRIA); Equality Impact Assessment (EQIA); and the Fairer Scotland Duty Assessment.

⁵⁹ <https://www.gov.scot/collections/social-security-experience-panels-publications/>

⁶⁰ <http://consult.gov.scot/social-security/improving-disability-assistance/>

Scope of the ICIA

10. The scope of this ICIA is the impact of replacing Personal Independence Payment with the Adult Disability Payment on those who live in remote and island communities.

Key Findings

11. This section provides an overview of issues for Scottish rural/remote and island communities that are relevant for these regulations.

12. Island stakeholders have emphasised the importance of understanding the island experience. Each island has its own specific considerations and constraints.

13. Rural Scotland accounts for 98% of the land mass of Scotland and 17% of the population are resident there.⁶¹

14. At the time of the 2011 Census, Scotland had 93 inhabited islands with a total population of 103,700 (which was 2% of Scotland's population).⁶² Of these islands, only five are connected to the Scottish mainland by bridge or causeway.

15. The Islands Act identifies six local authorities representing island communities in Part 4 of the Act (Section 20 (2)), which are Argyll and Bute Council; Comhairle nan Eilean Siar/Western Isles; Highland Council; North Ayrshire Council; Orkney Islands Council; and Shetland Islands Council. Amongst them, Orkney, Shetland and Western Isles are entirely island authorities, while Highland, Argyll and Bute and North Ayrshire local authorities cover island regions as well as mainland regions.

⁶¹ Scottish Government (2018) [Rural Scotland: key facts 2018](#)

⁶² NRS (2015) [Scotland's Census 2011: Inhabited Islands report](#)

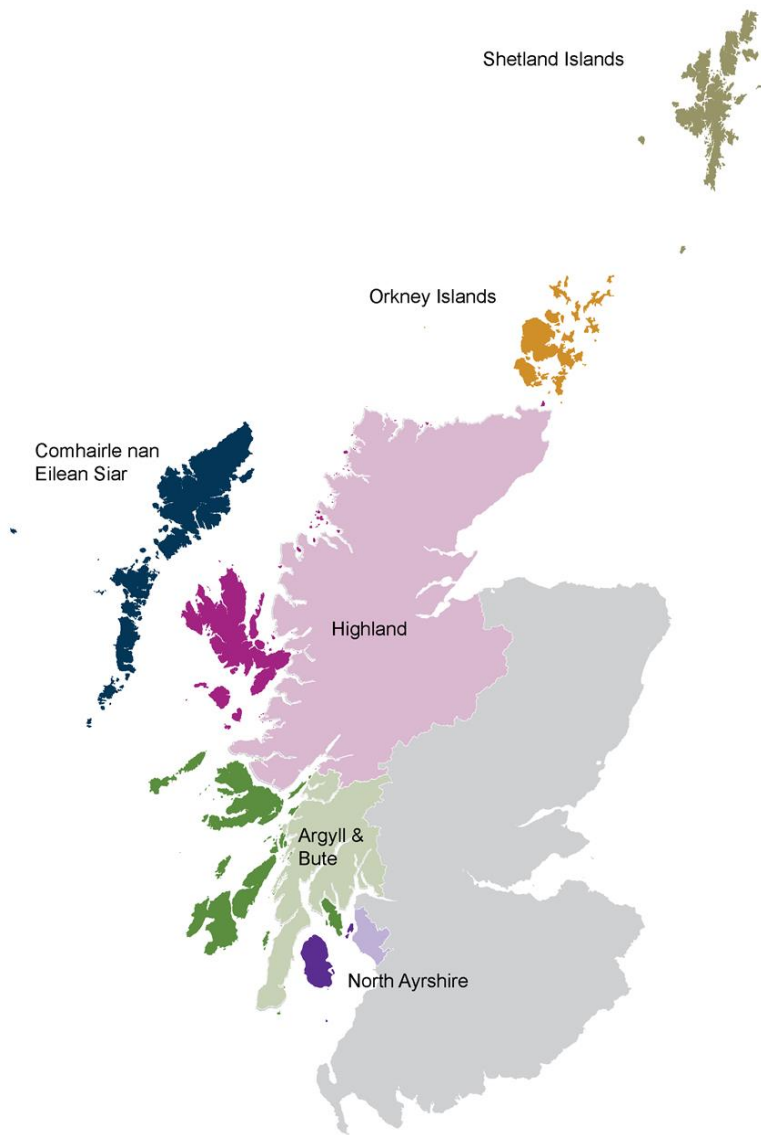


Figure 1: Map highlighting all 6 local authorities representing Island Communities (islands in darker shades where islands are part of mainland Local Authorities)⁶³

⁶³ <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2017/9/4/Islands--Scotland--Bill-1>

Demography and Health

16. According to the 2011 Census, 83% of island residents reported their health as being 'Very good' or 'Good' compared with 82% for Scotland as a whole.⁶⁴ The proportion of island residents with a long-term (lasting 12 months or more) health problem or disability that limited their day-to-day activities was just under 20%, including 9% who reported their daily activities were limited a lot.⁶⁵ The corresponding proportions for Scotland as a whole were very similar.

17. 62% of island residents are aged between 16-65 with the median age being 45 which is higher than the average across Scotland as a whole (41).⁶⁶

18. United Kingdom wide, disabled people have higher poverty rates than the general population. Disabled people make up 28% of people in poverty. A further 20% of people who are in poverty live in a household with a disabled child.

19. In Scotland 410,000 households in poverty (42%) include a disabled person. Disabled young adults in the United Kingdom aged 16-24 years have a particularly high poverty rate of 44%.⁶⁷

20. Nearly 9.5% of people in receipt of Personal Independence Payment in Scotland live in remote and island communities across the six local authority areas as of July 2020.⁶⁸ This accounts for 25,959 people.

21. There are higher rates of food insecurity among disabled people (18%) compared to non-disabled people (5%). There is also a higher likelihood of living in relative poverty after housing costs with a disabled person in the household (24% of families with a disabled person compared to 17% of families with no disabled members).⁶⁹ If disability benefits are not counted towards household income, this rises to 30%. 'Family' in these circumstances refers to the core family in a household, comprising one or two adults and children, if any.

⁶⁴ NRS (2015) [Scotland's Census 2011: Inhabited islands report](#)

⁶⁵ NRS (2015) [Scotland's Census 2011: Inhabited islands report](#)

⁶⁶ https://www.scotlandscensus.gov.uk/documents/analytical_reports/Inhabited_islands_report.pdf

⁶⁷ <https://www.jrf.org.uk/income-and-benefits>

⁶⁸ Department for Work and Pensions Stat Xplore

⁶⁹ <http://www.gov.scot/isbn/9781787816909>

22. 35% of ‘workless families’ (defined as families where parents are predominately out of work or have little connection to the labour market; who live in social rented accommodation and are reliant on benefits for their income) have an adult with a disability or long-term illness. A further 25% of ‘struggling to get by’ families (unemployed or working part-time, half of which are single-parent families) have one or more adults with a disability or long-term illness.⁷⁰ In households without children, 50% of ‘insecure singles’ (defined as workless, primarily single individuals living in social housing) had a disability or long-term health condition.⁷¹ This rises to 68% for ‘detached singles’. This group is similar to the ‘insecure singles’ group with the addition that they are less likely to have internet access or to participate in cultural activities, making them more disconnected.

23. Even where one or more individual in the household is in employment, the same level of income secures a lower standard of living than it would for a household without someone with a disability or long-term health condition. This is because disabled people face higher costs than non-disabled people, such as the cost of specialist equipment, therapies and home adaptations to manage a condition.⁷² Travel costs too, may be higher as individuals have to afford the cost of taxis to and from hospital where it is not possible to use public transport (and/or public transport may not be available).

Cost of Living

24. The cost of many amenities and activities are higher for people living in island communities than those living on the mainland. A lack of choice and accessibility means that shopping, mobile phone services and broadband can be more expensive for people living in island communities compared to those on the mainland. The greater distances and remoteness means that day to day travel, postage, fuel, day-trips and holidays are also more expensive for people in remote communities.

⁷⁰ <https://www.gov.scot/publications/poverty-perspective-typology-poverty-scotland/pages/5/>

⁷¹ <https://www.gov.scot/publications/poverty-perspective-typology-poverty-scotland/pages/6/>

⁷² <https://www.jrf.org.uk/income-and-benefits/>

25. Citizens Advice Scotland⁷³ have identified issues of grid, utilities, digital and travel as key barriers for people in accessible rural, remote rural and remote small towns. Furthermore, a typical food basket can cost as much as 50% more on island communities in Scotland, while transport can be up to £40 a week more expensive due to longer distances for commuting and a higher price for petrol.⁷⁴

26. According to Highlands and Islands Enterprise (HIE), household budgets in remote rural Scotland are typically 10-40% higher than elsewhere in the United Kingdom.⁷⁵ For households in the most remote parts of Scotland, additional costs can be greater than 40%. HIE attribute these extra costs to three principal sources:

- the higher prices that households must pay for food, clothes and household goods;
- much higher household fuel bills, influenced by climate and fuel sources;
- the longer distances that people have to routinely travel, particularly to work.

27. The Joseph Rowntree Foundation reported that levels of poverty among disabled people are generally underestimated.⁷⁶ Because disabled people's needs are often greater than for those without a disability, the cost of living for disabled people is frequently higher. These costs are higher in island and remote communities due to an environment that is less accessible, with higher costs for reasonable adjustments to technology, housing and transport.

28. A range of work is being undertaken by the Scottish Government to address the challenges that people in island and rural communities face. For example the Islands Strategic Group was established in August 2016. The group considers strategic issues affecting the island communities of Scotland, and to ensure greater involvement of the relevant councils in helping to identify and design solutions to the unique needs and challenges these communities face.

⁷³ Sutherland, F (2015) Remotely excluded: barriers facing Scotland's rural consumers CAS, Edinburgh, 36 pp

⁷⁴ A Minimum Income Standard: For Remote rural Scotland; Loughborough University, UHI & Highlands and Islands Enterprise; 2013

⁷⁵ A Minimum Income Standard: For Remote rural Scotland; Loughborough University, UHI & Highlands and Islands Enterprise; 2013

⁷⁶ https://www.npi.org.uk/files/7814/0490/1005/Disability_long_term_conditions_and_poverty.pdf

29. While Adult Disability Payment is not intended to be an income-replacement benefit, it is intended to provide support with helping to meet the extra costs associated with having a disability, such as paying for care and mobility needs. For some disabled people, it will bring additional entitlement to passported benefits.

Connectivity and accessibility

30. Citizens Advice Scotland have identified issues of grid, utilities, digital and travel as key barriers for people in accessible rural, remote rural and remote small towns.⁷⁷

31. According to the research briefings⁷⁸ from 2017 about the Islands (Scotland) Bill, residents of islands rely on ferry crossings and air travel to reach the mainland and larger islands, and key services such as secondary and higher education, care, and medical services.

32. In 2011, the proportion of island households with at least one car or van available was 79%, compared with just over two-thirds (69%) nationally.

33. In rural remote areas and island communities, disabled people face a lack of access to opportunities that are more readily and frequently available to those on the mainland or in urban areas. Furthermore, a lack of accessibility to employment, education and leisure opportunities can be made more difficult for someone with mobility issues, especially when transport options are limited.

34. Bus services in remote and island communities can be unreliable and are often community run. Even where buses are available, they often run rarely and timetables do not always meet the needs of people living in the community. Furthermore, if there is already someone with a wheelchair or pram on the bus it is not always possible for a wheelchair user to board.

35. Not all islands are served by buses and there are not always taxis available. We heard how disabled people on islands rely heavily on neighbours, friends and families driving them as a primary means of transport.

⁷⁷ Sutherland, F (2015) Remotely excluded: barriers facing Scotland's rural consumers CAS, Edinburgh, 36pp
⁷⁸ <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2017/9/4/Islands--Scotland--Bill-1>

36. The needs of wheelchair users can be different in island and rural communities than the needs of wheelchair users in an urban environment due to more challenging terrain.

37. Social Security Scotland local delivery officers will share locations with other services so that they are based where clients currently go to ensure that clients can access advice and support in existing island locations. Social Security Scotland will also offer a multi-channel approach, including telephone, paper-based and face-to-face applications to ensure that people are not isolated through a lack of access to technology.

38. We will also support individuals to gather supporting information. This includes, if requested, gathering information on the individual's behalf. For individuals living in rural or island communities, this will be beneficial as it may be difficult for them to contact relevant sources given the remoteness and lack of connectivity.

39. We have also introduced client consultations to replace the current Department for Work and Pensions assessments provision. If a consultation is required, it will take place at a time and place that suits the needs of the individual. Consultations will take place primarily over the phone with individuals having the option to request that it take place in person at a time and place that suits them, including at home or a separate location of their choosing.

40. We will be taking a multi-channel approach to how consultations take place, including telephone and video calls. This will allow individuals who have access to these services who are unable to travel easily to attend consultations without having to travel to unfamiliar locations. On the other hand, we know that this will not work for everyone which is why individuals will have the option of the consultation taking place face-to-face at a partner location, such as a GP, or the individual's home.

41. For individuals entitled to the highest rate of the mobility component of Adult Disability Payment, they will also have the option of accessing the Accessible Vehicles and Equipment (AVE) scheme. This is our devolved equivalent of the United Kingdom's Motability scheme which will provide a range of vehicles (including cars, wheelchair accessible vehicles, powered wheelchairs and scooters) which will help to meet the mobility needs of eligible individuals. All leases include insurance, breakdown cover, servicing and road tax.

42. We will also ensure that individuals currently leasing a vehicle, wheelchair or scooter from Motability are able to continue to access that vehicle when their case is transferred to Social Security Scotland so their mobility needs will continue to be met.

Culture

43. Stakeholders have identified potential cultural barriers to applying for Adult Disability Payment. This is because of the close-knit nature of island communities. Although there is research that evidences the positive impact of the support provided by close-knit communities, certain barriers may also be present.

44. The need for privacy and dignity is emphasised by disabled people in remote and island communities, for example, by ensuring that consultations taking place in locations that do not identify them as a disabled person or in receipt of benefits.

45. Dignity, fairness and respect underpins how Social Security Scotland will deliver Adult Disability Payment including protecting the privacy of clients.

Choice and representation

46. We have heard how there are limited options for people living in island and remote communities with regard to leisure activities, support services and support groups with the importance of choice being a key theme in previous social security and disability assistance consultations. However such choices are often diminished or non-existent in rural areas.

47. Social Security Scotland local delivery officers will share locations with other services so that they are based where clients currently go to ensure that clients can access advice and support in existing island locations. Social Security Scotland will also offer a multi-channel approach, including telephone, paper-based and face-to-face applications to ensure that people are not isolated through a lack of access to technology.

Implementation

48. A communications strategy and comprehensive guidance are being developed in advance of the launch of Adult Disability Payment. This will ensure that individuals who are eligible and their families, the third sector, local authorities, the education sector and advice providers are aware of Adult Disability Payment, know how to apply and understand the eligibility criteria.

49. The communications strategy will be linked in with wider Scottish Government initiatives for improving outcomes for disabled people and for remote and island communities. This will ensure that Adult Disability Payment is part of wider efforts to meet the needs of people living in island communities.

Monitoring and Review

50. Monitoring the impact of Adult Disability Payment in island and remote rural communities will be a continuous process and where any unintended consequences are identified, steps will be taken to improve the service. The Scottish Government will put in place a monitoring and evaluation plan for Adult Disability Payment prior to implementation which takes account of the issues identified within this impact assessment.

51. On-going stakeholder engagement with key organisations will also provide the Scottish Government with an opportunity to monitor the impact of the policy.

52. The Social Security (Scotland) Act 2018 places a duty on the Scottish Ministers to report annually to the Scottish Parliament on the performance of the Scottish social security system during the previous financial year. The report is to describe what the Scottish Ministers have done in that year to meet the expectations on them set out in the charter.

53. The Scottish Ministers have also committed to engaging with, and reporting regular progress to, the Islands Strategic Group to ensure that those representing the interests of island communities and others with experience of the current system, are fairly represented in the development and delivery of the Scottish social security system.

Conclusion

54. Scottish Ministers are aware of the duty to consult island communities before making a material change to any policy, strategy or service which, in the Scottish Ministers' opinion, is likely to have an effect on an island community which is significantly different from its effect on other communities.

55. This impact assessment has highlighted that living in island and remote communities present unique challenges for disabled people.

56. We have not identified any evidence that the introduction of Adult Disability Payment will directly or indirectly discriminate against remote and island communities.

57. The introduction of Adult Disability Payment is expected to have a positive impact on disabled people across Scotland, regardless of location, with a secondary positive impact on their families and carers.

58. Adult Disability Payment will help to address a number of issues raised in this ICIA such as the higher cost of living in remote and island communities, and challenges faced in relation to connectivity and accessibility.

59. This ICIA has identified the need to ensure that Adult Disability Payment is promoted appropriately and sensitively in remote rural areas.

60. The Scottish Government is committed to designing the devolved social security system with people in Scotland. On-going engagement with disabled people, external stakeholders and advisory groups will ensure that the impact of the regulations remain under continuous review.

61. The Scottish Government has concluded that no further changes to the Adult Disability Payment regulations are necessary as a result of the ICIA.

Authorisation

<p>Name and job title of Policy Lead: Nathan Gale Disability Benefits Policy Team Leader Social Security Policy Division</p> <p>Name and job title of a Deputy Director or equivalent: Ann McVie Deputy Director Social Security Policy Division</p>	<p>Date this version authorised: 13 January 2021</p>
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Annex H: Draft Fairer Scotland Duty Summary

<p>Title of Policy, Strategy, Programme etc</p>	<p>Disability Assistance for Working Age People (Scotland) regulations</p>
<p>Summary of aims and expected outcomes of strategy, proposal, programme or policy</p>	<p>The Social Security (Scotland) Act 2018 (the 2018 Act) sets out the broad framework for the delivery of devolved social security in Scotland. On 1 April 2020, the Scottish Ministers took executive and legal competence for disability benefits, including Disability Living Allowance for Children, Attendance Allowance and Personal Independence Payment.</p> <p>These benefits will continue to be delivered during a transition period by the Department for Work and Pensions under the terms of an Agency Agreement agreed with the Scottish Government to ensure the safe and secure devolution of disability benefits.</p> <p>The Scottish Government intends to replace Disability Living Allowance for Children, Personal Independence Payment and Attendance Allowance with new forms of assistance under the 2018 Act. These new benefits will be delivered by Social Security Scotland on behalf of Scottish Ministers.</p> <p>The Disability Assistance for Working Age People (Scotland) regulations sets out how we will deliver our replacement for Personal Independence Payment; Adult Disability Payment. This was formerly known as Disability Assistance for Working Age People. It will replace Personal Independence Payment for people living in Scotland between the ages of 16 and state pension age.</p>

	<p>The regulations set out the detailed rules surrounding entitlement to Adult Disability Payment which will replace Personal Independence Payment.</p> <p>This policy is closely aligned with the Healthier, Wealthier and Fairer Strategic Objectives, and contributes to the following National Outcomes:</p> <ul style="list-style-type: none"> • 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; and • We grow up loved, safe and respected so that we realise our full potential.
<p>Summary of evidence</p>	<p>The Scottish Health Survey 2018 provides an accurate estimate of the number of disabled working age people in Scotland. For young people aged 16-24, 24% of young people have a limiting longstanding illness. This number raises to 30% for individuals aged between 25-34, 32% between 35-44, 46% between 45-54 and, finally, 60% between 55-64.</p> <p>In 2019, there were 3,522,626 people aged between 16-65 in Scotland . As of July 2020, there were 273,901 people in Scotland entitled to Personal Independence Payment. This accounts for roughly 7.8% of this demographic.</p> <p>United Kingdom wide, disabled people have higher poverty rates than the general population with disabled people making up 28% of people in poverty. In Scotland 410,000 households in poverty (42%) include a disabled person. Disabled young adults in the United Kingdom aged 16-24 years have a particularly high poverty rate of 44%.</p>

There are higher rates of food insecurity among disabled people (18%) compared to non-disabled people (5%). There is also a higher likelihood of living in relative poverty after housing costs with a disabled person in the household (24% of families with a disabled person compared to 17% of families with no disabled members). If disability benefits are not counted towards household income, this raises to 30%. 'Family' in these circumstances referred to the core family in a household, comprising one or two adults and children, if any.

There is also a positive correlation between disability and unemployment. Recent statistics have found that, compared to non-disabled people in the United Kingdom (81.7), disabled people had a significantly lower rate of employment (53.6%). In Scotland, a recent publication identified that 45.6% of disabled people were employed compared to 81.1% of non-disabled individuals. In 2018, almost half of disabled people between 16-64 in Scotland were economically inactive (49.7%), compared with 15.9% of non-disabled people.

35% of 'workless families' (defined as families where parents are predominately out of work or have little connection to the labour market; who live in social rented accommodation and are reliant on benefits for their income) have an adult with a disability or long-term illness. A further 25% of 'struggling to get by' families (unemployed or working part-time, half of which are single-parent families) have one or more adults with a disability or long-term illness. In households without children, 50% of 'insecure singles' (defined as workless, primarily single individuals living in social housing) had a disability or long-term health condition. This rises to 68% for 'detached singles'. This group is similar to the 'insecure singles' group with the addition that they are less likely to have internet access or to participate in

	<p>cultural activities, making them more disconnected.</p> <p>Even where one or more individual in the household is in employment, the same level of income secures a lower standard of living than it would for a household without someone with a disability or long-term health condition. This is because disabled people face higher costs than non-disabled people, such as the cost of specialist equipment, therapies and home adaptations to manage a condition. Travel costs too, may be higher as individuals have to afford the cost of taxis to and from hospital where it is not possible to use public transport (and/or public transport may not be available).</p>
<p>Summary of assessment findings</p>	<p>Improved application and advice</p> <p>Making the application process more accessible and the provision of pre-application advice and support is intended to make it easier for individuals to secure the financial support that they are entitled to.</p> <p>Making the process of applying for Adult Disability Payment easier will potentially mitigate the risk of increasing the existing levels of adults living in poverty.</p> <p>Improved decision making</p> <p>Where possible, we will use existing supporting information to make a determination for Adult Disability Payment. Clients can provide us with supporting information themselves or can ask us for support in requesting it from other parties. We are working closely with other parts of the public sector to make it easy for clients to nominate professionals to share information with us on their behalf.</p>

Currently clients have to obtain their own supporting information, which can result in them paying a charge for that information. If Social Security Scotland collect this information on their behalf it potentially mitigates the risk of increasing the existing levels of adults living in poverty.

In the minority of cases where no formal sources of information are available, case managers will be able to use their discretion, informal sources of information and the advice and guidance available to them to reach a decision. This will ensure that clients who do not have formal sources of information are not disadvantaged.

Client consultations

Our new approach to information gathering will reduce the number of consultations that will take place and, if a consultation is required, it will take place at a time and place that suits the needs of the individual. Consultations will take place primarily over the phone with individuals having the option to request that it take place in person at a time and place that suits them, including at home or a separate location of their choosing which meets their needs.

Reducing the number of consultations and conducting them in a way that suits the needs of clients, will reduce the stress and anxiety caused and remove the requirement for individuals to travel long distances, often to unfamiliar locations.

Terminal illness

Our new definition of terminal removes the arbitrary six month time limit used in the current definition.

Allowing medical professionals to use their clinical judgement on a case by case basis will mean that a broader range of conditions will be able to be

accounted for and, thus, allow more individuals to be entitled to Adult Disability Payment through Special Rules for Terminal Illness. This will also allow individuals who need support to receive it more quickly.

Clients who are eligible for Adult Disability Payment through Special Rules for Terminal Illness will automatically be entitled to the enhanced rates of the daily living and mobility components. This will help mitigate the risk of increasing the number of individuals living in poverty.

Award duration and reviews

Awards will be rolling with no fixed end date and reviews will be light-touch and will be carried out through a determination without an application. This will help to reduce stress and anxiety associated with coming to the end of an award for assistance before a review is complete.

By continuing entitlement while a review is taking place, we will further help to mitigate any fear of a financial cliff edge by ensuring that individuals continue to receive the assistance they are entitled to until a case manager has made a new determination. This process still enables Social Security Scotland to undertake reviews to determine continuing entitlement to Adult Disability Payment. 66% of respondents to our Consultation on Disability Assistance agreed with this approach alongside general agreement from our Experience Panels.

The introduction of lifetime awards for individuals with conditions which are unlikely to change will cut down on the number of unnecessary reviews of awards individuals will need to go through. Our initial proposal to set awards of between 5-10 years and was agreed with by 58% of respondents to our Consultation on Disability

Assistance. However after receiving further feedback from stakeholders and people with lived experience, we now plan to go further. The introduction of lifetime awards for these individuals will further help to reduce stress and anxiety experienced as a result of being reviewed.

Re-determinations and appeals

Extending the time individuals have to request a re-determination 42 days will have a positive impact as it will provide more time to seek advice or support when challenging a decision. This was stressed as being important by organisations who responded to our Consultation on Disability Assistance even though, overall, there was general agreement to the initial time limit of 31 days (58%) .

We also noted concerns raised by a small number of respondents that a short timescale may deter individuals from challenging a decision. We want to ensure that no one is disadvantaged by time limits for challenging a decision. Extending the time individuals have to request a re-determination may help to encourage people to challenge a decision they do not agree with. If Social Security Scotland has made a mistake during the review, this will help to ensure that individuals receive administrative justice.

When we asked respondents to our 2019 consultation if Social Security Scotland should have a time limit of 40-60 days to complete the re-determination process, 60% agreed . We have settled on giving Social Security Scotland 56 days to complete the re-determination process.

While some stakeholders felt that this was an excessive period for someone to be left without clarity over their award level or eligibility, it is important that enough time is given to collect any supporting information that might be needed on

behalf of an individual, so that a case manager can make an informed decision about their entitlement to Adult Disability Payment .

This will be beneficial as it will ensure that individuals 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 timescale, this will further reduce any uncertainty and, consequently, make people feel more confident in challenging a decision they do not agree with.

Finally, continuing entitlement to Adult Disability Payment during the re-determination and appeals processes will help to mitigate a loss in household income experienced in the current system wherein, during mandatory reconsiderations and appeals, individuals are not entitled to disability benefits. This will allow individuals entitled to Adult Disability Payment to continue to meet the additional costs of having a disability, helping to mitigate the risk of increasing the number of individuals living in poverty.

Short-Term Assistance

Introducing Short-Term Assistance will help to mitigate the risk of increasing the number individuals in poverty by ensuring that, if a mistake has been made by Social Security Scotland, they will continue to receive the payments they would have been entitled to should the mistake not have been made.

Engagement with our Experience Panels found that participants believed that Short-Term Assistance would make it more likely for people to challenge decisions by Social Security Scotland . There was an emphasis on Short-Term

	<p>Assistance reducing financial pressure and giving people more confidence in challenging decisions they did not agree with.</p> <p>Additionally, Short-Term Assistance is a non-recoverable payment made by the Scottish Government, avoiding the need for clients to worry about having to pay it back should their re-determination or appeal be unsuccessful. This will help to prevent a further reduction in household income in these circumstances, something which was stressed by respondents to our 2019 consultation (87% agreed that Short-Term Assistance should not be recoverable).</p> <p>There was disagreement from respondents to our consultation to the proposal that Short-Term Assistance should be subject to deductions in respect of an overpayment agreement. Only 49% agreed with many stating that because disability assistance is essential to meeting the additional costs associated with having a disability, reducing this level of assistance could cause hardship . We have considered this carefully but where a deduction is being made, an individual will already have had dispute rights against the determination that put that deduction in place. Financial and other circumstances will have been considered as part of that process.</p>
<p>Sign off</p>	<p>Name: Ann McVie</p> <p>Job title: Deputy Director Social Security Policy</p>

Annex I: Respondent Information Form



Scottish Government
Riaghaltas na h-Alba
gov.scot

Consultation on Adult Disability Payment

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:
<https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

--	--

Phone number

Address

--

Postcode

--

Email

--

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
 Publish response only (without name)

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

No

Responding to this Consultation

We are inviting responses to this consultation by 15 March 2021.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/social-security/adult-disability-payment-regulations/>. You can save and return to your responses while the consultation is still open.

Please ensure that consultation responses are submitted before the closing date of 15 March 2021.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form to:

Disability Benefits Policy Team
Scottish Government
Victoria Quay
Edinburgh
EH6 6QQ

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy: <https://www.gov.scot/privacy/>

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or to nathan.gale@gov.scot.

Annex J: Consultation process

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Annex K: Consultation questions

Part 1: Introductory and Interpretation (regulations 1 and 2)

Q 1: Do you agree the regulations reflect this policy intent?

YES/NO/DON'T KNOW

Q 2: If you have any further comments please provide them here.

Part 2: Disability Assistance for Working Age People Overview
(regulation 3)

Q 3: Do you agree the regulations reflect this policy intent?

YES/NO/DON'T KNOW

Q 4: If you have any further comments please provide them here.

Daily Living Component and Mobility Component (regulations 4 and 5)

Q 5: Do you agree the regulations reflect this policy intent?

YES/NO/DON'T KNOW

Q 6: If you have any further comments please provide them here.

Determination of ability to carry out activities (regulation 6)

Scoring for daily living and mobility activities (regulations 7 and 8)

Scoring: further provision (regulation 9)

Q 7: Do you agree the regulations reflect this policy intent?

YES/NO/DON'T KNOW

Q 8: If you have any further comments please provide them here.

The required period condition: daily living component and mobility
component (regulation 10 and 11)

The relevant date (regulation 12)

The relevant date: after an interval (regulation 13)

Q 9: Do you agree the regulations reflect this policy intent?

YES/NO/DON'T KNOW

Q 10: If you have any further comments please provide them here.

Residence and presence conditions (regulation 14)

Absence from the United Kingdom (regulation 15)

Absence from the United Kingdom including medical treatment
(regulations 16)

Absence from the United Kingdom in special cases (regulation 17)

Serving members of Her Majesty's forces and their family members – further provision (regulation 18)

Persons habitually resident in the United Kingdom (regulation 19)

Persons habitually resident in outside of the UK (regulation 20)

Refugees (regulation 21)

Q 11: Do you agree the regulations reflect this policy intent?

YES/NO/DON'T KNOW

Q 12: If you have any further comments please provide them here.

Age Criteria (regulation 22)

Persons of pensionable age: exceptions (regulation 23)

Adult disability payment after an interval and after reaching the relevant age (regulation 24)

Determination of an award after the person has reached the relevant age (regulation 25)

Q 13: Do you agree the regulations reflect this policy intent?

YES/NO/DON'T KNOW

Q 14: If you have any further comments please provide them here.

Terminal Illness (regulation 26)

Q 15: Do you agree the regulations reflect this policy intent?

YES/NO/DON'T KNOW

Q 16: If you have any further comments please provide them here.

Care home residents (regulation 27)

Hospital in-patients (regulation 28)

Exceptions: care homes and hospitals (regulation 29)

Legal Detention (regulation 30)

Periods of residence (regulation 31)

Payment of Adult Disability Payment between two periods of residence (regulation 32)

Q 17: Do you agree the regulations reflect this policy intent?

YES/NO/DON'T KNOW

Q 18: If you have any further comments please provide them here.

Rate of Adult Disability Payment and Making Payments (regulation 33)

Making Payments (regulation 34)

When an application is treated as made and beginning of entitlement to assistance (regulation 35)

Time of Payment (regulation 36)
Continuing Eligibility (regulation 37)

Q 19: Do you agree the regulations reflect this policy intent?
YES/NO/DON'T KNOW

Q 20: If you have any further comments please provide them here.

Part 11: Qualifications and Experience Necessary to Carry out
Assessments (regulation 38)

Q 21: Do you agree the regulations reflect this policy intent?
YES/NO/DON'T KNOW

Q 22: If you have any further comments please provide them here.

Consideration of entitlement after specified period (regulation 39)
Other situations requiring a determination without an application
(regulation 40)
Determination following official error – underpayments (regulation 41)
Determination following error – overpayments (regulation 42)
When changes in entitlement take effect (regulation 43)

Q 23: Do you agree the regulations reflect this policy intent?
YES/NO/DON'T KNOW

Q 24: If you have any further comments please provide them here.

Periods in respect of a re-determination request (regulation 44)

Q 25: Do you agree the regulations reflect this policy intent?
YES/NO/DON'T KNOW

Q 26: If you have any further comments please provide them here.

Part 14: Provision of vehicles (regulation 45)

Q 27: Do you agree the regulations reflect this policy intent?
YES/NO/DON'T KNOW

Q 28: If you have any further comments please provide them here.

Liability for assistance given in error (regulation 46)
Determination to effect a deduction decision (regulation 47)

Q 29: Do you agree the regulations reflect this policy intent?
YES/NO/DON'T KNOW

Q 30: If you have any further comments please provide them here.

Schedule 1 – Adult Disability Assistance Determination

Q 31: If you have any comments Schedule 1 please provide them here.

Schedule 2 – Members of Her Majesty’s Forces: Excluded Persons

Q 32: If you have any comments on Schedule 2 please provide them here.

Q 33: If you have any comments about the proposed review of Adult Disability Payment please provide them here.

Q 34: If you have any comments about the impact assessments please provide them here.

Q 35: If there is anything else you would like to tell us about the regulations, impact assessments or Adult Disability Payment in general, please do so here.



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