

<b>Title of Policy</b>	Disability Assistance for Children and Young People (Scotland) Regulations 2021
<b>Summary of aims and desired outcomes of Policy</b>	<ul style="list-style-type: none"> <li>• To replace Disability Living Allowance for Children (DLAC) with a new form of devolved social security assistance for disabled children and young people in Scotland between the ages of three months and 18 years of age called Child Disability Payment.</li> <li>• This benefit is intended to help disabled children and young people, and their families, to meet the additional costs associated with their care and mobility needs, because of having a disability.</li> <li>• Child Disability Payment will have two components, a care component (with lowest, middle and higher rates) and a mobility component (with lower and higher rates).</li> <li>• The Scottish Government does not propose to make substantive changes to most eligibility criteria, but will deliver a system that is based on fairness, dignity and respect for the individual.</li> <li>• To safely and securely transfer responsibility for delivering disability benefits for children and young people under the age of 18 who receive DLAC in Scotland from the Department for Work and Pensions (DWP) on behalf of Scottish Ministers to Social Security Scotland, and to change the disability benefits for these children and young people from DLAC to CDP.</li> </ul>
<b>Directorate:</b> <b>Division:</b> <b>Team:</b>	Social Security Directorate Social Security Policy Division Disability Benefits Team

## Executive Summary

1. The Social Security (Scotland) Act 2018<sup>1</sup> (the 2018 Act) sets out the broad framework for the delivery of devolved social security in Scotland. On 1 April 2020, the Scottish Ministers took executive and legal competence for disability benefits, including Disability Living Allowance for Children (DLAC), Attendance Allowance (AA) and Personal Independence Payment (PIP).
2. These benefits will continue to be delivered during a transition period by the Department for Work and Pensions (DWP) under the terms of an Agency Agreement agreed with the Scottish Government, to ensure the safe and secure devolution of disability benefits.
3. The Scottish Government intends to replace DLAC, PIP and AA with new forms of assistance under the 2018 Act. These new benefits will be delivered by Social Security Scotland on behalf of Scottish Ministers with most determinations carrying a right of appeal to the First-Tier Tribunal for Scotland's Social Security Chamber.
4. The Scottish Government intends to launch disability assistance for new applicants first. This includes individuals who are not in receipt of a UK or Scottish Government disability benefit.
5. In addition to supporting new applications, Scottish Ministers will make provision for the transfer of responsibility for delivering disability benefits for children and young people under the age of 18 who receive DLAC in Scotland from the Department for Work and Pensions (DWP) on behalf of Scottish Ministers to Social Security Scotland, and for changing the disability benefits for these children and young people from DLAC to CDP. The cases and supporting information for these clients will transfer to Social Security Scotland once new applications functionality for the respective devolved benefit is in place. Over 700,000 existing clients will require to be transferred from the Department for Work and Pensions (DWP) to Social Security Scotland as devolved benefits 'go live'.
6. Based on estimates provided by the Scottish Government's Communities Analysis Division, there are 57,000 children and young people who will transfer to CDP from DLAC.
7. Scottish Ministers have set out a number of case transfer principles which we have used to guide the development of our approach to case transfer. Our commitment to equalities will run through all of these principles and also guides our overall approach. The principles are:
  - **Correct payment at the correct time** – ensuring that the case transfer process is designed so that clients will receive the same amount for the Scottish benefit as they received for the corresponding UK benefit to include checks at the point of transfer.

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

- **No re-applications** - we will not require clients to re-apply for their benefit as part of the case transfer. We will work with DWP to move clients automatically to Social Security Scotland and the corresponding new Scottish benefit.
- **No face to face DWP re-assessments** - we will ensure that no-one will be subject to a face to face re-assessment by DWP when new applications for Adult Disability Payment are open. DWP do not conduct face to face assessments for DLA Child renewals, so this is not a consideration for DLA Child case transfer.
- **Complete as soon as possible** – Whilst the previously set out timetable will no longer be possible due to the impacts of Covid-19, Scottish Ministers have been clear that they want to complete the transfer of cases as soon as is possible in a way that will not create unacceptable risks for clients.
- **Clear communication with clients** – we will inform our clients the date their case will be transferred and will keep them informed at the various stages of the case transfer process.

8. The first form of disability assistance the Scottish Government will deliver is Child Disability Payment (CDP). This was formerly known as Disability Assistance for Children and Young People. It replaces DLAC for children and young people in Scotland between three months and 18 years of age. The changes we are implementing include:

- automatically extending awards of CDP from age 16 to 18 for clients entitled to CDP immediately before reaching age 16;
- a new definition of terminal illness that removes time limits and will more accurately reflect clinical best practice;
- continuing entitlement to the mobility component of CDP while a child or young person is in legal detention;
- revising the definition of a severe visual disability for the purposes of entitlement to the higher rate of the mobility component in line with national clinical best practice;
- making all awards of CDP rolling, subject to reviews, which take account of how likely it is for an individual's condition to change over time and continuing entitlement during the review process;
- extending the time an individual has to request a re-determination from 31 to 42 calendar days;
- Social Security Scotland will have 56 calendar days to complete a re-determination before the individual can appeal a determination to the First-Tier Tribunal for Scotland; and
- introducing Short-Term Assistance (STA) which will 'top up' an individual's ongoing award which has been reduced or stopped due to a new determination. This can be applied for during re-determinations or appeals.

9. The Disability Assistance for Children and Young People (Scotland) Regulations 2021 set out how CDP will be delivered and make provision for the transfer of responsibility for delivering disability benefits for children and young people under the age of 18 who receive DLAC in Scotland from the Department for Work and Pensions (DWP) on behalf of Scottish Ministers to Social Security Scotland, and for changing the disability benefits for these children and young people from DLAC to CDP.

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

11. This EQIA has identified potential impacts on young disabled people in Scotland as a result of replacing DLAC with CDP, transferring responsibility for delivering disability benefits for children and young people under the age of 18 who receive DLAC in Scotland from the Department for Work and Pensions (DWP) on behalf of Scottish Ministers to Social Security Scotland, and changing the disability benefits for these children and young people from DLAC to CDP. It was found that, overall, our policy would have a positive impact on young disabled people. Where areas of improvement have been identified, we have made changes to better meet the needs of young people in Scotland.

12. These changes build on the Social Security (Scotland) Act 2018 framework of a new system that is underpinned by dignity, respect and a human rights based approach to delivering social security for the people of Scotland.

13. This impact assessment is one of a package to accompany the regulations. The others are: Business and Regulatory Impact Assessment (BRIA); Child Rights and Wellbeing Impact Assessment (CRWIA); and Island Community Impact Assessment (ICIA).

## **Background**

### **Policy Aims**

14. In a statement to the Scottish Parliament on 28 May 2019<sup>2</sup>, the Cabinet Secretary for Social Security and Older People, Shirley-Anne Somerville MSP set out the Scottish Government's vision for the further devolution of a number of benefits under the Social Security (Scotland) Act 2018, including the following disability benefits: Disability Living Allowance for Children (DLAC); Attendance Allowance (AA); and Personal Independence Payment (PIP). These are currently being delivered by the UK Government's Department for Work and Pensions (DWP).

15. As part of this devolution of benefits, individuals will have their reserved benefits changed to the corollary devolved benefits, a process called "case transfer".

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<sup>2</sup> <https://www.gov.scot/publications/devolution-of-benefits-ministerial-statement/>

16. As part of the Scottish Government's commitment to a safe and secure transition of powers, we do not propose to make significant changes to the eligibility criteria of CDP. However, we have set out several points of divergence between CDP and DLAC which we expect to have a positive impact on disabled children and young people in Scotland.

17. We also set out some points regarding the process of transition from DLAC to CDP which we expect to have a positive impact on disabled children and young people in Scotland.

#### No re-applications

18. Individuals have told us they would be worried about gaps or delays in their benefits, that their payments would stop, or that they may need to do something as part of the case transfer process.

19. We will not require clients to re-apply for their benefit as part of the case transfer. We will work with DWP to move clients automatically to Social Security Scotland and the corresponding new Scottish benefit.

20. We will ensure clients will receive the same amount for the Scottish benefit as they received for the corresponding UK benefit, with no gap between regular payment dates.

#### Communications during the transfer process

21. Clients suggested they would have many questions about the changes created by the case transfer process. For example, they may have concerns seeing a payment coming from Social Security Scotland as opposed to DWP, questions about whether they needed to do anything as part of the process, or be uncertain about the time remaining on the benefit award after point of transfer.

22. We are developing a communication strategy that strikes an appropriate balance between ensuring that the client is kept fully informed of what is happening with their case whilst also not providing an excessive amount of information which could result in confusion or anxiety for the client.

#### Extension of CDP award from age 16 to 18

23. The Scottish Government established Social Security Experience Panels in 2017 to engage directly with people who have lived experience of the reserved social security system, and sought views on the current UK disability benefits. When asked if 16 was the right age for young people to transition to adult services, most respondents in the experience panel research conducted regarding DLAC<sup>3</sup> disagreed, stating that 16 was too young and that it was an "extra stress on the parents".

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<sup>3</sup> <https://www.gov.scot/publications/social-security-experience-panels-disability-living-allowance-dla-children-visual-summary/>

24. The Scottish Government will automatically extend an award of Child Disability Payment for any young person entitled to the benefit immediately before 16 to age 18. Doing so will delay children and young people needing to undergo what is experienced by many as a stressful DWP PIP face-to-face assessment.

25. Respondents to our Consultation on Disability Assistance in Scotland supported the proposal with 92% of responses being in favour of extending CDP to age 18<sup>4</sup>.

### Terminal Illness

26. The central principle in our approach is to ensure that terminally ill individuals are provided with the support they need, when they need it. Terminal illness is a complex and sensitive issue, and affects individuals with a range of progressive diseases including combinations of conditions.

27. The Scottish Government is introducing a new definition of terminal illness. The current definition used in the reserved social security system is that an individual "must have a progressive disease and their death as a consequence of that disease can be reasonably expected within six months."

28. In Scotland, registered medical practitioners will use their clinical judgment to determine whether an individual is terminally ill for the purpose of accessing disability assistance under special rules<sup>5</sup>. The new definition specifies no time limit but relies on the clinical judgment of a registered medical practitioner or nurse to determine if an individual has 'a progressive disease that can reasonably be expected to cause the individual's death'.

29. For case transfer, whilst most of the eligibility requirements for DLA for Children and CDP are the same, there are some instances where someone receiving CDP will be eligible for a higher award than they would if they were receiving DLA. We will be able to identify some, such as clients with a terminal illness who are only on low mobility awards for DLA, as part of the case transfer process and these regulations provide for exceptions to the rule that the CDP determination on case transfer will be based on the equivalent rates and components for the client's DLA for Children award.

30. These regulations do not make provision for a client to initiate case transfer. A client is still free to choose to end their DLA Child award and to make a new application to CDP but we cannot guarantee there will be no break or delay in payment. We are, however, putting in place a process to prioritise the transfer of individuals who have been diagnosed with a terminal illness.

### Legal Detention and the Mobility Component of CDP

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<sup>4</sup> <https://www.gov.scot/publications/consultation-disability-assistance-scotland-scottish-government-response/pages/4/>

<sup>5</sup> <https://www.gov.scot/policies/social-security/terminal-illness/>

31. The Scottish Government recognise that young people and children can spend longer periods than adults outwith detention in legal custody as part of the rehabilitation process and their sentences are generally far shorter on average than adult prisoners. To support the young person's transition back into a community setting, it is important that their family are able to meet their mobility needs and keep up contact while the child or young person is in legal custody.

32. The rules for CDP provide that where a young person is in legal detention, the mobility component of this benefit will still be paid. This includes when a child or young person is taken into legal custody or sentenced. This aligns rules for legal detention with other forms of alternative accommodation, such as care homes or residential education institutions, ensuring consistency for young people and their families regardless of which environment a young person becomes resident in.

### Severe visual disabilities and the higher rate mobility component

33. Under the rules applicable to DLAC, a child or young person who has been "certified blind or severely sight impaired" will qualify for the higher rate of the mobility component. As of May 2020, there are 107 children in Scotland<sup>6</sup> who are entitled to the higher rate of the mobility component under these rules.

34. From April 2018, children under 16 years of age are no longer registered as having a severe visual disability, but will instead be provided with support as part of a national care pathway, the Visual Impairment Network for Children and Young People (VINCYP). If a child has a severe visual disability, they will be provided with a letter from an ophthalmologist, orthoptist, optometrist or paediatrician confirming that this.

35. Unlike adults, the definition of 'severe' in children cannot always be measured in terms of the standard sight tests of visual acuity, either because they are too young, or because visual impairment is due to an abnormality of brain function so that they cannot 'see' due to profound difficulties with visual processing in the brain.

36. Where it is not appropriate to apply the adult visual acuity criteria, clinicians form a professional opinion on whether a child has equivalent visual function to someone meeting the adult criteria. Best practice is for a child to have a functional assessment by a team of professionals with expertise in visual impairment including a teacher and habilitation specialist.

37. For Child Disability Payment, an individual will qualify for the higher rate of the mobility component if they have been diagnosed as having a severe visual disability fulfilling the VINCYP definition.

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<sup>6</sup> DWP Stat-Xplore, May 2020 statistical release

38. In light of the length of time that the VINCYP definition of severe visual impairment has been operational, we do not anticipate any significant change to the numbers of children who will qualify under this route for Child Disability Payment. The Scottish Government will monitor the number of children and young people who do qualify through this route, to ensure that any additional impacts of this change can be identified.

### Award Duration

39. In the current system, DWP will generally write to an individual between 6 and 12 months before their award is due to end. The individual will then be asked to complete a review form or to make a further application for benefit.

40. Unlike in the current system, awards of CDP will not have an end date. The Disability And Carer Benefits Expert Advisory Group (DACBEAG) recommended that awards should be made on a rolling basis with a review date set by a case manager when making a determination of entitlement to CDP has been accepted by the Scottish Government<sup>7</sup>. This review will be set at a point where the case manager believes there is likely to be a change in the needs of the individual.

41. DACBEAG also recommended that, in cases where an individual's condition is unlikely to change, there should be a minimum of five years before the award is reviewed. When asked about award duration, our Experience Panels were in favour of this as it would help to avoid stress and anxiety as a result of having to go through unnecessary re-assessments of entitlement<sup>8</sup>.

42. Where an individual has a condition which is unlikely to change, reviews will be set between five and ten years. Individuals will continue to be entitled to CDP while their award is being reviewed and any change to the level of assistance an individual is entitled to will only take place after the case manager has made a new determination.

### Residence and Presence conditions

43. The Scottish Government has considered the implications of removing or adjusting the existing DWP residence and presence conditions. This is the type of policy change which could potentially have implications for individuals moving around the UK whilst in receipt of Scottish Disability Assistance. There may also be issues around eligibility for a range of payments, exemptions and entitlements associated with reserved UK benefits which remain within the control of DWP, eligibility for which currently depends on receipt of a UK disability benefit.

44. A majority of respondents to the consultation on Disability Assistance agreed with the proposed approach taken to residence and presence tests for Child Disability Payment. However, we also received suggestions about how we could change the rules, including the removal or shortening of the 'past presence test'.

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<sup>7</sup> <https://www.gov.scot/publications/disability-and-carers-benefits-expert-advisory-group-award-duration/>

<sup>8</sup> <https://www.gov.scot/publications/social-security-experience-panels-award-duration-automatic-entitlement/pages/2/>



45. In developing the past presence test for CDP, we considered the responses to the consultation on disability assistance, the need to maintain a test that would retain access to reserved passported payments and entitlements, and the latest developments in Human Rights jurisprudence. The past presence test for CDP thus requires that all children over the age of 6 months should require 26 of the past 52 weeks' presence in the UK to establish eligibility for CDP, and that children under the age of 6 months should require presence amounting to 13 of the past 26 weeks to establish eligibility, in accordance with the most recent developments in case-law<sup>9</sup>

46. There are features built in to the test that mitigate the test for the youngest and most vulnerable:

- If a child becomes entitled to CDP at an age of 6 months or less, the shorter test will apply to them if they apply by the time they are 12 months;
- Individuals who are terminally ill do not need to satisfy the PPT;
- And in addition, CDP regulations provide that an advance award (with a delayed start date for payments) can be made where it appears that the applicant will meet the necessary conditions within three months of their application.

47. The past presence test will impact UK nationals returning to Scotland, and to third country nationals who have immigration status that allows them access to public funds. Scottish Government analysts highlighted significant challenges in relation to the data available on the size of these groups and interactions with social security benefits.

48. From the analysis available, the relative change in size of cohorts eligible under adjusted past presence tests is expected to be small. Previous analysis suggests that the impact of removing the past presence test for DLAC in its entirety for UK Nationals moving to Scotland from outside the EEA might affect some 25 children. There would be a further cohort of children moving to Scotland from outside the European Economic Area (EEA) who could be eligible, if they hold a visa that allows them access to public funds. Data constraints make it very difficult to assess the number of such children who might be affected any further reduction or removal of the award.

#### Re-determinations and appeals

49. In the reserved social security system, individuals have 31 calendar days to request what DWP term a mandatory reconsideration of a decision on an application or regarding a review of their entitlement to disability benefits.

50. If for any reason clients feel their new CDP award is incorrect at the point of transfer, they will be able to request a re-determination and appeal any such re-determination through Social Security Scotland.

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<sup>9</sup> TS (by TS) v SSWP (DLA); EK (by MK) v SSWP (DLA) [2020] UKUT 284 (AAC)

51. Clients can continue to request a revision or supersession to their DLAC award through DWP, even after it has ended on transfer.

52. In response to feedback from our Consultation on Disability Assistance in Scotland<sup>10</sup> and commentary from our Experience Panels<sup>11</sup> and from DACBEAG, we have extended the time from 31 to 42 calendar days for individuals to request a re-determination (in exceptional circumstances, this can be extended up to a maximum of one year).

53. Social Security Scotland has 56 calendar days to complete a re-determination. If a re-determination is not completed within that time, the individual will have the right to appeal directly to the First-Tier Tribunal for Scotland.

### Short-Term Assistance

54. The Scottish Government has introduced Short-Term Assistance (STA) where Social Security Scotland has made a decision to reduce or stop a continuing payment of CDP, and that decision is subject to a request for re-determination or an appeal. The 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.

55. STA is not available in the reserved social security system and providing support in this way is another example of where Scottish Ministers are removing barriers to challenging decisions in the Scottish social security system.

56. STA will be available until the First-tier Tribunal (FtT) for Scotland has made a determination, and is non-recoverable. Where a person is eligible for STA, the value of STA will be the difference between the level of assistance paid prior to the reduction and the new level of assistance (including if that amount is now nil because entitlement to CDP has stopped).

57. This policy will help deliver numerous Social Security Outcomes, it 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; and
- We grow up loved, safe and respected so that we realise our full potential.

### **Who was involved in this EQIA?**

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<sup>10</sup> <https://www.gov.scot/publications/consultation-disability-assistance-scotland-scottish-government-response/pages/3/>

<sup>11</sup> <https://www.gov.scot/publications/social-security-experience-panels-complaints-re-determination-appeals/>

58. 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.

59. There were 521 formal written responses submitted, 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/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<sup>12</sup>. In addition, the Equality Impact Assessment that was published alongside the Social Security (Scotland) Bill was used to inform the partial Equality Impact Assessment for these Regulations.

60. The Scottish Government has set up Social Security Experience Panels with over 2,400 people across Scotland registered as panel members when the Panels opened in 2017. The Panels involve people with lived experience of the benefits that are coming to Scotland. In July 2019 recruitment to the Experience Panels was reopened. We have been working with relevant stakeholders to specifically target disabled people from seldom heard groups as part of our engagement.

61. Two surveys regarding the case transfer process was sent out to Experience Panel members in January and February 2019. 404 and 559 responses were received respectively. A series of individual and group interviews were also conducted. Results from both surveys and the interviews were published in 2019.<sup>13</sup> These surveys confirmed that of most importance to panel members was that they continue to receive the correct payment at the correct time.

62. We have been working with relevant stakeholders to specifically target disabled people from seldom heard groups as part of our engagement. For example, we have reached out to the Inclusive Communications Stakeholder Reference group to seek views from people from seldom heard groups. This is a continuous exercise and more information from this work is imminently forthcoming.

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<sup>12</sup> <https://www.gov.scot/publications/analysis-written-responses-consultation-social-security-scotland/>

<sup>13</sup> See <https://www.gov.scot/publications/social-security-experience-panels-case-transfer-survey-findings/> and <https://www.gov.scot/publications/social-security-experience-panels-designing-case-transfer-process-main-report/>

63. 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, namely Disability Assistance for Children and Young People (now known as CDP), and replacement benefits for PIP and AA<sup>14</sup>. The consultation closed on 28 May 2019, having received 263 replies, of which 74 were from stakeholder organisations and 189 were from individuals.

64. Regarding disability assistance, an initial framing exercise for the partial Equalities Impact Assessment relating to disability assistance was carried out in 2017 involving a range of internal Scottish Government stakeholders. In addition to highlighting a number of positive impacts and potential barriers, the exercise enabled significant data gaps to be identified. This in turn led to the targeted consultation with stakeholders representing people with protected characteristics which was undertaken during the Consultation on Disability Assistance between 5 March and 28 May 2019.

65. Specifically with regards to case transfer, framing exercises have been taking place in 2020 and will continue to take place with a range of internal Scottish Government stakeholders.

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

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

68. Despite the continuing impact of coronavirus, work with Experience Panels has continued, with user testing on digital material that will be available on the Social Security Scotland website. This will give information to people who are considering making a CDP application. We focused on making sure that information was easy to find, understand and navigate. This was for people who don't necessarily have existing knowledge of disability benefits. We worked with participants and asked them to read through the material. We then asked them 20 questions to test how easily they could find and understand the information.

## **The Scope of the EQIA**

69. The scope of this EQIA is the impact of:

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<sup>14</sup> <https://www.gov.scot/publications/social-security-consultation-disability-assistance-scotland/>

- the introduction of the Child Disability Payment (CDP) to replace Disability Living Allowance for Children (DLAC); and
- the transfer of responsibility for delivering disability benefits for children and young people under the age of 18 who receive DLAC in Scotland from the Department for Work and Pensions (DWP) on behalf of Scottish Ministers to Social Security Scotland, and changing the disability benefits for these children and young people from DLAC to CDP.

## Data Sources

70. A variety of information sources were used in compiling this EQIA, including:

- Scottish Health Survey 2018<sup>15</sup>;
- Scotland's Census 2011<sup>16</sup>;
- NRS Scotland Mid-year Population Estimates<sup>17</sup>;
- Social Security Experience Panel findings;
- responses to our Consultation on Disability Assistance in Scotland<sup>18</sup>;
- advice from our Disability and Carer Benefits Expert Advisory Group<sup>19</sup>; and
- DWP stat Xplore statistics.

## General Data

71. The Scottish Health Survey 2018 provides an accurate estimate of the number of disabled children and young people in Scotland. Within the 0-15 age group, 18% of children have a limiting longstanding illness<sup>20</sup>. For young people aged 16-24, 24% of young people have a limiting longstanding illness.

72. In 2019, there were 867,345 children aged 15 and below in Scotland<sup>21</sup>. As of May 2020, there were 41,521 children entitled to Disability Living Allowance for Children (DLAC)<sup>22</sup>. This accounts for roughly 4.8% of this demographic.

<sup>15</sup> <https://www.gov.scot/publications/scottish-health-survey-2018-summary-key-findings/>

<sup>16</sup> <https://www.nrscotland.gov.uk/statistics-and-data/census>

<sup>17</sup> <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/mid-year-population-estimates/mid-2019>

<sup>18</sup> <https://www.gov.scot/publications/consultation-disability-assistance-scotland-analysis-responses/pages/3/>

<sup>19</sup> <https://www.gov.scot/groups/disability-carers-benefits-expert-advisory-group/#:~:text=The%20Disability%20and%20Carers%20Benefits,on%20disability%20and%20carers%20benefits.>

<sup>20</sup> Scottish Health Survey (2018) <https://www.gov.scot/publications/scottish-health-survey-2018-supplementary-tables/>

<sup>21</sup> NRS Scotland Mid-Year Population Estimates (2019) <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/mid-year-population-estimates/mid-2019>

<sup>22</sup> DWP Stat-Xplore (Accessed May 2020)

73. UK wide, disabled people have higher poverty rates than the general population. Disabled people make up 28% of people in poverty. A further 20% of people who are in poverty live in a household with a disabled child. In Scotland 410,000 households in poverty (42%) include a disabled person<sup>23</sup>. Disabled young adults in the UK aged 16-24 years have a particularly high poverty rate of 44%<sup>24</sup>.

74. Scotland-wide, there are higher levels of child material deprivation in households containing a disabled person, at 20% compared to households without a disabled person (at 8%). There are higher rates of food insecurity among disabled people (18%) compared to non-disabled people (5%). There is a higher likelihood of living in relative poverty after housing costs with a disabled person in the household (24% of families with a disabled person compared to 17% of families with no disabled members)<sup>25</sup>.

75. Disability and unemployment/ under-employment are positively correlated. 14% of 'workless families' (defined as families where parents are predominately out of work or have little connection to the labour market and/or who live in social rented accommodation and are reliant on benefits for their income) have one or more children with a disability or long-term illness. A further 17% of 'struggling to get by' families (unemployed or working part-time, half of which are single-parent families) have one or more children with a disability or long-term illness<sup>26</sup>. Child material deprivation in households containing a disabled person reaches 20% compared to 8% of households without a disabled person.

76. Even where one or more parent in the household is in employment, within families with a disabled child, the same level of income secures a lower standard of living than it would for a disabled person. Research conducted by the Papworth Trust<sup>27</sup> showed that the annual cost of bringing up a disabled child is three times greater than for a non-disabled child. Disabled people face higher costs than non-disabled people, such as the cost of specialist equipment, therapies and home adaptations to manage a condition<sup>28</sup>. Travel costs too, may be higher as families have to afford the cost of taxis to and from hospital where it is not possible to use public transport (and/or public transport may not be available).

## Key findings

77. A summary of the available evidence and data collected to help inform this EQIA is provided in the table below:

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<sup>23</sup> [https://www.npi.org.uk/files/3414/7087/2429/Disability\\_and\\_poverty\\_MAIN-REPORT\\_FINAL.pdf](https://www.npi.org.uk/files/3414/7087/2429/Disability_and_poverty_MAIN-REPORT_FINAL.pdf)

<sup>24</sup> <https://www.jrf.org.uk/income-and-benefits>

<sup>25</sup> <http://www.gov.scot/isbn/9781787816909>

<sup>26</sup> <https://www.gov.scot/publications/poverty-perspective-typology-poverty-scotland/pages/5/>

<sup>27</sup> Papworth Trust, Disability in the United Kingdom 2010, in <https://www2.le.ac.uk/departments/law/research/cces/documents/the-energy-penalty-disability-and-fuel-poverty-pdf>

<sup>28</sup> <https://www.jrf.org.uk/income-and-benefits/>

Protected characteristic	Evidence gathered
<b>Age</b>	<ul style="list-style-type: none"> <li>• As of May 2020, 41,521 children in Scotland were receiving DLAC<sup>29</sup>, representing 4.8% of children under age 16<sup>30</sup>.</li> <li>• The peak age for entitlement to DLAC is at age 11, with 4,113 children receiving an award of DLAC.</li> <li>• As of May 2020, 25 children entitled to DLAC in Scotland were terminally ill, representing 0.04% of all Scottish child DLAC cases<sup>31</sup>.</li> <li>• Since 2016, fewer than five individuals under the age of 16 have been detained in legal custody in Scotland<sup>32</sup>.</li> <li>• Our Experience Panel research highlighted<sup>33</sup>. <ul style="list-style-type: none"> <li>○ Almost all respondents to an Experience Panel survey felt that 16 was not the right age to transition to PIP. It was suggested that 18 was a more suitable age.</li> <li>○ The prospect of an impending face-to-face assessment was so stressful that sometimes their children refused to attend, which meant a financial loss to the family income of the disability benefit as well as Carer's Allowance.</li> </ul> </li> </ul>
<b>Disability</b>	<ul style="list-style-type: none"> <li>• 12% of all children under age 16 have a limiting longstanding illness, whilst 19% of all young people aged 16-24 have a limiting longstanding illness<sup>34</sup>.</li> <li>• 38% of children with a limiting longstanding illness had a mental health condition, 28% had a respiratory condition, and 12% had a musculoskeletal condition<sup>35</sup>.</li> <li>• As of May 2020, 41,521 children in Scotland were receiving DLAC<sup>36</sup>, representing 4.8% of children under age 16<sup>37</sup>.</li> </ul>

<sup>29</sup> DWP Stat Xplore,

<sup>30</sup> NRS Mid-Year Population Estimates (2019), <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/mid-year-population-estimates>

<sup>31</sup> DWP stat Xplore

<sup>32</sup> <https://www.gov.scot/publications/scottish-prison-population-statistics-2019-20/pages/4/>

<sup>33</sup> <https://www.gov.scot/publications/social-security-experience-panels-disability-living-allowance-DLAC-children-visual-summary/>

<sup>34</sup> Scottish Health Survey (2018), <https://www.gov.scot/publications/scottish-health-survey-2018-supplementary-tables/>

<sup>35</sup> DWP stat Xplore

<sup>36</sup> DWP Stat Xplore,

<sup>37</sup> NRS Mid-Year Population Estimates (2019), <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/mid-year-population-estimates>

Protected characteristic	Evidence gathered
	<ul style="list-style-type: none"> <li>• As of May 2020, 25 children entitled to DLAC in Scotland were terminally ill, representing 0.04% of all Scottish child DLAC cases<sup>38</sup>.</li> <li>• In 2018, 1,050 children (1%) within early learning and childcare registrations were either assessed or declared as disabled<sup>39</sup>. 14% of those registered had additional support needs<sup>40</sup>.</li> <li>• A 2015 research paper comparing 42 global studies reported a five-fold increase in the prevalence of ADHD in youth prison populations (30.1%) compared to the general population which ranged between 3-7%<sup>41</sup>.</li> <li>• Work with Experience Panels has identified: <ul style="list-style-type: none"> <li>○ Longer award durations were favoured for individuals whose conditions are unlikely to change<sup>42</sup> as it would help reduce the stress and anxiety people feel regarding reviews in the reserved system.</li> <li>○ Support for the introduction of Short-Term Assistance<sup>43</sup>.</li> <li>○ 94% of respondents would like to receive information on the benefit criteria once Social Security Scotland has made their decision<sup>44</sup>.</li> </ul> </li> <li>• Respondents to our 2019 Consultation on Disability Assistance in Scotland stated<sup>45</sup>: <ul style="list-style-type: none"> <li>○ 31 days was too short a time to request a re-determination and gather any necessary supporting information.</li> </ul> </li> </ul>

<sup>38</sup> DWP Stat Xplore

<sup>39</sup> <https://www2.gov.scot/Topics/Statistics/Browse/Children/Pubs-Pre-SchoolEducation/ELCAdditionalTables2018>

<sup>40</sup> Autism spectrum, English as an additional language, family issues, including additional support for bereavement, and young carers, speech and communication issues, learning difficulties and dyslexia, looked after, physical or motor impairment, or physical or mental health problems, social, emotional and behavioural difficulties, visual or hearing impairment or are deafblind.

<sup>41</sup> [https://www.cambridge.org/core/services/aop-cambridge-core/content/view/23477B340EDE335069C9050EF9F0DD0A/S0033291714000762a.pdf/metaanalyses\\_of\\_the\\_prevalence\\_of\\_attention\\_deficit\\_hyperactivity\\_disorder\\_in\\_incarcerated\\_populations.pdf](https://www.cambridge.org/core/services/aop-cambridge-core/content/view/23477B340EDE335069C9050EF9F0DD0A/S0033291714000762a.pdf/metaanalyses_of_the_prevalence_of_attention_deficit_hyperactivity_disorder_in_incarcerated_populations.pdf)

<sup>42</sup> <https://www.gov.scot/publications/social-security-experience-panels-award-duration-automatic-entitlement/pages/2/>

<sup>43</sup> <https://www.gov.scot/publications/social-security-experience-panels-short-term-assistance-visual-summary/>

<sup>44</sup> <https://www.gov.scot/publications/social-security-experience-panels-decision-making-reviewing-award-main-report/pages/4/>

<sup>45</sup> <https://www.gov.scot/publications/consultation-disability-assistance-scotland-scottish-government-response/pages/3/>



Protected characteristic	Evidence gathered
	<ul style="list-style-type: none"> <li>○ Individuals with conditions which are unlikely to change should have longer times between reviews.</li> <li>○ Support for the introduction of STA for individuals undergoing a re-determination or appealing a decision made on an ongoing award of disability assistance.</li> <li>○ 66% of respondents agreed with our proposal to make awards of disability assistance rolling with 58% also agreeing with our proposal to set awards between 5-10 years for individuals whose conditions are unlikely to change over time.</li> <li>○ Just under half of respondents who answered (49%) agreed that STA should be subject to deductions in respect of an overpayment agreement.</li> <li>○ A key theme was that disability assistance is essential to meeting the extra costs associated with ongoing health needs and reducing the level of assistance could cause hardship.</li> <li>○ Some respondents suggested using a case-by-case approach to decision-making.</li> </ul>
<b>Marriage and civil partnership</b>	<ul style="list-style-type: none"> <li>● No data is available about young disabled people under this protected characteristic grouping. There were no comments during the consultation on marriage and civil partnership.</li> </ul>
<b>Pregnancy and maternity</b>	<ul style="list-style-type: none"> <li>● No data is available about young disabled people under this protected characteristic grouping. There were no comments during the consultation on pregnancy and maternity.</li> </ul>
<b>Race</b>	<ul style="list-style-type: none"> <li>● Just under 4% of Scotland's population belong to minority ethnic groups, and 7% of our total population communicate in home languages other than English.</li> <li>● This number rises to 9.1% within the population of children registered for Early Learning and Childcare in Scotland<sup>46</sup>.</li> <li>● We do not have statistics showing the number of children and young people within Scotland who apply for disability benefits and who</li> </ul>

<sup>46</sup> <https://www2.gov.scot/Topics/Statistics/Browse/Children/Pubs-Pre-SchoolEducation/ELCAdditionalTables2018>

Protected characteristic	Evidence gathered
	<p>belong to minority ethnic groups. However, UK wide information from 2015/16-2017/2018 suggests that minority ethnic families in all age groups are slightly less likely to apply for DLA than white families, with a slight exception for Bangladeshi families who are more likely to receive the DLA care component<sup>47</sup>.</p> <ul style="list-style-type: none"> <li>• The 2011 census found: <ul style="list-style-type: none"> <li>○ both for the general population and the 0-24 age group, “White” people are more likely to say their day to day activities are limited “a lot” or “a little” by their long-term health conditions, compared to their share in the population. This is not true for any of the other ethnic categories apart from “Caribbean or Black” respondents aged 0-24 who are slightly more likely to say their day-to-day activity is limited “a little”<sup>48</sup>.</li> <li>○ there was a wide variation between men and women in different ethnic groups. Women from the three groups “Bangladeshi, Pakistani and Gypsy/Traveller” recorded higher rates of ‘health problem or disability’ than women from the “White: Scottish” ethnic group, while men from only two ethnic groups, “Pakistani” and “Gypsy/Traveller”, recorded higher rates of “health problem or disability” than men from the “White: Scottish” ethnic group<sup>49</sup>.</li> <li>○ just over 4,000 people in Scotland (0.1% of the population) identified their ethnic group as “White: Gypsy/Traveller”<sup>50</sup>. Generally, Gypsy/Traveller households were more likely to contain dependent children (36% compared to 26% of the population as a whole) and they were three times more likely to contain “three or more” dependent children<sup>51</sup>. The number of Gypsy/Traveller children who receive disability benefits under the current system is unknown.</li> </ul> </li> </ul>

<sup>47</sup> UK Government (2019) <https://www.ethnicity-facts-figures.service.gov.uk/work-pay-and-benefits/benefits/state-support/latest#by-ethnicity-and-type-of-support> Section 4

<sup>48</sup> Scotland's Census 2011 - National Records of Scotland, Table LC3205SC - Long-term health problem or disability by ethnic group by age: All people

<sup>49</sup> [Which ethnic groups have the poorest health?](#)

<sup>50</sup> [Gypsy/Travellers in Scotland - A Comprehensive Analysis of the 2011 Census](#)

<sup>51</sup> [Gypsy/Travellers in Scotland - A Comprehensive Analysis of the 2011 Census](#)

Protected characteristic	Evidence gathered
	<ul style="list-style-type: none"> <li>Gypsy/Traveller households were more likely to have no central heating (5 per cent) than all households (2 per cent). They were also more likely to have “Electric Central Heating” and “2 or more types of Central Heating”. Only 62 per cent of Gypsy/Traveller households had gas central heating compared to 74 per cent of the population<sup>52</sup>.</li> </ul>
<b>Religion and belief</b>	<ul style="list-style-type: none"> <li>According to latest data published by Scottish Surveys Core Question in 2019, 50% of respondents identified as having “no religion” while 47% identified as Christian (“Church of Scotland”, “Roman Catholic” or “other Christian”), 2% as Muslim, and 2% as an “other religion”<sup>53</sup>.</li> <li>Once age was taken into account, in comparison to those with no religious affiliation, a lower proportion of “other” religious groups reported good/very good general health and a higher proportion reported having a limiting long-term condition. “Other Christians” reported a higher level of good/very good general health than the “no religion” reference group<sup>54</sup>.</li> </ul>
<b>Sex</b>	<ul style="list-style-type: none"> <li>70.3% of DLA cases under 16 are male. This accounts for 29,205 cases. The remaining 12,319 being female.</li> <li>One of the main causes of this disparity is the much more frequent diagnosis of boys with behavioural and learning disabilities compared to girls, totalling 19,357 male and 6,698 female<sup>55</sup>.</li> <li>A 2015 research paper comparing 42 global studies reported a five-fold increase in the prevalence of ADHD in youth prison populations (30.1%) compared to the general population which ranged between 3-7%<sup>56</sup>.</li> <li>There is no significant difference in the number of individuals applying for DLAC with a terminal illness on the basis of gender<sup>57</sup>.</li> </ul>

<sup>52</sup> [Gypsy/Travellers in Scotland: A Comprehensive Analysis of the 2011 Census](#)

<sup>53</sup> [Scottish Surveys Core Questions 2017](#)

<sup>54</sup> [Scottish Surveys Core Questions 2017](#)

<sup>55</sup> DWP stat Xplore

<sup>56</sup> [https://www.cambridge.org/core/services/aop-cambridge-core/content/view/23477B340EDE335069C9050EF9F0DD0A/S0033291714000762a.pdf/metaanalysis\\_of\\_the\\_prevalence\\_of\\_attention\\_deficit\\_hyperactivity\\_disorder\\_in\\_incarcerated\\_populations.pdf](https://www.cambridge.org/core/services/aop-cambridge-core/content/view/23477B340EDE335069C9050EF9F0DD0A/S0033291714000762a.pdf/metaanalysis_of_the_prevalence_of_attention_deficit_hyperactivity_disorder_in_incarcerated_populations.pdf)

<sup>57</sup> DWP stat Xplore

Protected characteristic	Evidence gathered
<b>Sexual orientation and Gender Reassignment</b>	<ul style="list-style-type: none"> <li>• In 2015, 4.5% of young people in Scotland identified their sexual orientation as “Lesbian, Gay, Bisexual or other”<sup>58</sup>.</li> <li>• In 2017, 22% of the LGBTI young people (age 13 to 25 years of age) who completed an online survey (though self-selecting) for LGBT Youth Scotland<sup>59</sup> reported having a disability.</li> <li>• 84% of LGBTI young people and 96% of transgender young people who completed the LGBT Youth Scotland survey have experienced mental health problems and associated behaviours.<sup>60</sup></li> <li>• Many of the young people we engaged with had already undergone a PIP assessment in the current system and had experienced homophobia/ transphobia by assessors. They spoke sometimes of dismissive and disrespectful attitudes towards shared living arrangements with same-sex partners.</li> </ul>

**Impact of introducing Child Disability Payment (CDP) to replace Disability Living Allowance for Children (DLAC) on individuals in protected groups and further considerations**

78. We have not identified evidence of potential negative impacts of the policy to people who have one or more protected characteristics.

79. We recognise that there is limited data about young disabled people from certain protected characteristic groups, in particular in relation to gender reassignment, marriage and civil partnership, pregnancy and maternity, and religion and belief.

**Age**

80. Individuals will be chosen for transfer based first on their age, with the oldest being transferred first. This is primarily because there is reason to transfer “rising 16’s” - those young people between 16-18 who remain on DLAC instead of being required to apply for PIP – in the first instance.

81. We have not been able to determine any negative impacts this policy would cause.

<sup>58</sup> Scottish Surveys Core Questions 2016

<sup>59</sup> LGBT Youth Scotland: *Life in Scotland for LGBT Young People 2017*

<sup>60</sup> LGBT Youth Scotland: *Life in Scotland for LGBT Young People 2017*

82. We know that many disabled young people transition between child and adult services at age 16. Our decision to automatically extend CDP from age 16 to 18 will have a positive impact on disabled young people by reducing the anxiety and challenges at this difficult time for families.

83. The data show that whilst 39% of young people in Scotland moving from DLA to PIP saw their entitlement increase<sup>61</sup>, 11% saw their entitlement decrease and 25% had their entitlement stopped following their PIP assessment. We also know that around 2% of young people in Scotland fail to attend an assessment and almost 7% fail to return the forms for PIP.

84. Delaying the transition to PIP (or the Scottish Government's devolved replacement for PIP, when that form of assistance opens for applications) until the age of 18 will help young people and their families by helping to mitigate a further drop in household income at a time when other child benefits and respite care stops. This applies to passported benefits and premiums which are linked to CDP, such as Carer's Allowance and Child Winter Heating Assistance (CWHHA).

85. We also know that, for many young disabled people, the prospect of undergoing an assessment in the current system for Personal Independence Payment (PIP) is a stressful and anxiety inducing experience with many refusing to do so entirely<sup>62</sup>. CDP is launching before our replacement for PIP will open for new applications so, by extending CDP from 16 to 18, we will ensure that young people in Scotland will not have to undergo a DWP face-to-face assessment.

## **Disability**

86. We understand that supporting information may not routinely be sought as part of the application process for DLAC. Social Security Scotland case managers will seek one source of supporting information from a formal source, such as confirmation of a diagnosis or letter from a support worker. Together with information from family members and carers (where applicable), this will be used to determine, on the balance of probabilities, that the individual's condition is consistent with the general care and mobility needs detailed on their application.

87. Not all clients will have responsibility for their benefit transferred because they meet the initial selection criteria. Where a client meets one of several "stabilisation criteria" - where it is likely their DLAC award will change - their benefit will not be transferred until the stabilisation criteria no longer apply or by the end of the transfer period, which will be set out in published timetables, whichever is first. All clients must be transferred before the end of the transfer period. Examples of stabilisation criteria include: where the decision to award DLAC is currently under appeal, where the DLAC award is currently suspended due to an ongoing investigation, or where their DLAC award has been recently reviewed and is currently awaiting a decision.

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<sup>61</sup> DLA Stat-Xplore, accessed January 2021

<sup>62</sup> <https://www.gov.scot/publications/social-security-experience-panels-disability-living-allowance-dla-children-visual-summary/>

88. Experience Panel research<sup>63</sup> highlighted that not every applicant will have supporting information. Some respondents explained that they would struggle to provide supporting information to Social Security Scotland. Some of the reasons included having a lifelong, untreatable, fluctuating or rare condition; not taking medication; and not regularly seeing a medical professional.

89. However, case managers will have the ability to make an award where supporting information is not available, and will also be able to ask Social Security Scotland practitioners (who are experienced in providing health or social care) for guidance. This might include whether symptoms reported by an individual are consistent with their condition, how particular conditions may interact, or how long a client's condition might be expected to last.

90. We believe this approach to gathering supporting information will have a beneficial impact for disabled children and young people, by ensuring that Social Security Scotland case managers are able to access appropriate sources of information that will enable them to develop a complete picture of an applicant's disability.

91. Our policy on award duration will help to alleviate some of the stress and anxiety individuals have reported experiencing when their award of disability benefits comes to an end in the current system as awards will not have an end date and, instead, be subject to a review during which an individual will maintain entitlement to CDP. This approach will help to ensure that individuals don't perceive their award to be subject to a cliff-edge, which will lessen anxiety about the award being reviewed. The process still enables Social Security Scotland to undertake reviews as appropriate to determine continuing entitlement to CDP.

92. By ensuring that awards of CDP are ongoing with longer awards for individuals with conditions or disabilities that are unlikely to change, we will minimise the number of times children and young people will need to have their entitlement to CDP reviewed. The process for reviewing awards will be light-touch, providing a balance between respecting the needs of the individual and robust decision-making. Having a light-touch review process is more appropriate, particularly where a client's needs are unlikely to have changed significantly. We know that, for many people, it is important to minimise unnecessary reviews to disability benefits<sup>[1]</sup> as they can be extremely stressful. This change will therefore reduce stress and anxiety for children, young people and their families or carers.

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<sup>63</sup> <https://www.gov.scot/publications/social-security-experience-panels-gathering-supporting-information-main-report/pages/1/>

<sup>[1]</sup> <https://www.gov.scot/publications/social-security-experience-panels-award-duration-automatic-entitlement/pages/5/>

93. Allowing individuals to continue to receive CDP while their award is being reviewed will further help to alleviate the perception of reaching a financial cliff edge due to a sudden reduction in part of a household's income. This extends to passported benefits paid as a result of entitlement to CDP such as Carer's Allowance. This is particularly important given the research which indicates that households with at least one disabled child are far more likely to be in poverty. In mitigating the loss of income to households during reviews, we anticipate a positive impact to be had on disabled children and young people in Scotland.

94. We know that the definition of terminal illness used in the current system can be limited due to the arbitrary timescale of six months which is imposed. The new approach to terminal illness in Scotland will allow medical professionals to use their clinical judgement on a case by case basis to ensure that individuals who need support, receive it quickly as it is capable of taking account of a broader range of conditions. The new definition will also make it easier to take account of a broader range of conditions compared to the current time limited definition, thereby having a positive impact on young disabled people in Scotland.

95. CDP is also linked to other passported benefits and entitlements which can provide assistance to individuals and their families such as Carer's Allowance and Child Winter Heating Assistance (CWAHA). These are benefits which are dependent on an individual being in receipt of CDP, with CWAHA specifically requiring that an individual be in receipt of the highest rate of the care component which is automatically awarded to individuals who are eligible for the care component when awarded CDP under special rules for terminal illness.

96. The Consultation on Disability Assistance<sup>64</sup> set out the rights already provided to individuals through the Social Security Act (Scotland) 2018. When asked to comment on our proposals, a majority of respondents (58%) agreed. However, some organisations held differing views.

97. Some of the feedback provided suggested that accessing support or advice on challenging a decision can be time consuming and individuals may need longer than 31 days to do so with an emphasis on individual circumstances. We also noted concerns raised by a small number of respondents that a short timescale may deter individuals from challenging a decision. In response to the feedback in the consultation and our Experience Panels<sup>65</sup>, we extended the time limit for requesting a re-determination to 42 calendar days.

98. We proposed to give Social Security Scotland 40-60 days to reconsider a decision, as it may be necessary to collect supporting information on a child's behalf, and this information may take some time to obtain. A majority (60%) agreed with this proposed approach. However, some stakeholders felt that this was an excessive period for someone to be left without clarity over their award level or eligibility.

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<sup>64</sup> <https://www.gov.scot/publications/social-security-consultation-disability-assistance-scotland/>

<sup>65</sup> <https://www.gov.scot/publications/social-security-experience-panels-complaints-re-determination-appeals/>

99. Given concerns raised in the consultation, and subsequent stakeholder engagement, we have determined that Social Security Scotland will have 56 calendar days (8 weeks) to undertake a re-determination. If a re-determination is not completed by the end of this period, an individual can appeal directly to the First-Tier Tribunal (FtT) for Scotland.

100. This will be beneficial as it will provide certainty for children and their families about how long Social Security Scotland has to complete a re-determination. Similarly, by enabling individuals to appeal directly to the FtT should Social Security Scotland be unable to make a re-determination within that timescale, we will further reduce any uncertainty for disabled children, young people and their families or carers.

101. Short-term assistance (STA) is not available in the reserved social security system and is another example of where Scottish Ministers are removing barriers to challenging decisions in the Scottish social security system. The intention of STA is to ensure that an individual is not discouraged from challenging a decision or accessing administrative justice by having to manage, for a period, with a reduced income.

102. During the Parliamentary passage of the Social Security (Scotland) Act 2018, the inclusion of STA was welcomed by stakeholders and supported by Parliament.

103. When asked for views on STA in the Consultation on Disability Assistance in Scotland, respondents were overall in favour of our proposals<sup>66</sup> with some concerns raised that, originally, STA was not intended to be available for individuals residing outside of Scotland. We have changed this due to comments from respondents, allowing children and young people living outside of the UK to apply for STA if they are in receipt of a qualifying benefit such as CDP. We recognise the complexities involved and will need to carry out further work to understand the impacts.

104. Our proposal that STA should not be recoverable was also met with approval (87%). This will ensure that, should a re-determination or appeal be unsuccessful, there will not be any overpayments that individuals will need to worry about repaying. This will help to prevent a further reduction in household income in these circumstances, something which was stressed by respondents to our Consultation on Disability Assistance in Scotland<sup>67</sup>.

105. When engaging on the topic with our Experience Panels, STA was seen as beneficial as it would make it more likely for people to challenge a decision by Social Security Scotland with particular emphasis on STA reducing financial pressure and giving people more confidence in challenging a decision.

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<sup>66</sup> <https://www.gov.scot/publications/consultation-disability-assistance-scotland-scottish-government-response/pages/3/>

<sup>67</sup> <https://www.gov.scot/publications/consultation-disability-assistance-scotland-analysis-responses/pages/3/>



106. This will help to ensure that, if a mistake has been made by Social Security Scotland, disabled children and young people will continue to receive the payments they would have been entitled to should the mistake not have been made. STA will therefore enable people to feel more confident in seeking administrative justice should a mistake have been made by Social Security Scotland.

## **Sex**

107. There is an overrepresentation of males in the young prison population<sup>68</sup>. For this reason, young disabled males are likely to benefit more frequently from the change which allows for continuing entitlement to the mobility component of CDP while in legal detention. This will however not disadvantage female children and young people.

108. We anticipate that continuing entitlement to the mobility component of CDP while in legal detention will have a positive impact regardless of sex or gender on young disabled people in Scotland as it will enable families of disabled children and young people to visit them more easily, and provides consistency in our approach to paying the mobility component when a client is resident in alternative accommodation.

## **Sexual Orientation and Gender Reassignment**

109. When engaging with young people in the LGBTI+ community, we were told that 17-18 was the most common age to 'come out', including leaving the family home. This was clearly already a period of extreme stress and difficulty for many emotionally and financially.

110. For individuals in this group, the extension of CDP until the age of 18 may have a negative impact as, if they were to transfer to adult services at age 16, they would likely still be living in the family home and have support to complete the application for ADP, our replacement for PIP. For individuals who have had to leave the family home, they will need to apply for disability assistance on their own at a time when they will likely be facing other significant changes and decisions as they enter adulthood.

111. We are aware that there is no one-size-fits-all 'perfect' age at which to transition to adult services for young people in Scotland. We have consulted widely on extending the upper age limit for CDP, both with our stakeholder organisations and with the public during the consultation period. We will continue to monitor and consult with this group so as to mitigate any unintended consequences. It is anticipated overall though that the introduction of CDP will have a positive effect on this group.

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<sup>68</sup> Meta-analysis conducted in 2015, [https://www.cambridge.org/core/services/aop-cambridge-core/content/view/23477B340EDE335069C9050EF9F0DD0A/S0033291714000762a.pdf/metaanalysis\\_of\\_the\\_prevalence\\_of\\_attention\\_deficit\\_hyperactivity\\_disorder\\_in\\_incarcerated\\_populations.pdf](https://www.cambridge.org/core/services/aop-cambridge-core/content/view/23477B340EDE335069C9050EF9F0DD0A/S0033291714000762a.pdf/metaanalysis_of_the_prevalence_of_attention_deficit_hyperactivity_disorder_in_incarcerated_populations.pdf)

112. There are additional considerations required for transgender CDP applicants to ensure they have an equal opportunity to apply for assistance, including gender non binary young people. This includes, for example, avoiding having applicants needing to tick a box saying they are male or female. This will be addressed in the development and delivery plans of the benefit.

113. In relation to case transfer, we have not identified any particular barriers resulting from our policy approach which may affect people with the protected characteristic of sexual orientation and gender reassignment.

### **Marriage and Civil Partnership**

114. We have not identified any particular barriers resulting from our policy approach which may affect people with the protected characteristic of marriage or civil partnership.

115. For children who live in two homes, where their parents are separated or divorced, the parents will still have parental rights and Social Security Scotland will accept an application from either parent.

116. Appointeeship provisions for children and young people have been set out in the Social Security Administrations and Tribunal Membership (Scotland) Act. The Act makes provision to appoint persons to act on behalf of a child in relation to their application for assistance under the 2018 Act, ensuring that an appropriate person in the child's life is the person that Social Security Scotland will deal with when the child's parent or guardian is unable to act.

117. Our approach is to make an appointment where there is no one who lives with and has care of the child, who has parental rights and responsibilities, and is willing and practicably able to act on the child's behalf. In certain circumstances, a child's parent may have applied for assistance on their behalf, but the child may no longer reside with that parent. In these situations, it may be more appropriate that the person the child is presently living with should be able to access assistance on the child's behalf.

### **Race**

118. We are aware of the particular barriers faced by people belonging to ethnic minorities in applying for disability benefits, especially those with English as a second language as they may face difficulties in accessing or understanding their entitlements due to language or other communication barriers. To address this, work has been undertaken with ethnic minorities alongside the main Experience Panels as part of our Benefit Take-up Strategy.

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

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

121. Only those deemed to be “ordinarily resident” in Scotland on the day their case is reviewed for transfer will be subject to the transfer process. This will likely impact those that live more transient lifestyles, especially those regularly moving between Scotland and other parts of the UK, more so than those with a more settled lifestyle.

122. This residence requirement is therefore more likely to impact on the gypsy/traveller community. However, we do not have sufficient data to determine how many of the just over 4,000 people in Scotland (0.1% of the population) who identified their ethnic group as “White: Gypsy/Traveller”<sup>69</sup> regularly travel between Scotland and the rest of the UK. As a result, it is difficult to determine what, if any, negative impact this may have on this community.

123. We were informed anecdotally that Gypsy/Travellers operate within the ‘cash economy’ and that they are more likely to have a post office account than a bank account. This can be problematic in terms of having benefits paid.

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

## **Religion or belief**

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

## **Monitoring and review**

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<sup>69</sup> [Gypsy/Travellers in Scotland - A Comprehensive Analysis of the 2011 Census](#)

126. On-going stakeholder engagement with key organisations – such as the Child Poverty Action Group, Rights Advice Scotland, Young Scot, DACBEAG, and our Ill Health and Disability Benefit Stakeholder Reference Group – will provide the Scottish Government with an opportunity to monitor the impact of the changes made by these regulations.

127. 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.

128. The Scottish Ministers have also committed to engaging with, and reporting regular progress to, the Islands Strategic Group to ensure that those representing the interests of island communities and others with experience of the current system, are fairly represented in the development and delivery of the Scottish social security system.

## **Conclusion**

129. This EQIA process has identified that overall, the introduction of Child Disability Payment (CDP) to replace Disability Living Allowance for Children (DLAC) has potential to have a positive impact for children and young people in Scotland who share protected characteristics.

130. The potential positive impacts identified include:

- mitigating a drop in household income and avoiding what is seen by many as a stressful and difficult face-to-face assessment process, by automatically extending CDP from age 16 to 18;
- making it easier for individuals with a terminal illness to be entitled to CDP through SRTI by allowing medical practitioners to use their clinical judgement and removing the six month qualifying period from our definition of terminal illness;
- helping to ensure that families are able to continue to meet the needs of children and young people in legal detention, providing continuity with other forms of alternative accommodation and ensuring that the needs of the child or young person are able to be met when they spend periods of time outwith legal detention as part of the rehabilitation process via continuation of the mobility component;
- helping to reduce the stress and anxiety experienced due to the perception of reaching a financial cliff edge by making rolling awards;
- alleviating some of the worry that can be caused in the review process by making longer awards and using a light-touch review process when client's conditions are unlikely to have changed;
- reducing stress and anxiety as a result of requesting a re-determination by providing certainty around how long a re-determination will take alongside providing a way to appeal directly to the FtT should Social Security Scotland be unable to do so within the specified timescale; and
- helping to encourage individuals to seek administrative justice should they believe Social Security Scotland has made a mistake through STA, mitigating

a drop in the level of household income while also protecting people from overpayments.

### Authorisation

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