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Convener
Social Justice and Social Security Committee

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7 August 2023

Dear Convener,

I am pleased to inform you that today the draft Disability Assistance for Older People (Scotland) Regulations 2024 have been submitted to the Scottish Commission on Social Security (SCoSS) for their scrutiny.

Please find attached the draft regulations and accompanying documentation, sent today to the co-Chairs of SCoSS, Mark Simpson and Judith Paterson.

Along with the draft regulations, SCoSS have been provided with a policy note, an explanatory note of the draft regulations and accompanying draft impact assessments. These assessments have been provided for information only and we plan to undertake further work to finalise these before the regulations are formally laid before Parliament.

These draft regulations set out the detail of how Pension Age Disability Payment will function when it commences with a pilot in Autumn 2024. A further draft of these regulations will be laid in Parliament in Spring 2024.

The introduction of Pension Age Disability Payment will bring disability assistance for pension age individuals in Scotland in line with children and other adults, by introducing our definition of terminal illness and allowing individuals to access short-term assistance if they wish to challenge decisions that have been made. This is aligned with our overall policy intent, to improve outcomes for disabled people and to make sure they are always treated with dignity, fairness and respect. I would like to thank the Committee in advance for your co-operation and support and I look forward to discussing further when engaging with the Committee on these regulations in due course.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

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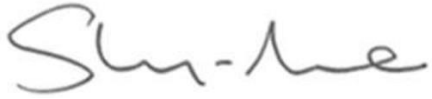
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I am proud to mark another major milestone in the process of delivering devolved social security and in building a system that better meets the needs of disabled people in Scotland.

Yours sincerely,



SHIRLEY-ANNE SOMERVILLE

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Draft Regulations laid before the Scottish Parliament under section 96(2) of the Social Security (Scotland) Act 2018 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2024 No.

SOCIAL SECURITY

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

<i>Made</i>	- - - -	2024
<i>Coming into force</i>	- -	2024

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

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.

In accordance with section 97(2) of that Act, the Scottish Ministers have informed the Scottish Commission on Social Security 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.

PART 1

Introductory and interpretation

Citation and commencement

1. These Regulations may be cited as the Disability Assistance for Older People (Scotland) Regulations 2024 and come into force on [XXXXXXXX].

Interpretation

2. In these Regulations—

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

“Adult Disability Payment” means disability assistance for adults given in accordance with the Disability Assistance for Working Age People (Scotland) Regulations 2022(b),

(a) 2018 asp 9 (“the 2018 Act”). Section 41 was amended by paragraph 2 of schedule 7 of the Coronavirus (Scotland) Act 2020 (asp 7). Section 51 was amended by section 12 of the Social Security Administration and Tribunal Membership (Scotland) Act 2020 (asp 18).

(b) S.S.I. 2022/54, amended by S.S.I. 2022/217.

“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(a),

“Attendance Allowance” means an attendance allowance under section 64 of the Social Security Contributions and Benefits Act 1992(b),

“award” means that a determination has been made that an individual is entitled to be given assistance under section 24 of the 2018 Act in accordance with these Regulations, and cognate expressions are to be construed accordingly,

“bodily functions” “means the normal actions of any organ of the body, including the brain, or of a number of organs acting together,

“care home” means an establishment which provides a care home service as defined in paragraph 2 of schedule 12 of the Public Services Reform (Scotland) Act 2010(c),

“day” is to be construed in relation to the ordinary domestic routine of the household in which the individual lives,

“Disability Living Allowance” means a disability living allowance under—

(a) section 71 of the Social Security Contributions and Benefits Act 1992(d), or

(b) section 71 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(e),

“legal detention” means detention in legal custody within the meaning of section 295 of the Criminal Procedure (Scotland) Act 1995(f),

“night” is to be construed in relation to the ordinary domestic routine of the household in which the individual lives,

“Pension Age Disability Payment” means disability assistance for older people given in accordance with these Regulations,

“Personal Independence Payment” means personal independence payment under—

(c) Part 4 of the Welfare Reform Act 2012(g), or

(d) article 82 of the Welfare Reform (Northern Ireland) Order 2015(h),

“qualifying services” means accommodation, board and personal care,

“relevant EU Regulation” means

(e) one of the following Regulations—

(i) Council Regulation (EC) No 1408/71 of 14 June 1971(i) on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community,

(ii) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004(j) on the coordination of social security systems, or

(f) in relation to an individual to whom 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(k) applies, a Regulation mentioned in paragraph (a) of

(a) S.I. 2011/517, amended by S.I. 2013/436, S.I. 2017/247 and S.I. 2021/285.

(b) 1992 c. 4. Section 64 was amended by section 66(1) of the Welfare Reform and Pensions Act 1999 (c. 30), paragraph 41 of schedule 1 of the Pensions Act 2007 (c. 22), and paragraph 5(2) and 5(3) of schedule 9 of the Welfare Reform Act 2012 (c. 5).

(c) 2010 asp 8.

(d) 1992 c. 4. Section 71 was amended by section 67(1) of the Welfare Reform and Pensions Act 1999 (c. 30) and S.I. 2021/804.

(e) 1992 c. 7. Section 71 was amended by S.I. 1999/3147.

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

(g) 2012 c. 5.

(h) S.I. 2015/2006.

(i) OJ L 28, 30.1.1997, p. 1.

(j) OJ L 166, 30.4.2004, p. 1.

(k) S.I. 1974/555.

this definition as it forms part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018(a),

“short-term assistance” means short-term assistance given in accordance with Part 1 of schedule 1 of these Regulations.

PART 2

Disability assistance for older people Overview

3.—(1) An individual is entitled to Pension Age Disability Payment in accordance with these Regulations if the individual meets the eligibility rules in—

- (a) regulation 4 (entitlement to other benefits),
- (b) regulations 9 to 16 (residence and presence conditions),
- (c) regulation 17 (age criteria), and
- (d) one or more of the following—
 - (i) regulation 5 (eligibility criteria: daytime and night-time condition and required period),
 - (ii) regulation 7 (entitlement to Pension Age Disability Payment when undergoing renal dialysis),
 - (iii) regulation 18 (entitlement under special rules for terminal illness).

(2) There are 2 weekly rates of Pension Age Disability Payment and those rates are specified in regulation 26 (amount and form of Pension Age Disability Payment).

Entitlement to other benefits

4. An individual is not entitled to Pension Age Disability Payment while they are entitled to—
- (a) armed forces independence payment,
 - (b) Attendance Allowance,
 - (c) Adult Disability Payment,
 - (d) Disability Living Allowance, or
 - (e) Personal Independence Payment.

PART 3

Eligibility: Pension Age Disability Payment

Eligibility criteria: daytime and night-time condition and required period

5.—(1) An individual may be awarded Pension Age Disability Payment if they satisfy either—

- (a) the condition specified in paragraph (2) below (“the daytime condition”),
- (b) the condition specified in paragraph (3) below (“the night-time condition”), or
- (c) both.

(2) An individual meets the daytime condition if they are so severely disabled physically or mentally that, by day, they require from another person either—

- (a) frequent attention throughout the day in connection with their bodily functions, or

(a) 2018 c. 16. Section 3 was amended by section 25(2) of European Union (Withdrawal Agreement) Act 2020 (c. 1).

- (b) continual supervision throughout the day in order to avoid substantial danger to themselves or others.
- (3) An individual meets the night-time condition if they are so severely disabled physically or mentally that, at night,—
 - (a) they require from another person prolonged or repeated attention in connection with their bodily functions, or
 - (b) in order to avoid substantial danger to themselves or others they require another person to be awake for a prolonged period or at frequent intervals for the purpose of watching over them.
- (4) For the purposes of paragraphs (2) and (3), the individual shall not be taken to satisfy paragraph (2)(a) or paragraph (3)(a) unless the attention the severely disabled person requires from another person is required to be given in the physical presence of the severely disabled person.
- (5) In this regulation—
 - (a) “attention” means the provision of personal care, prompting or motivation in relation to bodily functions or assistance with communication needs,
 - (b) “require” means reasonably require and cognate expressions are to be construed accordingly,
 - (c) “supervision” means the continuous presence of another person for the purpose of ensuring an individual’s safety.
- (6) An individual is not entitled to Pension Age Disability Payment unless throughout the period of 26 weeks immediately preceding the date on which the award would begin, the individual has satisfied or is likely to satisfy one or both of the conditions mentioned in paragraphs (2) and (3).
- (7) Paragraph (7) does not apply where regulation 18 (entitlement under special rules for terminal illness) applies.

Rates of Pension Age Disability Payment

- 6.—(1) An individual may be awarded Pension Age Disability Payment at either the lower rate or the higher rate.
- (2) An individual is entitled to Pension Age Disability Payment at the lower rate if they meet either the daytime condition or the night-time condition.
- (3) An individual is entitled to Pension Age Disability Payment at the higher rate if they meet both the daytime condition and the night-time condition.

Entitlement to Pension Age Disability Payment when undergoing renal dialysis

- 7.—(1) Except as provided in paragraph (3), an individual who suffers from renal failure and who is undergoing the treatment specified in paragraph (2) is treated as meeting the condition—
 - (a) in paragraph (2) of regulation 5 where they undergo renal dialysis by day,
 - (b) in paragraph (3) of regulation 5 where they undergo renal dialysis by night, or
 - (c) in either paragraph (2) or paragraph (3) of regulation 5, but not both, if they undergo renal dialysis by day and by night.
- (2) The treatment referred to in paragraph (1) is the undergoing of renal dialysis—
 - (a) two or more times a week, and
 - (b) which either—
 - (i) is of a type which normally requires the attendance of or supervision by another person during the period of dialysis, or
 - (ii) which, because of the particular circumstances of their case, in fact requires another person, during the period of dialysis, to attend in connection with the bodily functions of the individual undergoing renal dialysis or to supervise that individual in order that they avoid substantial danger to themselves.

(3) Paragraph (1) does not apply to an individual undergoing the treatment specified in paragraph (2) where the treatment—

- (a) is provided under the NHS Act of 1978, the NHS Act of 2006 or the NHS (Wales) Act of 2006,
- (b) is in a hospital or similar institution,
- (c) is out-patient treatment, and
- (d) takes place with the assistance or supervision of any member of staff of the hospital or similar institution.

(4) In this regulation a “hospital or similar institution” means—

- (a) a health service hospital (within the meaning of section 108(1) of the National Health Service (Scotland) Act 1978)**(a)** in Scotland,
- (b) a health service hospital (within the meaning of section 275(1) of the National Health Service Act 2006)**(b)** in England,
- (c) a hospital in Wales vested in—
 - (i) an NHS trust,
 - (ii) a Local Health Board, or
 - (iii) the Welsh Ministers.

(5) For the purposes of determining whether an individual is to be treated as meeting one of the conditions specified in paragraph (1), any period of time where paragraph (3) applies to the individual can be included for the purposes of calculating the period of 26 weeks required by paragraph (6) of regulation 5.

PART 4

Required Period Condition

The relevant date: Pension Age Disability Payment after an interval

8.—(1) Paragraphs (2) and (3) of this regulation apply where—

- (a) an individual makes an application for Pension Age Disability Payment (“the application”),
- (b) that individual had a previous award of—
 - (i) Attendance Allowance, or
 - (ii) Pension Age Disability Payment,which ended not more than two years before the date on which the application is made,
- (c) the previous award referred to in sub-paragraph (b) consisted of the same assistance as the one to which the individual is entitled (or would be entitled if the individual met the condition at regulation 5(6)) under the application, and
- (d) the Scottish Ministers determine that the entitlement under the application results from—
 - (i) substantially the same physical or mental condition or conditions for which the previous award was made, or
 - (ii) a new physical or mental condition or conditions which developed as a result of a condition for which the previous award was made.

(a) 1978 c. 29. Section 108(1) was relevantly amended by paragraph 6(a) of schedule 6 of the Health Services Act 1980 (c. 53) and paragraph 19(22)(b) of schedule 9 of the National Health Service and Community Care Act 1990 (c. 19).

(b) 2006 c. 41. Section 275 was relevantly amended by paragraph 138(2)(b) of schedule 4(12) of the Health and Social Care Act 2012 (c. 7).

(2) In relation to determination of entitlement under the application, the relevant date for the purpose of regulation 5(4) is the date on which the previous award ended.

(3) Where an individual is awarded Pension Age Disability Payment under the application, in relation to continued entitlement to that assistance, the relevant date for the purpose of regulation 5(6) is—

- (a) during the period of 26 weeks following the date of the application, the date on which the previous award ended,
- (b) in any other case, each day of the award.

PART 5

Residence and Presence Conditions

Residence and presence conditions

9.—(1) An individual satisfies the residence and presence conditions where 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 subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999(a),
- (d) is present in the common travel area, and
- (e) has been present in the common travel area for a period of, or for periods amounting in the aggregate to, not less than 26 weeks out of the 52 weeks immediately preceding that day.

(2) In this Part, “common travel area” has the meaning given in section 1(3) of the Immigration Act 1971(b).

(3) The residence condition set out in paragraph (1)(a) does not apply in relation to Pension Age Disability Payment where on any day the individual—

- (a) is habitually resident in Ireland,
- (b) has a genuine and sufficient link to Scotland, and
- (c) is 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(c), 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.

(4) The reference in paragraph (3)(b) to an individual’s link to Scotland being sufficient is to it being sufficiently close that if the individual were not entitled to Pension Age Disability Payment, paragraph (3) would be incompatible with 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.

(5) Paragraph (1)(c) does not apply to a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999 where the person—

(a) 1999 c. 33.
(b) 1971 c. 77.
(c) 2019 CP 49.

- (a) is lawfully working in United Kingdom and is a national of a state with which the United Kingdom has concluded an agreement which replaces in whole or in part an agreement under Article 217 of the Treaty on the Functioning of the European Union^(a) which has ceased to apply to, and in, the United Kingdom, providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory state and their families,
- (b) is a member of the family of, and living with, a person specified in sub-paragraph (a), or
- (c) has been given leave to enter, or remain in, the United Kingdom by the Secretary of State upon an undertaking by another person or persons pursuant to the immigration rules, to be responsible for their maintenance and accommodation.

(6) The past presence condition in paragraph (1)(e) does not apply where an individual has a terminal illness within the meaning of regulation 18.

(7) The residence and presence conditions set out in paragraphs (1)(b) and (1)(e) do not apply where an individual is a person who—

- (a) has leave to enter or remain in the United Kingdom granted under the immigration rules by virtue of—
 - (i) the Afghan Relocations and Assistance Policy, or
 - (ii) the previous scheme for locally-employed staff in Afghanistan (sometimes referred to as the ex-gratia scheme),
- (b) has been granted discretionary leave outside the immigration rules as a dependant of a person referred to in sub-paragraph (a),
- (c) has leave granted under the Afghan Citizens Resettlement Scheme,
- (d) has leave to enter or remain in the United Kingdom granted under or outside the immigration rules, has a right of abode in the United Kingdom within the meaning given in section 2 of the Immigration Act 1971 or does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act, where the individual—
 - (i) was residing in Ukraine immediately before 1 January 2022, and
 - (ii) left Ukraine in connection with the Russian invasion which took place on 24 February 2022, or
- (e) has leave to enter or remain in the United Kingdom granted under or outside the immigration rules, has a right of abode in the United Kingdom within the meaning given in section 2 of the Immigration Act 1971 or does not require leave to enter or remain in the United Kingdom in accordance with section 3ZA of that Act, where the individual—
 - (i) was residing in Sudan before 15 April 2023, and
 - (ii) left Sudan in connection with the violence which rapidly escalated on 15 April 2023 in Khartoum and across Sudan.

(8) For the purposes of paragraph (7), “the Afghan Citizens Resettlement Scheme” means the scheme announced by the United Kingdom Government on 18 August 2021^(b).

Temporary absence from the common travel area

10.—(1) Where an individual is temporarily absent from the common travel area, the individual is to be treated as present in the common travel area for—

- (a) the first 13 weeks of that absence for any reason, or
- (b) the first 26 weeks of that absence where—

(a) OJ C 202, 7.6.2016, p. 146.

(b) Published at <https://www.gov.uk/guidance/afghan-citizens-resettlement-scheme>.

- (i) after the first 13 weeks, the absence is in connection with arrangements made for the medical treatment of the individual for a disease or bodily or mental disablement which commenced before leaving the common travel area, and
 - (ii) the arrangements relate to medical treatment—
 - (aa) outside the common travel area,
 - (bb) during the period when the individual is temporarily absent from the common travel area, and
 - (cc) by, or under the supervision of, a person appropriately qualified to carry out that treatment.
- (2) For the purposes of paragraph (1)—
- (a) an individual is “temporarily absent” if, at the beginning of the period of absence, that absence is unlikely to exceed 52 weeks, and
 - (b) “medical treatment” means medical, surgical, psychological or rehabilitative treatment (including any course or diet regimen).

Serving members of His Majesty’s forces, civil servants and their family members

11.—(1) A relevant individual is treated as meeting the residence and presence conditions set out in regulations 9(1)(a), (b) and (d) where on any day that individual is outside the common travel area—

- (a) by reason of their capacity mentioned in paragraph (3)(a) provided that the individual satisfied the residence and presence conditions set out in regulation 9(1)(a), (b) and (d) immediately prior to the start of their employment mentioned in paragraph (3)(a), or
- (b) by reason of being a person mentioned in paragraph (3)(b) living with an individual to whom paragraph (3)(a) applies.

(2) The past presence condition set out in regulation 9(1)(e) does not apply to a relevant individual.

(3) A “relevant individual” in paragraph (1) and (2) means an individual who is—

- (a) outside of the common travel area in their capacity as a—
 - (i) serving member of His Majesty’s forces, or
 - (ii) civil servant, or
- (b) living with a person mentioned in sub-paragraph (a) and—
 - (i) is the child, step-child or child in care of that person,
 - (ii) is the parent, step-parent or parent-in-law of that person, or
 - (iii) is married to or in a civil partnership with that person, or is living together with that person as if they were married or in a civil partnership.

(4) In this regulation—

“child in care” means—

- (a) under the law of Scotland, a child in respect of whom a relevant individual listed in paragraph (3)(a)—
 - (i) is a foster carer within the meaning of regulation 2 of the Looked After Children (Scotland) Regulations 2009(a),
 - (ii) is a kinship carer within the meaning of regulation 2 of the Looked After Children (Scotland) Regulations 2009,
 - (iii) has a kinship care order within the meaning of section 72 of the Children and Young People (Scotland) Act 2014(b), or

(a) S.S.I. 2009/210.

(b) 2014 asp 8.

- (b) under the law of England and Wales and Northern Ireland, a child in respect of whom a person listed in paragraph (3)(a) has a relationship equivalent to those listed under the law of Scotland,

“civil servant” has the meaning given by section 1(4) of the Constitutional Reform and Governance Act 2010(a), and

“serving member of His Majesty’s forces” means a member of a regular force or a reserve force (“M”) as defined, in each case, by section 374 (definitions applying for purposes of the whole Act) of the Armed Forces Act 2006(b), unless—

- (c) M is under the age of 16,
- (d) M is committing an offence under section 8 of the Armed Forces Act 2006 (desertion),
- (e) the force concerned is one of His Majesty’s naval forces which M locally entered at an overseas base without—
 - (i) previously being an insured person under the National Insurance Act 1965(c), or
 - (ii) paying or having previously paid one or more of the following classes of contributions under the Social Security Act 1975(d) or the Social Security Contributions and Benefits Act 1992(e)—
 - (aa) primary Class 1,
 - (bb) Class 2, or
 - (cc) Class 3, or
- (f) the force concerned is one of His Majesty’s military forces or His Majesty’s air forces which M entered, or was recruited for, outside the United Kingdom and—
 - (i) where that force is one of His Majesty’s military forces, the depot for M’s unit is outside the United Kingdom, or
 - (ii) where that force is one of His Majesty’s air forces, M is liable under the terms of M’s engagement to serve only in a specified area outside the United Kingdom.

Aircraft workers, mariners and continental shelf operations

12.—(1) An individual is to be treated as meeting the presence conditions set out in regulation 9(1)(d) and (e) for any period where that individual is—

- (a) outside the common travel area in their capacity as an aircraft worker or a mariner, or
- (b) in employment prescribed for the purposes of section 120 (employment at sea (continental shelf operations)) of the Social Security Contributions and Benefits Act 1992(f) in connection with continental shelf operations.

(2) In this regulation—

“aircraft worker” means a person who is, or has been, 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 any 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,

(a) 2010 c. 25.

(b) 2006 c. 52. Section 374 was relevantly amended by section 44(3) of the Defence Reform Act 2014 (c. 20).

(c) 1965 c. 51.

(d) 1975 c. 14.

(e) 1992 c. 4.

(f) Section 120 was relevantly amended by paragraph 30 of schedule 4 of the Petroleum Act 1998 (c. 17), paragraph 26 of schedule 3 and paragraph 8 of schedule 7 of the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), paragraph 70 of schedule 7 of the Social Security Act 1998 (c. 14), and sections 12(2) to (4) of the National Insurance Contributions Act 2014 (c. 7).

but does not include a person so far as that employment is as a serving member of His Majesty's forces, and

“mariner” means a person who is, or has been, 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—

- (c) the employment in that other capacity is for the purposes of that ship or vessel or its crew or any passengers or cargo or mail carried by the ship or vessel, and
- (d) 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 in so far as that employment is as a serving member of His Majesty's forces.

Persons residing in the United Kingdom to whom a relevant EU regulation applies

13. The past presence condition set out in regulation 9(1)(e) does not apply where on any day the individual is—

- (a) ordinarily resident in Scotland,
- (b) habitually resident in the United Kingdom,
- (c) 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 (“the 2020 Act”)(**a**),
 - (cc) Title III of the EEA EFTA separation agreement (as defined in section 39(1) of the 2020 Act), 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(**b**), and
 - (ii) in respect of whom the United Kingdom is, as a result, competent for payment of sickness benefits in cash.

Persons residing outwith the United Kingdom to whom a relevant EU regulation applies

14.—(1) The residence and presence conditions set out in regulation 9(1) do not apply in relation to Pension Age Disability Payment where on any day the individual satisfies the conditions in paragraph (2).

(2) The conditions referred to in paragraph (1) are that the individual 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 (“the 2020 Act”)),
 - (cc) Title III of the EEA EFTA separation agreement (as defined in section 39(1) of the 2020 Act), or

(a) 2020 c. 1.

(b) S.I. 1974/555.

- (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, and
- (ii) in respect of whom the United Kingdom is, as a result, competent for payment of sickness benefits in cash,
- (b) be habitually resident in—
 - (i) Switzerland,
 - (ii) an EEA state, or
 - (iii) Gibraltar, and
- (c) have a genuine and sufficient link to Scotland.

(3) 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 Pension Age Disability Payment, paragraph (2) would be incompatible with the applicable agreement mentioned in sub-paragraph (a)(i) of that paragraph.

(4) 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(a), together with the Protocol adjusting that Agreement signed at Brussels on 17 March 1993(b), as modified or supplemented from time to time.

Refugees

15. The residence and presence conditions set out in regulation 9(1)(b) and (e) do not apply 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.

Persons to whom a relevant EU regulation applies and entitlement to Pension Age Disability Payment

16. An individual to whom a relevant EU regulation applies is not entitled to Pension Age Disability Payment for a period unless during that period the United Kingdom is competent for payment of sickness benefits in cash to the person for the purposes of the relevant EU regulation in question.

PART 6

Entitlement under rules relating to age

Age Criteria

17.—(1) Pension Age Disability Payment may be paid in respect of an individual who has reached pensionable age (within the meaning given by the rules in paragraph 1 of schedule 4 to the Pensions Act 1995(c)).

(a) Command Paper 2073 and OJ L 1, 3.1.1994, p. 3.
 (b) Command Paper 2183 and OJ L 1, 3.1.1994, p. 572.
 (c) 1995 c. 26. Paragraph 1 of schedule 4 was amended by paragraph 39 of schedule 2 of the State Pension Credit Act 2002 (c. 16), paragraph 13 of schedule 3 of the Welfare Reform Act 2007 (c. 5), paragraph 4 of schedule 3 of the Pensions Act 2007 (c. 22), section 1 of the Pensions Act 2011 (c. 19) and section 26 and paragraph 30 of schedule 12 of the Pensions Act 2014 (c. 19).

(2) 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.

PART 7

Entitlement under special rules for terminal illness

Entitlement under special rules for terminal illness

18.—(1) An individual who has a terminal illness is to be treated as satisfying the conditions for the higher rate of Pension Age Disability Payment.

(2) Paragraph (1) applies regardless of the period of time for which the individual has had the terminal illness.

(3) Subject to paragraphs (5) and (6), the individual's entitlement to the rate referred to in paragraph (1) begins on the date on which—

- (a) the individual's application for Pension Age Disability Payment was made, where the application included information about the individual's terminal illness,
- (b) the Scottish Ministers became aware of the individual's terminal illness (whether as a result of the individual notifying a change in circumstances or otherwise), where the individual was previously awarded, and has an ongoing entitlement to, Pension Age Disability Payment, on the basis of a determination that the individual was entitled to Pension Age Disability Payment in relation to a condition other than terminal illness, or
- (c) the clinical judgement was made in accordance with paragraphs (7) and (8) ("the judgement"),

whichever is the earlier.

(4) Where the judgement mentioned in paragraph (4)(c) is dated not more than 26 weeks earlier than whichever date in paragraph (4)(a) or (b) applies ("the applicable date"), the Scottish Ministers have the power, when making their determination, to specify that an individual's entitlement begins—

- (a) up to a maximum of 26 weeks prior to the applicable date, and
- (b) on or after the day these Regulations come into force.

(5) Where the judgement mentioned in paragraph (4)(c)—

- (a) is dated more than 26 weeks earlier than whichever date in paragraph (4)(a) or (b) applies ("the applicable date"), and
- (b) an appropriate healthcare professional confirms that the judgement is still accurate by making a judgement in accordance with paragraphs (7) and (8),
- (c) an individual's entitlement can only begin—
 - (i) up to a maximum of 26 weeks prior to the applicable date, and
 - (ii) on or after the day these Regulations come into force.

(6) For the purposes of these Regulations an individual is to be regarded as having a terminal illness for the purpose of determining entitlement to Pension Age 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 the individual's death.

(7) Subject to paragraph (9), an appropriate healthcare professional exercising the judgement described in paragraph (7) must have regard to the guidance prepared and made publicly available by the Chief Medical Officer of the Scottish Administration in accordance with paragraph 1(3) of schedule 5 of the 2018 Act.

(8) Where regulation 14 (persons residing outwith the United Kingdom to whom a relevant EU regulation applies) applies to the individual, an appropriate healthcare professional mentioned in paragraph (10)(b) need not have regard to the guidance mentioned in paragraph (8) where it would

not be reasonable in the circumstances to insist on the judgement being formed with regard to that guidance.

- (9) 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 individual, and
 - (ii) acting in their professional capacity, or
 - (b) where regulation 14 applies to the individual, a person who—
 - (i) has equivalent qualifications to a registered medical practitioner or a registered nurse in an EEA state, Gibraltar or Switzerland,
 - (ii) is a member of the professional body equivalent to the General Medical Council or Nursing and Midwifery Council in that EEA state, Gibraltar or Switzerland, and
 - (iii) meets the requirements of sub-paragraph (a)(i) and (ii).

(10) Where an individual has previously received Pension Age Disability Payment at the lower rate or a benefit listed in paragraph (12)(a) for a period and a determination is subsequently made that the individual is entitled to Pension Age Disability Payment at the higher rate for that period by virtue of this regulation, that individual will be entitled to the difference between the value of entitlement to Pension Age Disability Payment under the subsequent determination and the value of Pension Age Disability Payment or the benefit listed in paragraph (12)(a) to which that individual was previously entitled for that period.

- (11) For the purpose of paragraph (11)—
- (a) the benefits are—
 - (i) armed forces independence payment,
 - (ii) Attendance Allowance,
 - (iii) Disability Living Allowance,
 - (iv) Personal Independence Payment, or
 - (v) Adult Disability Payment, and
 - (b) regulation 4 (entitlement to other benefits) is treated as omitted.

PART 8

Effect of time spent in care homes, hospital and legal detention

Effect of admission to a care home on ongoing entitlement to Pension Age Disability Payment

19.—(1) This regulation applies where an individual who has an ongoing entitlement to Pension Age Disability Payment becomes a resident of a care home.

(2) Subject to paragraph (4) and regulation 21 on the day after the day on which the individual has been resident in a care home for 28 days, and for so long as the individual continues to reside in such a home, the value of Pension Age Disability Payment that is to be given to the individual is to be £0 instead of the values set out in regulation 26 (amount and form of Pension Age Disability Payment).

(3) The 28 days referred to in paragraph (2) may comprise two or more separate periods, provided that there is no more than 28 days between each period.

(4) Paragraph (2) does not apply to a resident in a care home, where the full costs of any qualifying services are met—

- (a) entirely out of the resources of the individual for whom the qualifying services are provided,

- (b) partly out of the resources of the individual for whom the qualifying services are provided and partly out of the resources of another person (other than a local authority) or assistance from a charity, or
- (c) entirely out of the resources of another person (other than a local authority) or assistance from a charity.

Effect of admission to hospital on ongoing entitlement to Pension Age Disability Payment

20.—(1) This regulation applies where an individual who has an ongoing entitlement to Pension Age Disability Payment—

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

(2) Subject to regulation 21, on the day after the day on which the individual has been an in-patient in a hospital or similar institution for 28 days, and for so long as the individual continues to be an in-patient in such an institution, the value of Pension Age Disability Payment that is to be given to the individual is £0 instead of the values set out in regulation 26 (amount and form of Pension Age Disability Payment).

(3) The 28 days referred to in paragraph (2) may comprise two or more separate periods, provided that there is no more than 28 days between each period.

(4) 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 in-patient in—

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

Exception: Hospices

21.—(1) Regulations 19(2) and 20(2) do not apply where the individual is residing in a hospice and has a terminal illness.

(2) In this regulation, “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 (within the meaning of section 108(1) of the National Health Service (Scotland) Act 1978(e)) in Scotland,
- (b) a health service hospital (within the meaning of section 275(1) of the National Health Service Act 2006(f)) in England,
- (c) a hospital in Wales vested in—
 - (i) an NHS trust,

(a) 2006 c. 41.
 (b) 2006 c. 42.
 (c) 1978 c. 29.
 (d) The Defence Council was established by section 1 of the Defence (Transfer of Functions) Act 1964 (c. 15).
 (e) 1978 c. 29. Section 108(1) was relevantly amended by paragraph 6(a) of schedule 6 of the Health Services Act 1980 (c. 53) and paragraph 19(22)(b) of schedule 9 of the National Health Service and Community Care Act 1990 (c. 19).
 (f) 2006 c. 41. Section 275 was relevantly amended by paragraph 138(2)(b) of schedule 4(12) of the Health and Social Care Act 2012 (c. 7).

- (ii) a Local Health Board, or
- (iii) the Welsh Ministers,

for the purpose of functions under the National Health Service (Wales) Act 2006^(a),

- (d) a hospital maintained or administered by the Defence Council, or
- (e) an institution similar to a hospital mentioned in any of the preceding sub-paragraphs.

(3) In this regulation—

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

“Local Health Board” means a body established under section 11 of that Act.

Effect of legal detention on ongoing entitlement to Pension Age Disability Payment

22.—(1) This regulation applies where an individual who has an ongoing entitlement to Pension Age Disability Payment begins a period of legal detention.

(2) For the purposes of this regulation, an individual is to be treated as though they are not in legal detention on any day on which they are an in-patient in a hospital or in a hospice.

(3) On the day after the day on which the individual enters legal detention, and for so long as the individual continues to be in legal detention, instead of the values set out in regulation 26 (amount and form of Pension Age Disability Payment) the value of Pension Age Disability Payment that is to be given to the individual is to be £0.

(4) Paragraph (3) of this regulation does not apply to an individual where—

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

Calculation of periods of time spent in a care home, hospital or legal detention

23.—(1) Subject to paragraphs (3) to (6), a period during which an individual is—

- (a) resident in a care home for the purpose of regulation 19,
- (b) an in-patient in hospital or similar institution for the purpose of regulation 20,
- (c) in legal detention for the purpose of regulation 22, or
- (d) resident in a care home, an in-patient in a hospital or similar institution, or in legal detention for the purposes of regulation 24,

is to be determined in accordance with this regulation.

(2) Such a period is to be taken to—

- (a) begin on the day after the day on which the individual enters the place, and
- (b) end on the day before the day on which the individual leaves the place.

(3) Where an individual takes a period of leave from a place mentioned in paragraph (1), the days on which the individual begins and returns from leave are not to be counted as days of residence in that place.

(4) Days constituting a period of leave are not to be counted as days of residence in a place.

(5) Where an individual enters a place (“the second place”) under paragraph (1) as a result of transfer from another place (“the first place”) under that paragraph—

- (a) the day of transfer is to be counted as a day of residence in the second place, and

(a) 2006 c. 42.

- (b) for the purposes of calculating when the individual has been in the second place for 28 days for the purposes of regulations 19(2), 20(2) and 22(3)—
 - (i) the days that they were resident in the first place are to be treated as days of residence in the second place,
 - (ii) if they were resident in the first place for more than 28 days, the individual is to be treated as though they have been resident in the second place for 28 days on the day before the day of transfer, and
 - (c) the period of residence in the first place is deemed to end on the day on which the period of residence in the second place ends.
- (6) For the purposes of this regulation, ‘days of residence’ means—
- (a) days resident in a care home in terms of regulation 19 or 24,
 - (b) days as an in-patient in hospital or similar institution in terms of regulation 20 or 24, and
 - (c) days in legal detention in terms of regulation 22 or 24.

Entitlement beginning while in alternative accommodation

24.—(1) This regulation applies where an individual is resident in a care home, an in-patient in a hospital or similar institution, or in legal detention on the day on which their entitlement to Pension Age Disability Payment begins.

(2) On and after that day, and for so long as the individual continues to reside in a place mentioned in paragraph (1), instead of the values set out in regulation 26 (amount and form of Pension Age Disability Payment), in respect of Pension Age Disability Payment, the individual is to be given the value of £0—

- (a) where the individual is resident in a care home,
- (b) where the individual is—
 - (i) undergoing medical or other treatment as an in-patient in a hospital or similar institution, and
 - (ii) any of the costs of the treatment, accommodation and any related services provided for them are borne out of public funds within the meaning of regulation 3(4), or
- (c) where the individual is in legal detention.

(3) Paragraphs (1) and (2) do not apply where the individual is a resident in a care home, and the full costs of any qualifying services are met—

- (a) entirely out of the resources of the individual for whom the qualifying services are provided,
- (b) partly out of the resources of the individual for whom the qualifying services are provided and partly out of the resources of another person (other than a local authority) or assistance from a charity, or
- (c) entirely out of the resources of another person (other than a local authority) or assistance from a charity.

PART 9

Making of applications and payments and duration of eligibility

Making payments

25.—(1) Where Pension Age 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.

Amount and form of Pension Age Disability Payment

26.—(1) The weekly rate of payment of Pension Age Disability Payment is, where the individual is entitled to—

- (a) the lower rate, £68.10, or
- (b) the higher rate, £101.75.

(2) Where an individual is entitled to payment of Pension Age Disability Payment for a period shorter than one week, payment is to be made at one-seventh of the relevant weekly rate, for each day of entitlement.

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

- (a) Pension Age Disability Payment, and
- (b) payment of an amount in respect of constant attendance under section 104 of the Social Security Contributions and Benefits Act 1992^(a) or article 8 of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 2006^(b),

the amount of Pension Age Disability Payment that is to be given to the individual is to be reduced by the amount paid under that section or article, as the case may be.

(4) For the purpose of calculating the amount of the Pension Age Disability Payment that is to be given to the individual, in accordance with paragraph (3), where the amount in respect of constant attendance is equal to or greater than the amount of Pension Age Disability Payment, the value of the Pension Age Disability Payment that is to be given to the individual is to be £0.

(5) Pension Age Disability Payment is only to be given in the form of money, except as provided for by regulation 37 (form of payment – giving Pension Age Disability Payment by way of deduction).

When an application is to be treated as made

27.—(1) An application for Pension Age 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 a requirement in—
 - (i) regulation 5 (eligibility criteria: daytime and night-time condition and required period),
 - (ii) regulation 7 (entitlement to Pension Age Disability Payment when undergoing renal dialysis),
 - (iii) regulations 9 to 16 (residence and presence conditions), or
 - (iv) regulation 17 (age criteria),

if the application were treated as made on the day it was received, and

- (b) would likely be entitled to receive Pension Age Disability Payment if those requirements were satisfied within a 26 week period beginning on the day it was received,

(a) 1992 c 4.

(b) S.I. 2006/06.

the Scottish Ministers may choose the date within that 26 week period on which the application is to be treated as made.

Beginning of entitlement to assistance

28.—(1) Where, on the basis of an application, a determination is made that an individual is entitled to Pension Age Disability Payment, the date on which entitlement begins is to be identified in accordance with paragraphs (2) to (4).

(2) 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 by, or on behalf of, the individual to the Scottish Ministers for the purpose of an application for Pension Age Disability Payment, entitlement begins on whichever is the later of the day—

- (a) on which the required data was submitted, or
- (b) identified in accordance with paragraph (2) of regulation 27.

(3) Subject to paragraph (4), where an application is made after the 8 week period described in paragraph (2), entitlement begins on the day on which the application is treated as made in accordance with regulation 27.

(4) Where the Scottish Ministers are satisfied that there is good reason why an application was made after the 8 week period described in paragraph (2), they may treat the application as having been made within that period.

(5) For the purposes of section 38(3) (application for assistance) of the 2018 Act, the period covered by an application for Pension Age Disability Payment—

- (a) under paragraph (1)(a) of regulation 27—
 - (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, and
- (b) under paragraph (1)(b) of regulation 27—
 - (i) is deemed to begin on the day before the determination of entitlement is made provided that the requirements are satisfied, and
 - (ii) ends on the day on which the determination of entitlement is made.

Time of Payment

29. Where an award of Pension Age Disability Payment is made, the Scottish Ministers are to make—

- (a) the first payment of assistance on a date specified in the notice of determination, and
- (b) any subsequent payment—
 - (i) 4 weekly in arrears, or
 - (ii) where regulation 18 (entitlement under special rules for terminal illness) applies, weekly in advance.

Continuing eligibility

30.—(1) Subject to paragraphs (3) and (4), a determination that an individual is entitled to Pension Age Disability Payment in respect of a period is to be made on the basis that the individual has an ongoing entitlement to Pension Age Disability Payment after the end of that period, except where paragraph (2) applies.

(2) This paragraph applies where, after the end of the period mentioned in paragraph (1), the individual no longer satisfies the eligibility rules.

(3) A determination of ongoing entitlement is made on the basis that—

- (a) the individual will continue to be entitled to Pension Age Disability Payment for a fixed or indefinite period as specified in the notice of determination, and

- (b) the decision that the individual is entitled to Pension Age Disability Payment for each subsequent 4-week period is to be taken in accordance with these Regulations, on the strength of the assumptions set out in paragraph (4).
- (4) The assumptions are that—
 - (a) the individual continues to satisfy the eligibility criteria which were satisfied to be entitled to Pension Age Disability Payment under the determination mentioned in paragraph (1),
 - (b) the information on which the determination mentioned in paragraph (1) was made still applies and is relevant in the individual’s case, and
 - (c) there is no change in circumstances of the individual which would require to be notified under section 56 (duty to notify change of circumstances) of the 2018 Act.

Circumstances in which assistance may be suspended

31.—(1) The Scottish Ministers may decide that an individual who has an ongoing entitlement to Pension Age Disability Payment in respect of a period by virtue of regulation 30 (continuing eligibility) is not to become entitled to be given some or all of Pension Age Disability Payment at the time at which the individual otherwise would in accordance with that regulation, as read with regulation 29 (time of payment) (referred to in these Regulations as a decision to suspend the individual’s Pension Age Disability Payment).

(2) Where such a decision is made in respect of an individual, payments of Pension Age Disability Payment to that individual are to be suspended until such a time as the Scottish Ministers decide that the individual is once again to become entitled to be given Pension Age Disability Payment.

(3) The Scottish Ministers may decide to suspend an individual’s Pension Age Disability Payment only in the circumstances where—

- (a) section 54(1A) of the 2018 Act(a) applies, or
- (b) the Scottish Ministers have made arrangements (whether under section 85B of the 2018 Act(b) or otherwise) for a person to receive the Pension Age Disability Payment on the individual’s behalf, and the Scottish Ministers consider that it is necessary to suspend the Pension Age Disability Payment—
 - (i) in order to protect the individual from the risk of financial abuse, or
 - (ii) because the person with whom the Scottish Ministers have made arrangements is unable to continue to receive the Pension Age Disability Payment.

(4) In this regulation, “financial abuse” includes—

- (a) having money or other property stolen,
- (b) being defrauded,
- (c) being put under pressure in relation to money or other property,
- (d) having money or other property misused.

Having regard to financial circumstances

32. The Scottish Ministers must have regard to an individual’s financial circumstances prior to making a decision to suspend payment to the individual of some or all of Pension Age Disability Payment.

(a) 2018 asp 9. Section 54(1A) was inserted by section 12(3)(b) of the Social Security Administration and Tribunal Membership (Scotland) Act 2020 (asp 18).

(b) Section 85A was inserted by section 1(2) of the Social Security Administration and Tribunal Membership (Scotland) Act 2020 (asp 18). Section 85B was inserted by section 2(4) of the Social Security Administration and Tribunal Membership (Scotland) Act 2020 (asp 18).

Information to be given following suspension

33.—(1) Having made a decision to suspend an individual’s Pension Age Disability Payment, the Scottish Ministers must inform the individual of—

- (a) their decision to suspend the individual’s Pension Age Disability Payment,
- (b) the reasons for their decision,
- (c) any steps which might be taken by the individual in order for the Scottish Ministers to consider ending the suspension, and
- (d) the individual’s right under regulation 34 to require the Scottish Ministers to review their decision to suspend the individual’s Pension Age Disability Payment.

(2) The Scottish Ministers must fulfil their duty under paragraph (1) in a way that leaves the individual with a record of the information which the individual can show to, or otherwise share with, others.

Right to review suspension

34.—(1) An individual may require the Scottish Ministers to review their decision to suspend that individual’s Pension Age Disability Payment.

(2) The Scottish Ministers must—

- (a) complete a review mentioned in paragraph (1) within 31 days beginning with the day when they received notice from the individual requiring them to review their decision,
- (b) inform the individual of the outcome of the review including reasons for their decision.

(3) The Scottish Ministers must fulfil their duty under paragraph (2)(b) in a way that leaves the individual with a record of the information which the individual can show to, or otherwise share with, others.

Ending a suspension

35. The Scottish Ministers are to make a decision to end a suspension where—

- (a) the individual provides the information requested under section 54(1) of the 2018 Act^(a) and the Scottish Ministers consider that they do not require to make a determination without application,
- (b) regulation 31(3)(a) applies and the Scottish Ministers make a determination without application under regulation 40 (consideration of entitlement after specified period), 41 (determination following change of circumstances, etc.), 42 (determination following official error – underpayments), 43 (determination following error – overpayments) or 44 (determination to effect a deduction decision),
- (c) the Scottish Ministers make a determination under section 54(2) of the 2018 Act^(b),
- (d) the circumstances mentioned in regulation 31(3)(b) no longer apply, or
- (e) the Scottish Ministers consider it appropriate in the circumstances, including having regard to the financial circumstances of the individual.

Effect of suspension ending

36. When—

- (a) the suspension of an individual’s Pension Age Disability Payment ends, and

(a) 2018 asp 9. Section 54(1A) was inserted by section 12(3)(b) of the Social Security Administration and Tribunal Membership (Scotland) Act 2020 (asp 18).

(b) Section 54(2) was amended by section 12(3)(c) of the Social Security Administration and Tribunal Membership (Scotland) Act 2020 (asp 18).

- (b) under the latest determination of the individual's entitlement to Pension Age Disability Payment relating to the period of the suspension the individual would have become entitled to be given Pension Age Disability Payment during that period,

the individual is immediately to be given the Pension Age Disability Payment that the individual would have become entitled to be given under the determination during the period of suspension.

Form of payment – giving Pension Age Disability Payment by way of deduction

37.—(1) Where an individual has a liability to the Scottish Ministers under section 63 of the 2018 Act (liability for assistance given in error), the individual's payment of Pension Age Disability Payment 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 paragraph (1), "reasonable level" means a level that is reasonable having regard to the financial circumstances of the individual.

When an increase in level of entitlement takes effect

38.—(1) Where, as a result of a determination without an application, the rate of Pension Age Disability Payment payable in respect of an individual is increased, the change takes effect—

- (a) [in the case of an increase pursuant to a determination made under regulation 41(c) or 41(d) (determination following change of circumstances etc.) on the day after the day on which Attendance Allowance ceased to be paid in respect of the individual,]
- (b) in the case of an award of entitlement or increase pursuant to a determination made in accordance with regulation 41(a) that affects their eligibility under regulation 5 (eligibility criteria: daytime and night-time condition and required period), on the date when—
 - (i) if as a result of the individual reporting the change—
 - (aa) if the individual reports the change within one month of the change occurring, the individual first satisfies the requirements for the higher rate of Pension Age Disability Payment,
 - (bb) if the individual reports the change within more than one month but not more than 13 months of the change occurring, the individual first satisfies the requirements for a higher rate of Pension Age Disability Payment, but only if the Scottish Ministers consider that the individual had good reason for not notifying the change within one month, or
 - (cc) in any other case, the individual reports the change.
 - (ii) if as a result of the Scottish Ministers becoming aware that a determination of an individual's entitlement was made in ignorance of a material fact, on the date when the Scottish Ministers make the determination.
- (c) in the case of an earlier determination which was based on official error within the meaning of regulation 42 (determination following official error – underpayments) or on error within the meaning of regulation 43 (determination following error – overpayments), on the date when the earlier determination took effect,
- (d) in the case of a determination made in accordance with regulation 41(a), where the period that an individual has been—
 - (i) resident in a care home for the purpose of regulation 19,
 - (ii) an in-patient in hospital or similar institution for the purpose of regulation 20,
 - (iii) in legal detention for the purpose of regulation 22, or

- (iv) resident in a care home, an in-patient in a hospital or similar institution, or in legal detention for the purposes of regulation 24,

has come to an end, on the day on which the individual leaves the place, or

- (e) in any other case, on the date when the Scottish Ministers make the determination.

(2) Where the Scottish Ministers consider that in all the circumstances it would be unjust not to do so, they may, when making their determination, set an earlier date for the purposes of paragraph (1) (b), (c), (d) or (e).

(3) This regulation does not apply to an individual to whom regulation 18 (entitlement under special rules for terminal illness) applies.

(4) Where an individual has previously received Pension Age Disability Payment for a period and a determination without application has subsequently been made that the same individual is entitled to Pension Age Disability Payment at a higher rate for that period, that individual will be entitled to the difference between the value of entitlement to Pension Age Disability Payment under the subsequent determination and the value of Pension Age Disability Payment to which that individual was previously entitled for that period.

When a decrease in level or cessation of entitlement takes effect

39.—(1) Where, as a result of determination without an application, the rate of Pension Age Disability Payment payable in respect of an individual is decreased or their entitlement is ceased, the change takes effect—

- (a) [in the case of a decrease pursuant to a determination made under regulation 41(c) or 41(d) (determination following change of circumstances etc.) on the day after the day on which Attendance Allowance ceased to be paid in respect of the individual,]
- (b) in the case of a determination without application under regulation 40 or 41(a), on the date—
 - (i) where the individual was required to notify a change under section 56 of the 2018 Act, if the individual—
 - (aa) knowingly fails to notify a change, or
 - (bb) fails to notify the change as soon as reasonably practicable after it occurred,

the individual should have notified the Scottish Ministers of the change, or

- (ii) in any other case, the Scottish Ministers make the determination,
- (c) in the case of a determination under regulation 41(b), on the date of the individual's death,
- (d) in the case of an earlier determination which was based on official error within the meaning of regulation 42 (determination following official error – underpayments) or on error within the meaning of regulation 43 (determination following error – overpayments), on the date when the earlier determination took effect,
- (e) in any other case, on the date when the Scottish Ministers make the determination.

(2) Where the Scottish Ministers consider that in all the circumstances it would be unjust not to do so, they may, when making their determination, set a later date for the purposes of paragraph (1) (b), (c), (d) or (e).

PART 10

Determination of entitlement to Pension Age Disability Payment without application

Consideration of entitlement after specified period

40. The Scottish Ministers must make a determination of an individual's entitlement to Pension Age Disability Payment, without receiving an application, after the end of the period specified (if any) in—

- (a) the individual's notice of determination under section 40 or notice of re-determination under section 44 (as the case may be), or
- (b) a determination made by the First-tier Tribunal for Scotland under section 49,

of the 2018 Act.

Determination following change of circumstances etc.

41. The Scottish Ministers must make a determination of an individual's entitlement to Pension Age Disability Payment, without receiving an application, where the individual has an ongoing entitlement to Pension Age Disability Payment and they become aware—

- (a) of a change of circumstances, whether or not notified by the individual in accordance with section 56 of the 2018 Act, or where the Scottish Ministers become aware that a determination of an individual's entitlement was made in ignorance of a material fact, which would possibly result in an alteration to the rate of Pension Age Disability Payment payable to the individual or which is likely to mean that the individual is no longer entitled to Pension Age Disability Payment,
- (b) that the individual has died,
- (c) [of an alteration of the rate of award of Attendance Allowance which the individual was entitled to immediately before the date of transfer to Pension Age Disability Payment in accordance with Part 2 of schedule 1 (transitional provisions) as a result of a decision made pursuant to—
 - (i) a revision under regulation 3 of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (“the 1999 Regulations”)(a),
 - (ii) a supersession under regulation 6 of the 1999 Regulations,
 - (iii) an appeal under section 12 of the Social Security Act 1998 (“the 1998 Act”)(b),
 - (iv) a re-consideration under section 13 of the 1998 Act,
 - (v) an appeal to the Upper Tribunal under section 14 of the 1998 Act,
 - (vi) a revision under article 10 of the Social Security (Northern Ireland) Order 1998 (“the 1998 Order”)(c),
 - (vii) a supersession under article 11 of the 1998 Order,
 - (viii) an appeal under article 13 of the 1998 Order, or
 - (ix) an appeal to the Commissioner under article 15 of the 1998 Order,]
 - (d) of an alteration of the rate of award of Attendance Allowance which the individual was entitled to immediately before moving to Scotland in circumstances in which regulation 45 (individuals in respect of whom Attendance Allowance is paid in another part of the United Kingdom immediately before moving to Scotland) applies, as a result of a decision made pursuant to—
 - (i) a revision under regulation 3 of the 1999 Regulations,

(a) S.I. 1999/991.

(b) 1998 c. 14.

(c) 1998 No. 1506 (N.I. 10).

- (ii) a supersession under regulation 6 of the 1999 Regulations,
- (iii) an appeal under section 12 of the 1998 Act,
- (iv) a re-consideration under section 13 of the 1998 Act,
- (v) an appeal to the Upper Tribunal under section 14 of the 1998 Act,
- (vi) a revision under article 10 of the 1998 Order,
- (vii) a supersession under article 11 of the 1998 Order,
- (viii) an appeal under article 13 of the 1998 Order, or
- (ix) an appeal to the Commissioner under article 15 of the 1998 Order.

Determination following official error – underpayments

42.—(1) The Scottish Ministers are to make a determination of an individual’s entitlement to Pension Age Disability Payment, without receiving an application, where—

- (a) they have previously made a determination of the individual’s entitlement to Pension Age Disability Payment (“the original determination”),
- (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 Pension Age Disability Payment, or
 - (ii) being given a lower award than that,
 - (iii) to which the individual was entitled,
- (c) the Scottish Ministers are not considering a request for a re-determination of the individual’s entitlement to Pension Age Disability Payment, and
- (d) the individual has not appealed to the First-tier Tribunal for Scotland against the Scottish Ministers’ determination of the individual’s entitlement to Pension Age Disability Payment.

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

- (a) the information—
 - (i) provided in the application that led to the original determination,
 - (ii) any other information they have obtained in connection with that application, and
- (b) any other information they have obtained in connection with the individual’s entitlement to Pension Age Disability Payment.

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

Determination following error – overpayments

43.—(1) The Scottish Ministers are to make a determination of an individual’s entitlement to Pension Age Disability Payment, without receiving an application, where—

- (a) they have previously made a determination of the individual’s entitlement to Pension Age Disability Payment (“the original determination”),
- (b) they establish that, due to an error, the original determination was incorrect resulting in the individual being given—
 - (i) an award of Pension Age Disability Payment to which the individual was not entitled, or
 - (ii) a higher award than that to which the individual was entitled,
- (c) the Scottish Ministers are not considering a request for a re-determination of the individual’s entitlement to Pension Age Disability Payment, and

- (d) the individual has not made an appeal to the First-tier Tribunal for Scotland or Upper Tribunal against the Scottish Ministers' determination of the individual's entitlement to Pension Age Disability Payment, that has not yet been determined.
- (2) In making a determination required by paragraph (1) the Scottish Ministers are to use—
- (a) the information—
 - (i) provided in the application that led to the original determination, and
 - (ii) any other information they have obtained in connection with that application,
 - (b) any other information they have obtained in connection with the individual's entitlement to Pension Age Disability Payment, and
 - (c) any other information available to them that is relevant to their consideration of whether the individual is entitled to Pension Age Disability Payment.
- (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 having not been made after an assumption on the basis of which an earlier determination was made has proven to be wrong.

Determination to effect a deduction decision

44.—(1) The Scottish Ministers are to make a determination of an individual's entitlement to Pension Age Disability Payment, without receiving an application, where the circumstances in paragraphs (2) and (3) apply.

- (2) This paragraph applies where—
- (a) regulation 37 (form of payment – giving Pension Age Disability Payment by way of deduction) allows Pension Age Disability Payment to be given to the individual by way of deduction, or
 - (b) Pension Age Disability Payment is being given to the individual by way of deduction, and the Scottish Ministers consider that may no longer be appropriate.
- (3) This paragraph applies where the Scottish Ministers have decided to—
- (a) vary the amount of Pension Age Disability Payment to be given by way of deduction (including introducing a deduction, where the full amount of Pension Age Disability Payment was previously given as money),
 - (b) vary any period for which the individual's Pension Age Disability Payment 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 Pension Age Disability Payment in the form of money.
- (4) The Scottish Ministers are to make a determination, without receiving an application, where an individual who is receiving Pension Age Disability Payment by way of deduction under a previous determination of entitlement notifies the Scottish Ministers that the individual—
- (a) withdraws their agreement to their Pension Age Disability Payment being given by way of deduction,
 - (b) wishes the Scottish Ministers to increase the amount of their Pension Age Disability Payment that is given by way of deduction,

- (c) wishes the Scottish Ministers to decrease the amount of their Pension Age 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 paragraph (3)(b).

PART 11

Movement of individuals between Scotland and the rest of the United Kingdom

Individuals in respect of whom Attendance Allowance is paid in another part of the United Kingdom immediately before moving to Scotland

45.—(1) Where an individual—

- (a) becomes resident in Scotland,
- (b) was resident in another part of the United Kingdom, and
- (c) was entitled to Attendance Allowance immediately before the date of the move,

the Scottish Ministers are to make a determination without application of the individual's entitlement to Pension Age Disability Payment.

(2) Entitlement to Pension Age Disability Payment under paragraph (1) begins on the day after the day on which the individual's entitlement to Attendance Allowance ends.

(3) In this regulation, "the date of the move" is the date when the individual becomes resident in Scotland, as notified by the individual or otherwise communicated to the Scottish Ministers (whether the notification takes place before or after the date of the move).

Individuals in respect of whom Pension Age Disability Payment is paid at the time of moving to another part of the United Kingdom

46.—(1) Where the Scottish Ministers become aware that an individual who is entitled to Pension Age Disability Payment has moved or is to move to become resident in another part of the United Kingdom, the individual is to be treated as though the individual meets the condition under regulation 9(1)(a) of being ordinarily resident in Scotland for a period of 13 weeks beginning in accordance with paragraph (4).

(2) Subject to Part 8 (effect of time spent in care homes, hospital and legal detention), where the Scottish Ministers become aware that an individual has moved or is to move to another part of the United Kingdom mentioned in paragraph (1), they are to make a determination without application at the end of the 13 week period mentioned in paragraph (1) that the individual's entitlement to Pension Age Disability Payment is to terminate.

(3) Where before the end of the 13-week period, the Scottish Ministers become aware that the individual is no longer to move to become resident in another part of the United Kingdom, the duty in paragraph (2) does not apply.

(4) The 13-week period mentioned in paragraph (1) begins on the date the individual ceases to be ordinarily resident in Scotland.

(5) On the day after the 13-week period specified in paragraph (4) ends—

- (a) entitlement to Pension Age Disability Payment ceases, and
- (b) regulation 43 (determination following error – overpayments) applies to any Pension Age Disability Payment paid to an individual in relation to a period after the end of that 13-week period.

PART 12

Periods in respect of a re-determination request

Periods in respect of a re-determination request

47.—(1) The period for requesting a re-determination of entitlement to Pension Age Disability Payment under section 41 of the 2018 Act (right to request re-determination) is 42 days beginning with the day that the individual is informed, in accordance with section 40 of the 2018 Act (notice of determination), of the right to make the request.

(2) In relation to determining entitlement to Pension Age Disability Payment, the period allowed for re-determination (within the meaning of section 43 of the 2018 Act (duty to re-determine)) is 56 days beginning with—

- (a) the day that the request for a re-determination is received by the Scottish Ministers,
- (b) in a case where the request for a re-determination is received by the Scottish Ministers outwith the period prescribed in paragraph (1), the day on which it is decided by the Scottish Ministers or (as the case may be) the First-tier Tribunal for Scotland that the individual in question has a good reason for not requesting a re-determination sooner, or
- (c) in a case where the Scottish Ministers have informed the individual of their decision that the request for re-determination was not made in such form as the Scottish Ministers require, the day on which it is subsequently decided by the First-Tier Tribunal for Scotland that the individual in question has made the request in such form as the Scottish Ministers require.

[PART 13

Transfer from Attendance Allowance to Pension Age Disability Payment

48. Part 2 of schedule 1 makes provision about transferring from Attendance Allowance to Pension Age Disability Payment.]

PART 14

Short-term assistance

Entitlement to short-term assistance

49. Part 1 of schedule 1 makes provision about short-term assistance.

St Andrew's House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

SCHEDULE

PART 1

Regulation 49

Short-term assistance

Entitlement to short-term assistance

50.—(1) Subject to sub-paragraph (2), an individual who is, or was, entitled to Pension Age Disability Payment under a determination made on the basis that the individual has ongoing entitlement is entitled to short-term assistance where—

- (a) a determination of the individual's entitlement to Pension Age Disability Payment ("earlier determination") has been superseded by a subsequent determination ("subsequent determination") which has the effect that the individual is—
 - (i) no longer entitled to Pension Age Disability Payment, or
 - (ii) entitled to a lower amount of Pension Age Disability Payment,
- (b) the individual's entitlement to Pension Age Disability Payment is under review within the meaning of—
 - (i) paragraph 1(2) of schedule 10 of the 2018 Act, or
 - (ii) sub-paragraph (2), and
- (c) the individual—
 - (i) continues to meet the conditions as to residence and presence set out in Part 5 or
 - (ii) has transferred to become resident in another part of the United Kingdom, and the matter under review is the determination of entitlement for the 13-week period beginning in accordance with regulation 46 (individuals in respect of whom Pension Age Disability Payment is paid at the time of moving to another part of the United Kingdom).

(2) An individual's entitlement to Pension Age Disability Payment is under review in terms of sub-paragraph (1)(b)(ii) if—

- (a) a decision of the First-tier Tribunal for Scotland under section 49 of the 2018 Act, in relation to the subsequent determination of the individual's entitlement to Pension Age Disability Payment mentioned in sub-paragraph (1)(a), is set aside after a review under section 43(2) of the Tribunals (Scotland) Act 2014^(a) ("the 2014 Act"), and
- (b) the First-tier Tribunal for Scotland decide not to uphold a determination of an individual's entitlement to Pension Age Disability Payment in an appeal under section 46 of the 2018 Act and the First-tier Tribunal for Scotland are to make a determination of the individual's entitlement to Pension Age Disability Payment under section 49 of the 2018 Act.

(3) Where—

- (a) an individual's entitlement to Pension Age Disability Payment is set aside after a review in terms of sub-paragraph (2)(a), and
- (b) the individual had previously been awarded short-term assistance on the basis that their entitlement to Pension Age Disability Payment was under review by the First-tier Tribunal prior to it making the decision that has been set aside,

the Scottish Ministers are to make a determination without application of the individual's entitlement to short-term assistance.

(4) Where—

(a) 2014 asp 10.

- (a) the First-tier Tribunal for Scotland set aside a decision by the Scottish Ministers not to accept a request for a re-determination of the individual's entitlement to Pension Age Disability Payment mentioned in sub-paragraph (1)(a), and
- (b) the Scottish Ministers had previously determined, pursuant to an application made by the individual, that the individual was not entitled to short-term assistance on the basis that the subsequent determination referred to in sub-paragraph (1)(a) was not under review,

the Scottish Ministers are to make a determination without application of the individual's entitlement to short-term assistance.

(5) An individual is not entitled to short-term assistance where the individual is no longer entitled to Pension Age Disability Payment as a result of a subsequent determination made under regulation 41(b) (determination following change of circumstances etc.).

(6) An individual to whom regulation 19(2) (effect of admission to a care home on ongoing entitlement to Pension Age Disability Payment), regulation 20(2) (effect of admission to hospital on ongoing entitlement to Pension Age Disability Payment), regulation 22(3) (effect of legal detention on ongoing entitlement to Pension Age Disability Payment), or 24(2) (entitlement beginning while in alternative accommodation) applies is not entitled to short-term assistance in respect of Pension Age Disability Payment for which the value is to be £0 under those regulations.

(7) Where the Scottish Ministers have made a determination under section 37 of the 2018 Act (duty to make determination) that an individual is entitled to short-term assistance, entitlement to short-term assistance begins—

- (a) where a request is made under section 41 of the 2018 Act (right to request re-determination) for a re-determination of the individual's entitlement to Pension Age Disability Payment mentioned in sub-paragraph (1)(a), on the day that request is made,
- (b) where a notice of appeal is submitted under section 47 of the 2018 Act (initiating an appeal) against the determination of the individual's entitlement to Pension Age Disability Payment mentioned in sub-paragraph (1)(a), on the day that request is made,
- (c) where a decision of the Scottish Ministers is made not to accept a request for a re-determination of the individual's entitlement to Pension Age Disability Payment mentioned in sub-paragraph (1)(a), on the day that decision is set aside by the First-tier Tribunal for Scotland,
- (d) where a request is made under section 48(1)(b) of the 2018 Act (deadline for appealing) for permission to appeal the determination of the individual's entitlement to Pension Age Disability Payment mentioned in sub-paragraph (1)(a), on the day that request is made, or
- (e) where a decision of the First-tier Tribunal for Scotland under section 49 of the 2018 Act, in relation to the subsequent determination of the individual's entitlement to Pension Age Disability Payment mentioned in sub-paragraph (1)(a), is set aside after a review under section 43(2) of the 2014 Act (review of decisions) and the First-tier Tribunal for Scotland are to make a determination of the individual's entitlement to Pension Age Disability Payment under section 49 of the 2018 Act, on the day that the decision is set aside.

(8) Regulation 47 (periods in respect of a re-determination request) applies to short-term assistance in the same way as it applies to Pension Age Disability Payment.

Value and form

51.—(1) The value of short-term assistance payable is to be the difference between the amount of Pension Age Disability Payment to which the individual was entitled under the earlier determination mentioned in paragraph 1(1)(a), and the amount of Pension Age Disability Payment the individual is entitled to under the subsequent determination mentioned in paragraph 1(1)(a).

(2) The form in which the short-term assistance is to be given is to be the same as the form in which Pension Age Disability Payment was given under the earlier determination.

(3) Regulations 37 (form of payment - giving Pension Age Disability Payment by way of deduction), 42 (determination following official error - underpayments), 43 (determination

following error – overpayments) and 44 (determination to effect a deduction decision) apply to short-term assistance in the same way as they apply to Pension Age Disability Payment.

End of entitlement

52.—(1) When an individual’s entitlement to short-term assistance is to end under subparagraph (2), the Scottish Ministers are to make a determination without application.

(2) Entitlement to short-term assistance ends on the day—

- (a) a determination of an individual’s entitlement to short-term assistance is cancelled under section 26(2) of the 2018 Act (individual’s right to stop receiving assistance),
- (b) a re-determination of an individual’s entitlement to Pension Age Disability Payment is made by the Scottish Ministers under section 43 of the 2018 Act (duty to re-determine),
- (c) the First-tier Tribunal for Scotland makes a determination under section 49 of the 2018 Act (First-tier Tribunal’s power to determine entitlement) in relation to the subsequent determination of the individual’s entitlement to Pension Age Disability Payment mentioned in paragraph 1(1)(a),
- (d) that the First-tier Tribunal for Scotland makes a determination to refuse permission under section 48(1)(b) of the 2018 Act (deadline for appealing) to bring an appeal against the subsequent determination of the individual’s entitlement to Pension Age Disability Payment mentioned in paragraph 1(1)(a), or
- (e) where the individual withdraws their application to bring an appeal against the subsequent determination of the individual’s entitlement to Pension Age Disability Payment mentioned in paragraph 1(1)(a), on that day.

Reduction of Pension Age Disability Payment where short-term assistance is paid

53. Where an individual has received short-term assistance for a period and a determination is subsequently made that the individual is entitled to Pension Age Disability Payment for the same period, any payment of Pension Age Disability Payment to be made as a result of the subsequent determination for that period—

- (a) where the individual is to be paid Pension Age Disability Payment at the same rate as or a lower rate than any short-term assistance and any Pension Age Disability Payment already paid to that individual for that period, is to be reduced to £0, and
- (b) in any other case, is to be reduced by any short-term assistance and any Pension Age Disability Payment already paid to that individual for that period.

[PART 2

Regulation 48

Transfer from Attendance Allowance to Pension Age Disability Payment]

54. [TO BE INCLUDED IN A LATER DRAFT]

EXPLANATORY NOTE

(This note is not part of the Order)

Disability Assistance for Older People (Scotland) Regulations 2024

Explanatory Note for SCoSS

Introduction

1. The Social Security (Scotland) Act 2018 (the 2018 Act) sets out the broad framework for the delivery of devolved social security in Scotland. The draft Disability Assistance for Older People (Scotland) Regulations 2024 set out the detailed entitlement and administrative rules for delivery of this form of Disability Assistance.
2. The proposed name for this benefit is Pension Age Disability Payment (PADP). This name reflects the findings of consultation, Experience Panel survey and user testing and aims to more accurately describe the benefit to attract applicants and maximise take-up.
3. Disability Assistance is set out in section 31 of the 2018 Act:

(1) Disability assistance is assistance (which may or may not take the form of money) given by the Scottish Ministers under section 24 to an individual on account of the individual having—

 - (a) a disability arising from a physical or mental impairment, or*
 - (b) a terminal illness.*
4. This note is intended to be a summary of the policy intent and meaning of the provisions within the draft regulations.

Part 1: Introductory and Interpretation

5. Some terms set out in this section include those that are key to this set of draft regulations but potentially novel in relation to social security in the UK. Other terms relate to phrases used in the existing Attendance Allowance (AA) legislation and the regulations attempt to reflect relevant judgments and case law in how these terms should be defined in relation to PADP.
6. There is a significant amount of case law relating to how certain terms are defined under the current administration of AA. The regulations intend to reflect case law in relation to all terms included.

Part 2: Pension Age Disability Payment

7. Part 2 sets out the overarching framework for entitlement to PADP. Draft regulation 4 sets out that if an individual is entitled to any benefit from the presented list, they are not entitled to PADP.

Part 3: Eligibility

8. Draft regulation 5 sets out the requirements to meet the day time and night time conditions for becoming eligible for PADP. These are that an individual:

- a. Requires frequent attention in connection with their bodily functions, or
 - b. Requires continual supervision so that they don't pose a substantial danger to themselves or others.
9. Draft regulation 5 also sets out the requirement for an individual to have satisfied at least one of the conditions for 26 weeks prior to becoming eligible, to ensure that the payments are for those with long term conditions.
10. Draft regulation 6 sets out that an individual will be entitled to the lower rate if they satisfy the day **or** night time conditions but not both, or the higher rate if they satisfy the day **and** night time conditions.
11. Draft regulation 7 covers the entitlement for those that are undergoing renal dialysis. If an individual is undergoing renal dialysis by day or by night they will meet the respective day or night condition, but dialysis alone does not allow an individual to meet both the day and night time conditions. This means that in order to be entitled to the higher rate award they must have additional care needs outside of their dialysis.

Part 4: Required Period Condition

12. Draft regulation 8 covers the instance where an individual has had a previous award of AA or PADP that ended within 2 years of a new application being made.
13. If the new application is for the same condition as the previous award, or a related condition that has developed from it, then the individual is immediately considered eligible for assistance rather than having to wait for 26 weeks, as the previous award shows that there is a long term element to their needs.

Part 5: Residence and Presence

14. Draft regulations 9-16 describes the residence and presence requirements. These are broadly replicating the existing AA provisions that relate to residence and presence with the addition of a requirement that clients are 'ordinarily resident' in Scotland as Scottish Ministers can only legislate for those in Scotland, and a much shorter "Past Presence Test". This replicates the approach used for Child Disability Payment and Adult Disability Payment.
15. The requirement is that an individual must:
- a. be ordinarily resident in Scotland;
 - b. be habitually resident in the common travel area;
 - c. not be a person 'subject to immigration control'; and
 - d. have been present in the common travel area for at least 26 out of the past 52 weeks (the "Past Presence Test").
16. This allows individuals moving from another part of the common travel area to live in Scotland to qualify for PADP, and avoids potential eligibility gaps which

could arise if a habitual residence test was applied to Scotland. It also honours existing reciprocal agreements between these jurisdictions.

17. Draft regulation 10 makes provision for individuals to travel outside of the common travel area for temporary absences without losing entitlement. Individuals will be free to travel temporarily within the common travel area while receiving PADP. Where an individual moves permanently to another part of the UK they will be under a duty to report that change to Social Security Scotland.
18. Draft regulation 11 covers special residence and presence rules for serving members of His Majesty's forces and civil servants, and draft regulation 12 covers special rules for aircraft workers, mariners and those working in continental shelf operations.
19. Draft regulations 13, 14 and 16 relate to coordination rules with the EU, EEA, Switzerland or Gibraltar, which mean that some components of the existing DWP disability benefits are paid to individuals living in another European country. Our intention is to continue to pay the equivalent parts of PADP to people who are covered by the coordination rules.
20. Draft regulation 15 covers special residence rules for those that have been granted refugee status.

Part 6: Age Criteria

21. Draft regulation 17 requires individuals to have reached state pension age to be eligible, and covers the case of individuals born on February 29th during a leap year.

Part 7: Special Rules for Terminal Illness

22. Draft regulation 18 covers the special rules for an individual with a terminal illness. PADP uses the same rules for terminal illness as CDP and ADP, such that registered medical practitioners or registered nurses will use their clinical judgement to determine whether an individual is terminally ill for the purpose of accessing PADP under special rules. They will pay regard to guidance developed by the Chief Medical Officer when making their clinical judgement, and there is no requirement for a judgement to be made about how long an individual will live.
23. Under the draft regulations, an individual with a terminal illness will be entitled to the higher rate of PADP, regardless of the period of time for which that individual has had a terminal illness. This will allow rapid access to financial support during a sensitive and distressing time for families.

Part 8: Time spent in care homes, hospital and legal detention

24. Draft regulations 19 and 20 set out that if an individual becomes a resident of a care home that they are not paying for themselves, or is an in-patient at a

hospital where the costs are borne out of public funds, the value of their PADP will reduce to £0 after 28 days.

25. Draft regulation 21 provides an exception for those individuals that are residing in a hospice and have a terminal illness.
26. Draft regulation 22 sets out that if an individual begins a period of legal detention, the value of their PADP will reduce to £0 on the day after the day they enter legal detention.
27. The intention behind these draft regulations is to ensure that an individual's care needs are not paid for twice by the public purse, as in these circumstances their care needs will already be being met.
28. Draft regulation 23 covers particulars of how the time spent in a hospital, care home or legal detention is calculated.
29. Draft regulation 24 covers the case where an individual's entitlement to PADP begins when they are in a care home, hospital or legal detention, and means that the value of their PADP is reduced to £0 until they leave the alternative accommodation.

Part 9: Making of applications and payments and duration of eligibility

30. Draft regulation 25 allows for the case where someone else will be receiving the payment on behalf of the individual, for example where they have power of attorney that includes being responsible for finances.
31. Draft regulation 26 covers the amounts that are payable on the lower rate and higher rate (currently £68.10 and £101.75 per week, but may be uprated by time of laying), and that if an individual is receiving Constant Attendance Allowance the payment will be reduced by the equivalent amount.
32. Draft regulation 27 sets out the details of when an application is treated as being made, normally the date that it is received. It can also be treated as being made later (within 26 weeks) if the eligibility criteria have not been met at the time of the application, enabling an individual to apply before they meet the qualifying period.
33. Where there is a gap between parts 1 and 2 of the application being submitted, draft regulation 28 allows the entitlement to assistance to begin when the first part of the application was received as long as it was within 8 weeks. This 8 week period can be extended if there is a good reason why there was a longer period before receiving the full details of the application.
34. Draft regulation 29 covers when payments will be made, mainly 4 weekly in arrears or weekly in advance in the case of individuals that have a terminal illness.

35. Draft regulation 30 sets out that an individual has an ongoing entitlement to PADP unless they no longer satisfy the eligibility rules. This is in relation to the policy of reviews for ongoing assistance rather than awards that expire, so that individuals continue to receive assistance until or unless a review makes a different decision.
36. Draft regulations 31-36 cover the reasons why an award may be suspended, the information that must be given in relation to a suspension, the right of review, when a suspension ends and that an individual's financial circumstances must be taken into account before a decision is taken on a suspension. The powers of suspension are contained within section 51 and schedule 11 of the Social Security (Scotland) Act 2018, and therefore these are the same as for suspensions of CDP or ADP.
37. Draft regulation 37 covers the case where an individual has, in error, been given greater payments than they were entitled to, and to allow PADP to be given as a deduction from the overpayment rather than a payment.
38. Draft regulation 38 sets out when an increase to the value of entitlement takes effect, which if the individual has a good reason can be within 13 months of the change occurring, but otherwise will be when the individual reports the change.
39. Draft regulation 39 shows when a decrease in value or ending of payments takes place, which is generally when the determination is made, but can be set as an earlier date if the individual knowingly failed to report a change in circumstances that would reduce the value of their entitlement.

Part 10: Determination without application

40. There are a number of circumstances where a determination will need to be made on an application without an application being made. Draft regulation 40 deals with the first of these, where a scheduled review date has been reached, either from the initial application or from the determination of the First-tier Tribunal.
41. Draft regulation 41 deals with the cases where there has been a change of circumstances and therefore a determination needs to be made without an application. These circumstances can range from the individual notifying Scottish Ministers of a change in care needs, to the outcome of appeals or the death of the individual.
42. Draft regulations 42 and 43 deal with the impact of underpayments and overpayments respectively, and the information that is to be used in classifying and correcting errors.
43. Draft regulation 44 covers the cases where PADP is being given to an individual by way of a deduction, and the various ways that this can be altered in order to vary the amount, the period, or to cease making deductions and give the individual PADP in the form of money.

Part 11: Movement between Scotland and the rest of the UK

44. When an individual moves from somewhere else in the UK and comes to Scotland, and was receiving AA before they moved, draft regulation 45 covers the start of their entitlement to PADP, which begins on the day after their AA ends.
45. When an individual moves from Scotland to somewhere else in the UK, draft regulation 46 states that they are treated as being resident in Scotland for 13 weeks, to give them time to apply to DWP. After 13 weeks they stop being entitled to PADP.

Part 12: Periods for a re-determination request

46. When an individual requests a re-determination of a decision, draft regulation 47 gives them 42 days after they are informed of the initial decision to request the re-determination. It allows Scottish Ministers 56 days to complete the re-determination.

Part 13 & Schedule 1: Short-term Assistance (STA)

47. Draft regulation 48 references schedule 1 to bring it into the draft regulations.
48. These regulations provide individuals with a right to apply for STA where Social Security Scotland has made a decision to reduce or stop a continuing payment, and that decision is subject to a request for re-determination or an appeal.
49. The policy intention is to ensure an individual is not discouraged from challenging that decision or from accessing administrative justice by having to manage, for a period, with a reduced income. STA is not available in the reserved system.
50. The draft regulations provide that:
 - a. STA will be available if an individual's PADP has been reduced or stopped and that is subject to a challenge;
 - b. STA will be available until Social Security Scotland has made a re-determination, or the First-tier Tribunal (FtT) has made a determination;
 - c. the value of STA will be the difference between the amount prior to the reduction and what it was reduced to.
51. In line with a rights-based approach, individuals have a right to choose whether they want STA, but its availability will be as seamless as possible without the need to complete complicated forms.
52. The availability of STA will not be dependent on meeting conditions of hardship as it would be inconsistent with the policy approach to on-going types of devolved assistance, which will themselves not be subject to means-testing. An application for STA will be processed when an individual requests

a re-determination or an appeal.

53. In Schedule 1, paragraph 1 sets out the entitlement criteria for STA as covered above, and covers when that entitlement begins, which is normally the day that the request is made. If the individual does not initially apply for STA but later changes their mind, the entitlement can be backdated to the day the challenge to the decision was made.
54. Paragraph 2 covers the value and form of STA, and means that the STA should bring the value the individual receives back up to the previous level of PADP awarded to them, and given in the same form that they had previously received.
55. Paragraph 3 sets out the conditions for STA to stop, including when a re-determination is made or if the individual withdraws their application for an appeal.
56. Paragraph 4 covers the circumstances where an individual has received STA for a particular period, and then a subsequent determination indicates that they should receive PADP for that period, and ensures that an individual is not paid twice for the same period.

Peter Bell
Scottish Government
Social Security Directorate
June 2023

Equality Impact Assessment (EQIA)

<p>Title of Policy</p>	<p>The Disability Assistance for Older People (Scotland) Regulations 2024</p>
<p>Summary of aims and desired outcomes of Policy</p>	<p>The Social Security (Scotland) Act 2018 sets out the broad framework for the delivery of the Scottish Government’s social security benefits.</p> <p>On 1 April 2020, executive and legal competence for disability benefits, including Disability Living Allowance for Children, Personal Independence Payment and Attendance Allowance was transferred to Scottish Ministers.</p> <p>Pension Age Disability Payment will be the replacement for Attendance Allowance in Scotland. This new benefit will be delivered by Social Security Scotland.</p> <p>Attendance Allowance will continue to be delivered during a transition period by the Department for Work and Pensions under the terms of an Agency Agreement to ensure the safe and secure transfer to Pension Age Disability Payment.</p> <p>The draft Disability Assistance for Older People (Scotland) Regulations 2024 set out the eligibility criteria and how Social Security Scotland will deliver Pension Age Disability Payment. This benefit will accept new applications from those over State Pension age.</p> <p>The regulations also make provision for the case transfer process for people in Scotland who currently receive Attendance Allowance. These provisions are not currently included within the full draft regulations, however they will be added in due course.</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.
Directorate, Division, Team	Social Security Directorate, Social Security Policy Division, Disability Benefits Policy Unit

Executive Summary

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

The Scottish Government has now replaced Disability Living Allowance for Children with Child Disability Payment, and Personal Independence Payment with Adult Disability Payment. Attendance Allowance is currently being delivered by the Department for Work and Pensions on behalf of the Scottish Government under the terms of an Agency Agreement.

Under the 2018 Act, it is the Scottish Government’s intention to replace Attendance Allowance with Pension Age Disability Payment. This was formerly known as Disability Assistance for Older People. Pension Age Disability Payment will be delivered by Social Security Scotland on behalf of Scottish Ministers. People will be able to challenge a determination by requesting a re-determination, and subsequently they will be able to appeal to the Social Security Chamber of the First-tier Tribunal for Scotland.

The draft Disability Assistance for Older People (Scotland) Regulations 2024 set out the eligibility criteria and how Social Security Scotland will deliver Pension Age Disability Payment. Section 31 of the 2018 Act sets out the legal basis in which Scottish Ministers make regulations for the rules and structures of disability assistance. Therefore, the title of these regulations do not use the specific name of this benefit.

The regulations also make provision for the case transfer process for people in Scotland who currently receive Attendance Allowance. These provisions are not

¹<https://www.legislation.gov.uk/asp/2018/9/contents/enacted>

currently included within the full draft regulations, however they will be added in due course.

Based on information from the Department for Work and Pensions' Stat-Xplore service, there were around 144,000 individuals in August 2022 with an entitlement to Attendance Allowance in Scotland whose awards would transfer to Pension Age Disability Payment.²

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

This Equality Impact Assessment has identified potential impacts on disabled people in Scotland who are over the State Pension age as a result of replacing Attendance Allowance with Pension Age Disability Payment.

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

Background

Pension Age Disability Payment will be a disability benefit for people over State Pension age. It will be awarded to help with extra costs if a person has a disability severe enough that they need someone to help look after them.

As part of the commitment to a safe and secure transfer, Scottish Ministers do not propose to make significant changes to the existing Attendance Allowance eligibility criteria when introducing Pension Age Disability Payment. Examples of this include the replication of the current 6 month qualifying period for Attendance Allowance and continuing alignment by not introducing a mobility component. By maintaining the current eligibility criteria, individuals in Scotland who are eligible for passported benefits and premiums from the UK Government will have seamless access to this vital support. This will provide security to people in Scotland when Pension Age Disability Payment is rolled out.

However, there are some key changes along with a number of practical administrative differences between Pension Age Disability Payment and Attendance Allowance which Scottish Ministers expect to have a positive impact for disabled people in Scotland. These differences have been developed through the commitments under the Social Security Charter.³ The Scottish Government

² <https://stat-xplore.dwp.gov.uk/>

³ https://www.socialsecurity.gov.scot/asset-storage/production/downloads/Our-Charter_1.pdf

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

Application Process

The Scottish Government has made changes to the application process for all forms of disability assistance, including Pension Age Disability Payment, which will help to reduce stress and anxiety for individuals. People interacting with Social Security Scotland will require options and choices that suit them best. Social Security Scotland offers a multi-channel approach including online, telephone, paper-based and face-to-face applications. As well as offering choices, this ensures that those who cannot or choose not to adopt digital methods will not become isolated.

People who require further assistance or would prefer face-to-face support will be able to access that through Social Security Scotland's Local Delivery service. Local Delivery staff will provide one-to-one support and help disabled people to understand what Scottish Government benefits they may be entitled to. They can also provide assistance to complete application forms and take forward any follow-up actions relating to a person's application. It is considered that this support will be of particular benefit to older people applying for Pension Age Disability Payment, as many older people may find completing application forms overwhelming and might not have access to a support network to assist them.

The Scottish Government also launched the Social Security Independent Advocacy Service in January 2022, and has committed to investing £20.4 million in the service over the following four years. The service is free and supports people who self-identify as a disabled person to access and apply for Social Security Scotland assistance.

As with the Scottish Government's other disability benefits, a new approach to gathering supporting information is being utilised by Social Security Scotland which will help reduce stress and anxiety for individuals. A Case Manager will ordinarily only seek one piece of supporting information from a professional to support the decision-making process when making a determination on an individual's entitlement to Pension Age Disability Payment.

Case Managers will use a collaborative approach to help people gather supporting information from a professional, where an individual does not already have this to hand. This includes Case Managers obtaining supporting information from professionals on the individual's behalf. Case Managers can also assist in gathering supporting information from the individual's wider support network, such as a family member or unpaid carer, which can help Social Security Scotland to understand the individual's needs, conditions or disability.

Definition of terminal illness

In August 2022, 3,370 people receiving Attendance Allowance in Scotland had their main condition or disability listed as a terminal illness.⁴

The Scottish Government's definition of terminal illness will support recognition of a wider number of illnesses and conditions through Pension Age Disability Payment than can be accounted for under the current definition in the UK Government system.

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

The Scottish Government included provision in the 2018 Act to introduce a new definition of terminal illness that differs from the current UK Government definition. It removes the arbitrary 12 month timescale currently used by the Department for Work and Pensions. Instead, the judgement as to whether a person should be considered terminally ill for the purposes of determining eligibility for Pension Age Disability Payment will be made by clinicians, based on guidance prepared by the Chief Medical Officer.⁵

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

Applications will be fast tracked from people with a terminal illness. Individuals who are terminally ill will automatically receive the highest rate of Pension Age Disability Payment and there will be no award reviews.

Ongoing awards and reviews

For many people in the current system, the award end date 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 reviews of entitlement.

Providing ongoing awards that are subject to light-touch reviews will help to reduce the stress and anxiety associated with approaching an award review by removing a financial cliff edge for individuals. This is a change from the 'renewal' process for Attendance Allowance, whereby an individual has to complete a new application

⁴ <https://stat-xplore.dwp.gov.uk/>

⁵ <https://www.socialsecurity.gov.scot/asset-storage/production/downloads/Disability-Benefits-Terminal-Illness-CMO-guidance-V1.0.pdf>

form and will see payments stop if they do not reapply in time. By continuing entitlement while a review is taking place, disabled people will continue to receive the assistance they are entitled to until a Case Manager has made a new determination.

Light-touch reviews will make the process easier and less stressful for individuals. This means that Case Managers are able to, if needed, gather supporting information for the person whose award is being reviewed and consider existing information and previous determinations to avoid asking unnecessary questions. Case Managers will be empowered to make a determination without supporting information if this information is unavailable during a review, and request case discussions with practitioners to further reduce the need for intrusive questions.

Having a light-touch review process is more appropriate, particularly where an individual's needs are unlikely to have changed significantly. 66% of respondents to the Consultation on Disability Assistance agreed with this approach alongside general agreement from Experience Panels.^{6,7}

Additionally, when asked if review periods should be between 5-10 years for individuals with conditions unlikely to change, 58% of respondents to the consultation agreed. This will help to cut down on the number of unnecessary award reviews that disabled people will need to go through, and as a result, reduce stress and anxiety, thereby having a positive impact on individuals. Work is also underway to consider in more detail whether and in what circumstances indefinite awards should be made available to people whose needs are highly unlikely to change.

Re-determinations and appeals

The Scottish Government wants to ensure that no one is disadvantaged by time limits for challenging a determination. In response to feedback from the Disability Assistance consultation, Experience Panels and the Disability and Carers Benefits Expert Advisory Group, Scottish Ministers have set the time limit for requesting a re-determination to 42 calendar days across the Scottish Government's disability benefits. This is an increase on the month time limit that is set for requesting a mandatory reconsideration by the Department for Work and Pensions.⁸ This will provide individuals with additional time to seek advice or gather supporting information which might be required before requesting a re-determination.

⁶ <https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-analysis/2019/10/consultation-disability-assistance-scotland-scottish-government-response/documents/social-security-consultation-disability-assistance-scotland-scottish-government-response/social-security-consultation-disability-assistance-scotland-scottish-government-response/govscot%3Adocument/social-security-consultation-disability-assistance-scotland-scottish-government-response.pdf>

⁷ <https://www.gov.scot/publications/social-security-experience-panels-decision-making-reviewing-award-main-report/>

⁸ <https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-analysis/2019/10/consultation-disability-assistance-scotland-scottish-government-response/documents/social-security-consultation-disability-assistance-scotland-scottish-government-response/social-security-consultation-disability-assistance-scotland-scottish-government-response/govscot%3Adocument/social-security-consultation-disability-assistance-scotland-scottish-government-response.pdf>

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

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

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

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

Short-term Assistance

During the Parliamentary passage of the 2018 Act, the inclusion of Short-term Assistance was welcomed by stakeholders and supported by Parliament.

The Scottish Government has committed to providing Short-term Assistance where Social Security Scotland has made a determination to reduce or stop an on-going Scottish Government benefit and that determination is subject to a request for re-determination or an appeal. As with the Scottish Government's other disability benefits, Short-term Assistance will be available for those with an award of Pension Age Disability Payment.

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

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

The proposal that Short-term Assistance should not be recoverable, except in cases of fraud or error, was also met with approval by 87% of respondents to the Disability Assistance consultation.⁹ 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.

Eligibility criteria

A number of key changes for Pension Age Disability Payment have been set out above, including the introduction of the Scottish Government's definition of terminal illness and provision of Short-term Assistance. However, the Scottish Government does not propose to make significant changes to the existing Attendance Allowance eligibility criteria.

The Scottish Government will ensure that individuals with an award of Attendance Allowance will not need to reapply when transferred to Pension Age Disability Payment. Significant changes to the eligibility criteria from that of Attendance Allowance would risk creating a two-tier system of disability benefits for those over State Pension age. Changes to the eligibility criteria for Pension Age Disability Payment would cause unfairness, confusion and disruption for individuals by having two different sets of eligibility criteria and rules, whilst undertaking a significantly complicated case transfer process.

Eligibility to Attendance Allowance also provides individuals with entitlement to various UK Government benefits and premiums, usually referred to as 'passporting'. Throughout the consultation on Disability Assistance, people consistently raised concerns about maintaining other support that they are entitled to as a result of their disability benefit award. An example of a passported entitlement through an award of Attendance Allowance is the Severe Disability premium of Pension Credit. Whilst the passporting of benefit entitlements is not the sole reason for Scottish Ministers' approach to safe and secure transfer, the Scottish Government recognises that these entitlements are crucial to disabled people in Scotland.

However, what Social Security Scotland delivers on day one is not the limit of the Scottish Government's aspirations. Scottish Ministers are committed to continually

⁹ <https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-analysis/2019/10/consultation-disability-assistance-scotland-scottish-government-response/documents/social-security-consultation-disability-assistance-scotland-scottish-government-response/social-security-consultation-disability-assistance-scotland-scottish-government-response/govscot%3Adocument/social-security-consultation-disability-assistance-scotland-scottish-government-response.pdf>

improving disability benefits by continuing engagement with disabled people and stakeholders to identify areas for further improvement in future.

Who was involved in this Equality Impact Assessment?

This Equality Impact Assessment has been developed involving officials from within the Scottish Government and with a range of external stakeholders, as well as the wider public.

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

There were 521 formal written responses submitted overall, of which 241 were from organisations and 280 from individual respondents. Of the 241 organisational responses, 81 were received from stakeholder groups relating to children and young people, equalities and human rights, disability and long term conditions, and carers. The independent analysis of the responses along with the Scottish Government response were published on 22 May 2017.¹⁰ In addition, the Equality Impact Assessment that was published alongside the Social Security (Scotland) Bill was used to inform this Equality Impact Assessment for Pension Age Disability Payment.¹¹

The Consultation on Disability Assistance was published on 5 March 2019. In line with the principles of dignity, fairness and respect, the Scottish Government sought the views of the people of Scotland on the three proposed disability assistance benefits to replace Disability Living Allowance for Children, Personal Independence Payment and Attendance Allowance. The consultation closed on 28 May 2019, having received 263 replies, of which 74 were from stakeholder organisations and 189 were from individuals. An analysis of responses was published in October 2019.¹² Targeted consultation with stakeholders representing people with protected characteristics was undertaken during the consultation period.

In August 2022, the Disability and Carers Benefits Expert Advisory Group (DACBEAG) shared advice on Pension Age Disability Payment with the Scottish Government.¹³ Scottish Ministers responded on 1 March 2023,¹⁴ accepting Recommendation 12 which commits the Scottish Government to completing a robust Equality Impact Assessment for Pension Age Disability Payment.

¹⁰ <https://www.gov.scot/publications/analysis-written-responses-consultation-social-security-scotland/>

¹¹ <https://www.gov.scot/publications/social-security-scotland-bill-equality-impact-assessment/>

¹² <https://www.gov.scot/publications/consultation-disability-assistance-scotland-analysis-responses/>

¹³ <https://www.gov.scot/publications/disability-and-carer-benefits-expert-advisory-group-pension-age-disability-payment-advice/>

¹⁴ <https://www.gov.scot/publications/disability-and-carer-benefits-expert-advisory-group-pension-age-disability-payment-response-from-ministers/>

The Scottish Government has also held specific stakeholder engagement sessions for Pension Age Disability Payment. In April 2023, a stakeholder engagement workshop was held to inform the findings of this Equality Impact Assessment. Key stakeholders from MND Scotland, Mobility and Access Committee for Scotland (MACS), Scottish Women’s Convention and Christians Against Poverty attended this workshop.

The Scope of the Equality Impact Assessment

This Equality Impact Assessment considers the impact of introducing Pension Age Disability Payment on disabled people who are over the State Pension age and have one or more protected characteristics. State Pension age is currently 66 years of age, and is planned to gradually increase to 67 years of age by 2028.¹⁵

Data Sources

- Scottish Health Survey
- Scotland’s census 2011
- NRS Mid-year population estimates
- Social Security Experience Panel findings
- Responses to the Consultation on Disability Assistance in Scotland
- Advice from the Disability and Carer Benefits Expert Advisory Group
- DWP Stat-Xplore statistics
- Statistics and Projections from the Scottish Government’s Communities Analysis Division
- Scottish Government publications: qualifying periods and mobility policy position papers
- Stakeholder Workshop on the Equalities Impact Assessment

Key Findings

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

Age

In the Mid-2021 Population Estimates, people aged 65 and over accounted for 20% of the Scottish population.¹⁶ This is an increase since the time of the 2011 Census, whereby this age group accounted for around 17% of the population.

In the current system, the age criteria for Attendance Allowance begins at State Pension age. The Scottish Government intends to align the age criteria for Pension Age Disability Payment with that of Attendance Allowance. In the 2019 Consultation,

¹⁵ <https://www.gov.uk/government/publications/state-pension-age-timetable/state-pension-age-timetable>

¹⁶ <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/mid-year-population-estimates/mid-2021>

89% of respondents agreed with the proposals to align the age criteria with State Pension age.

It will be important for individuals to understand that if they are receiving Adult Disability Payment prior to reaching State Pension age, they will continue to receive this after reaching State Pension age so long as they remain entitled. Individuals will also be able to apply for Adult Disability Payment after reaching State Pension age in circumstances where no more than a year has lapsed since their previous award of Adult Disability Payment, Personal Independence Payment or Disability Living Allowance has ended, and their condition or disability is substantially the same as when their previous award was made. Guidance and communications will be clear on this so that individuals understand if, and in what circumstances, they should apply for Pension Age Disability Payment.

Given Pension Age Disability Payment will be open to new applications for those over State Pension age, the Scottish Government has an opportunity to further tailor the approach to disability assistance with regard to the needs of this age group. Scottish Ministers believe that the approach to Pension Age Disability Payment will have a positive impact on this age group.

Application and decision-making process

Case Managers will be empowered to speak to individuals who have indicated that they are willing to be called to gain additional information or to clarify details of their application and supporting information. Supporting information will be used by Case Managers as a resource to support the decision-making process. This information, along with information in application or review forms, will be approached from a position of trust.

From engagement with stakeholders, it is understood that although many people who apply for Attendance Allowance are able to manage their own affairs, it is likely that they may require support from family or a caregiver with aspects such as the application or review processes. The Scottish Government will ensure that individuals can request a third party representative with ease to support them in their engagement with Social Security Scotland. Scottish Ministers believe this strikes the right balance to encourage people in this age group to gain support from friends and relatives when required, while also maintaining their financial independence.

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

In instances where supporting information is not available, Case Managers can make a determination of an individual's entitlement to Pension Age Disability Payment with no supporting information from a professional, or from their wider

support network. Where it is reasonable that this information is not available, Social Security Scotland will consider this when making a determination. This could be due to the individual's health, condition or personal circumstances. Examples include, if an individual has had a recent hospital stay, if they have been unable to receive the support they need from an advocate or support worker, or where they may have lost contact with their support network, including health and social care professionals.

Case Managers will then utilise other decision-making tools, such as case discussions with a health or social care practitioner to assist in using their discretion when making a determination, based on the balance of probabilities. This will have a positive impact on disabled people in this age cohort. As older people are disproportionately impacted by social isolation, this approach will ensure access to a robust determination of entitlement that takes into consideration their current circumstances when supporting information is not available.

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

This approach will be of particular benefit for individuals within this age cohort, as Social Security Scotland will be able to support them in gathering supporting information where they do not already have this to hand. The decision-making process will ensure that Case Managers have access to support from in-house practitioners who understand the needs of older people from their clinical and social care background, ensuring that they are able to make the right determination at the first opportunity. This process will similarly help ensure Case Managers develop an informed understanding of the individual's needs and condition(s) when deciding the appropriate award review period.

Mobility

The 2019 consultation and stakeholder feedback suggested there was interest in the introduction of a mobility component as part of Pension Age Disability Payment. The Scottish Government undertook an analysis of the potential impact of this policy change. Further consideration of the impact of the Scottish Government's position can be found in the 'Disability' section of this Equality Impact Assessment.

As part of the development of Pension Age Disability Payment, the Scottish Government has carefully considered whether to introduce a mobility component. Scottish Ministers have concluded that it is not feasible to include a mobility component within the foreseeable future.

In February 2020, the Scottish Government estimated that the introduction of a mobility component could cost an additional £580 million annually.¹⁷

This cost would increase annually due to uprating with inflation and, with an aging population, is likely to grow substantially in the coming years. Due to the financial implications, as set out in the position paper, the Scottish Government would have to find additional funding from the fixed budget. Therefore, given the highly challenging fiscal environment, Scottish Ministers are not currently in a position to consider the introduction of a mobility component.

However, it can be noted that following a consultation in 2017,¹⁸ the Scottish Government committed to maintaining free bus travel through the National Entitlement Card scheme for people aged 60 and over. This scheme provides free travel on registered local and long-distance bus services throughout Scotland, at any time of day for any number of journeys. In recognition of the impact of age, the provision of free bus travel allows older people improved access to services, facilities and social networks, therefore promoting social inclusion.

Alternative accommodation rules: legal detention

Under the UK Government social security system, different approaches have been taken to legal detention for disability benefits for individuals of working age and those of State Pension age.

Payments for those receiving Attendance Allowance are stopped the day after an individual enters legal detention. However, for those receiving Personal Independence Payment, the individual's payments are stopped after 28 days from when they entered legal detention. This position has been replicated as part of Adult Disability Payment in order to maintain alignment with Personal Independence Payment. Similarly, the Scottish Government will align Pension Age Disability Payment with the legal detention rules of Attendance Allowance.

In the 2019 consultation, a number of respondents noted this difference between the Attendance Allowance rules for those who have entered legal detention and that of Personal Independence Payment and Adult Disability Payment. The Scottish Government has given consideration to this during the development of this Equality Impact Assessment. However, as the Scottish Government's position aligns with Attendance Allowance, this will have no material financial impact on individuals as a result of introducing Pension Age Disability Payment.

It is important to note that when an individual enters legal detention, they will continue to have an entitlement to Pension Age Disability Payment, however their award will be reduced to £nil from the day after they enter legal detention. An

¹⁷ <https://www.gov.scot/binaries/content/documents/govscot/publications/factsheet/2020/02/scottish-government-position-paper-mobility-component-disability-assistance-older-people-daop/documents/scottish-government-position-paper-mobility-component-disability-assistance-older-people-daop/scottish-government-position-paper-mobility-component-disability-assistance-older-people-daop/govscot%3Adocument/scottish-government-position-paper-mobility-component-disability-assistance-older-people-daop.pdf>

¹⁸ <https://www.transport.gov.scot/concessionary-travel/concessionary-travel-consultation/>

individual whose award is reduced to £nil due to being in legal detention is not entitled to Short-term Assistance. By reducing the award to £nil during this period, when an individual leaves legal detention they will not be required to make a new application for Pension Age Disability Payment if they continue to be eligible. Therefore, individuals will be able to access their financial support again with relative ease.

Disability

The Scottish Government believes that the changes being made with Pension Age Disability Payment will have a positive impact on disabled people over State Pension age in Scotland.

In August 2022 there were around 144,000 individuals having an entitlement to Attendance Allowance in Scotland. 3,370 of these people had their main condition or disability listed as a terminal illness. This represents just over 2% of the total people entitled to Attendance Allowance in Scotland.¹⁹

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

Supporting information

Case Managers will usually only seek one piece of supporting information from a professional to make a determination on an individual's entitlement to Pension Age Disability Payment. Case Managers within Social Security Scotland will, if requested, help people to gather supporting information from a professional where an individual does not already have this to hand. Case Managers can also assist in gathering supporting information from the individual's wider support network, such as a family member or carer, which can help Social Security Scotland to better understand the individual's needs and condition or disability.

It is anticipated that this will have a positive impact on disabled people. As with the experience of Child Disability Payment and Adult Disability Payment, this approach to supporting information will help reduce stress and anxiety for individuals. This policy will allow for a consistent approach for those applying for Pension Age Disability Payment, thereby ensuring the appropriate level of assistance is awarded through a robust decision-making process that embodies the values of dignity, fairness and respect. It is envisaged that by having one piece of supporting information from a professional, Social Security Scotland will be better equipped to make the right determination in the first instance, thereby reducing the likelihood of requiring a re-determination.

¹⁹ <https://stat-xplore.dwp.gov.uk/>

Award reviews

The Scottish Government has taken a different approach to the award review framework across all disability benefits to ensure that people's awards are not reviewed unnecessarily. When a Case Manager makes a determination to award Pension Age Disability Payment, they will set a review date based on when they think a person's needs will change, using a person-centred approach.

Such reviews will be light-touch and designed to minimise stress and anxiety for disabled people. Social Security Scotland will tailor reviews for each person to ensure that they are suitable to their needs, take account of their preferences and deliver an appropriate determination for each individual. This will have a positive impact, particularly for those who have been awarded the lower rate of Pension Age Disability Payment, as a light touch review will ensure that individuals have an opportunity to tell Social Security Scotland if their needs have increased.

Short-term Assistance

The introduction of Short-term Assistance will have a positive impact on disabled people over State Pension age. Short-term Assistance is currently available for those receiving Child Disability Payment and Adult Disability Payment.

Short-term Assistance will be available when Social Security Scotland has made a determination to reduce or stop an individual's entitlement to Pension Age Disability Payment and that determination is subject to a request for re-determination or an appeal. Short-term Assistance will be non-recoverable, except in cases of fraud or error. This will ensure that disabled people have confidence and financial stability when seeking a re-determination or appeal of changes to their on-going award.

Scottish Ministers believe that this strikes the right balance of supporting disabled people in seeking administrative justice, and to ensure that individuals are not discouraged from challenging a review of their award due to facing a reduced income. Short-term Assistance is not available under the current Attendance Allowance system, and aligns with the Scottish Government's human rights approach to social security in Scotland.

Qualifying period

The current rules set out that an individual must have been disabled or had their condition for six months before becoming eligible for Attendance Allowance. This qualifying period for Attendance Allowance will be replicated as part of Pension Age Disability Payment. However, for people with a terminal illness, there will continue to be no qualifying period. It is understood that some people have concerns about the impact of this rule on those who require financial assistance. Therefore, the Scottish Government undertook an analysis of qualifying periods for disability benefits when establishing a policy position.²⁰

²⁰ <https://www.gov.scot/publications/disability-assistance-qualifying-periods-policy-position-paper/>

The Scottish Government believes that the six month qualifying period prior to payment of Pension Age Disability Payment is appropriate and in keeping with the policy intent for Pension Age Disability Payment. It ensures that this form of assistance is targeted at those with longer-term conditions and disabilities. Changes to the six month qualifying period would lead to people with very short-term conditions becoming eligible, substantially changing both the nature and purpose of Pension Age Disability Payment.

When applying the qualifying period, Social Security Scotland will ensure that the impact of unpredictable and fluctuating conditions on individuals is taken into consideration as part of a person centred approach. Unlike Child Disability Payment and Adult Disability Payment, there will be no qualifying period expecting a person's condition to last for a specified time period into the future as part of Pension Age Disability Payment.

As with Attendance Allowance, the rationale for this approach is that the number of people who have stopped receiving their award because their condition improves is negligible; largely attributable to the requirement for a six month initial qualifying period. This helps to mitigate the impact of having a longer qualifying period when compared to Child Disability Payment and Adult Disability Payment.

Terminal illness

In August 2022, 3,370 people receiving Attendance Allowance had their main condition or disability listed as a terminal illness.²¹ It is anticipated that the new definition of terminal illness within Scottish Government disability benefits will support the recognition of a wider number of illnesses and conditions than under the UK Government definition. The Scottish Government expects this to be of significant benefit to disabled people in Scotland, particularly within the age cohort of those entitled to Pension Age Disability Payment.

Estimates published in August 2021 suggest that there could be a 90% increase in the number of successful applications for Pension Age Disability Payment due to having a terminal illness.²² These estimates are based on projections for Adult Disability Payment due to a lack of data on the conditions of those entitled to Attendance Allowance due to terminal illness, so it is therefore possible that this projection may underestimate the impact of the Scottish Government's terminal illness policy.

The implementation of the Scottish Government's definition of terminal illness through Pension Age Disability Payment will have a more positive impact on disabled people over State Pension age in Scotland than that of the current social security system.

Alternative accommodation rules: hospitals and care homes

²¹ <https://stat-xplore.dwp.gov.uk/>

²² <https://www.gov.scot/publications/estimating-impact-new-definition-terminal-illness-disability-assistance-scotland/pages/5/>

Many people with disabilities and long-term health conditions may often experience stays in hospital, sometimes for a lengthy period. As with the current Attendance Allowance rules, Pension Age Disability Payment will continue to be paid to an individual in hospital or a publicly funded care home for 28 days. Beyond 28 days, payment of Pension Age Disability Payment will be reduced to £nil. Pension Age Disability Payment is not intended to be an income-replacement benefit. Payments to support those over State Pension age on a low income are provided by the UK Government through Pension Credit.

As part of this Equality Impact Assessment, the Scottish Government has considered the impact of this rule. The intention of Pension Age Disability Payment is to provide financial assistance to mitigate the costs that individuals and their families incur as a result of a health condition or disability. Continuing to pay Pension Age Disability Payment where an individual's care needs are met in full through alternative public funding, for instance in a care home, hospital or secure accommodation, would lead to funding duplication in meeting the individual's care needs. In the majority of instances when an individual is in hospital, their additional care needs are met by the NHS.

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

The purpose of the '28 day rule' is to ensure that longer term periods in alternative accommodation are not subject to funding duplication, by receiving Pension Age Disability Payment while the costs of that care are being covered. The 28 day window ensures that people cared for in temporary respite do not lose access to payments as well as recognising that where care placements break down or periods within alternative accommodation end at an early stage, the individual does not experience the additional disruption of losing access to Pension Age Disability Payment. As set out previously, individuals residing in legal detention will have their payment reduced to £nil from the day after they enter legal detention.

Where an individual undergoes frequent short periods in hospital, their payment of Pension Age Disability Payment will be unaffected. People are entitled to continue receiving their entitlement for the first 28 days of a hospital stay in order to meet any outstanding additional costs incurred prior to their hospital stay. Although payment will stop after 28 days of an individual being in a publicly funded hospital or care home, entitlement is unaffected. Therefore, if and when an individual leaves such accommodation, payments will resume, subject to continuing to meet the eligibility criteria for Pension Age Disability Payment.

It is important to note that there is an exception to this rule for those who are residing in a hospice and have a terminal illness. In these circumstances, an individual's payment of Pension Age Disability Payment will continue, and the 28 day rule will not apply. This will have a positive impact by ensuring that people who are already in

extremely difficult circumstances will not see their income reduce as a result of residing in a hospice.

Mobility

As Attendance Allowance provides help with the extra costs associated with an individual's care needs, it does not include a mobility component. The Scottish Government has committed to aligning Pension Age Disability Payment with Attendance Allowance to ensure a safe and secure transfer. Following the 2019 consultation and stakeholder feedback that suggested there was interest in the introduction of a mobility component as part of Pension Age Disability Payment, the Scottish Government undertook an analysis of the potential impact of this policy change.

The Scottish Government published a Pension Age Disability Payment policy position paper in February 2020 which included a detailed analysis of the relevant considerations regarding a mobility component.²³ As part of the development of Pension Age Disability Payment, the Scottish Government has carefully considered whether to introduce a mobility component. Scottish Ministers have concluded that it is not feasible to include a mobility component within the foreseeable future.

Within the policy position paper, the Scottish Government estimated that the introduction of a mobility component could cost an additional £580 million annually. However, this cost would increase annually due to uprating with inflation and, with an aging population, is likely to grow substantially in the coming years.

Due to the financial implications, as set out in the position paper, the Scottish Government would have to find this additional funding from the fixed budget. Given the highly challenging fiscal environment, such a significant increase in costs would require the Scottish Government to reduce spending on other key social security priorities. Having evaluated the financial implications outlined in this paper, the Scottish Government is not currently in a position to further consider the introduction of a mobility component.

As set out above, the Scottish Government intends to align Pension Age Disability Payment with Attendance Allowance to ensure a safe and secure transfer. The introduction of a mobility component as part of Pension Age Disability Payment would be a fundamental change in the policy rationale that underpins Attendance Allowance as a benefit that helps with the additional costs related to an individual's care needs.

As the Scottish Government will ensure that those receiving Attendance Allowance in Scotland do not need to reapply to receive Pension Age Disability Payment, significant changes, such as introducing a mobility component, would risk creating a two-tier system of disability benefits for those over State Pension age. Changes to the eligibility criteria for Pension Age Disability Payment would cause unfairness, confusion and disruption for individuals by having two different sets of eligibility

²³ <https://www.gov.scot/publications/scottish-government-position-paper-mobility-component-disability-assistance-older-people-daop/>

criteria and rules, whilst undertaking a significantly complicated case transfer process.

Gender reassignment

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

It is anticipated overall though that Pension Age Disability Payment will have a positive impact on this group. Information on an individual's gender is not required to make a determination of entitlement for Pension Age Disability Payment. Therefore, this has been taken into consideration through the design of the Pension Age Disability Payment application form which will not collect information on an individual's gender.

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

Pregnancy and maternity

This Equality Impact Assessment has not identified any barriers from Pension Age Disability Payment that have an impact on the protected characteristics of pregnancy and maternity. As an individual is only entitled to Pension Age Disability Payment having reached State Pension age, it is unlikely that they will possess this protected characteristic.

Race

Just under 4% of Scotland's population belong to minority ethnic groups, and 7% of the total population communicate in home languages other than English. Although there are not statistics showing the number of people within Scotland who are in receipt of disability benefits and who belong to minority ethnic groups, it is known that they generally make up 3.7% of those with a reported learning disability or developmental disorder.²⁴

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

²⁴ 2011 Census

comfortable making sense of the complicated and technical language often used by authorities.²⁵

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

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

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

Social Security Scotland will create a range of Pension Age Disability Payment stakeholder resources and content in accessible formats. These resources will be proactively supplied to relevant stakeholder organisations through the National Engagement Team for organisations to distribute to people in local communities. The languages that Social Security Scotland 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. Materials in other languages are available on request.

Social Security Scotland's communications team will work with community radio and foreign language press to provide messaging on Pension Age 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, Social Security Scotland will provide an engagement approach through work carried out by the National Engagement and Local Delivery teams.

Social Security Scotland will continue to work with experts who have experience of benefit take-up in specific communities, such as Black, Asian and Minority Ethnic women and the Gypsy/Traveller community. The purpose will be to monitor and provide management information to effectively target take-up activity and assist the production of take-up resources for Social Security Scotland staff and stakeholders.

²⁵ <https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2020/11/social-security-experience-panels-ethnic-minorities-report/documents/social-security-experience-panels-ethnic-minorities/social-security-experience-panels-ethnic-minorities/govscot%3Adocument/social-security-experience-panels-ethnic-minorities.pdf>

The Scottish Government will draw on best practice from take-up initiatives and campaigns undertaken across Scotland and elsewhere in the United Kingdom.

Gypsy/Traveller community

Within the broader classification of ethnic minority, just over 4,000 people in Scotland (0.1% of the population) identified their ethnic group as ‘White: Gypsy/Traveller’.²⁶ Although there are not statistics held on the number of Gypsy/Traveller people who receive disability benefits under the current system, the census showed that 28% of Gypsy/Travellers reported having a life limiting long-term health problem or disability, compared to 20% of the general population. It is thus more likely that this group will need to access disability benefits, but also likely that this group may experience additional barriers to accessing benefits.

The Scottish Government was also informed anecdotally that the Gypsy/Traveller community operate within the ‘cash economy’ and that they are more likely to have a post office account than a bank account. This can be problematic in terms of receiving payments. The payment method of Pension Age Disability Payment will be important for some people, and in particular the Gypsy/Traveller community. 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 forms, such as SMS and email. These can be redeemed at one of 2850 PayPoint outlets in Scotland.

Refugees

The ethnic minority population also includes refugees. Refugees are eligible for benefits such as disability benefits, but typically experience additional barriers in comparison to the general population in accessing them. Specific research has been undertaken with this group as part of the Experience Panels to highlight barriers and challenges in accessing social security by Mobile Populations.²⁷

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

Social Security Scotland will ensure that individuals who require the use of translator services during telephone calls have access to this support. Decision reports when a determination of entitlement is made will be translated for individuals who require this information in another language. Social Security Scotland staff will also undertake training in inclusive communications to ensure individuals can interact in ways that

²⁶ 2011 Census

²⁷ <https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2022/06/social-security-experience-panels-seldom-heard-programme-research-mobile-populations/documents/social-security-experience-panels-seldom-heard-programme-research-mobile-populations/social-security-experience-panels-seldom-heard-programme-research-mobile-populations/govscot%3Adocument/social-security-experience-panels-seldom-heard-programme-research-mobile-populations.pdf>

work for them. This approach will help to reduce the stigma felt by refugees in their interactions with Scotland's social security system.

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

As previously noted, Social Security Scotland will proactively provide stakeholder organisations with Pension Age Disability Payment resources and will provide a multi-channel application process, including paper-based, telephone and face-to-face applications. The application form for Pension Age Disability Payment has been designed through user research to ensure it is accessible and reduces some of the complexities associated with the social security system. This approach should help to mitigate barriers in accessing information and the application process for refugees and other Mobile Populations.

Residence and presence

The current rules for Attendance Allowance set out that an individual would be required to be present for 104 out of the previous 156 weeks. Since the Disability Assistance public consultation launched, a change has been made to Scottish Government policy to reduce the past presence test from 104 out of 156 weeks to 26 out of 52 weeks.

This position has been settled upon to ensure compliance with recent developments in case law in relation to the United Kingdom's social security system.²⁸ Removing the test entirely, would carry a financial cost as well as a number of delivery implications. The test also provides for a number of exceptions such as for individuals with a terminal illness. The Scottish Government believes this strikes the right balance between meeting the policy intent behind the residence and presence eligibility criteria and ensuring fairness for individuals applying for Pension Age Disability Payment.

Scottish Ministers have previously legislated to ensure those settling in Scotland from Afghanistan are exempt from having to satisfy the habitual residence and past presence tests. These provisions will also be included as part of the Pension Age Disability Payment regulations. This includes those with leave to enter or remain in the United Kingdom under immigration rules in relation to the Afghan Relocations and Assistance Policy, the previous scheme for locally-employed staff in Afghanistan, those granted discretionary leave outside the immigration rules as a dependent of a person in relation to that scheme, as well as those granted leave under the Afghan Citizens Resettlement Scheme.

²⁸ https://assets.publishing.service.gov.uk/media/5fc500e0d3bf7f7f5521a732/CDLA_2208_2018-00_CDLA_2019_2018.pdf

Provisions in relation to individuals from Ukraine that have settled in Scotland due to the Russian invasion which took place on 24 February 2022 and were residing in Ukraine immediately before 1 January 2022 will also be included in the Pension Age Disability Payment regulations.²⁹ This exempts individuals from having to satisfy the habitual residence and past presence tests. This exemption will apply to those arriving in the United Kingdom under the Ukraine Family Scheme and Homes for Ukraine. These individuals will be able to meet the residency conditions for Scottish Government benefits from day one, meaning they will be eligible subject to all other entitlement conditions being met.

The Scottish Government has also legislated in relation to the conflict in Sudan, whereby those who were resident in Sudan prior to 15 April 2023 will be exempt from the past presence and habitual residence tests for Scottish Government benefits if they left Sudan in connection with the violence.³⁰ This will also be applied to Pension Age Disability Payment.

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

Terminal illness

It is known that there is a low uptake of palliative and end of life care services for Black, Asian and Minority Ethnic groups in the United Kingdom. This was also identified in the 'Palliative and end of life care for BAME groups in the United Kingdom' report,³¹ which identified 45 literature reviews in this area. Some suggested factors for low uptake included a lack of referrals, lack of knowledge about services or the impact of family and religious values interacting with the idea of palliative and hospice care.

It is likely that some of the reasons for a low uptake of palliative care could also lead to a low uptake in disability benefits when terminally ill. As population projections are suggesting that there will be a general increase in population for those over State Pension age and continued international migration to Scotland,³² this may present a challenge to ensure that Pension Age Disability Payment is accessible for those who are terminally ill from minority ethnic groups.

There is some evidence that ethnic minority groups can vary in the extent to which individuals would wish to know about their terminal diagnosis. This has been

²⁹ <https://www.gov.scot/publications/the-social-security-residence-requirements-ukraine-scotland-regulations-2022-policy-note/>

³⁰ <https://www.legislation.gov.uk/ssi/2023/149/contents/made>

³¹ https://www.mariecurie.org.uk/globalassets/media/documents/who-we-are/diversity-and-inclusion-research/palliative-care-bame_exec-summary.pdf

³² <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationprojections/datasets/2020basedinterimnationalpopulationprojectionsyearendingjune2022estimatedinternationalmigrationvariant>

highlighted in a cross-cultural study involving some East Asian countries.³³ The research around this is not specific to any particular age group. The terminal illness policy has been developed in a way that is supportive of individuals from minority ethnic groups where explicit knowledge of a terminal diagnosis may be considered not to be in the best interests of the individual.

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

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

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

Figures for terminally ill people are not collected by ethnic group. As the numbers are small, caution would be needed as release of these statistics could identify individuals. To mitigate this, although ethnicity monitoring is not compulsory, it will form part of the application process through the Equalities Monitoring form, and individuals will have to 'opt out' if they wish not to submit this information. This should lead to collection of better data which can be used to inform changes to Pension Age Disability Payment, and where relevant, terminal illness policy.

Religion and belief

According to data published by the Scottish Surveys Core Questions in 2019, 50.7% of respondents identified as having no religion, while 46.4% identified as Christian (Church of Scotland, Roman Catholic or other Christian). 1.1% identified as Muslim, with 1.7% belonging to other religions.³⁴

Although religion and belief may vary with age, the Scottish Government has not identified any particular barriers resulting from Pension Age Disability Payment which may affect people with the protected characteristic of religion and belief.

Sex

Data from the Papworth Trust found that women are slightly more likely than men to be disabled in the United Kingdom.³⁵ 23% of women are noted as having a disability, compared to 19% of men.

³³ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4616852/>

³⁴ <https://www.gov.scot/publications/scottish-surveys-core-questions-2019/pages/2/>

³⁵ <https://www.papworthtrust.org.uk/about-us/publications/papworth-trust-disability-facts-and-figures-2018.pdf>

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.³⁶ This higher percentage of disabled women compared to men is also reflected in the ratio of those in receipt of Attendance Allowance. In August 2022, 37.1% of those receiving Attendance Allowance in Scotland were men, and 62.9% were women.³⁷ However, this may in part be explained by the differences in life expectancy in Scotland. Between 2019 and 2021, life expectancy in Scotland was 76.6 years for men and 80.8 years for women.³⁸

There is evidence that gender inequalities are likely to have become even more pronounced in light of the COVID-19 pandemic. When healthcare systems come under pressure, it becomes increasingly likely that women will take on further caring responsibilities.³⁹

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

Sexual orientation

In 2019, around 3% of people in Scotland identified their sexual orientation as ‘lesbian’, ‘gay’, ‘bisexual’ or other.⁴⁰ This is likely to be an under-report, as younger people are more likely to self-identify their sexual orientation in surveys than older people.⁴¹ In 2021, 17% of those who identified as gay, lesbian or bisexual had experienced discrimination, compared to 8% who identified as straight.⁴²

A report by the Equality Network found that disabled people who identify as LGBT were more likely to experience discrimination than LGBT people without a disability. 59% of disabled LGBT people had experienced prejudice or discrimination within the

³⁶ <https://wbg.org.uk/analysis/uk-policy-briefings/social-security-gender-and-covid-19/>

³⁷ <https://stat-xplore.dwp.gov.uk/>

³⁸ <https://www.nrscotland.gov.uk/files//statistics/life-expectancy-in-scotland/19-21/life-expectancy-19-21-report.pdf>

³⁹ <https://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2020/03/GiHA-WG-Advocacy-Brief-Gender-Impact-COVID19.pdf>

⁴⁰ <https://www.gov.scot/publications/scottish-surveys-core-questions-2019/documents/>

⁴¹ <https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2017/01/sexual-orientation-scotland-2017-summary-evidence-base/documents/00513240-pdf/00513240-pdf/govscot%3Adocument/00513240.pdf>

⁴² <https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2023/04/scottish-household-survey-2021-telephone-survey-key-findings/documents/shs-2021-annual-report-supporting-document-tables-neighbourhoods-communities/shs-2021-annual-report-supporting-document-tables-neighbourhoods-communities/govscot%3Adocument/shs-2021-annual-report-supporting-document-tables-neighbourhoods-communities.xlsx>

last month at the time of publication in 2015, compared to 47% of non-disabled LGBT individuals.⁴³

The Scottish Government is committed to engaging with this group to build a service that meets their needs. 9% of Social Security Experience Panel members identify as lesbian, gay or bisexual and have been actively involved in the design of Social Security Scotland's services.⁴⁴

Applications for Pension Age Disability Payment will only request information that is required for processing and determining entitlement to this benefit. The Scottish Government are trying to ensure that all individuals are comfortable in disclosing only necessary information. User research has assisted with the design of the application form, ensuring that the application uses inclusive language. It is therefore expected that the Pension Age Disability Payment application form will support equal opportunities for the LGBTI community in accessing this benefit.

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

Marriage and civil partnership

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

Recommendations and Conclusion

This Equality Impact Assessment process has identified that overall, the introduction of Pension Age Disability Payment to replace Attendance Allowance would have a positive impact for people in Scotland with protected characteristics. These impacts include:

- Those applying for Pension Age Disability Payment will benefit from an improved decision-making process that starts from a position of trust and supports individuals to receive the right determination at the first opportunity.
- The application form will be more accessible, and information about Pension Age Disability Payment will be available in multiple languages and in accessible formats.

⁴³ <https://www.equality-network.org/resources/publications/policy/the-scottish-lgbt-equality-report/#:~:text=The%20Scottish%20LGBT%20Equality%20Report%20The%20Scottish%20LGBT,the%20form%20at%20the%20bottom%20of%20this%20page%29.>

⁴⁴ <https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2020/11/social-security-experience-panels-panels-2020-update-full-report2/documents/social-security-experience-panels-panels-2020-update-full-report/social-security-experience-panels-panels-2020-update-full-report/govscot%3Adocument/social-security-experience-panels-panels-2020-update-full-report.pdf>

- Awards of Pension Age Disability Payment will be ongoing and subject to light touch reviews, alleviating some of the worry caused by the review process.
- Terminally ill people will have their application fast-tracked and processed using the Scottish Government’s definition of terminal illness, which removes arbitrary timescales and is based on clinical judgement.
- When an individual disagrees with their award review, they will have access to Short-term Assistance during the re-determination and appeals process. This is non-recoverable and will mitigate a drop in the level of household income while reducing anxiety for those seeking administrative justice.

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

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

<p>Name and job title of Policy Lead: Joseph Scullion Disability Benefits Policy Officer Social Security Policy Division</p> <p>Name and job title of a Deputy Director or equivalent: [Name] Deputy Director Social Security Policy Division</p>	<p>Date this version authorised:</p>
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Business and Regulatory Impact Assessment

Title of Proposal

The Disability Assistance for Older People (Scotland) Regulations 2024

Purpose and Intended Effect

Background

The Social Security (Scotland) Act 2018¹ (the 2018 Act) sets out the broad framework for the delivery of the Scottish Government's social security benefits. On 1 April 2020, Scottish Ministers took executive and legal competence for disability benefits, including Disability Living Allowance for Children, Personal Independence Payment and Attendance Allowance.

Pension Age Disability Payment will be the replacement for Attendance Allowance in Scotland. Attendance Allowance will continue to be delivered during a transition period by the Department for Work and Pensions under the terms of an Agency Agreement to ensure the safe and secure transfer to Pension Age Disability Payment. The Scottish Government plans to introduce Pension Age Disability Payment with a pilot and phased approach in Autumn 2024 and national launch in early 2025.²

The draft Disability Assistance for Older People (Scotland) Regulations 2024 set out the eligibility criteria and how Social Security Scotland will deliver Pension Age Disability Payment. This benefit will accept new applications from those over State Pension age.

The regulations also make provision for the case transfer process for people in Scotland who currently receive Attendance Allowance. These provisions are not currently included within the full draft regulations, however they will be added in due course.

Based on information from the Department for Work and Pensions' Stat-Xplore service, there were around 144,000 individuals in August 2022 with an entitlement to Attendance Allowance in Scotland whose awards would transfer to Pension Age Disability Payment.³

Pension Age Disability Payment will be delivered by Social Security Scotland on behalf of Scottish Ministers. People will be able to challenge a determination by requesting a re-determination, and subsequently they will be able to appeal to the Social Security Chamber of the First-tier Tribunal for Scotland.

As part of the commitment to a safe and secure transfer, Scottish Ministers do not propose to make significant changes to the existing Attendance Allowance eligibility

¹ <http://www.legislation.gov.uk/asp/2018/9/contents/enacted>

² <https://www.gov.scot/publications/executive-summary-social-security-business-case-february-2023/>

³ <https://stat-xplore.dwp.gov.uk/>

criteria when introducing Pension Age Disability Payment. Examples of this include the replication of the current 6 month qualifying period for Attendance Allowance and continuing alignment by not introducing a mobility component. By maintaining the current eligibility criteria, individuals in Scotland who are eligible for passported benefits and premiums from the UK Government will have seamless access to this vital support. This will provide security to people in Scotland when Pension Age Disability Payment is rolled out.

However, there are some key changes along with a number of practical administrative differences between Pension Age Disability Payment and Attendance Allowance which Scottish Ministers expect to have a positive impact for disabled people in Scotland. These differences have been developed through the commitments under the Social Security Charter.⁴ The Scottish Government recognises social security as a human right and has designed Social Security Scotland's services with the people who use them so that everyone is treated with dignity, fairness and respect. The Scottish Government is committed to continually improving Scottish disability benefits by continuing to engage with disabled people and stakeholders to identify areas for further improvement in future.

The Scottish Government has made changes to the application process for all forms of disability assistance, including Pension Age Disability Payment, which will help to reduce stress and anxiety for individuals. People interacting with Social Security Scotland will require options and choices that suit them best. Social Security Scotland offers a multi-channel approach including online, telephone, paper-based and face-to-face applications. As well as offering choices, this ensures that those who cannot or choose not to adopt digital methods will not become isolated.

People who require further assistance or would prefer face-to-face support will be able to access that through Social Security Scotland's Local Delivery service. Local Delivery staff will provide one-to-one support and help disabled people to understand what Scottish Government benefits they may be entitled to. They can also provide assistance to complete application forms and take forward any follow-up actions relating to a person's application. It is considered that this support will be of particular benefit to older people applying for Pension Age Disability Payment, as many older people may find completing application forms overwhelming and might not have access to a support network to assist them.

The Scottish Government also launched the Social Security Independent Advocacy Service in January 2022, and has committed to investing £20.4 million in the service over the following four years. The service is free and supports people who self-identify as a disabled person to access and apply for Social Security Scotland assistance.

As with the Scottish Government's other disability benefits, a new approach to gathering supporting information is being utilised by Social Security Scotland which will help reduce stress and anxiety for individuals. A Case Manager will ordinarily only seek one piece of supporting information from a professional to support the

⁴ https://www.socialsecurity.gov.scot/asset-storage/production/downloads/Our-Charter_1.pdf

decision-making process when making a determination on an individual's entitlement to Pension Age Disability Payment.

Case Managers will use a collaborative approach to help people gather supporting information from a professional, where an individual does not already have this to hand. This includes Case Managers obtaining supporting information from professionals on the individual's behalf. Case Managers can also assist in gathering supporting information from the individual's wider support network, such as a family member or unpaid carer, which can help Social Security Scotland to understand the individual's needs, conditions or disability.

The Scottish Government's new definition of terminal illness will apply to Pension Age Disability Payment. The Scottish Government definition removes the arbitrary 12 month timescale currently used by the Department for Work and Pensions. Instead, the judgement as to whether a person should be considered terminally ill for the purposes of Pension Age Disability Payment will be made by clinicians based on guidance prepared by the Chief Medical Officer.⁵

Applications will be fast tracked from people with a terminal illness. Individuals who are terminally ill will automatically receive the highest rate of Pension Age Disability Payment and there will be no award reviews.

The Scottish Government has committed to providing Short-term Assistance where Social Security Scotland has made a determination to reduce or stop an on-going Scottish Government benefit and that determination is subject to a request for re-determination or an appeal. As with the Scottish Government's other disability benefits, Short-term Assistance will be available for those with an award of Pension Age Disability Payment.

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

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

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

Objective

⁵ <https://www.socialsecurity.gov.scot/asset-storage/production/downloads/Disability-Benefits-Terminal-Illness-CMO-guidance-V1.0.pdf>

Pension Age Disability Payment is awarded to help with the extra costs if an individual over State Pension age has a condition or disability severe enough that they need someone to help look after them. This includes physical or mental health conditions and disabilities which have a significant adverse effect on an individual's care needs.

This impact assessment is one of a package to accompany the regulations. The other impact assessments are: Equality Impact Assessment; Island Communities Impact Assessment; and the Fairer Scotland Duty Assessment.

Rationale for Government intervention

The assessment of the Disability Assistance for Older People (Scotland) Regulations 2024 and Pension Age Disability Payment overall in relation to business and regulatory impact was undertaken using the five principles of Better Regulations,⁶ 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 Pension Age Disability Payment.

The equivalent United Kingdom Government benefit, Attendance Allowance, will reduce in caseload as Pension Age Disability Payment is delivered through Social Security Scotland, and cases are transferred from the Department for Work and Pensions. This will likely lead to a neutral impact in the longer term on the administrative burdens on other public agencies, private business 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 on behalf of people accessing disability assistance, including Pension Age Disability Payment, and intends to utilise data sharing processes with relevant bodies. For example, this may occur where an individual requests Social Security Scotland to gather supporting information from a professional, where the individual does not already have this to hand.

It is anticipated that this will streamline the administrative burden of providing supporting information in circumstances where an individual does not have this to hand. Public agencies will instead be able to supply this information directly to Social Security Scotland through formal data sharing agreements and processes.

There is also expected to be a neutral impact on medical professionals as a result of the 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

⁶ <https://www.gov.scot/policies/supporting-business/business-regulation/>

difference being that, instead of a DS1500 or SR1 form, they will be required to complete a 'Benefits Assistance Under Special Rules in Scotland' (BASRiS) form.

There may be some short-term impacts 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 and, as the BASRiS form has been rolled out for Child Disability Payment and Adult Disability Payment, many medical professionals will already be familiar with this new process in Scotland.

Consistent: Pension Age Disability Payment builds on the framework of a new social security system underpinned by the values of dignity, fairness and respect, as set out in the 2018 Act.

Pension Age Disability Payment will be delivered to eligible people on a similar basis as Attendance Allowance. Decision-making will be person-centred and operational guidance for Case Managers within Social Security Scotland will be in line with the regulations and 2018 Act, which will provide a framework for consistent decision-making across all applications.

Where possible, regulations for Pension Age Disability Payment and associated policies have been aligned with those of Child Disability Payment and Adult Disability Payment. This will provide a consistent approach for both applicants and external organisations who will support them, while paying due regard to the specific needs of people over State Pension age.

Accountable: All determinations made relating to an application for Pension Age Disability Payment will be provided to individuals in a communication method that meets their needs. All information used, and a rationale for the determination made for a new application or re-determination, will be included within communications to ensure that individuals are informed of how their determination of entitlement was made.

The Social Security Charter sets out 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.

The Scottish Government will ensure that people understand their right to have a re-determination by Social Security Scotland, and have a right of appeal to the Social Security Chamber of the First-tier Tribunal for Scotland if they are not satisfied with the outcome of a re-determination. This includes a right to appeal directly to the First-tier Tribunal if Social Security Scotland are unable to complete the re-determination process within the 56 day period.

Individuals will also be made aware of the existence of Short-term Assistance, which can be utilised where Social Security Scotland has made a determination to reduce or stop an on-going Scottish Government benefit and that determination is subject to a request for re-determination or an appeal. Short-term Assistance will ensure that individuals do not face a reduced income while undergoing a re-determination or appeal of an ongoing award. This will help to ensure that individuals are not

discouraged from challenging a determination they do not agree with, or seeking administrative justice by having to manage, for a time, with a reduced income.

Transparent: A communications strategy will be developed for Pension Age Disability Payment, as has been done for other forms of disability assistance. This will aim to ensure that individuals and their families or carers as well as the third sector, local government, health sector and advice providers are aware of this benefit, know how to apply for it and understand the eligibility criteria.

Where a determination is made that an individual is not entitled to Pension Age Disability Payment, Social Security Scotland will provide a reason why, as set out in section 40 of the 2018 Act, to ensure that determinations are understood and that Social Security Scotland's processes are as transparent as possible.

Guidance will be published on Pension Age Disability Payment in a way that takes account of differing communication needs, so that material is clear and transparent for those seeking further information. Social Security Scotland will create a bank of Pension Age Disability Payment stakeholder resources and content for distribution to people in local communities. These resources will be produced in accessible formats that will be proactively supplied to relevant stakeholder organisations through the Stakeholder Engagement team.

The languages that Social Security Scotland proactively translate materials to were selected through consultation with those who have experience of the social security system. These languages are: British Sign Language, 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's communications team will work with community radio and foreign language press to provide messaging on Pension Age 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 Social Security Scotland will provide an engagement approach through work carried out by the Stakeholder Engagement and Local Delivery teams.

The second Benefit Take-Up Strategy was published in October 2021 under the provision of the 2018 Act.⁷ The strategy sets out Scottish Ministers' work supporting benefit take-up to date. It also introduced a series of new activities and initiatives aimed at increasing awareness of, and access to, Scottish Government benefits and supporting those who are eligible to apply.

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

⁷ <https://www.gov.scot/publications/social-security-scotland-act-2018-benefit-take-up-strategy-october-2021/>

is likely to have a positive impact on businesses and the economy because more individuals with a disability will have increased income, which may be used to purchase a range of goods and services from private or third sector organisations.

Targeted only where needed: Pension Age Disability Payment is intended to help mitigate the additional costs for individuals over State Pension age with a disability or health condition that requires someone to help look after them. The rules for the benefit will be set out in these regulations, and each new application will undergo a decision-making process which will consider eligibility for Pension Age Disability Payment in a way that is consistent with the principles of dignity, fairness and respect.

Based on information from the Department for Work and Pensions' Stat-Xplore service, there were around 144,000 individuals in August 2022 with an entitlement to Attendance Allowance in Scotland whose awards would transfer to Pension Age Disability Payment.⁸

It is expected that the introduction of Pension Age 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 social security 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 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 February 2017,⁹ in addition to the Business and Regulatory Impact Assessment that was published alongside the Social Security (Scotland) Bill.

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 the Scottish Government has executive and legal competence for. In July 2019, recruitment to the Experience Panels was reopened. The Scottish Government have

⁸ <https://stat-xplore.dwp.gov.uk/>

⁹ <https://www.gov.scot/publications/analysis-written-responses-consultation-social-security-scotland/>

been working with relevant stakeholders to specifically identify disabled people from seldom heard groups for further engagement.

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 Pension Age Disability Payment.¹⁰ The consultation closed on 28 May 2019, having received 263 replies, of which 74 were from stakeholder organisations and 189 from individuals.

The Scottish Government has also undertaken engagement with stakeholders during the development of Pension Age Disability Payment, through the Ill Health and Disability Benefits Stakeholder Reference Group (IHDBSRG) as well as the independent Disability and Carers Benefits Expert Advisory Group (DACBEAG).

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. 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 Pension Age Disability Payment,¹¹ and Scottish Ministers responded on 1 March 2023.¹²

The views of people with lived experience have been captured through a range of ongoing user research and specific stakeholder engagement activities since 2022. This engagement has provided stakeholders the opportunity to feed into the development of Pension Age Disability Payment, including the Equality Impact Assessment and the drafting of regulations. Such engagement has also provided the Scottish Government with the opportunity to engage specifically with particular groups that would be impacted by the proposed policy.

Options

Option 1: Take no action

The Smith Commission set out that powers over Attendance Allowance in Scotland should be devolved to the Scottish Parliament. This transfer of power was legislated for through the Scotland Act 2016. The Scottish Parliament has also passed the 2018 Act which enables Scottish Ministers to introduce regulations to provide Pension Age Disability Payment, a form of disability assistance for those over State Pension age. Attendance Allowance is currently delivered in Scotland by the Department for Work and Pensions on behalf of the Scottish Government by way of an Agency Agreement.

¹⁰ <https://www.gov.scot/publications/social-security-consultation-disability-assistance-scotland/>

¹¹ <https://www.gov.scot/publications/disability-and-carer-benefits-expert-advisory-group-pension-age-disability-payment-advice/>

¹² <https://www.gov.scot/publications/disability-and-carer-benefits-expert-advisory-group-pension-age-disability-payment-response-from-ministers/>

Consequently, taking no action and therefore not taking over administrative responsibility from the Department for Work and Pensions is not considered to be a viable option. There are not considered to be any benefits of this option.

If the Department for Work and Pensions were to stop providing Attendance Allowance to people in Scotland, and the Scottish Government had not made provision for a replacement benefit, a significant number of people with an entitlement to Attendance Allowance would be worse off as they would no longer be receiving financial support.

Option 2: Introduce a Scottish Government replica of Attendance Allowance, including how it is delivered

The Scottish Government could have decided to replicate Attendance Allowance in its entirety, by making no changes to eligibility rules, the application process or the decision-making process. However, this would have been inconsistent with the Scottish social security principles, as set out in the 2018 Act.

By taking this policy approach, the Scottish Government would have continued the delivery of a benefit that has not been designed with the people in Scotland who will use it. This approach would not be utilising the opportunity to seek continuous improvement through putting the needs of those who require assistance first, while advancing equality and non-discrimination.

This approach would fail to utilise the opportunity to improve on the current administration of Attendance Allowance, allowing unsuitable aspects to be delivered by the Scottish Government without reconsideration. For example, in the 2016 consultation, it was noted that some respondents, mainly individuals and local authority respondents, commented that the application process for Attendance Allowance was too complex and that the forms were too long, inaccessible for some, and daunting to complete.¹³ Similar findings have also been highlighted through user research undertaken by the Scottish Government in 2018 and 2023. This included those who have experience of the current social security system, including members of the Social Security Experience Panels, third sector organisations as well as family and friends that assisted individuals with the Attendance Allowance application process.

This approach would be inconsistent with Scottish Ministers' delivery of Child Disability Payment and Adult Disability Payment, whereby individuals benefit from improvements, such as an improved application process, the new Scottish Government definition of terminal illness and access to support through Short-term Assistance where eligible.

Option 3: Introduce Pension Age Disability Payment (recommended option)

¹³ <https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2017/02/analysis-written-responses-consultation-social-security-scotland/documents/00514351-pdf/00514351-pdf/govscot%3Adocument/00514351.pdf>

The Scottish Government will introduce Pension Age Disability Payment as a form of disability assistance under the 2018 Act for people over State Pension age, with a number of practical and administrative improvements that will provide disabled people with a different experience when accessing the support that they are entitled to. The Scottish Government plans to introduce Pension Age Disability Payment with a pilot and phased approach in Autumn 2024 and national launch in early 2025.

Individuals with an award of Attendance Allowance will have their award transferred to Pension Age Disability Payment, administered by Social Security Scotland, under the safe and secure principles set out by Scottish Ministers.

Although there will not be fundamental changes to the existing Attendance Allowance eligibility criteria when delivering Pension Age Disability Payment, individuals will be able to make use of a number of improvements. These range from a choice of inclusive application channels, local delivery support, improved Special Rules for Terminal Illness provision and access to Short-term Assistance. 63% of respondents to the 2019 consultation agreed with the proposals for the eligibility criteria of Pension Age Disability Payment.¹⁴

Sectors and Groups Affected, Benefits and Costs

Option 1

Were the Scottish Government to take no action, it is anticipated that there could be a significant impact on individuals in Scotland who are entitled to Attendance Allowance. This would also impact third sector organisations, such as advice and advocacy services and other areas of the public sector, such as local government.

This is because Attendance Allowance is being delivered on the Scottish Government's behalf by the Department for Work and Pensions by way of an Agency Agreement. If the Scottish Government did not introduce a form of Disability Assistance for those over State Pension age in Scotland, the Agency Agreement would require further negotiation to ensure individuals in Scotland do not lose access to their awards of Attendance Allowance.

There are therefore not considered to be any benefits to this option, and the financial and social cost could be significant, as the Scottish Government may have to act in an unplanned manner to ensure disabled people over State Pension age continue to receive financial support.

Option 2

If the Scottish Government were to replicate Attendance Allowance in its entirety, it is anticipated that individuals entitled to support under the current system as well as

¹⁴ <https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-analysis/2019/10/consultation-disability-assistance-scotland-analysis-responses/documents/consultation-disability-assistance-scotland-analysis-responses/consultation-disability-assistance-scotland-analysis-responses/govscot%3Adocument/consultation-disability-assistance-scotland-analysis-responses.pdf>

third sector and public sector organisations would see no change, therefore having a neutral impact in the short term. However, the Scottish Government would have missed an opportunity to improve processes and systems to benefit both the individuals seeking financial support and the impacted sectors of the economy.

The financial cost of this option is likely to be largely similar to that of Option 3. The Scottish Government would be delivering a replica of Attendance Allowance under this option, however there would still be a requirement to budget for extensive system development, training of staff to administer this benefit and the delivery of a case transfer process.

Therefore, although this option would have a neutral impact on individuals and impacted sectors of the economy in the short term, there are not considered to be any benefits to this option which would see the Scottish Government deliver a benefit that is inconsistent with the social security principles. This option has a significant cost and would fail to deliver improvements like those delivered by the introduction of Child Disability Payment and Adult Disability Payment.

Option 3 (recommended option)

The impact of Pension Age Disability Payment will be dispersed across Scotland and sectors of the economy. Pension Age Disability Payment will have an impact on individuals over State Pension age who have a long-term condition or disability. This impact has been assessed through an Equalities Impact Assessment. The launch of Pension Age Disability Payment will have a short-term impact on advice and advocacy services, as well as some aspects of the public sector, such as local government and the health service, while they adapt to the delivery of this benefit.

However, over the longer term, this initial impact will reduce and will be largely beneficial for individuals as well as the third and public sectors as there will be more consistency and efficiency in the delivery of disability benefits in Scotland than was the case previous to the Scottish Government's delivery of disability assistance.

For 2024-25, expenditure on Pension Age Disability Payment is projected to be £715.5 million; and the Scottish Government is expected to receive £714.5 million from the Block Grant Adjustment for Attendance Allowance.¹⁵ The Scottish Fiscal Commission have forecasted that expenditure on Pension Age Disability Payment is expected to increase to £816.5 million by 2027-28. In the same financial year, the Scottish Government is expected to receive £744.5 million from the Block Grant Adjustment for Attendance Allowance.

The reasons for the increase in expenditure is due to the changes the Scottish Government are making as part of Pension Age Disability Payment, such as the introduction of the Scottish definition of terminal illness and provision of Short-term Assistance.

¹⁵ https://www.fiscalcommission.scot/download/2023/05/Scotland_s-Economic-and-Fiscal-Forecasts-May-2023.pdf

The May 2023 forecast on Pension Age Disability Payment expenditure and the forecast Attendance Allowance Block Grant Adjustment from the Scottish Fiscal Commission are set out in the table below: ¹⁶

£ million	2024-25	2025-26	2026-27	2027-28
Forecast on Pension Age Disability Payment expenditure	715.5	762.3	790.2	816.5
Block Grant Adjustment forecast for Attendance Allowance	714.5	728.3	733.2	744.5
Additional expenditure above the Block Grant Adjustment	1.0	34.0	57.0	72.0

Regulatory and EU Alignment Impacts

Intra-UK Trade

Is this measure likely to impact on intra-UK trade? **No**

International Trade

Is this measure likely to impact on international trade and investment? **No**

EU Alignment

Is this measure likely to impact on the Scottish government's policy to maintain alignment with the EU? **No**

Scottish Firms Impact Test

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

Stakeholder events were 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 delivery of disability benefits in Scotland. 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

¹⁶ https://www.fiscalcommission.scot/download/2023/05/Scotland_s-Economic-and-Fiscal-Forecasts-May-2023.pdf

Parent Families Scotland, Children’s Hospices Across Scotland (CHAS), The Poverty Alliance, Epilepsy Scotland and Glasgow Disability Alliance.

Following the Consultation on Disability Assistance, the Scottish Government also engaged with stakeholders specifically on Pension Age Disability Payment. This involved engagement with the IHDBSRG in November 2022, seeking advice from DACBEAG and responding to their recommendations in March 2023, as well as holding stakeholder engagement sessions, such as for the development of the Equality Impact Assessment. Stakeholder organisations involved in our engagement sessions included: MND Scotland, Mobility and Access Committee for Scotland, Scottish Pensioner’s Forum, Scottish Women’s Convention, Christians Against Poverty, BLESMA and Sight Scotland.

It is expected that the introduction of these regulations could cause additional requests for information and support from existing advice and advocacy 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 social security provision in Scotland progresses.

The Scottish Government does not believe that the introduction of Pension Age Disability Payment will have an adverse impact on the competitiveness of Scottish companies or the third sector within Scotland, the United Kingdom or internationally, including Europe and the rest of the world. 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 Pension Age Disability Payment.

There may be some impact on public sector agencies and third sector organisations operating in Scotland in relation to the way that Social Security Scotland delivers Scottish Government 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 or enquiring about social security payments and should not require a significant change to their operations.

The 2018 Act sets out a duty on Scottish Ministers to promote the take-up of Scottish Government benefits. As Pension Age Disability Payment helps with the extra costs relating to an individual’s care needs, an increase in benefit uptake is likely to have a positive impact on Scottish businesses and the economy. This is because individuals may use their payments to purchase a range of goods and services.

Competition Assessment

The Scottish Government does not believe that Pension Age Disability Payment will directly or indirectly limit the number of suppliers, nor will it limit the ability of suppliers to complete or reduce suppliers’ incentives to compete vigorously.

Any procurement required to support the administration of Pension Age Disability Payment will be subject to the Procurement Reform (Scotland) Act 2014 and The Public Contracts (Scotland) Regulations 2015, which together provide a national

legislative framework for sustainable public procurement, which supports Scotland's economy growth through improved procurement practice.

- 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**

Consumer Assessment

The Scottish Government does not believe that Pension Age Disability Payment will have an adverse impact on either eligible people or any other consumer either within Scotland, the UK or internationally, including Europe and the rest of the world. Pension Age Disability Payment does not directly or indirectly limit the choices of consumers, nor does it limit the ability of consumers to compare the quality, availability or price of goods or services in the market. Furthermore, Pension Age Disability Payment will not impact a consumer's ability to understand their rights.

- Does the policy affect the quality, availability or price of any goods or services in a market? **No**
- Does the policy affect the essential services market, such as energy or water? **No**
- Does the policy involve storage or increased use of consumer data? **No**
- Does the policy increase opportunities for unscrupulous suppliers to target consumers? **No**
- Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these? **No**
- Does the policy affect routes for consumers to seek advice or raise complaints on consumer issues? **No**

Test Run of Business Forms

Pension Age Disability Payment will make use of a new application form, as well as forms for applications under special rules for terminal illness, award reviews and change of circumstances. At present, such forms are under development, utilising user research from relevant stakeholder organisations and those with lived experience of the current social security system. The introduction of BASRiS forms in place of the existing DS1500 or SR1 forms for terminal illness applications is not a new business requirement, as this has already been rolled out with the introduction of Child Disability Payment and Adult Disability Payment.

Digital Impact Test

Scottish Ministers do not foresee that there will be any adverse impacts now, or in the future, of Pension Age Disability Payment in relation to its delivery in the current and future digital context.

Pension Age Disability Payment will be delivered alongside the Scottish Government's other disability benefits, Child Disability Payment and Adult Disability Payment, which already utilise digital processes for individuals where convenient, but does not exclude those that are unable to access these channels.

Those seeking to apply for Pension Age Disability Payment will be able to apply online, over the phone, in person or through a paper application form. Individuals will also be able to seek support through online webchat and digital guidance resources.

However, whilst it is recognised that technological advances do mean that social security provision across the United Kingdom has already largely moved to a digital offering, it is important that the Scottish Government continues to support those who do not have access to, or knowledge of, the necessary digital channels to apply for and manage their payments.

Therefore, individuals will be able to seek support over the phone through Social Security Scotland's freephone number, in-person through the Local Delivery team and through paper guidance resources. Social Security Scotland will continue to support individuals in an online and offline environment, ensuring that any future changes to Pension Age Disability Payment are mindful of the needs of the individual first and foremost.

Legal Aid Impact Test

Individuals applying for Pension Age Disability Payment will have a right to request a re-determination of their entitlement by Social Security Scotland and subsequently will be able to appeal to the Social Security Chamber of the First-tier Tribunal for Scotland.

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 individual.

It is a demand led budget and will continue to be available to individuals to appeal a determination of entitlement to the First-tier Tribunal, the Upper Tribunal, the Court of Session or the 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.

The Scottish Government expects that the re-determination process will ensure most determinations are made correctly. If nevertheless someone remains dissatisfied and wishes to appeal to the First-tier Tribunal, Social Security Scotland will do all it can to

help an individual with an appeal. This includes providing information about the process, providing the right form to make an appeal and signposting to organisations who can support the individual throughout the process.

Enforcement, Sanctions and Monitoring

Under section 97 of the 2018 Act, the Scottish Commission on Social Security (SCoSS) must prepare a report setting out its observations and recommendations in relation to the Scottish Government's proposals.

The Scottish Government will publish its formal response to this report when laying these regulations before the Scottish Parliament.

Ongoing stakeholder engagement with key organisations 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 2018 Act 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 Scottish Ministers have done in that year to meet the expectations on them as set out in the Social Security Charter.

Implementation and Delivery Plan

The Scottish Government intends to begin accepting new applications for Pension Age Disability Payment as part of a pilot from Autumn 2024, with a national launch in early 2025. Existing awards of Attendance Allowance from the Department for Work and Pensions will transfer to Social Security Scotland without individuals having to make a new application.

A communications strategy will be developed in advance of the launch of Pension Age Disability Payment. This 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 Pension Age Disability Payment, and understand the eligibility criteria. A communications strategy will be developed so that it will be linked with wider Scottish Government initiatives for improving outcomes for disabled people and older 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 Recommendations

In summary, the Scottish Government has identified evidence that the introduction of Pension Age 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. Therefore businesses could benefit from the introduction of Pension Age Disability Payment.

Any impact to businesses as a result of these regulations should be positive or neutral in the long term. The Scottish Government has worked closely with stakeholders to develop the policy and will continue to do so when Pension Age Disability Payment opens for new applications, during the case transfer process and beyond.

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	No benefits have been identified from this option.	<p>This option could have a negative economic and social impact.</p> <p>If the Department for Work and Pensions were to stop providing Attendance Allowance to people in Scotland, and the Scottish Government had not made provision for a replacement benefit, a significant number of people with an entitlement to Attendance Allowance would be worse off as they would no longer be receiving financial support.</p> <p>The Scottish Government would likely have to act in an unplanned manner to ensure disabled people over State Pension age continue to receive financial support.</p> <p>This could also have a significant impact on third sector organisations, such as advice and advocacy services and other areas of the public sector, such as local government.</p>
2	Although in the short term this option would have a neutral impact, the Scottish Government would have delivered a benefit that does not align with our	The cost of this option is likely to be similar to that of Option 3, as the Scottish Government would still need to budget for the delivery of new

	<p>social security principles. This would still have a significant budgetary impact, and deliver a benefit that has not been designed with people that have experience of the current system, therefore lacking in the improvements that the Scottish Government has delivered for Child Disability Payment and Adult Disability Payment.</p>	<p>systems and a case transfer process as well as training staff.</p>
<p>3</p>	<p>There will be a significant social benefit through this option, as individuals will be able to benefit from a number of improvements from Pension Age Disability Payment, ranging from a choice of inclusive application channels, local delivery support, improved Special Rules for Terminal Illness provision and access to Short-term Assistance.</p>	<p>For 2024-25, the Scottish Fiscal Commission have forecasted expenditure on Pension Age Disability to be £715.5 million; and the Scottish Government is expected to receive £714.5 million from the Block Grant Adjustment for Attendance Allowance.</p> <p>The Scottish Fiscal Commission have forecasted expenditure on Pension Age Disability Payment to increase over future years to £816.5 million in 2027-28. In the same financial year, the Scottish Government is expected to receive £744.5 million from the Block Grant Adjustment for Attendance Allowance.</p> <p>The Scottish Fiscal Commission have set out the reason for this increase in expenditure over the Attendance Allowance Block Grant Adjustment is due to the changes the Scottish Government are making as part of Pension Age Disability Payment, such as the introduction of the Scottish definition of terminal illness and provision of Short-term Assistance.</p>

Declaration and Publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that:

- (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and
- (b) that the benefits justify the costs.

I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date:

Minister's name:

Minister's title:

Scottish Government Contact point: Joseph Scullion

Island Communities Impact Assessment (ICIA): The Disability Assistance for Older People (Scotland) Regulations 2024

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 2018 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 also includes the development of legislation.¹ 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 2018 (the 2018 Act)² 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 delivery of social security powers in Scotland.

4. If 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 Scottish Ministers to:

- describe the likely significantly different effect of the legislation;
- assess the extent to which 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.

Executive Summary

5. This Island Communities Impact Assessment has considered the potential effects of the draft Disability Assistance for Older People (Scotland) Regulations 2024 and how they impact on people living in island communities, as 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 system,³ and the Consultation on Disability Assistance.⁴ 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.

¹ <http://www.legislation.gov.uk/asp/2018/12/enacted>

² <http://www.legislation.gov.uk/asp/2018/9/contents/enacted>

³ <https://www.gov.scot/collections/social-security-experience-panels-publications/>

⁴ <http://consult.gov.scot/social-security/improving-disability-assistance/>

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. The Scottish Government is extending the Island Communities Impact Assessment by considering rurality and remoteness in the same spirit of the Act to gauge evidence as to whether the policy and regulations will impact rural/remote communities differently to other communities.

8. Scottish Ministers have concluded that there will not be any new unique impacts on remote and island communities as a result of the provisions in these regulations, nor will there be a specific financial impact for island communities in isolation resulting from the provisions. The positive impacts of Pension Age Disability Payment that have been identified are expected to have a similar impact on remote and island communities as with the rest of Scotland.

Policy Background

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

10. The Scottish Government has now replaced Disability Living Allowance for Children with Child Disability Payment, and Personal Independence Payment with Adult Disability Payment. Attendance Allowance is currently being delivered by the Department for Work and Pensions on behalf of the Scottish Government under the terms of an Agency Agreement. Under the 2018 Act, it is the Scottish Government's intention to replace Attendance Allowance with Pension Age Disability Payment. This was formerly known as Disability Assistance for Older People.

11. The draft Disability Assistance for Older People (Scotland) Regulations 2024 set out the eligibility criteria and how Social Security Scotland will deliver Pension Age Disability Payment, the replacement for Attendance Allowance in Scotland.

12. Pension Age Disability Payment will be delivered by Social Security Scotland on behalf of Scottish Ministers. People will be able to challenge a determination by requesting a re-determination, and subsequently they will be able to appeal to the Social Security Chamber of the First-tier Tribunal for Scotland.

13. The regulations also make provision for the transfer of awards for individuals in Scotland who currently receive Attendance Allowance from the Department for Work and Pensions. This process is referred to as "case transfer". These provisions are not currently included within the full draft regulations, however they will be added in due course.

14. Based on information from the Department for Work and Pensions' Stat-Xplore service, there were around 144,000 individuals in August 2022 with an

entitlement to Attendance Allowance in Scotland whose awards would transfer to Pension Age Disability Payment.⁵

15. As part of the Scottish Government's commitment to a safe and secure transfer, Scottish Ministers do not propose to make significant changes to the existing Attendance Allowance eligibility criteria for Pension Age Disability Payment.

16. Significant changes to the eligibility criteria from that of Attendance Allowance would risk creating a two-tier system of disability benefits for those over State Pension age. Changes to the eligibility criteria for Pension Age Disability Payment would cause unfairness, confusion and disruption for individuals by having two different sets of eligibility criteria and rules, whilst undertaking a significantly complicated case transfer process.

17. Eligibility to Attendance Allowance currently provides individuals with entitlement to various UK Government benefits and premiums, usually referred to as 'passporting'. Throughout the consultation on Disability Assistance, people consistently raised concerns about maintaining other support that they are entitled to as a result of their disability benefit award.

18. This would specifically impact on people who rely on additional means of support such as the Severe Disability premium of Pension Credit which an award of Attendance Allowance may entitle them to.

19. Whilst the passporting of benefit entitlements is not the sole reason for Scottish Ministers' approach to safe and secure transfer, the Scottish Government recognises that these entitlements are crucial to disabled people in Scotland.

20. By maintaining the current eligibility criteria, individuals in Scotland who are eligible for passported benefits and premiums from the UK Government will have seamless access to this vital support. This will provide security to people in Scotland when Pension Age Disability Payment is rolled out.

21. However, there are some key changes along with a number of practical administrative differences between Pension Age Disability Payment and Attendance Allowance which Scottish Ministers expect to have a positive impact for disabled people in Scotland. These differences have been developed through the commitments under the Social Security Charter.⁶

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

⁵ <https://stat-xplore.dwp.gov.uk/>

⁶ https://www.socialsecurity.gov.scot/asset-storage/production/downloads/Our-Charter_1.pdf

23. The Scottish Government has made changes to the application process for all forms of disability assistance, including Pension Age Disability Payment, which will help to reduce stress and anxiety for individuals. People interacting with Social Security Scotland will require options and choices that suit them best. Social Security Scotland offers a multi-channel approach including online, telephone, paper-based and face-to-face applications. As well as offering choices, this ensures that those who cannot or choose not to adopt digital methods will not become isolated.

24. People who require further assistance or would prefer face-to-face support will be able to access that through Social Security Scotland's Local Delivery service. Local Delivery staff will provide one-to-one support and help disabled people to understand what Scottish Government benefits they may be entitled to. They can also provide assistance to complete application forms and take forward any follow-up actions relating to a person's application.

25. It is considered that this support will be of particular benefit to older people applying for Pension Age Disability Payment, as many older people may find completing application forms overwhelming and might not have access to a support network to assist them.

26. The Scottish Government also launched the Social Security Independent Advocacy Service in January 2022, and has committed to investing £20.4 million in the service over the following four years. The service is free and supports people who self-identify as a disabled person to access and apply for Social Security Scotland assistance.

27. As with the Scottish Government's other disability benefits, a new approach to gathering supporting information is being utilised by Social Security Scotland which will help reduce stress and anxiety for individuals. A Case Manager will ordinarily only seek one piece of supporting information from a professional to support the decision-making process when making a determination on an individual's entitlement to Pension Age Disability Payment.

28. Case Managers will use a collaborative approach to help people gather supporting information from a professional, where an individual does not already have this to hand. This includes Case Managers obtaining supporting information from professionals on the individual's behalf.

29. Case Managers can also assist in gathering supporting information from the individual's wider support network, such as a family member or unpaid carer, which can help Social Security Scotland to understand the individual's needs, conditions or disability.

30. Applications will be fast tracked from people with a terminal illness. Individuals who are terminally ill will automatically receive the highest rate of Pension Age Disability Payment and there will be no award reviews.

31. The Scottish Government's new definition of terminal illness will apply to Pension Age Disability Payment. The Scottish Government's definition removes the arbitrary 12 month timescale currently used by the Department for Work and

Pensions. Instead, the judgement as to whether a person should be considered terminally ill for the purposes of determining eligibility for Pension Age Disability Payment will be made by clinicians, based on guidance prepared by the Chief Medical Officer.⁷

32. For many people in the current system, the award end date 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 reviews of entitlement.

33. Providing ongoing awards that are subject to light-touch reviews will help to reduce the stress and anxiety associated with approaching an award review by removing a financial cliff edge for individuals. This is a change from the ‘renewal’ process for Attendance Allowance, whereby an individual has to complete a new application form and will see payments stop if they do not reapply in time. By continuing entitlement while a review is taking place, disabled people will continue to receive the assistance they are entitled to until a Case Manager has made a new determination.

34. Light-touch reviews will make the process easier and less stressful for individuals. This means that Case Managers are able to, if needed, gather supporting information for the person whose award is being reviewed and consider existing information and previous determinations to avoid asking unnecessary questions.

35. Case Managers will be empowered to make a determination without supporting information if this information is unavailable during a review, and request case discussions with practitioners to further reduce the need for intrusive questions. Having a light-touch review process is more appropriate, particularly where an individual’s needs are unlikely to have changed significantly. 66% of respondents to the Consultation on Disability Assistance agreed with this approach alongside general agreement from Experience Panels.^{8,9}

36. Additionally, when asked if review periods should be between 5-10 years for individuals with conditions unlikely to change, 58% of respondents to the consultation agreed. This will help to cut down on the number of unnecessary award reviews that disabled people will need to go through, and as a result, reduce stress and anxiety, thereby having a positive impact on individuals. Work is also underway to consider in more detail whether and in what circumstances indefinite awards should be made available to people whose needs are highly unlikely to change.

37. The Scottish Government wants to ensure that no one is disadvantaged by time limits for challenging a determination. In response to feedback from the Disability Assistance consultation, Experience Panels and the Disability and Carers

⁷ <https://www.socialsecurity.gov.scot/asset-storage/production/downloads/Disability-Benefits-Terminal-Illness-CMO-guidance-V1.0.pdf>

⁸ <https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-analysis/2019/10/consultation-disability-assistance-scotland-scottish-government-response/documents/social-security-consultation-disability-assistance-scotland-scottish-government-response/social-security-consultation-disability-assistance-scotland-scottish-government-response/govscot%3Adocument/social-security-consultation-disability-assistance-scotland-scottish-government-response.pdf>

⁹ <https://www.gov.scot/publications/social-security-experience-panels-decision-making-reviewing-award-main-report/>

Benefits Expert Advisory Group, Scottish Ministers have set the time limit for requesting a re-determination to 42 calendar days across the Scottish Government's disability benefits. This is an increase on the month time limit that is set for requesting a mandatory reconsideration by the Department for Work and Pensions.¹⁰ This will provide individuals with additional time to seek advice or gather supporting information which might be required before requesting a re-determination.

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

39. In the Consultation on Disability Assistance, it was proposed that Social Security Scotland be allowed 40-60 days to carry out a re-determination. 60% of respondents to the Consultation on Disability Assistance 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.

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

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

42. The Scottish Government has committed to providing Short-term Assistance where Social Security Scotland has made a determination to reduce or stop an ongoing Scottish Government benefit and that determination is subject to a request for re-determination or an appeal. As with the Scottish Government's other disability benefits, Short-term Assistance will be available for those with an award of Pension Age Disability Payment.

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

¹⁰ <https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-analysis/2019/10/consultation-disability-assistance-scotland-scottish-government-response/documents/social-security-consultation-disability-assistance-scotland-scottish-government-response/social-security-consultation-disability-assistance-scotland-scottish-government-response/govscot%3Adocument/social-security-consultation-disability-assistance-scotland-scottish-government-response.pdf>

44. The policy position for Pension Age Disability Payment is closely aligned with the Healthier, Wealthier and Fairer Strategic Objectives, and contributes to the following National Outcomes:

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

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

Scope of the Island Communities Impact Assessment

46. This Island Communities Impact Assessment considers the impact of replacing Attendance Allowance with Pension Age Disability Payment in Scotland on disabled people over the State Pension age and their families and carers, who live in island and remote communities.

Key Findings

47. This section provides an overview of the issues for Scottish island and remote communities that are relevant to these regulations. Island stakeholders have emphasised the importance of understanding the island experience.

48. Each island has its own specific considerations and constraints. Rural Scotland accounts for 98% of the Scottish landmass, with 17% of the population residing there.¹¹

49. At the time of the 2011 Census, Scotland had 93 inhabited islands, with a total population of 103,700. This was 2% of the Scottish population.¹² Of these islands, only five are connected to the Scottish mainland by bridge or causeway.

50. Part 4 of the Islands Act identifies six local authorities representing island communities. These are: Argyll and Bute Council; Comhairle nan Eilean Siar/Western Island Council; Highland Council; North Ayrshire Council; Orkney Islands Council and Shetland Islands Council. Amongst them, Orkney, Shetland and Western Isles are entirely island authorities, while Argyll and Bute, Highland and North Ayrshire cover island regions as well as mainland regions.

¹¹ <https://www.gov.scot/publications/rural-scotland-key-facts-2018/>

¹² https://www.scotlandscensus.gov.uk/documents/analytical_reports/Inhabited_islands_report.pdf

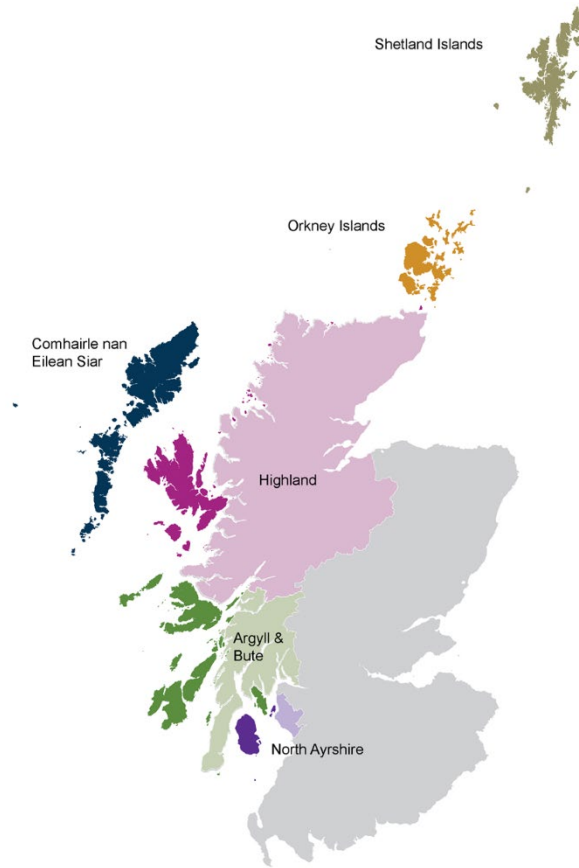


Figure 1: Map highlighting all six local authorities representing Island Communities. Islands are in a darker shade where the islands are part of mainland Local Authority areas.¹³

Demography and Health

51. 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.¹⁴ The proportion of island residents with a long-term 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.¹⁵ The corresponding proportions for Scotland as a whole were very similar. 21% of island residents were aged 65 and over, whereas the proportion nationally was 17%.¹⁶

52. Across the United Kingdom, disabled people have higher poverty rates than the general population. 24% of people over State Pension age with a disability are in poverty compared with 17% of those without a disability.¹⁷ Data related to disability specific to island communities is not available.

¹³ <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2017/9/4/Islands--Scotland--Bill-1>

¹⁴ https://www.scotlandscensus.gov.uk/documents/analytical_reports/Inhabited_islands_report.pdf

¹⁵ https://www.scotlandscensus.gov.uk/documents/analytical_reports/Inhabited_islands_report.pdf

¹⁶ https://www.scotlandscensus.gov.uk/documents/analytical_reports/Inhabited_islands_report.pdf

¹⁷ <https://www.jrf.org.uk/report/uk-poverty-2022>

53. In Scotland, 410,000 households in poverty (42%) include a disabled person. 1 in 8 people aged over 65 in Scotland experience poverty in the last year of their life. The impact of social inequalities on health outcomes in older people is well documented.¹⁸

54. As of August 2022, around 16,500 individuals had an entitlement to Attendance Allowance within the entirety of the six island local authority areas, with around 3,500 of those individuals residing on the islands. This accounts for around 2.4% of those with an entitlement to Attendance Allowance within Scotland.¹⁹

55. Although Pension Age 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. The Scottish Government's approach to delivery is expected to improve outcomes for older people across Scotland, including in island communities, by starting from a position of trust and listening to what individuals tell Social Security Scotland about their personal circumstances while endeavouring to make the right determination at the first opportunity.

Cost of Living

56. 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.

57. 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.²⁰ 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.²¹

58. According to Highlands and Islands Enterprise (HIE), household budgets in remote rural Scotland in 2013 were typically 10-40% higher than elsewhere in the United Kingdom.²² Although this had reduced slightly in 2016 and has a more modest impact on older people, HIE attributes these extra costs to three principle sources:

- The higher prices that households were required to pay for food, clothes and household goods;
- Considerably higher household fuel bills, influenced by climate and fuel sources;

¹⁸ <https://www.healthscotland.scot/population-groups/older-people>

¹⁹ <https://stat-xplore.dwp.gov.uk/>

²⁰ Sutherland, F (2015) Remotely excluded: barriers facing Scotland's rural consumers, CAS, Edinburgh, 36 pp

²¹ A Minimum Income Standard: For Remote rural Scotland; Loughborough University, UHI & Highlands and Islands Enterprise; 2013

²² <https://www.hie.co.uk/research-and-reports/our-reports/2016/november/30/a-minimum-income-standard-for-remote-rural-scotland-a-policy-update/#:~:text=The%20Minimum%20Income%20Standard%20for%20Remote%20Rural%20Scotland,minimum%20budgets%20required%20by%20various%20types%20of%20household>

- The longer distances that people have to routinely travel, particularly to work.

59. The Joseph Rowntree Foundation reported that levels of poverty among disabled people are generally underestimated.²³ 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.

60. 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 2016.²⁴ 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.

61. The Scottish Government recognises that both being disabled and living in a remote rural area makes it more expensive to meet material needs and participate in society. While Pension Age Disability Payment is not intended to be an income-replacement benefit, it is intended to provide support with helping to meet the extra costs of care associated with having a disability. For some disabled people, entitlement to Pension Age Disability Payment may bring additional entitlement to other benefits and premiums.

Connectivity and Accessibility

62. Alongside the areas identified by Citizens Advice Scotland, research briefings from 2017 for the Islands (Scotland) Bill suggest that residents of islands rely on ferry crossings and air travel to reach the mainland and larger islands to access key services such as secondary and higher education, care, and medical services.²⁵

63. 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.²⁶

64. 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 a physical condition, especially when transport options are limited.

65. 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.

²³ https://www.npi.org.uk/files/7814/0490/1005/Disability_long_term_conditions_and_poverty.pdf

²⁴ <https://www.gov.scot/groups/islands-strategic-group/>

²⁵ <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2017/9/4/Islands--Scotland--Bill-1>

²⁶ [Inhabited islands analytical report | Scotland's Census \(scotlandscensus.gov.uk\)](https://www.scotlandscensus.gov.uk/inhabited-islands-analytical-report/)

66. Not all islands are served by buses and there are not always taxis available. It is known that disabled people on islands rely heavily on neighbours, friends and families driving them as a primary means of transport.

67. 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.

68. Research undertaken by the Scottish Government and by stakeholders in 2020 have found that a lack of connectivity in rural or remote communities has been compounded by the impacts of the COVID-19 pandemic.²⁷ An absence of good quality internet connection can significantly impact on an individual's ability to socialise and partake in cultural activities, particularly where people already have difficulty taking part in activities as a result of a disability or health condition.

69. The Scottish Government is working to address some of these issues through Social Security Scotland's Local Delivery staff sharing locations with other services so that they are based where people currently go, to ensure that individuals can access advice and support in existing island locations.

70. Social Security Scotland will 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.

71. Social Security Scotland will also support individuals to gather supporting information. This includes, if authorised by the individual, gathering supporting information on their behalf if they do not have this to hand. For individuals living in rural or island communities, this may be of particular benefit as it may be difficult for residents to gather supporting information from a professional given the remoteness and lack of connectivity.

Culture

72. Stakeholders have identified potential cultural barriers to applying for Pension Age 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.

73. It is possible that the stigma attached to identifying as disabled could act as a barrier to people applying for Pension Age Disability Payment. The need for privacy and dignity is emphasised by disabled people in remote and island communities.

74. Dignity, fairness and respect underpins how Social Security Scotland will deliver Pension Age Disability Payment, including protecting the privacy of individuals. For instance, Social Security Scotland's Local Delivery team will share locations with other services so that they are based where individuals currently go to ensure that they can access advice and support in existing island locations. This

²⁷ <https://www.gov.scot/publications/poverty-perspective-typology-poverty-scotland/pages/6/>

should help to reduce the stigma of seeking support when applying for Pension Age Disability Payment.

75. Access to information on Pension Age Disability Payment will also be reflective of culture and lived experience. Social Security Scotland will create a range of Pension Age Disability Payment stakeholder resources and content in accessible formats.

76. Such resources will be proactively supplied to relevant stakeholder organisations through the National Engagement Team for organisations to distribute to people in local communities. Social Security Scotland proactively translates information resources into Gaelic, which may be beneficial to some island communities, particularly those residing in the Western Isles, Highlands and Argyll and Bute.

Choice and Representation

77. The Scottish Government has 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.

78. As previously highlighted, Social Security Scotland's Local Delivery team will share locations with other services so that they are based where people currently go to ensure that they can access advice and support in existing island locations.

79. 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. Further to this, carers, adult children and those with power of attorney will be able to navigate the process of applying for and maintaining Pension Age Disability Payment through Social Security Scotland's multi-channel approach. People applying for Pension Age Disability Payment will not be required to undergo a face-to-face consultation.

80. The importance of representation has been heard from island communities. The Scottish Government will ensure that individuals can request a third party representative with ease to support them in their engagement with Social Security Scotland. Scottish Ministers believe this strikes the right balance to encourage people in this age group to gain support from friends and relatives when required, while also maintaining their financial independence.

81. Engagement with key stakeholders, including advice organisations, will be ongoing throughout the development and delivery of Pension Age Disability Payment to ensure that they understand the application process and eligibility criteria to provide representation for individuals.

82. The Scottish Government launched the Social Security Independent Advocacy Service in January 2022 and has committed to investing £20.4 million in the service over the following four years. The service is free and supports people

who self-identify as a disabled person to access and apply for Social Security Scotland assistance. The service is independent of the Scottish Government and is delivered by VoiceAbility, a charity with 40 years' experience of delivering independent advocacy services. Advocates from VoiceAbility can support people to have their voices heard, understand and secure their rights under the Scottish social security system, express their wishes and be fully involved in order to make informed decisions.

83. It is expected that the Scottish Government's approach to delivering Pension Age Disability Payment will help to ensure that individuals can interact with Social Security Scotland in a way that best meets their needs, while having support from friends or relatives as well as independent advice organisations, no matter where they reside in Scotland.

Implementation

84. A communications strategy and comprehensive guidance will be developed in advance of the launch of Pension Age Disability Payment. This will ensure that individuals who are eligible and their families, the third sector, local authorities and advice providers are aware of Pension Age Disability Payment, and have an understanding of the application process and eligibility criteria.

85. The communications strategy will be linked with wider Scottish Government initiatives on improving outcomes for disabled people and for remote and island communities. This will ensure that Pension Age Disability Payment is part of wider efforts to meet the needs of people living in island communities.

86. The Scottish Government recognises that awareness and understanding of Attendance Allowance is often limited, which is especially relevant in rural communities. Scottish Ministers intend to provide clear information about eligibility and the new application process for Pension Age Disability Payment which will be more personalised and efficient than the current process.

87. Social Security Scotland's Local Delivery staff will provide support to applicants in rural areas. This will be an improvement on the current level of support offered through the Department for Work and Pensions system.

Monitoring and Review

88. Monitoring the impact of Pension Age 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 Pension Age Disability Payment prior to implementation which takes account of the issues identified within this impact assessment.

89. On-going stakeholder engagement with key organisations will also provide the Scottish Government with an opportunity to monitor the impact of the policy.

90. The 2018 Act places a duty on 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 Scottish Ministers have done in that year to meet the expectations set out in the Charter.

91. 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

92. Scottish Ministers are aware of the duty to consult island communities before making a material change to any policy, strategy or service which, in Scottish Ministers' opinion, is likely to have an effect on an island community which is significantly different from its effect on other communities.

93. This impact assessment has highlighted that living in island and remote communities present unique challenges for disabled people.

94. The Scottish Government has not identified any evidence that the introduction of Pension Age Disability Payment will directly or indirectly discriminate against remote and island communities.

95. The introduction of Pension Age 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.

96. Pension Age Disability Payment will help to address a number of issues raised in this Island Communities Impact Assessment, such as the higher cost of living in remote and island communities and challenges faced in accessing social security due to cultural barriers. This Island Communities Impact Assessment has identified the need to ensure that Pension Age Disability Payment is promoted appropriately and sensitively in remote rural areas.

97. The Scottish Government is committed to designing Social Security Scotland's services 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.

98. The Scottish Government has concluded that no further changes to the Pension Age Disability Payment regulations are necessary as a result of the Island Communities Impact Assessment.

Authorisation

Name and job title of Policy Lead: Joseph Scullion Disability Benefits Policy Officer	Date this version authorised:
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<p>Social Security Policy Division</p> <p>Name and job title of a Deputy Director or equivalent:</p> <p>Deputy Director Social Security Policy Division</p>	
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Fairer Scotland Duty Summary

<p>Title of Policy</p>	<p>The Disability Assistance for Older People (Scotland) Regulations 2024</p>
<p>Summary of aims and expected outcomes of policy</p>	<p>The Social Security (Scotland) Act 2018¹ (the 2018 Act) sets out the broad framework for the delivery of the Scottish Government’s social security benefits. On 1 April 2020, executive and legal competence for disability benefits, including Disability Living Allowance for Children, Personal Independence Payment and Attendance Allowance was transferred to Scottish Ministers.</p> <p>Pension Age Disability Payment will be the replacement for Attendance Allowance in Scotland. Attendance Allowance will continue to be delivered during a transition period by the Department for Work and Pensions under the terms of an Agency Agreement to ensure the safe and secure transfer to Pension Age Disability Payment.</p> <p>The draft Disability Assistance for Older People (Scotland) Regulations 2024 set out the eligibility criteria and how Social Security Scotland will deliver Pension Age Disability Payment. This benefit will accept new applications from those over State Pension age.</p> <p>The regulations also make provision for the case transfer process for people in Scotland who currently receive Attendance Allowance. These provisions are not currently included within the full draft regulations, however they will be added in due course.</p> <p>Based on information from the Department for Work and Pensions’ Stat-Xplore service, there were around 144,000 individuals in August 2022 with an entitlement to Attendance Allowance in Scotland whose awards would transfer to Pension Age Disability Payment.²</p> <p>Pension Age Disability Payment will be delivered by Social Security Scotland on behalf of Scottish Ministers. People will be able to challenge a determination by requesting a re-determination, and subsequently they will be able to appeal to the Social Security Chamber of the First-tier Tribunal for Scotland.</p> <p>As part of the Scottish Government’s commitment to a safe and secure transfer, Scottish Ministers do not propose to make significant changes to the existing</p>

¹ <http://www.legislation.gov.uk/asp/2018/9/contents/enacted>

² <https://stat-xplore.dwp.gov.uk/>

	<p>Attendance Allowance eligibility criteria for Pension Age Disability Payment.</p> <p>The Scottish Government will ensure that individuals in receipt of Attendance Allowance do not need to reapply when transferred to Pension Age Disability Payment. Significant changes to the eligibility criteria from that of Attendance Allowance would risk creating a two-tier system of disability benefits for those over State Pension age.</p> <p>Changes to the eligibility criteria for Pension Age Disability Payment would cause unfairness, confusion and disruption for individuals by having two different sets of eligibility criteria and rules, whilst undertaking a significantly complicated case transfer process.</p> <p>Eligibility to Attendance Allowance also provides individuals with entitlement to various UK Government benefits and premiums, usually referred to as ‘passporting’. Throughout the consultation on Disability Assistance, people consistently raised concerns about maintaining other support that they are entitled to as a result of their disability benefit award.</p> <p>An example of a passported entitlement through an award of Attendance Allowance is the Severe Disability premium of Pension Credit. Whilst the passporting of benefit entitlements is not the sole reason for Scottish Ministers’ approach to safe and secure transfer, the Scottish Government recognises that these entitlements are crucial to disabled people in Scotland.</p> <p>However, what Social Security Scotland delivers on day one is not the limit of the Scottish Government’s aspirations. Scottish Ministers are committed to continually improving disability benefits by continuing engagement with disabled people and stakeholders to identify areas for further improvement in future.</p> <p>However, there are some key changes along with a number of practical administrative differences between Pension Age Disability Payment and Attendance Allowance which Scottish Ministers expect to have a positive impact for disabled people in Scotland. These differences have been developed through the commitments under the Social Security Charter.³ The Scottish Government recognises social security as a</p>
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³ https://www.socialsecurity.gov.scot/asset-storage/production/downloads/Our-Charter_1.pdf

	<p>human right and has designed Social Security Scotland's services with the people who use them so that everyone is treated with dignity, fairness and respect.</p> <p>The Scottish Government has made changes to the application process for all forms of disability assistance, including Pension Age Disability Payment, which will help to reduce stress and anxiety for individuals. People interacting with Social Security Scotland will require options and choices that suit them best. Social Security Scotland offers a multi-channel approach including online, telephone, paper-based and face-to-face applications. As well as offering choices, this ensures that those who cannot or choose not to adopt digital methods will not become isolated.</p> <p>People who require further assistance or would prefer face-to-face support will be able to access that through Social Security Scotland's Local Delivery service. Local Delivery staff will provide one-to-one support and help disabled people to understand what Scottish Government benefits they may be entitled to. They can also provide assistance to complete application forms and take forward any follow-up actions relating to a person's application.</p> <p>It is considered that this support will be of particular benefit to older people applying for Pension Age Disability Payment, as many older people may find completing application forms overwhelming and might not have access to a support network to assist them.</p> <p>The Scottish Government also launched the Social Security Independent Advocacy Service in January 2022, and has committed to investing £20.4 million in the service over the following four years. The service is free and supports people who self-identify as a disabled person to access and apply for Social Security Scotland assistance.</p> <p>As with the Scottish Government's other disability benefits, a new approach to gathering supporting information is being utilised by Social Security Scotland which will help reduce stress and anxiety for individuals. A Case Manager will ordinarily only seek one piece of supporting information from a professional to support the decision-making process when making a determination on an individual's entitlement to Pension Age Disability Payment.</p> <p>Case Managers will use a collaborative approach to help people gather supporting information from a professional, where an individual does not already have this to hand.</p>
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	<p>This includes Case Managers obtaining supporting information from professionals on the individual’s behalf. Case Managers can also assist in gathering supporting information from the individual’s wider support network, such as a family member or unpaid carer, which can help Social Security Scotland to understand the individual’s needs, conditions or disability.</p> <p>Applications will be fast tracked from people with a terminal illness. Individuals who are terminally ill will automatically receive the highest rate of Pension Age Disability Payment and there will be no award reviews.</p> <p>The Scottish Government’s new definition of terminal illness will apply to Pension Age Disability Payment. It removes the arbitrary 12 month timescale currently used by the Department for Work and Pensions. Instead, the judgement as to whether a person should be considered terminally ill for the purposes of determining eligibility for Pension Age Disability Payment will be made by clinicians, based on guidance prepared by the Chief Medical Officer.⁴</p> <p>The Scottish Government has committed to providing Short-term Assistance where Social Security Scotland has made a determination to reduce or stop an on-going Scottish Government benefit and that determination is subject to a request for re-determination or an appeal. As with the Scottish Government’s other disability benefits, Short-term Assistance will be available for those with an award of Pension Age Disability Payment.</p> <p>The intention of Short-term Assistance is to ensure individuals are not discouraged from challenging a review of their award determination or from accessing administrative justice, by having to manage, for a period, with a reduced income. Short-term Assistance is not available in the UK Government system. Providing support in this way is another example of where Scottish Ministers are removing barriers in the Scottish social security system.</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;
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⁴ <https://www.socialsecurity.gov.scot/asset-storage/production/downloads/Disability-Benefits-Terminal-Illness-CMO-guidance-V1.0.pdf>

	<ul style="list-style-type: none"> • We tackle poverty by sharing opportunities, wealth, and power more equally; and • We live in communities that are inclusive, empowered, resilient and safe.
<p>Summary of evidence</p>	<p>This Fairer Scotland Duty assessment has been developed drawing on a range of primary research, including public consultations,^{5,6} engagement with those with lived experience, as well as ongoing consultation with stakeholders including through the independent Disability and Carers Benefits Expert Advisory Group (DACBEAG)⁷ and the Ill Health and Disability Benefits Stakeholder Reference Group.</p> <p>This work also drew upon interviews conducted via the Scottish Government’s Social Security Experience Panels.⁸ The Panels involve people with lived experience of the benefits that are being devolved to Scotland, and have over 2,400 members drawn from people across Scotland. In 2019, a second round of recruitment took place, targeting specific groups identified as being underrepresented such as ethnic minorities and young people.</p> <p>The Scottish Health Survey 2021 provides an accurate estimate of the number of disabled people in Scotland.⁹ For people between 65 and 74 years of age, 46% have a limiting longstanding illness. This number increases to 60% for those over 75 years of age.</p> <p>In 2019, people aged 65 and over accounted for 19% of the Scottish population.¹⁰</p> <p>The link between poverty and disability</p> <p>Research has shown that poverty disproportionately affects individuals with a disability, with higher poverty rates being reported amongst disabled people compared to the rest of the population.¹¹ This is the case across the United Kingdom, and is prevalent amongst disabled people over State Pension age. 24% of people over State</p>

⁵ <https://www.gov.scot/publications/analysis-written-responses-consultation-social-security-scotland/>

⁶ <https://www.gov.scot/publications/consultation-disability-assistance-scotland-analysis-responses/>

⁷ <https://www.gov.scot/groups/disability-carers-benefits-expert-advisory-group/>

⁸ <https://www.gov.scot/collections/social-security-experience-panels-publications/>

⁹ <https://www.gov.scot/publications/scottish-health-survey-2021-volume-1-main-report/>

¹⁰ <https://www.nrscotland.gov.uk/files//statistics/rgar/2019/Pages/pop-sec.html#Population-Section-four>

¹¹ <https://www2.le.ac.uk/departments/law/research/cces/documents/the-energy-penalty-disability-and-fuel-poverty-pdf>

	<p>Pension age with a disability are in poverty, compared with 17% of those without a disability.¹²</p> <p>410,000 households in poverty within Scotland include a disabled person, accounting for 42% of households. The impact of social inequalities on health outcomes in older people is well documented.¹³</p> <p>In Scotland, 66% of older people in poverty who have ill health also have no savings, with 61% living in a deprived area. 92% of people within this cohort rely on benefits for more than 80% of their income.¹⁴</p> <p>On average, women tend to have a lower income when retired than men.¹⁵ When considered alongside the impact of a long-term health condition or disability, women tend to be disproportionately impacted by low income. 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.¹⁶</p> <p>In 2018, research from the Papworth Trust has shown that in the United Kingdom, three-quarters of households using foodbanks contain someone with a health condition or disability, with one-third of households containing someone with a mental health condition. This is influenced by the day-to-day living costs of those with a disability, which are 25% higher than those without a disability. Food poverty amongst disabled people over 65 years old is twice as likely when compared to those without a disability.¹⁷</p> <p>Marie Curie and Loughborough University research suggests that 1 in 8 people aged over 65 in Scotland experience poverty in the last year of their life. This increases to 1 in 5 in areas such as Glasgow, Dundee and West Dunbartonshire,¹⁸ which are also areas of relatively high deprivation in Scotland.</p> <p>Poverty amongst disabled people is likely to be exacerbated in light of the COVID-19 pandemic. UNICEF</p>
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¹² <https://www.jrf.org.uk/report/uk-poverty-2022>

¹³ <https://www.healthscotland.scot/population-groups/older-people>

¹⁴ <https://www.gov.scot/publications/poverty-perspective-typology-poverty-scotland/pages/7/>

¹⁵ https://www.ageuk.org.uk/globalassets/age-uk/documents/policy-positions/money-matters/poverty_in_later_life_briefing_june_2021.pdf

¹⁶ <https://www.wbg.org.uk/analysis/uk-policy-briefings/social-security-gender-and-covid-19/>

¹⁷ <https://www.papworthtrust.org.uk/about-us/publications/papworth-trust-disability-facts-and-figures-2018.pdf>

¹⁸ <https://www.mariecurie.org.uk/globalassets/media/documents/policy/dying-in-poverty/h420-dying-in-poverty-scotland-4th-pp.pdf>

	<p>highlighted that: ‘In the context of the COVID-19 pandemic, persons with disabilities may have increased risk’.¹⁹ The report also makes connections between the pandemic and poverty, with disabled people likely to be disproportionately impacted.</p> <p>Research by Age UK suggests that many older people are missing out on maximising their income through the financial support that is currently available. For support such as Attendance Allowance, the main reasons why individuals have not applied are due to not knowing such support exists, or because they did not feel they would be eligible.²⁰</p>
<p>Summary of assessment findings</p>	<p>Improved application process</p> <p>Making the application process more accessible and the provision of comprehensive pre-application advice is intended to make it easier for individuals to secure the financial support that they are entitled to.</p> <p>The Scottish Government recognises that people interacting with Social Security Scotland will require options and choices that suit individuals best. Social Security Scotland offers a multi-channel approach including online, telephone, paper-based and face-to-face applications. As well as offering choices, this ensures that those who cannot or choose not to adopt digital methods will not become isolated.</p> <p>People who require further assistance or would prefer face-to-face support will be able to access that through Social Security Scotland’s Local Delivery service. Local Delivery staff will provide one-to-one support and help disabled people to understand which Scottish Government benefits they may be entitled to.</p> <p>Local Delivery staff can also provide assistance to complete application forms and take forward any follow-up actions relating to a person’s application. It is considered that this support will be of particular benefit to older people applying for Pension Age Disability Payment, as many older people may find completing application forms overwhelming and might not have access to a support network to assist them.</p>

¹⁹ <https://www.unicef.org/media/125956/file/COVID-19-response-considerations-for-people-with-disabilities-190320.pdf>

²⁰ <https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/reports-and-briefings/money-matters/benefit-take-up-and-older-people--july-2022.pdf>

	<p>Enhanced support during the application process will also assist the Scottish Government in achieving the commitments made under the Benefit Take-up Strategy.²¹</p> <p>The Scottish Government will ensure that individuals can request a third party representative with ease to support them in their engagement with Social Security Scotland. Scottish Ministers believe this strikes the right balance to encourage people in this age group to gain support from friends and relatives when required, while also maintaining their financial independence.</p> <p>Making the process of applying for Pension Age Disability Payment easier will potentially assist in mitigating the increasing levels of disabled older people living in poverty. This may encourage people facing financial difficulties due to disability or their condition to apply who feel the current system is too overwhelming.</p> <p>It will be important for individuals to understand that if they are receiving Adult Disability Payment prior to reaching State Pension age, they will continue to receive this after reaching State Pension age so long as they remain entitled. Individuals will also be able to apply for Adult Disability Payment after reaching State Pension age in circumstances where no more than a year has lapsed since their previous award of Adult Disability Payment, Personal Independence Payment or Disability Living Allowance has ended, and their condition or disability is substantially the same as when their previous award was made. Guidance and communications will be clear on this so that individuals understand if, and in what circumstances, they should apply for Pension Age Disability Payment.</p> <p>Improved decision-making</p> <p>Case Managers will be empowered to speak to individuals who have indicated that they are willing to be called to gain additional information or to clarify details of their application and supporting information. Supporting information will be used by Case Managers as a resource to support the decision-making process. This information, along with information in application or review forms, will be approached from a position of trust.</p> <p>One piece of supporting information from a professional will ordinarily be sought by Case Managers, such as a</p>
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²¹ <https://www.gov.scot/publications/social-security-scotland-act-2018-benefit-take-up-strategy-october-2021/>

	<p>medical report or a letter from a support worker. This will be used to support the decision-making process by assisting Case Managers in their understanding of an individual’s level of need, condition or disability alongside utilising internal Decision Making Guidance. Where an individual does not have supporting information to hand, Social Security Scotland will use a collaborative approach with the individual to assist in gathering supporting information from a professional and/or their wider support network.</p> <p>In instances where supporting information is not available, Case Managers can make a determination of an individual’s entitlement to Pension Age Disability Payment with no supporting information from a professional, or from their wider support network. Where it is reasonable that this information is not available, Social Security Scotland will consider this when making a determination.</p> <p>This could be due to the individual’s health, condition or personal circumstances. Examples include, if an individual has had a recent hospital stay, if they have been unable to receive the support they need from an advocate or support worker, or where they may have lost contact with their support network, including health and social care professionals.</p> <p>Case Managers will then utilise other decision-making tools, such as case discussions with a health or social care practitioner to assist in using their discretion when making a determination, based on the balance of probabilities. This will have a positive impact on disabled people in this age cohort. As older people are disproportionately impacted by social isolation, this approach will ensure access to a robust determination of entitlement that takes into consideration their current circumstances when supporting information is not available.</p> <p>This will have a positive impact on disabled people in this age cohort. As older people are disproportionately impacted by social isolation, this approach will ensure access to a robust determination of entitlement that takes into consideration their current circumstances when supporting information is not available. This also has the potential to reduce barriers for some individuals to apply for the financial assistance they are entitled to. Therefore, this approach is likely to have a positive impact on reducing inequality.</p>
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	<p>Case discussions with a health or social care practitioner can assist Case Managers through advising on aspects such as the side effects of a particular medication, how a disability or health condition will typically affect someone, or the way in which two conditions may interact. This will help Case Managers to make an informed decision regarding an individual's entitlement to Pension Age Disability Payment.</p> <p>Practitioners are registered health or social care professionals employed by Social Security Scotland who will have access to a range of resources and professionals with expertise in conditions more likely to affect older people, such as dementia.</p> <p>This approach to decision-making will ensure that Case Managers are able to make the right determination at the first opportunity with an informed understanding of the individual's needs and condition(s).</p> <p>Passported entitlements</p> <p>Eligibility to Attendance Allowance currently provides individuals with entitlement to various benefits and premiums, usually referred to as 'passporting'.</p> <p>Throughout the consultation on Disability Assistance, people consistently raised concerns about maintaining other support that they are entitled to as a result of their disability benefit award. An example of a passported entitlement through an award of Attendance Allowance is the Severe Disability premium of Pension Credit.</p> <p>Whilst the passporting of benefit entitlements is not the sole reason for Scottish Ministers' approach to safe and secure transfer, the Scottish Government recognises that these entitlements are crucial to disabled people in Scotland.</p> <p>By maintaining the current eligibility criteria, individuals in Scotland who are eligible for passported benefits and premiums from the UK Government will have seamless access to this vital support. This will provide security to people in Scotland when Pension Age Disability Payment is rolled out.</p> <p>Mobility</p> <p>As Attendance Allowance provides help with the extra costs associated with an individual's care needs, it does</p>
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	<p>not include a mobility component. The Scottish Government has committed to aligning Pension Age Disability Payment with Attendance Allowance to ensure a safe and secure transfer.</p> <p>Following the 2019 consultation and stakeholder feedback that suggested there was interest in the introduction of a mobility component as part of Pension Age Disability Payment, the Scottish Government undertook an analysis of the potential impact of this policy change.</p> <p>The Scottish Government published a Pension Age Disability Payment policy position paper in February 2020 which included a detailed analysis of the relevant considerations regarding a mobility component.²² As part of the development of Pension Age Disability Payment, the Scottish Government has carefully considered whether to introduce a mobility component. Scottish Ministers have concluded that it is not feasible to include a mobility component within the foreseeable future.</p> <p>Within the policy position paper, the Scottish Government estimated that the introduction of a mobility component could cost an additional £580 million annually. However, this cost would increase annually due to uprating with inflation and, with an aging population, is likely to grow substantially in the coming years.</p> <p>Due to the financial implications, as set out in the position paper, the Scottish Government would have to find this additional funding from the fixed budget. Given the highly challenging fiscal environment, such a significant increase in costs would require the Scottish Government to reduce spending on other key social security priorities. Having evaluated the financial implications outlined in this paper, the Scottish Government is not currently in a position to further consider the introduction of a mobility component.</p> <p>As set out above, the Scottish Government intends to align Pension Age Disability Payment with Attendance Allowance to ensure a safe and secure transfer. The introduction of a mobility component as part of Pension Age Disability Payment would be a fundamental change in the policy rationale that underpins Attendance Allowance as a benefit that helps with the additional costs related to an individual's care needs.</p>
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²² <https://www.gov.scot/publications/scottish-government-position-paper-mobility-component-disability-assistance-older-people-daop/>

	<p>As the Scottish Government will ensure that those receiving Attendance Allowance in Scotland do not need to reapply to receive Pension Age Disability Payment, significant changes, such as introducing a mobility component, would risk creating a two-tier system of disability benefits for those over State Pension age. Changes to the eligibility criteria for Pension Age Disability Payment would cause unfairness, confusion and disruption for individuals by having two different sets of eligibility criteria and rules, whilst undertaking a significantly complicated case transfer process.</p> <p>However, it can be noted that following a consultation in 2017,²³ the Scottish Government committed to maintaining free bus travel through the National Entitlement Card scheme for people aged 60 and over. This scheme provides free travel on registered local and long-distance bus services throughout Scotland, at any time of day for any number of journeys. In recognition of the impact of age, the provision of free bus travel allows older people improved access to services, facilities and social networks, therefore promoting social inclusion and reducing inequalities in access to transport options.</p> <p>Qualifying period</p> <p>The current rules set out that an individual must have been disabled or had their condition for six months before becoming eligible for Attendance Allowance. This qualifying period for Attendance Allowance will be replicated as part of Pension Age Disability Payment.</p> <p>However, for people with a terminal illness, there will continue to be no qualifying period. It is understood that some people have concerns about the impact of this rule on those who require financial assistance. Therefore, the Scottish Government undertook an analysis of qualifying periods for disability benefits when establishing a policy position.²⁴</p> <p>The Scottish Government believes that the six month qualifying period prior to payment of Pension Age Disability Payment is appropriate and in keeping with the policy intent for Pension Age Disability Payment. It ensures that this form of assistance is targeted at those with longer-term conditions and disabilities. Changes to the six month qualifying period would lead to people with</p>
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²³ <https://www.transport.gov.scot/concessionary-travel/concessionary-travel-consultation/>

²⁴ <https://www.gov.scot/publications/disability-assistance-qualifying-periods-policy-position-paper/>

	<p>very short-term conditions becoming eligible, substantially changing both the nature and purpose of Pension Age Disability Payment.</p> <p>When applying the qualifying period, Social Security Scotland will ensure that the impact of unpredictable and fluctuating conditions on individuals is taken into consideration as part of a person centred approach. Unlike Child Disability Payment and Adult Disability Payment, there will be no qualifying period expecting a person’s condition to last for a specified time period into the future as part of Pension Age Disability Payment.</p> <p>As with Attendance Allowance, the rationale for this approach is that the number of people who have stopped receiving their award because their condition improves is negligible; largely attributable to the requirement for a six month initial qualifying period. This helps to mitigate the impact of having a longer qualifying period when compared to Child Disability Payment and Adult Disability Payment.</p> <p>Residence and presence</p> <p>The current rules for Attendance Allowance set out that an individual would be required to be present for 104 out of the previous 156 weeks. Since the Disability Assistance public consultation launched, a change has been made to Scottish Government policy to reduce the past presence test from 104 out of 156 weeks to 26 out of 52 weeks.</p> <p>This position has been settled upon to ensure compliance with recent developments in case law in relation to the United Kingdom’s social security system.²⁵ Removing the test entirely, would carry a financial cost as well as a number of delivery implications.</p> <p>The test also provides for a number of exceptions such as for individuals with a terminal illness. The Scottish Government believes this strikes the right balance between meeting the policy intent behind the residence and presence eligibility criteria and ensuring fairness for individuals applying for Pension Age Disability Payment.</p> <p>Scottish Ministers have previously legislated to ensure those settling in Scotland from Afghanistan are exempt from having to satisfy the habitual residence and past</p>
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²⁵ https://assets.publishing.service.gov.uk/media/5fc500e0d3bf7f7f5521a732/CDLA_2208_2018-00_CDLA_2019_2018.pdf

	<p>presence tests. These provisions will also be included as part of the Pension Age Disability Payment regulations. This includes those with leave to enter or remain in the United Kingdom under immigration rules in relation to the Afghan Relocations and Assistance Policy, the previous scheme for locally-employed staff in Afghanistan, those granted discretionary leave outside the immigration rules as a dependent of a person in relation to that scheme, as well as those granted leave under the Afghan Citizens Resettlement Scheme.</p> <p>Provisions in relation to individuals from Ukraine that have settled in Scotland due to the Russian invasion which took place on 24 February 2022 and were residing in Ukraine immediately before 1 January 2022 will also be included in the Pension Age Disability Payment regulations.²⁶</p> <p>This exempts individuals from having to satisfy the habitual residence and past presence tests. This exemption will apply to those arriving in the United Kingdom under the Ukraine Family Scheme and Homes for Ukraine. These individuals will be able to meet the residency conditions for Scottish Government benefits from day one, meaning they will be eligible subject to all other entitlement conditions being met.</p> <p>The Scottish Government has also legislated in relation to the conflict in Sudan, whereby those who were resident in Sudan prior to 15 April 2023 will be exempt from the past presence and habitual residence tests for Scottish Government benefits if they left Sudan in connection with the violence.²⁷ This will also be applied to Pension Age Disability Payment.</p> <p>The inclusion of these provisions will assist in reducing inequalities for disabled people who have settled in Scotland from areas of conflict by ensuring that they have access to Pension Age Disability Payment at the earliest possible opportunity, therefore assisting with the additional costs relating to their care needs as a result of a disability or health condition.</p> <p>Terminal illness</p> <p>The Scottish Government’s definition of terminal illness will support recognition of a wider number of illnesses and conditions through Pension Age Disability Payment than</p>
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²⁶ <https://www.gov.scot/publications/the-social-security-residence-requirements-ukraine-scotland-regulations-2022-policy-note/>

²⁷ <https://www.legislation.gov.uk/ssi/2023/149/contents/made>

	<p>can be accounted for under the current definition in the UK Government system.</p> <p>The new definition in Scotland allows medical professionals, including registered nurses, to use their clinical judgement when determining whether an individual has a condition which can reasonably be expected to result in their death. This means that individuals who would otherwise not be entitled to Attendance Allowance through Special Rules will be able to do so under the Scottish Government definition as part of Pension Age Disability Payment.</p> <p>Applications will be fast tracked from people with a terminal illness. Individuals who are terminally ill will automatically receive the highest rate of Pension Age Disability Payment and there will be no award reviews. This will help to mitigate the risk of living in poverty for those who are terminally ill.</p> <p>Alternative accommodation rules: legal detention</p> <p>Under the UK Government social security system, different approaches have been taken to legal detention for disability benefits for individuals of working age and those of State Pension age.</p> <p>Payments for those receiving Attendance Allowance are stopped the day after an individual enters legal detention. However, for those receiving Personal Independence Payment, the individual's payments are stopped after 28 days from when they entered legal detention. This position has been replicated as part of Adult Disability Payment in order to maintain alignment with Personal Independence Payment. Similarly, the Scottish Government will align Pension Age Disability Payment with the legal detention rules of Attendance Allowance.</p> <p>In the 2019 consultation, a number of respondents noted this difference between the Attendance Allowance rules for those who have entered legal detention and that of Personal Independence Payment and Adult Disability Payment. The Scottish Government has given consideration to this during the development of the Equality Impact Assessment. However, as the Scottish Government's position aligns with Attendance Allowance, this will have no material financial impact on individuals as a result of introducing Pension Age Disability Payment.</p>
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	<p>It is important to note that when an individual enters legal detention, they will continue to have an entitlement to Pension Age Disability Payment, however their award will be reduced to £nil from the day after they enter legal detention. An individual whose award is reduced to £nil due to being in legal detention is not entitled to Short-term Assistance.</p> <p>By reducing the award to £nil during this period, when an individual leaves legal detention they will not be required to make a new application for Pension Age Disability Payment if they continue to be eligible. Therefore, individuals will be able to access their financial support again with relative ease.</p> <p>Alternative accommodation rules: hospitals and care homes</p> <p>Many people with disabilities and long-term health conditions may often experience stays in hospital, sometimes for a lengthy period. As with the current Attendance Allowance rules, Pension Age Disability Payment will continue to be paid to an individual in hospital or a publicly funded care home for 28 days. Beyond 28 days, payment of Pension Age Disability Payment will be reduced to £nil. Pension Age Disability Payment is not intended to be an income-replacement benefit. Payments to support those over State Pension age on a low income are provided by the UK Government through Pension Credit.</p> <p>As part of the Equality Impact Assessment, the Scottish Government has considered the impact of this rule. The intention of Pension Age Disability Payment is to provide financial assistance to mitigate the costs that individuals and their families incur as a result of a health condition or disability.</p> <p>Continuing to pay Pension Age Disability Payment where an individual's care needs are met in full through alternative public funding, for instance in a care home, hospital or secure accommodation, would lead to funding duplication in meeting the individual's care needs. In the majority of instances when an individual is in hospital, their additional care needs are met by the NHS.</p> <p>Child Disability Payment is not stopped when a child or young person undergoes a stay in hospital for longer than 28 days. This is because, when children are in hospital they continue to require care and support, usually from a</p>
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	<p>parent or guardian, over and above that which is provided in clinical settings because of their young age. Adult inpatients are not expected to need this kind of pastoral input, and NHS staff are expected to meet essential care needs.</p> <p>The purpose of the '28 day rule' is to ensure that longer term periods in alternative accommodation are not subject to funding duplication, by receiving Pension Age Disability Payment while the costs of that care are being covered. The 28 day window ensures that people cared for in temporary respite do not lose access to payments as well as recognising that where care placements break down or periods within alternative accommodation end at an early stage, the individual does not experience the additional disruption of losing access to Pension Age Disability Payment.</p> <p>As set out previously, individuals residing in legal detention will have their payment reduced to £nil from the day after they enter legal detention.</p> <p>Where an individual undergoes frequent short periods in hospital, their payment of Pension Age Disability Payment will be unaffected. People are entitled to continue receiving their entitlement for the first 28 days of a hospital stay in order to meet any outstanding additional costs incurred prior to their hospital stay. Although payment will stop after 28 days of an individual being in a publicly funded hospital or care home, entitlement is unaffected. Therefore, if and when an individual leaves such accommodation, payments will resume, subject to continuing to meet the eligibility criteria for Pension Age Disability Payment.</p> <p>It is important to note that there is an exception to this rule for those who are residing in a hospice and have a terminal illness. In these circumstances, an individual's payment of Pension Age Disability Payment will continue, and the 28 day rule will not apply. This will have a positive impact by ensuring that people who are already in extremely difficult circumstances will not see their income reduce as a result of residing in a hospice.</p> <p>Ongoing awards and reviews</p> <p>For many people in the current system, the award end date for disability benefits can be extremely stressful, particularly for individuals whose conditions are unlikely to</p>
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	<p>change over time and who are consequently subject to unnecessary reviews of entitlement.</p> <p>Providing ongoing awards that are subject to light-touch reviews will help to reduce the stress and anxiety associated with approaching an award review by removing a financial cliff edge for individuals. This is a change from the ‘renewal’ process for Attendance Allowance, whereby an individual has to complete a new application form and will see payments stop if they do not reapply in time. By continuing entitlement while a review is taking place, disabled people will continue to receive the assistance they are entitled to until a Case Manager has made a new determination.</p> <p>Light-touch reviews will make the process easier and less stressful for individuals. This means that Case Managers are able to, if needed, gather supporting information for the person whose award is being reviewed and consider existing information and previous determinations to avoid asking unnecessary questions.</p> <p>Case Managers will be empowered to make a determination without supporting information if this information is unavailable during a review, and request case discussions with practitioners to further reduce the need for intrusive questions.</p> <p>Having a light-touch review process is more appropriate, particularly where an individual’s needs are unlikely to have changed significantly. 66% of respondents to the Consultation on Disability Assistance agreed with this approach alongside general agreement from Experience Panels.^{28,29}</p> <p>Additionally, when asked if review periods should be between 5-10 years for individuals with conditions unlikely to change, 58% of respondents to the consultation agreed. This will help to cut down on the number of unnecessary award reviews that disabled people will need to go through, and as a result, reduce stress and anxiety, thereby having a positive impact on individuals.</p>
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²⁸ <https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-analysis/2019/10/consultation-disability-assistance-scotland-scottish-government-response/documents/social-security-consultation-disability-assistance-scotland-scottish-government-response/social-security-consultation-disability-assistance-scotland-scottish-government-response/govscot%3Adocument/social-security-consultation-disability-assistance-scotland-scottish-government-response.pdf>

²⁹ <https://www.gov.scot/publications/social-security-experience-panels-decision-making-reviewing-award-main-report/>

Work is also underway to consider in more detail whether and in what circumstances indefinite awards should be made available to people whose needs are highly unlikely to change.

Re-determinations and appeals

The Scottish Government wants to ensure that no one is disadvantaged by time limits for challenging a determination. In response to feedback from the Disability Assistance consultation, Experience Panels and the Disability and Carers Benefits Expert Advisory Group, Scottish Ministers have set the time limit for requesting a re-determination to 42 calendar days across the Scottish Government's disability benefits.

This is an increase on the month time limit that is set for requesting a mandatory reconsideration by the Department for Work and Pensions.³⁰ This will provide individuals with additional time to seek advice or gather supporting information which might be required before requesting a re-determination.

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

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

Given the concerns raised in the consultation, and subsequent stakeholder engagement, the Scottish Government has settled on the timescale for Social

³⁰ <https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-analysis/2019/10/consultation-disability-assistance-scotland-scottish-government-response/documents/social-security-consultation-disability-assistance-scotland-scottish-government-response/social-security-consultation-disability-assistance-scotland-scottish-government-response/govscot%3Adocument/social-security-consultation-disability-assistance-scotland-scottish-government-response.pdf>

	<p>Security Scotland to undertake a re-determination at a maximum of 56 calendar days. It may be necessary to gather supporting information on behalf of the individual, and this information may take some time to obtain.</p> <p>This will be beneficial as it will ensure that disabled people and their families or carers will have certainty about how long Social Security Scotland has to complete a re-determination. Similarly, by enabling individuals to appeal directly to the First-tier Tribunal, should Social Security Scotland be unable to complete the re-determination process within the prescribed timescale, this will further reduce any uncertainty and make people feel more confident in challenging a determination they do not agree with.</p> <p>Short-term Assistance</p> <p>The Scottish Government has committed to providing Short-term Assistance where Social Security Scotland has made a determination to reduce or stop an on-going Scottish Government benefit and that determination is subject to a request for re-determination or an appeal. As with the Scottish Government's other disability benefits, Short-term Assistance will be available for those with an award of Pension Age Disability Payment.</p> <p>Introducing Short-term Assistance will help to mitigate the risk of increasing the number of 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.</p> <p>Engagement with Experience Panels found that participants believed that Short-term Assistance would make it more likely for people to challenge award reviews made by Social Security Scotland. There was an emphasis on Short-term Assistance reducing financial pressure and giving people more confidence in challenging award reviews they did not agree with.</p>
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	<p>Short-term Assistance will be available until the First-tier Tribunal for Scotland has made a determination, and is non-recoverable except in cases of fraud or error. Where a person is eligible, the value of Short-term Assistance will be the difference between the level of award paid prior to the reduction and the new level of award. This includes when that amount is now £nil because entitlement to the individual’s award has stopped.</p> <p>This will help to prevent a further reduction in household income and increase financial security in these circumstances, something which was stressed by respondents to the 2019 consultation, with 87% agreeing that Short-term Assistance should not be recoverable.</p> <p>There was disagreement from respondents to the consultation on 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.</p> <p>The Scottish Government has 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 by Social Security Scotland as part of that process.</p> <p>Recommendations and conclusions</p> <p>This Fairer Scotland Duty has identified that overall, the introduction of Pension Age Disability Payment to replace Attendance Allowance has the potential to have a positive impact on reducing inequality and tackling poverty for disabled people in Scotland.</p>
<p>Sign off</p>	<p>[name] Deputy Director Social Security Policy Division</p>

POLICY NOTE

DRAFT DISABILITY ASSISTANCE FOR OLDER PEOPLE (SCOTLAND) REGULATIONS 2024

The above instrument will, if approved by the Scottish Parliament, be made in exercise of the powers conferred by sections 31(2), 36(2), 41(4)(a), 43(5), 51(1), 52 and 95 of the Social Security (Scotland) Act 2018 (the 2018 Act). Some of those powers are subject to negative procedure and others to affirmative procedure. The powers are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 and section 33(3) of that Act makes the instrument subject to the affirmative procedure.

This draft instrument sets out the rules and eligibility criteria for Pension Age Disability Payment, a form of assistance to provide financial support to individuals who are over State Pension age with the additional costs related to their care needs, arising from a disability or health condition(s). This new form of disability assistance under section 31 of the 2018 Act will replace Attendance Allowance in Scotland.

The draft instrument includes provisions to include the Scottish definition of terminal illness as part of Pension Age Disability Payment, and provisions in relation to individuals who move from Scotland to reside in another part of the United Kingdom, or who move to Scotland. It further includes provisions for when short-term assistance is to be given to those who have been in receipt of Pension Age Disability Payment.

Policy Objectives

Pension Age Disability Payment is intended to improve outcomes for disabled people over State Pension age, by providing financial assistance to help meet the additional costs of care relating to an individual's disability or health condition(s). This includes physical and mental disabilities and health conditions which are severe enough that an individual needs someone to help look after them.

This form of assistance will replace Attendance Allowance in Scotland for individuals over State Pension age who are making a new application for disability assistance. This new Scottish Government benefit will be delivered by Social Security Scotland on behalf of the Scottish Ministers. The regulations include provisions detailing the eligibility criteria, the rates of assistance and the making of applications and payments.

Pension Age Disability Payment consists of two rates of assistance, the higher rate and the lower rate. To be eligible for the lower rate, an individual must require frequent help or constant supervision during the day, or supervision at night. To be eligible for the higher rate, an individual must require attention both throughout the day and at night, meeting the respective conditions. Individuals who are terminally ill will be automatically entitled to the higher rate. Reflecting the Scottish Government's approach to social security, Pension Age Disability Payment is intended to be person-centred, taking into account the specific needs of each individual.

The eligibility criteria for Pension Age Disability Payment broadly aligns with the eligibility criteria for Attendance Allowance. However, the Scottish Government is making improvements to the application process and the collection of supporting information about

an individual's disability, to better meet the needs of individuals entitled to Pension Age Disability Payment.

Pension Age Disability Payment will be delivered by Social Security Scotland from Autumn 2024 through a pilot and phased approach. Social Security Scotland will then accept new applications from individuals across all of Scotland in 2025.

Short-term Assistance

The regulations make provision for the introduction of short-term assistance. Short-term assistance is given by the Scottish Ministers to an individual on a short-term basis under section 24 (duty to give assistance) of the 2018 Act. An individual may be eligible for short-term assistance if they have been previously entitled to Pension Age Disability Payment and, as a result of a subsequent determination, their Pension Age Disability Payment entitlement has reduced or stopped. In the event of a re-determination or appeal, individuals can apply for short-term assistance in order to continue to receive their previous payment amount until the conclusion of their re-determination or appeal.

Suspension of Assistance

Provisions relating to the suspension of assistance are included in the draft regulations. Regulation 31 sets out the specific circumstances in which payment of assistance can be suspended. The regulations also set out the considerations that Scottish Ministers must make before suspending payment of assistance, the individual's right to request a review of the suspension, the information that should be provided to the individual when a suspension occurs and the circumstances in which a suspension should end.

Consultation

Between 5 March and 28 May 2019, the Scottish Government undertook a public consultation on its proposals for the delivery of disability assistance. The consultation received 263 responses from individuals and stakeholder organisations. A summary of these responses can be found in the analysis of consultation responses.¹ The views expressed within the consultation responses helped shape the proposals for Pension Age Disability Payment. The Scottish Government published its response to the consultation findings in October 2019.²

Respondents were broadly supportive of the policy proposals, although several changes were made to our approach to disability assistance in response to the consultation. Such changes include setting the time limit for requesting a re-determination to 42 calendar days, an increase on the Department for Work and Pension's time limit of one month. If Social Security Scotland is unable to complete a re-determination within 56 calendar days, an individual has a right to appeal to the First-tier Tribunal for Scotland.

Following the 2019 consultation, the Scottish Government published a Pension Age Disability Payment policy position paper in February 2020 which included a detailed analysis of the relevant considerations regarding a mobility component.³ As part of the development of Pension Age Disability Payment, careful consideration had been given to whether to introduce a mobility component, which is not included in Attendance Allowance. It was

¹ <https://www.gov.scot/publications/consultation-disability-assistance-scotland-analysis-responses/>

² <https://www.gov.scot/publications/consultation-disability-assistance-scotland-scottish-government-response/>

³ <https://www.gov.scot/publications/scottish-government-position-paper-mobility-component-disability-assistance-older-people-daop/>

concluded that it is not feasible to include a mobility component within the foreseeable future. The impact of this position has been assessed as part of the draft impact assessments.

In November 2020, officials presented the Scottish Government's policy position on Pension Age Disability Payment to DACBEAG. This was revisited in discussions with DACBEAG in November 2021. DACBEAG provided advice on Pension Age Disability Payment in August 2022, with the Scottish Government responding in March 2023.⁴

Officials have also engaged with a variety of stakeholders on the Scottish Government's policy position on Pension Age Disability Payment. In November 2022, a meeting of the Ill Health and Disability Benefits Stakeholder Reference Group was held, giving Group members an opportunity to consider the Scottish Government's policy position, while also allowing officials to assess the impact of the Scottish Government's policy position on third sector organisations. A similar session was held for wider stakeholders in January 2023.

In April 2023, the Scottish Government held a stakeholder engagement session to assist in the development of our Equality Impact Assessment for Pension Age Disability Payment. This session allowed the Scottish Government to discuss impacts that have been identified across all protected characteristics, and ensured stakeholders had an opportunity to raise any further potential impacts for further consideration.

A first draft of the regulations for Pension Age Disability Payment was circulated informally in June 2023 among the stakeholders that had already been engaged with the process, so that their expertise and feedback could be taken into account ahead of the draft of the regulations that was submitted to the Scottish Commission on Social Security for scrutiny.

Scottish Commission on Social Security – Scrutiny of the Draft Regulations

Under section 97 of the 2018 Act, the Scottish Ministers have consulted the Scottish Commission on Social Security (SCoSS). SCoSS published their scrutiny report on XXX. The Scottish Government's response will accompany these regulations.

Impact Assessments

An Equality Impact Assessment, Islands Community Impact Assessment and Fairer Scotland Duty Assessment are all provided with this instrument. A Data Protection Impact Assessment is also being prepared in relation to this instrument. The impact assessments indicate that the commencement of Pension Age Disability Payment will have a broadly positive impact on a range of groups with protected characteristics, island communities and in relation to the reduction of the impact of inequalities of outcome and socio-economic disadvantage.

Financial Effects

A Business and Regulatory Impact Assessment has been completed and is provided with this instrument. The Scottish Government does not believe that Pension Age Disability Payment will have an adverse impact on the competitiveness of Scottish companies or the third sector within Scotland, the United Kingdom or internationally including Europe and the rest of the world. The Scottish Government expects that there may be a limited impact on the operational business of local authorities or health boards, principally because Social Security

⁴ <https://www.gov.scot/publications/disability-and-carer-benefits-expert-advisory-group-pension-age-disability-payment-response-from-ministers/>

Scotland may seek to obtain, with the individual's consent, information held by public sector bodies about the individual's disability to make a determination of entitlement.

The right to appeal to the Social Security Chamber of the First-tier Tribunal for Scotland is provided for in the 2018 Act. Legal Assistance will continue to be available to individuals to appeal a determination of entitlement to the Upper Tribunal, Court of Appeal or Supreme Court. The Scottish Government does not expect any adverse impact to the Legal Aid budget as a result of the introduction of Pension Age Disability Payment. Current recipients of Attendance Allowance are already able to access legal aid to appeal entitlement decisions.

Scottish Government
Social Security Directorate

[DATE]