

# **The Disability Assistance for Older People (Scotland) Regulations 2024**

**Data Protection Impact Assessment (DPIA)**

**April 2024**

## **Data Protection Impact Assessment**

The Disability Assistance for Older People (Scotland) Regulations 2024

### **Version date**

17 April 2024

### **Background**

These Regulations make provision to establish Pension Age Disability Payment, which will be delivered by Social Security Scotland on behalf of Scottish Ministers and will replace Attendance Allowance in Scotland. Attendance Allowance for people in Scotland is currently delivered by the Department for Work and Pensions on behalf of Scottish Ministers under an agency agreement.

The Regulations also make provision to enable the transfer of entitlement for those in receipt of Attendance Allowance in Scotland.

This Data Protection Impact Assessment (DPIA) works in conjunction with the [Article 36\(4\) ICO](#) consultation form submitted in advance of this, as the proposal requires consultation with the Information Commissioner's Office (ICO).

## 1. Contact and schedule information

1.1	SG department	Social Security Directorate
1.2	Contact email	<a href="mailto:Joseph.Scullion@gov.scot">Joseph.Scullion@gov.scot</a>
1.3	Data protection support email Data protection officer	<a href="mailto:dpa@gov.scot">dpa@gov.scot</a> <a href="mailto:dataprotectionofficer@gov.scot">dataprotectionofficer@gov.scot</a>
1.4	Is your proposal primary legislation, secondary legislation or other form of statutory measure?	<p>The provisions are being made through secondary legislation.</p> <p>Regulations will be laid before the Scottish Parliament under sections 31(2), 36(2), 41(4)(a), 43(5), 51(1), 52 and 95 of the Social Security (Scotland) Act 2018.</p> <p>This instrument will be subject to the affirmative procedure.</p>
1.5	What stage is the legislative process at? Please indicate any relevant timescales and deadlines.	<p>The regulations have been finalised following formal scrutiny by the Scottish Commission on Social Security (SCoSS).</p> <p>The regulations were laid before the Scottish Parliament on 17 April 2024 to ensure they are made by the pilot launch of PADP, taking account of the 54 day laying period for affirmative instruments.</p>

## 2. Introductory information

	Questions	Comments
2.1	Summary of proposal	<p>Regulations to make provision to:</p> <ul style="list-style-type: none"> <li>• establish Pension Age Disability Payment (PADP) which will be delivered by Social Security Scotland on behalf of Scottish Ministers, and will replace Attendance Allowance in Scotland</li> <li>• enable the transfer of entitlement for those in receipt of Attendance Allowance</li> <li>• include a minor technical amendments on Short-term Assistance for Child Disability Payment and Adult Disability Payment. These amendments regularises existing processes, to align with current practice used across live disability benefits to calculate the value of Short-term Assistance.</li> </ul> <p>Attendance Allowance is currently delivered in Scotland by the Department for Work and Pensions (DWP) on behalf of Scottish Ministers under an agency agreement.</p>
2.2	<p>Description of the personal data involved</p> <p>Please also specify if this personal data will be special category data, or relate to criminal convictions or offences</p>	<p>To make an initial determination of entitlement for individuals newly applying for PADP, Social Security Scotland will collect information by way of an application form. The application form will be available in both paper and digital formats, and can be initiated via telephone, with support to complete it being available by request through Social Security Scotland’s local delivery team under pre-existing application support processes.</p> <p>The application form will collect the following personal information relating to the identity of the individual: name, date of birth, address and NINO, their communication preferences and payment details.</p> <p>Special category data about the nature of the individual’s disability or health condition will be collected by Social Security Scotland in order to make a determination of entitlement to PADP.</p> <p>For those with a terminal illness and applying for PADP under the special rules, a Benefits Assessment under Special Rules in Scotland (BASRiS) form provides Social Security Scotland with supporting information and confirmation of a terminal diagnosis.</p>

	Questions	Comments
		<p>The BASRiS form will capture personal information relating to the individual: name, date of birth, Community Health Index (CHI) number, address, diagnosis and clinical indicators. The BASRiS form also collects the name and registration number of the Registered Medical Practitioner or Registered Nurse along with employment contact details (phone, email address and postal address). Where the BASRiS form is completed for someone who is unaware of the terminal nature of their condition, the name and contact details (phone, email, address) of their legal representative will be provided.</p> <p>A third party (e.g. family member) or someone with legal powers (such as Power of Attorney) can complete a special rules application on behalf of someone with a terminal illness. Personal information of the third party/legal representative is captured on the SRTI application form: name, NINO, contact details (phone, email address and postal address).</p> <p>If an individual is currently held in legal detention, data will be processed as this impacts on the individual's payments of PADP. This includes transfer of such data from the DWP to ensure an individual's record and award is appropriately created on Social Security Scotland's case management system. Data regarding an individual's criminal conviction or offence will not be collected, processed or transferred, as payment of PADP is only impacted on the basis of being held in legal detention.</p> <p>Equalities data will be captured from those applying for PADP through an equalities monitoring form. This is not a mandatory process – the equalities monitoring form will be optional for an individual to complete.</p> <p>Social Security Scotland may use a collaborative approach with the individual to gather supporting information where this is needed to support the decision-making process and assist Case Managers in their understanding of an individual's level of need, condition or disability alongside internal Decision Making Guidance. This supporting information relates to the individual's health condition and how it impacts their needs, from a professional or from their wider support network.</p> <p>When supporting information is requested from a professional, Social Security Scotland will gather the</p>

	Questions	Comments
		<p>professional's name, relationship with the individual (such as their job role), as well as contact details, such as their department, phone number and work address.</p> <p>When supporting information is gathered from an individual's wider support network, the data gathered by Social Security Scotland will include the individual's name, relationship with the applicant, and contact details such as telephone number and address.</p> <p>For the transfer of individuals from the DWP to Social Security Scotland, both organisations will work together to securely transfer sufficient data, forms and supporting information held by DWP for existing awards of Attendance Allowance to create an equivalent new PADP award with no or minimal input required from those receiving assistance.</p> <p>Digital files will be transferred as part of the data transfer process, whereas paper files stored by DWP will need to be requested when required. This is to ensure that no one in receipt of Attendance Allowance is required to re-apply for the replacement Scottish Government benefit and to ensure individuals are not disadvantaged or face any interruptions to receipt of their entitlements.</p> <p>This will include much of the same data and information required for a new application, and only that which is needed to set up the award in the Social Security Scotland system. This will include information on the individual's disability or health condition and data necessary to effect payment of PADP to individuals, such as address and bank details.</p> <p>To have information to communicate effectively with individuals, information such as accessibility requirements and language preferences will also be transferred from the DWP.</p> <p>Information for the effective management of the individual's award and necessary to ensure staff safety, such as on control measures that have been established by the DWP will also be transferred to Social Security Scotland.</p> <p>It has been agreed that the following data items will be transferred: name; address; NINO; date of birth; phone number; sex; payment and bank details; decision and award details; disability code; terminal illness indicator;</p>

	Questions	Comments
		<p>nationality; exportability; date of death (where death occurred during the transfer period); whether an appeal or reconsideration is outstanding; special markers relating to accessibility or alternative formats; any special marker relating to potential staff safety concerns; and name/contact details of any appointee or third-party representative.</p> <p>For additional protection all equalities data is retained in a separate location to the individual's record in a pseudonymised state.</p> <p>Processing of personal data is required to enable Social Security Scotland to undertake their public task, this includes the processing of special category data. Where data relates to equalities information, this data is optional and not required to undertake the public task of administrating social security as is used to assist with statistical information.</p>
2.3	<p>Will the processing of personal data as a result of the proposal have an impact on decisions made about individuals, groups or categories of persons?</p> <p>If so, please explain the potential or actual impact. This may include, for example, a denial of an individual's rights, or use of social profiling to inform policy making.</p>	<p>Personal data will be used to inform decisions on an individual's entitlement to disability benefits and to make payments to them. For both new applications and case transfers, determinations of entitlement will be subject to full re-determination and appeal rights.</p> <p>There is a risk that individuals will not be fully aware of their right to full re-determination and appeal. This will be mitigated through a communications framework for all individuals whose case is transferred with letters detailing this process.</p> <p>All individuals are also asked to complete an Equality Monitoring and Feedback form along with the application form for each benefit delivered by Social Security Scotland, including PADP.</p> <p>The data collected is used to identify who is using the service, to investigate how Social Security Scotland processes work for different groups of people and to understand whether groups with protected characteristics are able to adequately access social security payments. The equalities data is also analysed by outcome of application to assess if there is any variation.</p> <p>For additional protection all equalities data is retained in a separate location to the individual's record in a pseudonymised state.</p>

	Questions	Comments
		Processing using automated decision making will be used for case transfer from DWP. There is no expected negative impact on the individual where Automated Decision Making (ADM) has been used to process or unintended consequence to the individuals where manual intervention will be required. ADM will be used to make a positive award.
2.4	<p><b>Necessity, proportionality and justification</b></p> <p>What issue/public need is the proposal seeking to address?</p> <p>What policy objective is the legislation trying to meet?</p> <p>Were less invasive or more privacy-friendly options considered, and if so why were these options rejected?</p> <p>Are there any potential unintended consequences with regards to the provisions e.g., would the provisions result in unintended surveillance or profiling?</p> <p>Have you considered</p>	<p>The Scotland Act 2016 made provision to devolve limited aspects of social security powers to Scottish Ministers, including disability benefits.</p> <p>The Social Security (Scotland) Act 2018 received Royal Assent on 1 June 2018 and sets out the overarching legislative framework for the delivery of the Scottish Government’s social security system.</p> <p>Scottish Ministers, through a series of regulations made under enabling powers in the 2018 Act, have made provision for new disability and carer benefits to replace the current UK Government benefits in Scotland.</p> <p>In addition, Scottish Ministers have made provision for the transfer of individuals resident in Scotland who are currently in receipt of Disability Living Allowance for Children and Personal Independence Payment onto new Scottish Government benefits delivered by Social Security Scotland.</p> <p>Over 700,000 individuals are being transferred from the DWP to Social Security Scotland as each new Scottish disability and carer benefit ‘goes live’.</p> <p>The specific regulations that are subject to this DPIA will make provision to establish PADP and for the transfer of individuals in Scotland currently in receipt of the UK Government equivalent benefit, Attendance Allowance, onto PADP.</p> <p>This is a well-considered, necessary and proportionate measure to ensure the safe and secure delivery of PADP and transfer of Attendance Allowance awards to PADP. Based on caseload data from the DWP’s statxplere service, there were around 150,000 individuals in May 2023 with an entitlement to Attendance Allowance in Scotland<sup>1</sup>.</p>

<sup>1</sup> [Stat-Xplere - Home \(dwp.gov.uk\)](https://www.dwp.gov.uk/stat-xplere)



	Questions	Comments
	<p>whether the intended processing will have appropriate safeguards in place? If so briefly explain the nature of those safeguards and how any safeguards ensure the balance of any competing interests in relation to the processing.</p>	<p>The Scottish Government takes an approach of data minimisation so that only the required information is collected to provide PADP. Where information is collected through the Equality Monitoring and Feedback form, data will be stored in a separate location to the individual's PADP record in a pseudonymised state.</p> <p>Therefore, this ensures the Scottish Government is taking the least invasive and most privacy-friendly option when delivering PADP.</p> <p>There have been no potential unintended consequences identified with regard to the provisions. As with all principal regulations for disability assistance, the proposed regulations have undergone stakeholder engagement and scrutiny from the Scottish Commission on Social Security (SCoSS) to assist in identifying unintended consequences.</p> <p>The processing of data will follow the same high security standards already in place within Social Security Scotland for the processing of new applications. A security risk assessment is completed for all new processes via IT to ensure sufficient security controls are in place.</p> <p>The Operational DPIA will consider the data subject rights of individuals associated with the processing and payment of PADP and ensure that any risks are mitigated and managed to ensure the rights of data subjects are not impacted.</p>
2.5	<p>Will the implementation be accompanied by guidance or by an associated Code of Conduct?</p> <p>If the latter, what will be the status of the Code of Conduct? (statutory or voluntary?)</p>	<p>The implementation of the proposals is principally guided by the Social Security Charter<sup>2</sup> and the Civil Service Code<sup>3</sup>.</p> <p>All Social Security Scotland staff are bound by the Civil Service Code, to ensure individual confidentiality, integrity and accuracy of personal data.</p> <p>Implementation will also be supported by operational and decision-making guidance with input from colleagues with relevant interests across the Social Security Directorate, including policy and legal officials and will be tested before PADP launches.</p>

<sup>2</sup> [Our Charter - Social Security Scotland \(socialsecurity.gov.scot\)](https://www.socialsecurity.gov.scot/our-charter)

<sup>3</sup> [Civil Service Code - gov.scot \(www.gov.scot\)](https://www.gov.scot/civil-service-code)

	Questions	Comments
		Social Security Scotland adhere to the ICO Code of good practice when for Data Sharing.

### 3. Data Controllers

Organisation	Social Security Scotland		
Activities	<p>Social Security Scotland collects and stores personal data in order to make determinations of entitlement to Scottish Government benefits and for the ongoing management of social security awards. This will include PADP following the regulations coming into force.</p> <p>Social Security Scotland will be the Data Controller for all client data in Scotland once the Attendance Allowance case transfer process has completed.</p>		
Is the organisation a public authority or body as set out in Part 2, Chapter 2, Section 7 of the Data Protection Act 2018?	Yes		
Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 6 for the collection and sharing of personal data – general processing	Article 6(1)(e) – processing is necessary for the performance of a task carried out under the Social Security (Scotland) Act 2018 in the public interest or in the exercise of official authority vested in the controller.	<p>Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 9 – special category data or Article 10 – criminal convictions data</p> <p>Include condition from Schedule 1 or 2 of the Data</p>	Article 9(2)(g) – processing is necessary for reasons of substantial public interest, on the basis of law which shall be proportionate to the aim of maximising benefit take-up and reducing barriers to accessing social security benefits in Scotland. Processing will respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights

		<p>Protection Act 2018</p>	<p>and interests of the data subject.</p> <p>Article 9(2)(b) - processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of social security and social protection law in so far as it is authorised by domestic law or a collective agreement pursuant to domestic law providing for appropriate safeguards for the fundamental rights and the interests of the data subject.</p> <p>Processing satisfies the conditions of Schedule 1 of the Data Protection Act 2018 in that processing is necessary for the exercise of a function conferred on Social Security Scotland. An appropriate policy document is held.</p> <p>Processing of data relating to an individual being held in legal detention will be required for PADP. To determine eligibility or to process an individual's change of circumstances, Social Security Scotland will need to know if they have been admitted to</p>
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			<p>or have left legal detention.</p> <p>Processing does not pertain to the nature of the individual's conviction and is only in regard to whether they have been legally detained for the purposes of social security. An appropriate policy document is held.</p>
<p>Law Enforcement – if any law enforcement processing will take place – lawful basis for processing under Part 3 of the Data Protection Act 2018</p>	<p>For law enforcement purposes, Social Security Scotland is a competent authority under paragraph 2 of Schedule 7 of the Data Protection Act 2018. Social Security Scotland exercises the powers and duties of the Social Security (Scotland) Act 2018 under the authority of Scottish Ministers.</p>	<p>Legal gateway for any sharing of personal data between organisations</p>	<p>N/A - Existing legal gateways will apply. In line with ICO Data Sharing Code of Practice, as required by Section 121 of the Data Protection Act 2018.</p>

<p>Organisation</p>	<p>The Department for Work and Pensions (DWP)</p>
<p>Activities</p>	<p>DWP collects and stores personal data in order to make decisions on entitlement to Attendance Allowance and for the ongoing management of Attendance Allowance awards in England, Wales and Scotland, until Scottish awards have been transferred to Social Security Scotland under case transfer to PADP.</p>
<p>Is the organisation a public authority or body as set out in Part 2, Chapter 2, Section 7 of the Data Protection Act 2018?</p>	<p>Yes</p>

<p>Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 6 for the collection and sharing of personal data – general processing</p>	<p>Article 6(1)(e) – processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.</p>	<p>Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 9 – special category data or Article 10 – criminal convictions data</p> <p>Include condition from Schedule 1 or 2 of the Data Protection Act 2018</p>	<p>Article 9(2)(b) - processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of social security and social protection law in so far as it is authorised by domestic law or a collective agreement pursuant to domestic law providing for appropriate safeguards for the fundamental rights and the interests of the data subject.</p> <p>Processing satisfies the conditions of Schedule 1 of the Data Protection Act 2018 in that processing is necessary for the exercise of a function conferred on the Department for Work and Pensions.</p> <p>Processing of data relating to legal detention will be transferred to Social Security Scotland for PADP. To determine eligibility or to process an individual’s change of circumstances Social Security Scotland will need to know if they have been admitted to or have left legal detention during their</p>
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			<p>award of Attendance Allowance.</p> <p>Processing does not pertain to the nature of the individual's conviction and is only in regard to whether they have been legally detained for the purposes of social security. An appropriate policy document is held.</p> <p>Social Security Scotland will be Data Controller for all client data once the case transfer process is complete.</p>
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#### 4. Consultation

	Questions	Comments
4.1	<p>Have you consulted with the ICO using the Article 36(4) form?</p> <p>(please provide a link to it)</p> <p>If the ICO has provided feedback, please include this.</p>	<p>Consultation with the ICO has been undertaken using an Article 36(4) enquiry form.</p> <p>Feedback was received from the ICO in relation to PADP on 30 January 2024. The Scottish Government responded on 23 February 2024, including a copy of the legislative DPIA. The feedback and response are noted below:</p> <p><b><u>ICO feedback</u></b></p> <p>We note that the Regulations will create a new obligation for Scottish Ministers/SSS to process data to make a determination of entitlement to PADP in various scenarios, including:</p> <ul style="list-style-type: none"> <li>• new applications;</li> <li>• cases transferred from the DWP; and</li> <li>• change of circumstances.</li> </ul>

	Questions	Comments
		<p>It looks like this will involve the processing of data belonging to third party representatives where the potential claimant requests this, is that correct?</p> <p>If so, please set out whether that needs provisions to support that processing and (in any case) set out any risks and safeguards that you will put in place.</p> <p><b><u>Scottish Government response</u></b></p> <p>Yes – the Third Party Representative process is an existing Social Security Scotland process that already applies to all other benefits.</p> <p>Part 7 of the <a href="#">Client Representative Guidelines</a> sets out the existing policy that governs Third Party Representatives. This already applies to all existing benefit and will also apply to Pension Age Disability Payment</p> <p>Where additional support is required, a client can nominate a person or organisation to become their Third Party Representative. The client must give <b>authorised consent</b> to allow Social Security Scotland to fully interact with and share their information with a Third Party Representative. This authorisation can be provided in the following ways:</p> <ul style="list-style-type: none"> <li>• a signed letter from the client</li> <li>• authorisation given on the application form</li> <li>• <a href="#">Social Security Scotland's online mandate</a></li> <li>• an organisation's own mandate which explicitly states Social Security Scotland may share information with the Third Party Representative (signed by the client)</li> <li>• verbally by the client on the provision that Social Security Scotland are satisfied that it is the client providing the consent.</li> </ul> <p>The authorisation should include confirmation that the Third Party Representative agrees that Social Security Scotland can hold their information. The personal data gathered for the third party is kept to a minimum (name and contact details) and these are noted on the IT system along with the review date or an end date and what the third party has been authorised by the individual to assist with.</p>

	Questions	Comments
		<p>The authorisation will specify that the Third Party Representative can assist with a specific task, or for a specific period, if no period is provided this is limited to three months, then reviewed with the individual. To ensure Third Party Representatives are aware that we process their personal data, the Privacy Notice on the mygov.scot website states we may collect personal data about “friends or family or anyone supporting your application, for example carers”.</p> <p>To safeguard the individual’s personal information, certain data is never disclosed to a Third Party Representative such as: bank account details, household members, employer or former employers, contact numbers, addresses, and National Insurance numbers.</p> <p>Social Security Scotland have an obligation to exercise caution if authorised consent cannot be obtained from the client. In exceptional circumstances, Social Security Scotland may provide limited information to a Third Party Representative where they believe it is reasonable to assume the client consented to that information being shared.</p> <p>In these circumstances, Social Security Scotland will follow clear guidance to decide whether it is reasonable that the client has given their consent to share the requested information with the Third Party Representative in the absence of explicit authorisation. Only generic information can be shared with the Third Party Representative if unavailable consent is assumed. Authority to represent the client under unavailable consent only lasts for the particular item of business that the Third Party Representative is asking for at that time.</p>
4.2	Do you need to hold a public consultation and if so has this taken place? What was the result?	<p>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.</p> <p>There were 521 formal written responses submitted in total, of which 241 were from organisations and 280 from individual respondents. The 241 organisational responses included stakeholder groups representing human rights, disability, long term conditions and carers. The independent analysis of the responses along with the Scottish Government response were published on 22</p>



	Questions	Comments
		<p>February 2017,<sup>4</sup> in addition to the Business and Regulatory Impact Assessment that was published alongside the Social Security (Scotland) Bill.</p> <p>The Scottish Government established 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 the Scottish Government has executive and legal competence for. In July 2019, recruitment to the Experience Panels was reopened. The Scottish Government have been working with relevant stakeholders to specifically identify disabled people from seldom heard groups for further engagement.</p> <p>Feedback from Experience Panels has helped to shape the Scottish Government's delivery of disability benefits, including PADP, through sharing lived experience of the current social security system. This has assisted in delivering changes in Scotland, such as increasing the time limit for requesting a re-determination to 42 calendar days and providing feedback on the decision-making process.</p> <p>Two surveys regarding the case transfer process were sent out to Experience Panel members in January and February 2019. 404 and 559 responses were received respectively. A series of individual and group interviews were also conducted. Results from both surveys and the interviews were published in 2019.<sup>5,6</sup> These surveys confirmed that of most importance to panel members was that they continue to receive the correct payment at the correct time.</p> <p>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 PADP.<sup>7</sup> The consultation closed on 28 May 2019, having received 263 replies, of which 74 were from stakeholder organisations and 189 from individuals. The majority of respondents agreed with</p>

<sup>4</sup> [Analysis of written responses to the consultation on social security in Scotland - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>5</sup> [DWP benefits case transfers: survey findings - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>6</sup> [Social Security Experience Panels: designing the benefits case transfer process - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>7</sup> [Disability assistance in Scotland: consultation - Scottish Government \(www.gov.scot\)](http://www.gov.scot)

	Questions	Comments
		<p>the Scottish Government’s proposals for PADP. 89% agreed with the proposal to align the age criteria with State Pension age, and 63% agreed with the proposed approach to the eligibility criteria.</p> <p>The Scottish Government has also undertaken engagement with stakeholders during the development of PADP, through the Ill Health and Disability Benefits Stakeholder Reference Group (IHDBSRG) as well as the independent Disability and Carers Benefits Expert Advisory Group (DACBEAG).</p> <p>DACBEAG was chaired by Dr Jim McCormick and comprised of individuals with significant practical experience of the social security system in the United Kingdom, from a range of professional backgrounds. It was independent of the Scottish Government.</p> <p>The Group’s role was to advise Scottish Ministers on specific policy options for disability assistance and carers benefits due to be delivered by the Scottish Government. On 24 August 2022, the Group shared advice on PADP.<sup>8</sup> The Group was broadly understanding of the Scottish Government’s reasons for not introducing significant policy changes from that of Attendance Allowance, and provided 12 recommendations highlighting potential opportunities for future improvements. Scottish Ministers responded to the Group on 1 March 2023.<sup>9</sup></p> <p>On 3 November 2022 officials met with DACBEAG to discuss case transfer, and DACBEAG provided further advice in December 2022 which was broadly supportive of the proposed case transfer process.</p> <p>The views of people with lived experience have also been captured through a range of ongoing user research and other specific stakeholder engagement activities since 2022.</p> <p>This engagement has provided stakeholders the opportunity to feed into the development of PADP, including the Equality Impact Assessment and the drafting of regulations. Such engagement has also provided the Scottish Government with the opportunity to</p>

<sup>8</sup> [Disability and Carer Benefits Expert Advisory Group - Pension Age Disability Payment: advice - gov.scot \(www.gov.scot\)](https://www.gov.scot)

<sup>9</sup> [Disability and Carer Benefits Expert Advisory Group - Pension Age Disability Payment: response from ministers - gov.scot \(www.gov.scot\)](https://www.gov.scot)

	Questions	Comments
		engage specifically with particular groups that would be impacted by the proposed policy.
4.3	Were there any Comments/feedback from the public consultation about privacy, information or data protection?	<p>Both case transfer surveys sought feedback from experience panel members on the processes for transfer. Responses to the first survey showed a strong preference for the position that no individual should have to reapply for their benefit as part of the case transfer process. In the second set of interviews with experience panel members, participants were presented with the different types of information that Social Security Scotland may take over as part of an individual's case transfer.</p> <p>Participants were asked how they felt about Social Security Scotland taking over the different information types. It was explained that some information is essential for Social Security Scotland to take over as part of an individual's case, including payment information, personal information (such as an individual's address and contact information) and award information.</p> <p>All participants asked agreed that this information should be transferred as part of an individual's case. Nearly all those asked were happy with Social Security Scotland taking over application information. Again, the majority of participants were happy for information submitted for evidence to be taken over. Views were mixed on taking over assessment information and case management information.</p> <p>Some participants saw no problems with Social Security Scotland taking over assessment information and thought it would be better for Social Security Scotland to have all the information that DWP currently hold as part of an individual's case. Some participants requested that Social Security Scotland staff view the contents of previous assessments with a critical eye if the information is to be transferred. However, some participants thought that assessment information should not be taken over. The most common reason for this was that participants did not feel the information from their assessment was accurate or correct. Participants spoke of their previous experience of assessments with DWP and some said they would like a fresh start with Social Security Scotland.</p> <p>Some participants wanted case management information to be transferred so that there was a fully comprehensive record of an individual's circumstances. However, many participants saw this information as irrelevant and questioned whether it would be needed. Similarly, to</p>

	Questions	Comments
		<p>assessment information, some participants also spoke of wanting a fresh start with Social Security Scotland and therefore didn't want this information transferred. Gathering this information is intended to reduce the burden on individuals.</p> <p>The approach to gather all relevant information is intended to reduce the burden on individuals. It means people will not need to submit new information to Social Security Scotland. However, where an individual is unhappy with their award, they will be able to submit new information to Social Security Scotland.</p>

## 5. Further assessment and risk identification

	Question	Comments
5.1	Will the proposal require the creation of new identifiers, or require the use of existing ones?	<p>Delivery of the benefit will reuse existing mechanisms introduced for other Scottish social security benefits that will retrieve identifiers for individuals when sharing data with the DWP.</p> <p>The DWP hold Global Unique Identifiers (GUIDs) for each individual who receives benefits that they administer. To obtain a GUID from DWP, SPM will share the individual's name, date of birth and postcode. If there is a match with information held by DWP, a GUID will be shared and stored within SPM.</p> <p>The GUID is then used to share data on other data necessary to make determinations of entitlement and to maintain entitlement for individuals who receive PADP. SPM may hold a GUID already obtained for an individual applying for PADP if they had previously received another Scottish Government social security benefit. Where this is the case, the identifier will be reused when requesting data from DWP for the purposes of administering PADP.</p> <p>Delivery of this benefit will reuse existing mechanisms introduced for other Scottish social security benefits that will retrieve Community Health Index (CHI) numbers for individuals when sharing information with health boards and GPs. The re-use of CHI numbers has previously been agreed via the CHI Advisory Board.</p>

	<b>Question</b>	<b>Comments</b>
5.2	<p>Will the proposal require regulation of:</p> <ul style="list-style-type: none"> <li>• technology relating to processing</li> <li>• behaviour of individuals using technology</li> <li>• technology suppliers</li> <li>• technology infrastructure</li> <li>• information security</li> </ul>	<p>In practice, DWP will encrypt data and the Scottish Government will decrypt on arrival. All data will be accessed – identity and access mapping will be completed.</p> <p>The existing infrastructure and security used by Social Security Scotland to transfer data from DWP will be utilised. There are no legislative measures relating to technology.</p> <p>Technology already used to provide other Social Security Scotland payments will be used to support the payment of PADP. Technology used to support the applications for PADP and payment of PADP will be limited to support those functions.</p> <p>Social Security Scotland have technical and operational controls in place to safeguard individuals.</p> <p>An IT Health Check that includes penetration testing takes place prior to any system release. Digital Security officials undertake an operational readiness statement prior to any go live decision. All digital security risks are registered and a treatment plan put in place. These plans are reviewed regularly.</p>
5.3	<p>Will the proposal require establishing or change to operation of an established public register (e.g. Accountancy in Bankruptcy, Land Register etc.) or other online service/s?</p>	<p>No.</p>
5.4	<p>Please provide details of whether the proposal will involve the collection or storage of data to be used as evidence or use of investigatory powers (e.g.in relation to fraud, identify theft, misuse of public funds, any possible criminal activity, witness information, victim information or other monitoring of online behaviour)</p>	<p>The proposal does not introduce any new requirements regarding investigatory powers; these are already included in the Social Security (Scotland) Act 2018 and regulations to be made under it.</p>

	<b>Question</b>	<b>Comments</b>
5.5	<p>Would the proposal have an impact on a specific group of persons e.g. children, vulnerable individuals, disabled persons, persons with health issues, persons with financial difficulties, elderly people? (Please specify) In what way?</p>	<p>This proposal relates to the collection of data and information for new PADP applications and the transfer of data and information on awards of Attendance Allowance in Scotland. This will have a direct impact on the individual and the individual to whom the benefit is paid, where the individual has an appointee in place.</p> <p>The main data subject should in the vast majority of cases be a disabled older person. Impact assessments have been drafted, including an Equalities Impact Assessment, with the intention that these are to be published alongside the Regulations in the Scottish Parliament.</p> <p>Drafts of impact assessments were prepared and published in relation to the draft PADP Regulations to ensure transparent governance when the draft Regulations were issued to SCoSS on 7 August 2023.</p> <p>SCoSS provided an observation in their report on the draft PADP Regulations relating to the Equalities Impact Assessment, following engagement with the Equalities and Human Rights Commission. The Scottish Government has made necessary amendments to all impact assessments as a result.</p>
5.6	<p>Is there anything potentially controversial or of significant public interest in the policy proposal as it relates to processing of data? For example, is the public likely to views the measures as intrusive or onerous?</p> <p>Are there any potential unintended consequences with regards to the provisions e.g. would the provisions result in unintended surveillance or profiling.</p> <p>Have you considered whether the intended processing will have appropriate safeguards in</p>	<p>There is nothing potentially controversial or of significant public interest in relation to the processing of data for PADP.</p> <p>For case transfer, research has confirmed that the majority of people are supportive of award information being transferred to allow for a safe and secure transfer rather than being required to complete a new application for a replacement Scottish Government benefit.</p> <p>Social Security Scotland will process PADP data for the same purpose and in a similar manner to how Attendance Allowance data is currently processed by DWP. There are no identified potential unintended consequences.</p> <p>The processing of data will follow the same high security standards already in place within Social</p>

	<b>Question</b>	<b>Comments</b>
	<p>place? If so briefly explain the nature of those safeguards and how any safeguards ensure the balance of any competing interests in relation to the processing.</p>	<p>Security Scotland for the processing of new applications and case transfers.</p> <p>A security risk assessment is completed for all new processes via IT to ensure sufficient security controls are in place. An operational DPIA is already being completed and updated as the new system develops to ensure privacy risks are identified and assessed.</p> <p>The Operational DPIA will consider the data subject rights of individuals associated with the processing and payment of PADP. Any risks will be mitigated to ensure the rights of data subjects are not impacted.</p> <p>Under the case transfer process, processing will be completed using ADM only where the outcome for the individual is positive. To note there is no profiling.</p> <p>Safeguards that will be in place included being transparent to individuals that Social Security Scotland's case transfer process is using ADM. This can be seen in the Privacy Notice.</p> <p>The Privacy Notice is layered and will provide an easily understood privacy pattern to allow the individual to understand how ADM is used.</p> <p>The individual will be notified ADM has been used and provided details on how to exercise their rights for a review (including by a person). Operational safeguards include staff being able to provide an explanation on how ADM processing is undertaken, accuracy checks to ensure the process is accurate and access controls on system application to ensure codes changes are monitored and logged.</p>
<p><b>5.7</b></p>	<p>Are there consequential changes to other legislation that need to be considered as a result of the proposal or the need to make further subordinate legislation to achieve the aim?</p>	<p>Provisions consequential to the principal PADP regulations are being made under:</p> <ul style="list-style-type: none"> <li>• the schedule of the principal PADP regulations to amend primary legislation</li> <li>• consequential amendment regulations to amend devolved secondary legislation</li> </ul>

	Question	Comments
		<ul style="list-style-type: none"> <li>• section 104 orders to amend reserved legislation.</li> </ul> <p>These regulations will not relate to information sharing and/or information processing.</p>
5.8	<p>Will this proposal necessitate an associated code of conduct? If so, what will be the status of the code of conduct (statutory, voluntary etc.)?</p>	<p>The implementation of the proposals is principally guided by the Social Security Charter<sup>10</sup> and the Civil Service Code<sup>11</sup>.</p> <p>All Social Security Scotland staff are bound by the Civil Service Code, to ensure individual confidentiality, integrity and accuracy of personal data.</p> <p>Implementation will also be supported by operational and decision-making guidance with input from colleagues with relevant interests across the Social Security Directorate, including policy and legal officials and will be tested before PADP launches.</p>
5.9	<p>Have you considered whether the intended processing will have appropriate safeguards in place, for example in relation to data security, limitation of storage time, anonymisation? If so briefly explain the nature of those safeguards</p> <p>Please indicate how any safeguards ensure the balance of any competing interests in relation to the processing.</p>	<p>The processing of data will follow the same high security standards already in place within Social Security Scotland for the processing of new applications, including:</p> <ul style="list-style-type: none"> <li>• pseudonymisation of equalities data</li> <li>• redaction of personal data received on documents during the application process</li> <li>• retention schedules to minimise personal data where there is no longer purpose for retention</li> <li>• Social Security Scotland will adhere to a policy of data minimisation in the transfer of information from the DWP.</li> <li>• Where an individual is terminally ill, relevant 'harmful information' indicators will ensure that where harmful information is held, Social Security Scotland will not disclose this to an individual who is unaware of their terminal diagnosis.</li> </ul> <p>An IT Health Check that includes penetration testing takes place prior to any system release. Digital Security undertake an operational</p>

<sup>10</sup> [Our Charter - Social Security Scotland \(socialsecurity.gov.scot\)](https://socialsecurity.gov.scot)

<sup>11</sup> [Civil Service Code - gov.scot \(www.gov.scot\)](https://www.gov.scot)



	Question	Comments
		<p>readiness statement prior to any go live decision, all digital security risks are registered and treatment plan put in place, these plans are reviewed regularly.</p> <p>The Operational DPIA will consider the data subject rights of individuals associated with the processing and payment of PADP. Any risks will be mitigated to ensure the rights of data subjects are not impacted.</p>
5.10	<p>Will the processing of personal data as a result of the proposal have an impact on decisions made about individuals, groups or categories of persons? If so, please explain the potential or actual impact. This may include, for example, a denial of an individual's rights or use of social profiling to inform policy making.</p>	<p>Personal data will be used to inform decisions on an individual's entitlement to disability benefits and make payments to them. For both new applications and case transfers, determinations of entitlement will be subject to full re-determination and appeal rights</p> <p>For case transfers where ADM processing has taken place, the individual will also have the right of review, including by a person. The individual will be advised of their rights.</p> <p>There is a risk that individuals will not be fully aware of their right to full re-determination and appeal. This will be mitigated through a communications framework for all individuals whose case is transferred with letters detailing this process. For ADM, details are added to the outcome notice and the Privacy Notice.</p> <p>All individuals are also asked to complete a voluntary Equality Monitoring and Feedback form along with the application form for each benefit delivered by Social Security Scotland, including PADP.</p> <p>The data collected is used to identify who is using the service, to investigate how Social Security Scotland processes work for different groups of people and to understand whether groups with protected characteristics are able to adequately access social security payments. The equalities data is also analysed by outcome of application to assess if there is any variation.</p> <p>The Scottish Government is are also seeking to receive any relevant equalities data DWP collected for individuals in order to meet the</p>

	Question	Comments
		<p>statutory duty to report on outcomes for those with protected characteristics.</p> <p>For additional protection all equalities data is retained in a separate location to the individual's record in a pseudonymised state.</p>
5.11	<p>Will the proposal include automated decision making/profiling of individuals using their personal data?</p>	<p>No profiling takes place.</p> <p>ADM will be used when transferring the data from DWP. Where all the information from DWP passes validation and a like for like award can be made this action will be undertaken without any meaningful intervention from an individual.</p> <p>This relates to a positive award only, where the individual is awarded the same rate of payment as they were previously in receipt of by DWP. If validation fails or the rate differs then the case will be handed to a member of staff to undertake a manual determination.</p> <p>These decisions have a legal and significant effect on the individual and are deemed as ADM processing.</p> <p>Article 22(1) does not apply as processing is under Article (22)(2)(b) authorised by law. The Data Protection Act 2018 (Chapter 2, Part 2, Section 14(3)(b) refers only to a decision which is required or authorised by law and that law doesn't have to explicitly state that solely automated decision making is authorised for a particular purpose.</p> <p>The use of ADM is justified as there is a statutory power to award social security benefit and Pension Age Disability Payment and the use of automated decision-making/profiling is the most appropriate way to achieve this purpose.</p> <p>There will be safeguards in place to ensure the individual is aware that they have been subject to ADM, details will be provided in their</p>

	Question	Comments
		<p>outcome notice and on Social Security Scotland's Privacy Notice<sup>12</sup>.</p> <p>Additional safeguards, for example, ensuring that the individual is aware and how to have their decision reviewed by a person, checks on the ADM solution to ensure accurate application and staff training to allow an explanation of how the ADM decision was made, will all be in place prior to the use of ADM for case transfer.</p> <p>Scottish Ministers consider the use of ADM to be lawful and it will not disadvantage individuals. This will be further demonstrated in the Operational DPIA. There is no machine learning therefore no bias will be introduced. The ADM is based on set factors, the data matches set parameters and formatting, the rate paid and personal details match DWP.</p> <p>ADM is only used where it creates the positive award, not all cases will be subject to ADM, cases where data doesn't match will "fall out" to a member of staff. The use of ADM allows the processing of high volumes accurately, allowing time for staff members to deal with the more complex cases, ensuring a seamless transfer for the individual. ADM allows for all cases selected for transfer to be completed within an agreed 17 week window, during this time DWP will continue to pay the individual ensuring no break in payment.</p> <p>The processing of data resulting from these regulations will follow the same high security standards already in place within Social Security Scotland.</p>
5.12	Will the proposal require the transfer of personal data to a 'third country'? (Under UK GDPR this is defined as country outside the UK.)	<p>No – there will be no transfer of personal data to organisations in a third country outside of the United Kingdom.</p> <p>In limited circumstances, there may be a small number of individuals residing outwith the United Kingdom who will be entitled to PADP. In these cases, interaction will be with the data subject directly and not with any data controllers or processors within those countries.</p>

<sup>12</sup> [Privacy notice and data protection - Social Security Scotland - mygov.scot](https://www.mygov.scot/privacy-notice-and-data-protection-social-security-scotland)

## 6. Risk Assessment

Detailed discussion of risks and mitigations will be set out in the Operational DPIA.

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity (Red/Amber Green)	Result
<p><b>6.1.1 Risk to individual rights</b></p> <ul style="list-style-type: none"> <li>• <b>right</b> to be informed</li> <li>• <b>right</b> of access</li> <li>• <b>right</b> to rectification</li> <li>• <b>right</b> to erasure</li> <li>• <b>right</b> to restrict processing</li> <li>• <b>right</b> to <b>data</b> portability</li> <li>• <b>right</b> to object</li> <li>• <b>rights</b> in relation to automated decision making and profiling</li> </ul> <p>Will this initiative result in any detriment if individuals do not want their personal data to be processed? This is particularly relevant if special category data is being processed</p>	<p>Detailed discussion of risks and mitigations will be set out in the Operational DPIA.</p> <p>The personal information to be processed is required to enable Social Security Scotland to meet its statutory requirement in providing Social Security Assistance, the data being processed under public task with the legal basis being GDPR Article 6(1)(e). There is no profiling and the appropriate safeguards for processing using automated decision making will be in place and documented on the Operational DPIA.</p> <p>Work has been undertaken to ensure only the minimum amount of personal information is gathered and stored only for the appropriate time.</p> <p>There is a process in place for managing all subject rights requests.</p>	Low	Green	Mitigated
<p><b>6.2.1 Privacy risks</b></p> <p>Purpose limitation</p>	<p>Detailed discussion of risks and mitigations will be set out in the Operational DPIA.</p>	Low	Green	Mitigated

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity (Red/Amber Green)	Result
	<p>Social Security Scotland has a Privacy Notice that is accessible on the mygov.scot website<sup>13</sup>.</p> <p>Outward letters and telephony messaging also advise individuals where to find information regarding the processing of their information.</p> <p>Data Sharing Agreements will be in place with stakeholders following the ICO Data Sharing code of practice, where clear purpose is document and adhered to.</p>			
<p><b>6.2.2 Privacy risks</b></p> <p>Transparency – data subjects may not be informed about the purposes and lawful basis for the processing, and their rights</p>	<p>Detailed discussion of risks and mitigations will be set out in the Operational DPIA.</p> <p>Social Security Scotland has a Privacy Notice that is accessible on mygov.scot website.</p> <p>Outward letters and telephony messaging also advise individuals where to find information regarding processing of their information.</p>	Low	Green	Mitigated
<p><b>6.2.3 Privacy risks</b></p> <p>Minimisation and necessity</p>	<p>Detailed discussion of risks and mitigations will be set out in the Operational DPIA.</p> <p>Necessity of the data to be processed has been determined based on the minimum amount of personal information required for assessing entitlement.</p>	Low	Green	Mitigated

<sup>13</sup> [Privacy notice and data protection - Social Security Scotland - mygov.scot](#)

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity (Red/Amber Green)	Result
<b>6.2.4 Privacy risks</b>  Accuracy of personal data	<p>Detailed discussion of risks and mitigations will be set out in the Operational DPIA.</p> <p>The personal data gathered is from the individual, their representative or an Other Government Department where the individual has an established relationship.</p>	Low	Green	Mitigated
<b>6.3.1 Security risks</b>  Keeping data securely  Retention	<p>Detailed discussion of risks and mitigations will be set out in the Operational DPIA. A Digital security risk assessment is completed for all new processes and one will be completed for PADP. A copy will be retained in the Operational DPIA.</p> <p>The IT Health Check includes penetration testing and the health check takes place prior to any system release. Digital Security undertake an operational readiness statement prior to any go live decision, all digital security risks are registered and treatment plan put in place, these plans are reviewed regularly</p>	Low	Green	Mitigated
<b>6.3.2 Security risks</b>  Transfer – data may be lost in transit	<p>Detailed discussion of risks and mitigations will be set out in the Operational DPIA.</p> <p>Established secure transfer routes will be re-used for previous transitions. Data is encrypted at rest and in transit.</p>	Low	Green	Mitigated

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity (Red/Amber Green)	Result
	Data Sharing Agreements will be in place detailing both parties' roles and responsibilities in relation to safeguarding individual personal information.			
<b>6.3.3 Security risks</b>	<p>Detailed discussion of risks and mitigations will be set out in the Operational DPIA. A security risk assessment is completed for all new processes and one will be completed for PADP. This will be contained in the Operational DPIA.</p> <p>The IT Health Check includes penetration testing and the health check takes place prior to any system release. Digital Security undertake an operational readiness statement prior to any go live decision , all digital security risks are registered and treatment plan put in place, these plans are reviewed regularly</p>	Low	Green	Mitigated
<b>6.4.1 Other risks</b> will this impact on children?	PADP will not impact on children. An individual is only entitled to PADP when they are of State Pension age and over, as set out in Regulations. Other impact assessments have been drafted, including an Equalities Impact Assessment, Island Communities Impact Assessment, Fairer Scotland Duty Assessment and a Business and Regulatory Impact Assessment to assess and mitigate other potential impacts or risks.	Low	Green	Eliminated

## Data Protection Officer (DPO)

The DPO may give additional advice, please indicate how this has been actioned.

<b>Advice from DPO</b>	<b>Action</b>
The DPO has been consulted in the development of the Article 36(4) form.  The DPO was provided an opportunity to comment on this DPIA. The DPO suggested continued engagement with Information Governance officials during drafting of the impact assessment.	Policy officials continued engagement with Information Governance officials during the drafting of this impact assessment.

**I confirm that the Disability Assistance for Older People (Scotland) Regulations 2024 have been sufficiently assessed in compliance with the requirements of the UKGDPR and Data Protection Act 2018**

<b>Name and job title of an IAO or equivalent</b>	<b>Date each version authorised</b>
Ian Davidson, Deputy Director Social Security Policy Division	17 April 2024





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