

Business and Regulatory Impact Assessment

Title of proposal

1. Disability Assistance for Children and Young People (Consequential Amendment and Transitional Provision) (Scotland) Regulations 2021

Purpose and intended effect

Background

2. The Social Security (Scotland) Act 2018¹ (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).

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 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.

5. Entitlement to DLAC may entitle a child or young person to other forms of assistance, discount, exemptions or disregards that are generally called passported benefits.

6. As part of the Scottish Government's commitment to a safe and secure transition of disability benefits from DWP to Social Security Scotland, it is intended that CDP should entitle a child or young person to the same passported benefits as DLAC.

7. Where those passported benefits fall within a devolved area, the Disability Assistance for Children and Young People (Consequential Amendments) (Scotland) Regulations 2021 set out how devolved legislation will be amended to reflect the introduction of CDP.

The legislation

8. The consequential regulations will allow individuals who are entitled to CDP, to benefit from the same entitlements and income or capital disregards, in devolved areas, as individuals who are entitled to Disability Living Allowance (DLA). The provisions being amended, that passport individuals to other forms of entitlement,

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

typically relate to individuals who are in receipt of a particular component or rate of component of a disability benefit. Extending this provision to CDP clients is straightforward because DLA and CDP share substantially the same components, rates and eligibility criteria.

9. The regulations also make provision for individuals who are in receipt of short-term assistance (STA). STA is assistance that an individual can elect to receive if they are appealing to Social Security Scotland, or to the First-Tier Tribunal for Scotland, against a decision to stop or reduce their entitlement to assistance under Part 2 of the Social Security (Scotland) Act 2018. STA is not available for first-time applicants and is unique to the Scottish Social Security System. Because STA can be paid in respect of more than one form of devolved assistance, the consequential regulations make clear that the scope of the amendment extends only to circumstances where STA is paid as a result of a qualifying CDP award being stopped or reduced.

10. Finally, as CDP will replace DLA for children in Scotland, the regulations make transitional provision to remove the right of individuals who are under the age of 16 (and able to apply for CDP) from applying for DLA for children.

Financial impact

11. In the absence of STA, replacing DLA for Children with CDP would be almost cost neutral, because the eligibility criteria for both benefits is broadly the same. The number of individuals entitled to DLAC will decrease as we transfer those individuals to CDP.

12. As noted in the Scottish Fiscal Commission’s (SFC) Economic and Fiscal Forecast dated 28 January 2021, the expectation is that caseloads for most existing benefits will increase over time, based on trends in recent years. The caseload for DLAC will fall in Scotland as the caseload for CDP increases.

13. The SFC forecast estimates a joint caseload of 51,000 children and young people who are entitled to DLAC or CDP in 2021/22. The SFC forecast does not disaggregate DLAC and CDP caseloads.

14. The forecasts nevertheless provide indicative future numbers of children and young people eligible to receive CDP:

Thousand	2019/ 20	2020/ 21	2021/ 22	2022/ 23	2023/ 24	2024/ 25	2025/ 26
Child Disability Payment		46	51	58	63	67	70

15. There will be natural growth in the number of children and young people eligible for CDP however, this is accounted for in the Scottish Fiscal Commission's analysis. It is not anticipated that the number of children who are entitled to a passported entitlement or disregard materially increases as a result of the introduction of CDP, as it is fully anticipated that the DLAC caseload would continue to grow even if CDP was not introduced.

16. However, in addition to rolling out CDP, Ministers will also pay STA to individuals who have requested Social Security Scotland carry out a re-determination, or are appealing to the First-Tier Tribunal for Scotland, about a decision to stop or reduce their entitlement to CDP.

17. The policy intent is for individuals in receipt of STA to benefit from the same income disregards and entitlements as they would have but for their CDP award being stopped or reduced. This means an additional group of individuals will qualify for the entitlements and disregards that are being amended.

18. Communities Analysis Division forecast that around 1,250 people per year will receive STA while a CDP award is under appeal, once delivery of CDP reaches steady-state. It is not known how many people will have had the relevant level of CDP entitlement to actually qualify for the relevant passported entitlements nor how many of those who do qualify will actually make use of the relevant entitlements. Furthermore, some individuals will nonetheless remain entitled to some passported entitlements because there are several ways to qualify. Some individuals will nonetheless remain entitled to some passported entitlements because there are several ways to qualify. This suggests that the financial impact of individuals being passported to entitlements on account of entitlement to STA is not considered to be materially significant.

19. The amount of additional income or capital that could potentially be disregarded depends on the amount of STA which is paid out in order to temporarily top-up the reduction in individuals' CDP entitlements.

Objective

20. The Social Security (Scotland) Act 2018 will allow Scottish Ministers to create a distinctly Scottish approach to developing a new social security system which has dignity and respect at its core.

21. 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.² For young people aged 16-24, 24% of young people have a limiting longstanding illness.

² Scottish Health Survey (2018) <https://www.gov.scot/publications/scottish-health-survey-2018-supplementary-tables/>

22. In 2019, there were 867,345 children aged 15 and below in Scotland.³ Within this group, there were 40,856 children entitled to Disability Living Allowance for Children (DLAC).⁴ This accounts for roughly 4.4% of this demographic.

23. 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. Disabled young adults in the UK aged 16-24 years have a particularly high poverty rate of 44%.

24. 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).

25. 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; 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 illness⁵. Child material deprivation in households containing a disabled person reaches 20% compared to 8% of households without a disabled person.

26. 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 Trust⁶ 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.⁷ 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).

Rationale for Government Intervention

³ 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>

⁴ DWP Stat-Xplore (Accessed May 2020)

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

⁶ 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>

⁷ <https://www.jrf.org.uk/income-and-benefits/>

27. Our assessment of the Disability Assistance for Children and Young People (Scotland) Regulations and CDP overall in relation to Business and Regulatory impact was undertaken using the five principles of Better Regulation. The assessment took into account the importance, with regard to securing a safe transfer from DLA to CDP, of individuals in receipt of CDP being passported to the same entitlements as individuals with equivalent awards of DLAC.

28. **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 CDP.

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

30. In the short term, there may be additional work for some third sector organisations as they make arrangements for their staff to incorporate knowledge of the new benefit into their current systems. Social Security Scotland has committed to undertaking much of the administrative responsibility, as far as possible, on behalf of people accessing disability assistance, including CDP, and intends to create data sharing processes with relevant public bodies. It is anticipated that this will reduce the burden of providing information to individuals that public agencies currently undertake, by creating formal data sharing agreements and processes with one Agency, Social Security Scotland.

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

32. CDP will be delivered on an entitlement basis to eligible people. Decision-making will be person-centred and operational guidance for Case Managers within Social Security Scotland will be created in line with the rules within the regulations, to provide a framework for consistent decision making across all applications.

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

34. We published the first Benefit Take-Up Strategy⁸ (October 2019) under the provision of the Social Security (Scotland) Act 2018. The strategy sets out Scottish Ministers' work supporting benefit take-up to date. It also introduces a series of new

⁸ [Benefit Take-up Strategy](#)

activities and initiatives aimed at increasing awareness of and access to Scottish benefits and supporting those who are eligible to apply.

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

36. **Targeted only where needed:** CDP is intended to help mitigate the additional costs of having a disability. The rules for the benefit will be set out in regulations and each new application will undergo an application process which will assess eligibility for CDP in a way that is consistent with the principles of dignity, fairness and respect.

37. We have undertaken analysis, based around the anticipated eligibility criteria, to scope potential CDP caseload size. In 2019, there were 867,345 children aged 15 and below in Scotland⁹. In February 2020, there were 41,432 children entitled to Disability Living Allowance for Children (DLAC).¹⁰ This accounts for roughly 4.8% of this demographic. Scottish Fiscal Commission forecasts estimate that we could receive approximately 7,600 new applications for Child DLA in 2021/22¹¹, noting that these figures are based on a delivery timetable for CDP that has since been revised as a result of the impact of Covid-19.

38. When children and young people transfer to CDP, the rates and component they are entitled to will remain unchanged. The Social Security (Scotland) Act 2018 sets out the duty on Scottish Ministers to promote uptake of benefits for eligible individuals, and the Act requires Ministers to set out in parliament a benefit uptake strategy. Increased benefit uptake is likely to have a positive impact on businesses and the economy because more individuals will be in receipt of benefits which will be used to purchase a range of goods and services from third sector or private organisations.

39. It is expected that the introduction of CDP could cause additional requests for information and support from existing advice services. However, it is anticipated that by introducing a system that has been designed in partnership with advice agencies, key stakeholders and individuals with experience of the current system, Social Security Scotland will be equipped to support individuals. This should lessen the impact on advice services in their provision of complex welfare rights casework support for individuals.

Consultation

40. In July 2016 the Scottish Government launched a public consultation to support the development of a framework that would become the Social Security

⁹ 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>

¹⁰ DWP Stat-Xplore

¹¹ [Scottish Fiscal Commission – Economic and Fiscal Forecasts \(2020\)](#)

(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.

41. 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 February 2017¹². 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.

42. 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.

43. 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 AA¹³. The consultation closed on 28 May 2019, having received 263 replies, of which 74 were from stakeholder organisations and 189 were from individuals. Independent analysis of this consultation found that several consultees mentioned the need to conduct a comprehensive review of existing regulations, guidance and case law to ensure that important detail and rights are not lost upon transition from reserved to devolved social security benefits and stressed the need to ensure a smooth transition from the current system to the new system¹⁴.

44. 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.

45. 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

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

¹³ <https://www.gov.scot/publications/social-security-consultation-disability-assistance-scotland/>

¹⁴ [consultation-disability-assistance-scotland-analysis-responses \(3\).pdf](#), page 71

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.

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

47. 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 those who are considering making a Child Disability Payment 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.

Costs on the Scottish Government

48. There will be some one-off costs to the Scottish Government and for those wider Scottish Government bodies affected by this legislation, associated with revising application forms and systems to take account of the new route through which individuals can be passported to the various entitlements.

49. Other than these one-off, transitional administrative costs, the Scottish Government is not expected to incur significant increases in direct costs as a result of these consequential regulations. The passported benefits which the Scottish Government and health boards currently provide and for which they incur costs are:

Entitlement to Child Winter Heating Assistance

50. Child Winter Heating Assistance is an annual payment of £200 for those who are entitled to receive payment of the highest rate care component of either DLA or CDP. The number individuals entitled to the highest rate care component of DLA will decrease as we transfer those individuals to CDP and because we have removed the right to apply for DLA for those who are able to apply for CDP. This amendment does not produce any costs for the Scottish Government that have not already been forecast and budgeted for, as part of the development and implementation of delivering Child Winter Heating Assistance.

Payment of reasonable travelling expenses incurred in attending NHS treatment and the remission of NHS charges.

51. Persons of certain descriptions are entitled to payment of the travelling expenses incurred in attending hospital for the provision of NHS services (including where necessary overnight accommodation and expenses related to a person accompanying the person receiving the service) and the remission of charges

payable for certain NHS services. The relevant regulations for this scheme are the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No. 2) Regulations 2003.

52. The charges are charges for drugs, medicines, appliances and pharmaceutical services payable under section 69 of the National Health Service (Scotland) Act 1978, and for dental appliances and dental services payable under sections 70, 71 of the National Health Service (Scotland) Act 1978 or section 20 of the the National Health Service (Primary Care) Act 1997. Broadly, there are two routes to entitlement to the scheme. One route involves being in receipt of a qualifying low-income benefit. The second route involves having available resources (income and capital) below a specified threshold. For the purpose of access to the scheme, disability benefits are not a qualifying low-income benefit, but income from disability benefits is disregarded when determining if an individual's available resources are below the relevant threshold.

53. Full or partial support for dental care costs is delivered by the NHS Business Services Authority (BSA). In the financial year 2020/21 the estimated total cost to the Scottish Government for the delivery of this support is £317,199. The Scottish Government does not analyse the data collected when delivering the schemes as a whole to determine the proportion of funds directed towards the support of children with disabilities. The budget for the scheme is not a fixed amount. The Scottish Government provides the necessary funds each year to meet the cost of the scheme each year in order to meet demands, so the amount may vary from one financial year to the next.

54. All children in Scotland are entitled to receive free NHS dental care. Pre-existing benefits provide support for the families of children in receipt of disability benefits and it is not anticipated that the new benefit will significantly affect the number of adults entitled to receive support.

Concessionary travel

55. Transport Scotland offers free bus travel for older people, and for disabled people who are in receipt of the higher rate of the mobility component of disability living allowance or the higher or middle rate of the care component of disability living allowance.

56. There are currently around 1.5 million National Entitlement Cards in circulation giving access to free bus travel throughout Scotland. Of these, around 88% are eligible through the age criteria (60 and over) with the remaining 12% eligible through a number of passported benefits.

57. Expenditure for the National Concessionary Travel Scheme in 2019-20 was £213.65 million; the average benefit for an individual eligible to use the scheme was in the region of £250. Expenditure for the National Concessionary Travel Scheme is capped each year and requires to be detailed in the legislation.

58. There will be no additional costs incurred as there are existing systems in place for processing passported applications into the National Concessionary Travel Scheme.

Disabled persons parking badges

59. There were 248,073 Blue Badges on issue in Scotland at the end of March 2020. 115,104 were issued to recipients of allowances or grants which provide an automatic entitlement to a Blue Badge. 130,344 were issued on a discretionary basis to other people with a permanent or substantial disability. 2,635 were issued to Organisations.

60. The budget for the Blue Badge scheme is not a fixed amount. Transport Scotland provides the necessary funds each year to meet the cost of the scheme each year in order to meet demands. This means that the cost of providing Blue Badge as a passported benefit may vary each year.

61. Moving forward, there will be no additional costs incurred as there are existing systems in place for processing passported applications into the Blue Badge Scheme.

Legal aid

62. The Scottish Legal Aid Board (the Board) is a non-departmental public body funded by the Scottish Government and by contributions and expenses payable by persons in receipt of legal assistance. The Board is responsible for managing legal aid in Scotland. Applicants for legal assistance can qualify with no contribution payable if they are in receipt of certain low-income benefits. Applicants who are not in receipt of these low-income qualifying benefits must complete an application form and show evidence of income and expenditure. The Board will then decide if the person qualifies for legal assistance and whether or not they will have to pay a contribution.

63. The budget for legal aid is demand-led and is not a fixed amount. The Scottish Government gives the Board the necessary funds to meet the cost of cases. This means that the cost to the Legal Aid Fund of providing legal assistance will vary from year to year. If a person is in receipt of a passporting low income benefit, then they will be able to access funding for the legal issue they require assistance with, subject to satisfying any statutory merits tests that may be applicable. DLA is not a passporting benefit for this purpose, but DLA is disregarded when calculating an individual's available resources for legal aid purposes. The legislation makes equivalent provision so that CDP payments, and STA payments while a CDP award is under appeal, are disregarded in the same manner as DLA.

Repayment of student loans

64. There is not considered to be any additional costs associated with the amendment to the Repayment of Student Loans (Scotland) Regulations 2000. The provision being amended entitles individuals to have their student loan cancelled if they are in receipt of a qualifying disability benefit and are permanently unfit for work

as a result of their disability. The effect of the amendment is that CDP is to be a qualifying disability benefit for this purpose.

Council tax

65. The amount of foregone of council tax as a result of changes to the rules on entitlement to council tax discount, council tax reduction and council tax exemption is expected to marginally increase. Although the numbers of individuals with qualifying DLA awards will decrease proportionately as the number of individuals with qualifying CDP awards increase, the proposed amendments will also apply to individuals in receipt of STA while a qualifying CDP award is under review. This will lead to a slightly greater number of individuals qualifying for CTR, council tax discount or council tax exemption than would be the case if the amendments only extended provision to individuals in receipt of a qualifying CDP award. The additional cost of this is in council tax forgone is not known but is not considered to be significant for the following reasons: the Scottish Government's own forecasting estimates that around 1250 people per year will receive STA while a CDP award is under appeal. Putting this figure in context, in May 2020 approximately 51,882 individuals in Scotland were under the age of 18 and in receipt of a disability benefit. Not of all this forecasted group, of 1250 individuals, will actually have had the relevant level of CDP entitlement to be able to qualify for Council Tax Discount, Council Tax, or for a higher 'applicable amount' under the rules on entitlement to council tax reduction. Not all of those who do qualify are expected to actually make use of the relevant disregards, premiums and exemptions.

Elections

66. There will be no additional costs incurred due to these changes as they simply remove the requirement to have an application for a proxy vote attested if the individual is already in receipt of a qualifying award of CDP.

Grants to improve energy efficiency of homes

67. The passported entitlement in question is the right to be considered for a grant under the Home Energy Assistance Scheme (Scotland) Regulations 2013 (the 2013 Regulations). The grant making scheme established by the 2013 regulations is no longer in use. Similar grants continue to be given by the Scottish Government using a more general grant-making power. If the scheme under the 2013 regulations is re-established, then no additional costs will be incurred due to these changes as the grants are discretionary and the number of individuals eligible to apply will only marginally increase.

Residential accommodation that local authorities are required to provide

68. Children and young people with sufficient available resources are liable, under the National Assistance (Assessment of Resources) Regulations 1992, to pay for the cost of residential accommodation that local authorities are required to provide. Receipt of Child Disability Payment will not be regarded as an available resource when determining a child or young person's available resources. This change will have no significant additional cost on local authorities as the number of children and

young people entitled to Disability Living Allowance will decline at a proportionate rate to the increase in the number entitled to Child Disability Payment.

Business

69. The impact of the benefit is going to be dispersed across the country and sectors of the economy. For 2022-23, the financial impact to the Scottish Government of the cost of introduction of Child Disability Payment is estimated to be £275 million.

Scottish Firms Impact Test

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

71. There may be some negligible impact on businesses and third sector organisations operating in Scotland in relation to the way the new Social Security Scotland agency delivers the devolved benefits compared to the status quo. These changes are unlikely to place significant demands on third sector organisations providing advice and support for people receiving and enquiring about social security payments and should not require a significant change to their operations.

Business Forms

72. No new business forms will be brought in with the implementation of the proposed legislation.

Competition Assessment

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

Legal Aid Impact Test

74. Clients applying for CDP will have a right to request a redetermination of their entitlement by Social Security Scotland, and have a right of appeal to the First-Tier Tribunal for Scotland's Social Security Chamber.

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

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

77. It is also expected that as a result of the extensive consultation and co-designed service design process, that the decision making quality of Social Security Scotland will be improved and reduce appeals to tribunal by clients.

Enforcement, sanctions and monitoring

78. 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 introducing CDP.

79. The Communities Analysis Division (CAD) within the Scottish Government will also run a comprehensive evaluation programme to consider the impact of introducing CDP.

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

Implementation and delivery plan

81. The Scottish Government intends to begin accepting applications for assistance from new clients who do not receive either a UK or Scottish Government disability benefit first, and at a later date, existing DWP clients will transfer to Social Security Scotland without having to make a new application. Social Security Scotland will handle all aspects of the client’s case to minimise stress and anxiety.

82. A communications strategy will be developed in advance of the launch of CDP, which will aim to ensure that children and young people, their families and carers, the third sector, local government, education sector and advice providers are aware of the introduction of CDP, and understand the eligibility criteria. We will develop the communications strategy so that it will be linked in with wider Scottish Government initiatives for improving outcomes for disabled people.

Summary and recommendation

83. In summary, the Scottish Government has identified evidence that the introduction of CDP will contribute an additional investment into the Scottish economy. It is anticipated that these funds will be used to pay for care, goods and services and therefore businesses could benefit from the introduction of CDP.

84. Any impact to businesses as a result of these regulations should be positive or neutral. The Scottish Government have worked closely with stakeholders to develop the policy and will continue to do so until CDP opens for new applications, the transfer process of clients from DWP to Social Security Scotland, and beyond.

Declaration and publication

85. 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: Shirley-Anne Somerville, MSP
Cabinet Secretary for Social Security and Older People

Date: 11 February 2021

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86. Any queries about this BRIA should be addressed to:

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