

EQUALITY IMPACT ASSESSMENT – RESULT

Title of Policy	The Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022
Summary of aims and desired outcomes of Policy	<ul style="list-style-type: none"> • To make provision for the transfer of awards of Disability Living Allowance for adults ordinarily resident in Scotland from the Department for Work and Pensions (DWP) to Social Security Scotland, in certain circumstances. • To make determinations without application on interim entitlement of these individuals to Adult Disability Payment as part of the case transfer process and to make provision to end these individuals entitlement to Disability Living Allowance. • To make provision to add a transitional low daily living component to allow Disability Living Allowance individuals to transfer to Adult Disability Payment on an interim like for like basis. • To make provision for the review of individuals' entitlement against the standard eligibility criteria for Adult Disability Payment as soon as reasonably practicable after the interim transfer determination. • To make provision to maintain frequency and timing of the individual's payments following transfer. • To make miscellaneous amendments to the Personal Independence Payment (Transitional Provisions) Regulations 2013, the Disability Assistance for Children and Young People (Scotland) Regulations 2021, and the Disability Assistance for Working Age People (Scotland) Regulations 2022.
Directorate: Division: Team	Directorate for Social Security: Social Security Policy: Carer Benefits and Case Transfer Unit

Executive summary

This instrument sets out provisions for transferring the awards of individuals resident in Scotland currently in receipt of Disability Living Allowance, who were over 16 and under 65 and in receipt of Disability Living Allowance at the introduction of Personal Independence Payment on 08 April 2013, to Social Security Scotland and onto Adult Disability Payment.

It also makes miscellaneous amendments to the Personal Independence Payment (Transitional Provisions) Regulations 2013, the Disability Assistance for Children and Young People (Scotland) Regulations 2021, and the Disability Assistance for Working Age People (Scotland) Regulations 2022.

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

A Business and Regulatory Impact Assessment (BRIA) Equalities Impact Assessment, Island Communities Impact Assessment, Fairer Scotland Duty Impact Assessment, Data Protection Impact Assessment and a Children's Rights and Wellbeing Impact Assessment were all produced for the Disability Assistance for Working Age People (Scotland) Regulations 2022 and the Disability Assistance for Children and Young People (Scotland) Regulations 2021.

It is anticipated from the analysis in these impact assessments that both Child and Adult Disability Payment will have a broadly positive impact on a range of equalities groups, island communities and in relation to the realisation of children's rights and improving their wellbeing. There were no significant equalities or rights impacts that required further consideration in relation to the commencement of those regulations. We have reviewed the impact assessments for these regulations from the perspective of this specific cohort of individuals transferring onto Adult Disability Payment and consider there is potential for similar positive impacts, and that there are no significant equalities or rights impacts that require further consideration in relation to the commencement of these regulations.

Given the miscellaneous amendments in Part 4 of the draft regulations are aimed at clarifying the intent and effect of the regulations, removing ambiguities, it is not considered that the any of the provisions in Part 4 would give rise to any significant equalities or rights impacts that require further consideration in relation to the commencement of these regulations. Where amendments in Part 4 of the draft regulations are made in consequence of the main provisions on case transfer, these are considered alongside those provisions. This assessment, therefore, focuses on the main provisions being taken forward to make provision for the transfer of individual's awards from Disability Living Allowance to Adult Disability Payment.

Background

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

At the transfer of executive competence, the Department for Work and Pensions agreed to continue to deliver Disability Living Allowance in Scotland on behalf of Scottish Ministers under an agency agreement. At this time, there were approximately 42,000 individuals in receipt of Working Age Disability Living Allowance individuals¹ who had not yet migrated to Personal Independence Payment. It was, therefore, also agreed that the Department for Work and Pensions would halt the programme of managed migration onto Personal Independence Payment for individuals resident in Scotland aged between 16 and 65 on 08 April 2013.

However, any individual resident in Scotland in receipt of Working Age Disability Living Allowance reporting a relevant change of circumstances, due an award renewal, otherwise requiring an award review or requesting to move was still required to apply for Personal Independence Payment until such times as Adult Disability Payment was launched in Scotland.

Policy aims

The eligibility criteria for Adult Disability Payment differs from the eligibility criteria for Disability Living Allowance and broadly aligns with the eligibility criteria for Personal Independence Payment. However, the Scottish Government has made improvements to the application process, the way awards are made, and the collection of supporting information about an individual's disability or health condition, to make the processes involved in assessing entitlement for Adult Disability Payment less onerous and to improve decision-making. The Scottish Government has also introduced a new individual consultation service to aid the decision making process. This will be substantially different from the assessments used to determine entitlement to Personal Independence Payment by the Department for Work and Pensions.

Scottish Ministers, therefore, intend to transfer the award of any individual in receipt of Working Age Disability Living Allowance to Adult Disability Payment, where an individual wishes to move to Adult Disability Payment or would otherwise be required to apply for Personal Independence Payment.²

The Scottish Ministers have developed a safe and secure transfer process, which will require no action on behalf of the individual wherever possible, and has been designed in line with the following case transfer principles:

¹ Working Age, in the context of this cohort, refers to those individuals in receipt of Disability Living Allowance who were under 65 in April 2013 when the transition from Disability Living Allowance to Personal Independence Payment began, even though many will now be over the state pension age.

² Scottish Ministers are still considering how to transfer the awards for those to which these circumstances do not apply. The transfer process for these individuals will be provided for through separate regulations in due course.

- no individual will be required to re-apply for their benefit;
- after Adult Disability Payment is launched nationally individuals will, wherever possible, be transferred before they are required to undergo a DWP face-to-face assessment;
- individuals will continue to receive the right payment, at the right time; and
- we will complete the case transfer process as soon as possible while ensuring it is safe and secure.

Interim determination of entitlement

To facilitate a safe and secure transfer, Scottish Ministers intend to award transferring individuals with Adult Disability Payment at the equivalent rate as they are currently receiving for Disability Living Allowance. This applies regardless of whether the individual would otherwise meet the eligibility rules for those components of the Adult Disability Payment mobility and daily living components. Since there are three rates of care component for Disability Living Allowance but only two for Adult Disability Payment, Scottish Ministers also intend to make provision for the introduction of a transitional daily living component within Adult Disability Payment for the purposes of these transfer determinations only. The determination of the individual's entitlement to Adult Disability Payment will also end the corresponding award of Personal Independence Payment.

Review of entitlement to Adult Disability Payment

Since the eligibility criteria for Adult Disability Payment differ from the eligibility criteria for Disability Living Allowance, it is Scottish Minister's intention that a further review of the individual's entitlement to Adult Disability Payment will be undertaken after the transfer. This review will consider the individual's entitlement against the usual criteria for the mobility and daily living components of Adult Disability Payment and take into consideration any relevant change of circumstance that triggered the transfer or was reported to the Department of Work and Pensions during the transfer window. This process will likely require the gathering of additional evidence and information from the individual and supporting sources. This is because of the differing eligibility criteria and because records for these transferring individuals are all paper based and have not been reviewed since prior to 08 April 2013.

It is intended that this review determination will occur as soon as reasonably practicable after the transfer process is completed, and within 12 months of the issue of the notice of intention to transfer. It is anticipated that the majority of individuals will see their award increase or remain the same as a result of this review. If the individual's award increases, the increase will be apply from the date of the transfer determination. If a individual's award is decreased following the review, the change will only take effect from the date the decision is made. There will, therefore, be no overpayment the person could be asked to repay. Short-term assistance will be available to individuals during the re-determination and appeals process, where they have had a decrease or nil award, to avoid financial hardship.

Terminal illness

Scottish Ministers also intend to provide for an accelerated route of transfer for individuals resident in Scotland in receipt of Disability Living Allowance who would meet the special rules for terminal illness for Adult Disability Payment, in any case where the individual does not meet the rules for terminal illness that apply to Disability Living Allowance or who does meet those rules but is not in receipt of the highest rates of the care and mobility components.

On transfer these individuals will be entitled to both components of Adult Disability Payment at the enhanced rate and that no review determination will be required.

Relevant age

Transitional provision was made in the Personal Independence Payment (Transitional) Provision Regulations 2013 to dis-apply the relevant age rule for any person on Disability Living Allowance that applied for Personal Independence Payment. To ensure parity with the existing Disability Living Allowance to Personal Independence Payment journey we have made provision for those individuals age 65+ the opportunity to access both the daily living and mobility component at the appropriate rate when they undergo the first review for Adult Disability Payment following case transfer. This provision ensures that Disability Living Allowance individuals in Scotland are not disadvantaged compared to those in the rest of the UK.

Residency and appointees

Scottish Ministers will identify individuals who will have their awards transferred from Working Age Disability Living Allowance to Adult Disability Payment using the residential address held by the Department for Work and Pensions in the individual's Disability Living Allowance record.

In order to ensure a safe and secure transfer, an individual will be assumed to meet the residence and presence conditions for Adult Disability Payment at the point of transfer if they have a Scottish postcode. If Scottish Ministers determine after transfer that an individual should not have transferred because they fail to meet the residence and presence conditions, a further determination without application will be made that will nullify the case transfer Adult Disability Payment determination and the resulting entitlement. This will also nullify the termination of the Disability Living Allowance award. Similarly, all individuals appointed by the Department for Work and Pensions in respect of a Disability Living Allowance award will be temporarily treated as an appointee for the purposes of Adult Disability Payment until it is reasonably practicable for Scottish Ministers to consider whether to make an appointment under the Social Security (Scotland) Act 2018.

Re-determinations, appeals and short term assistance

It is Scottish Ministers intention that the transfer determination and review determinations made as a result of the case transfer process have the same rights to

re-determination and appeal as any other determination made under section 52 of the Social Security (Scotland) Act 2018.

Where an individual sees a reduction in award or nil award as a result of the review determination and seeks a re-determination, or as a result of the re-determination of the transfer determination deciding a lower amount than the transfer determination and seeks to appeal, an individual will also be able to access short-term assistance.

If an individual wishes to seek a re-determination of the transfer determination rather than wait for the review determination, the re-determination will consider their entitlement against the usual daily living and mobility component criteria for Adult Disability Payment. Since there are differences in eligibility criteria between Disability Living Allowance and Adult Disability Payment, this will require a more substantive re-consideration of the individuals entitlement than would usually be the case for a request for a re-determination. Scottish Ministers are making provision for a maximum of 182 days for Social Security Scotland to complete a re-determination of a case transfer determination. The intention will, however, be that any re-determination is undertaken as soon as is reasonably practicable within that timeframe.

Frequency of payments

Disability Living Allowance is currently paid on a weekly in advance, 4 weekly in arrears or 3 weekly in advance and 1 week in arrears payment cycle. Adult Disability Payment is only paid 4 weekly in arrears, unless an individual meets the special rules for terminal illness when they will be paid weekly in advance.

In order to meet the commitment that individuals will continue to receive the right payment at the right time, Scottish Ministers intend to allow any individual currently paid Disability Living Allowance weekly in advance to also be paid Adult Disability Payment weekly in advance once they have transferred. As it is not possible to provide for a 3+1 payment cycle for Adult Disability Payment, Scottish Ministers are making provision to maintain individuals current payment schedule as we move them onto a 4 weekly in arrears payment cycle by providing for a week of overlapping entitlement to both Disability Living Allowance and Adult Disability Payment, at the end of the individual's Disability Living Allowance award.

While it is not certain whether any individual currently in receipt of Personal Independence Payment is currently being paid on the 3+1 payment cycle, Scottish Ministers have also taken the decision to include provision in these regulations for the same solution of a week's overlap in benefits to apply for these individuals.

Miscellaneous amendments

Finally, as noted above, the provisions in Part 4 of the regulations seek to make miscellaneous amendments to the Personal Independence Payment (Transitional Provisions) Regulations 2013, the Disability Assistance for Children and Young People (Scotland) Regulations 2021, and the Disability Assistance for Working Age People (Scotland) Regulations 2022 in order to clarify the intent and effect of the regulations, remove ambiguities, and in consequence of the case transfer provisions.

The Scope of the Equalities Impact Assessment

This Equality Impact Assessment considers the impact of the introduction of provisions to enable the transfer of individuals currently in receipt of Working Age Disability Living Allowance onto Adult Disability Payment on disabled people who have one or more protected characteristics.

Who was involved in this EQIA?

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

There were 521 formal written responses submitted, 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 2017³. 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.

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.

Two surveys regarding the case transfer process were sent out to Experience Panel members in January and February 2019. 404 and 559 responses were received respectively. A series of individual and group interviews were also conducted. Results from both surveys and the interviews were published in 2019.⁴ These surveys confirmed that of most importance to panel members was that they continue to receive the correct payment at the correct time.

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

Regarding disability assistance, an initial framing exercise for the partial Equalities Impact Assessment was carried out in 2017 involving a range of internal Scottish

³ <https://www.gov.scot/publications/analysis-written-responses-consultation-social-security-scotland/>

⁴ 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/>

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.

The Scottish Government has also undertaken ongoing consultation with stakeholders through our independent Disability and Carers Benefits Expert Advisory Group as well as the Ill Health and Disability Benefits Stakeholder Reference Group. The Disability and Carers Benefits Expert Advisory Group 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.

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.

On 21 December 2020, the Scottish Government launched a public consultation on its proposals for the delivery of Adult Disability Payment and on drafts of the accompanying impact assessments. The consultation ran until 15 March 2021 and received 127 responses from individuals and stakeholder organisations. A number of changes to the Adult Disability Payment Equality Impact Assessment were made in response to this feedback including:

- Undertaking further analysis of the impact of proposed changes to the application of the eligibility criteria, specifically looking at potential impacts on women and on people with one or more mental health condition and people with a learning disability and/ or learning difficulty, and on people with varying health conditions.
- The introduction of measures to ensure that a Social Security Scotland practitioner gains an understanding of the full needs and experiences of a individual where a consultation takes place.
- Actions to further ensure that the application of the reliability criteria mitigates the negative impacts of how the Personal Independence Payment eligibility criteria is currently applied by the Department for Work and Pensions.

Despite the continuing impact of coronavirus, work with Experience Panels has continued. Framing exercises have been taking place in 2020 and 2021 specifically looking at the differing process for transferring individuals from Disability Living Allowance for Children, Personal Independence Payment and Working Age Disability Living Allowance and these will continue to take place with a range of internal Scottish Government stakeholders.

Data Sources

Based on statistics published by the Department for Work and Pensions in May 2021 there were approximately 44,000 people in receipt of Disability Living Allowance in Scotland, who were over 16 and under 65 and in receipt of Disability Living Allowance at the introduction of Personal Independence Payment on 08 April 2013,. Since April 2020 there have been an average of approximately 100 cases per month moving from Disability Living Allowance to Personal Independence Payment. If this level continues, around 100 a month are likely to transfer to Adult Disability Payment from 29 August 2022 as a result of a request to transfer, reporting a relevant change of circumstances or as a result of an award review or renewal. Information from the Department for Work and Pensions suggests all current Working Age Disability Living Allowance individuals are on indefinite awards. Therefore, we anticipate the majority of individuals moving over to Adult Disability Payment will be as a result of reporting a relevant change of circumstances or because they have requested to transfer.

This assessment was undertaken by reviewing the Equalities Impact Assessment undertaken for the Disability Assistance for Working Age People (Scotland) Regulations, taking into consideration any specific data for the Working Age Disability Living Allowance cohort and specific user research conducted with individuals currently in receipt of Working Age Disability Living Allowance. A variety of information sources were used in the assessments, including:

- Scottish Health Survey 2018^[4];
- Scotland's Census 2011^[5];
- NRS Scotland Mid-year Population Estimates^[6];
- Social Security Experience Panel findings;
- responses to our Consultation on Disability Assistance in Scotland^[7];
- advice from our Disability and Carer Benefits Expert Advisory Group^[8]; and
- the Department for Work and Pensions Stat-Xplore statistics.

Key findings

The impact of introducing Adult Disability Payment has been reviewed in the EQIA carried out for the Disability Assistance for Working Age People (Scotland) Regulations 2022, and the key findings of that assessment can be viewed [here](#). Overall, that assessment found that the introduction of Adult Disability Payment will have a positive impact on the people of Scotland, including individuals who fall under the protected characteristics considered in this assessment. Similarly we consider making provision for an individual to transfer to Adult Disability Payment, where they would otherwise have been required to apply for Personal Independence Payment will have an overall positive impact. Specific examples include:

- We will select cases for transfer before they would be subject to a face-to-face assessment with the DWP. Moreover, when we do review the award, we will not carry out functional examinations of individuals in order to decide eligibility for Adult Disability Payment. We will also trust what individuals tell us about their needs during the review process. This will help to ensure that individuals who fall within the protected characteristics, including sex, pregnancy and

maternity, do not experience discrimination when undergoing the review following transfer or engaging with Social Security Scotland more broadly; and

- The transfer and review process will be supported by Social Security Scotland staff who embody values of dignity and respect, with all training for new staff including equalities awareness and underpinned by human rights principles. This should result in a more positive experience and outcomes when transferring to Social Security Scotland and when individuals have their Adult Disability Payment award reviewed following the interim transfer determination.

Individuals in receipt of Working Age Disability Living Allowance have been on this benefit since at least 2013 and will not have had their award reviewed since then. User research highlighted that many Disability Living Allowance individuals have concerns regarding transferring to another disability benefit, given the perceived experience of many that have had to apply for Personal Independence Payment.

Due to this being a 'closed benefit' this cohort also has an older age profile than other disability benefits aimed at working age adults. The research also reported concerns that the transfer process may be more difficult and stressful for some individuals, especially older individuals who may experience the transfer as particularly disruptive. Older people with dementia, a learning disability, or with a mental health condition may also experience additional barriers to engaging in the transfer and review process.

Taking these key points into consideration, we identified several areas of improvement and made changes specific to the case transfer process for this cohort as it was developed to ensure Adult Disability Payment also has the same positive impacts on those transferring from Disability Living Allowance and to mitigate any potential negative impacts of the transfer and review process itself:

- **Two stage transfer process:** Since Disability Living Allowance and Adult Disability Payment have significantly different rules and differing components it is inevitable that individuals will need to undergo a full case review to determine their ongoing eligibility to Adult Disability Payment. One option would have been to seek to conduct a full review of entitlement to Adult Disability Payment as part of the case transfer process. Following consideration of potential impacts on individuals, including specific impacts on those with protected characteristics in addition to being disabled, we made the decision to provide for a two stage process. This will allow individuals to become familiar with Social Security Scotland rather than embarking on the review process straightaway and allow better opportunities to support, signpost and mitigate any potential negative impacts of changing an individual's benefit. This requires making provision for a transitional rate of daily living component equivalent to the lowest rate of the Disability Living Allowance care component for this group of individuals only.
- **Giving individuals choice on the extent to which existing evidence for their Disability Living Allowance Award is used:** given the age of the evidence held by the DWP for the individual's current Disability Living Allowance award, the differences between the two benefits, and the additional support available in the Scottish system to collect supporting information we

are giving individuals the choice as to whether they this evidence to be transferred and used as part of the review following transfer.

- **Access to short term assistance:** By adopting this two stage process, it means we can better signpost individuals to the support available to help them through the transfer process and then the review and ensure that Short Term Assistance is available to any individual who does see their award reduced or stopped following a re-determination of their interim transfer determination or the review determination. As with the introduction of Short Term Assistance elsewhere in the Scottish system, this aims 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.
- **Extending the period for conducting re-determination from the interim transfer determination:** if an individual wishes to ask for a re-determination of their interim transfer determination, ahead of the intended review, this will require a full assessment of their entitlement to Adult Disability Payment. This is different from other circumstances in which a re-determination is sought, where that full assessment will already have been undertaken. Therefore to ensure there is sufficient time to gather all necessary supporting information, we are making provision for a maximum of 182 days for Social Security Scotland to complete a re-determination of a case transfer determination. The intention will, however, be that any re-determination is undertaken as soon as is reasonably practicable within that timeframe. This may be of particular benefit to individuals that may face additional barriers to engaging in the process. We will still aim to complete the re-determination as soon as reasonably practicable.
- **An accelerated process for terminally ill individuals:** to ensure equal benefit from the new definition of terminal illness and the decision to automatically award all those that meet the Scottish rules on terminal illness with the enhanced rates of both the mobility and daily living component of Adult Disability Payment, we will provide an accelerated transfer process in any case where the individual does not meet the rules for terminal illness that apply to Disability Living Allowance or who does meet those rules but is not in receipt of the highest rates of the care and mobility components. On transfer these individuals will be entitled to both components of Adult Disability Payment at the enhanced rate and no review determination will be required.
- **Suspending the relevant age rule for accessing the mobility component:** Given the age range of individuals currently in receipt of Working Age Disability Living Allowance, the number now over the state pension age and the length of time since these individuals have had their entitlement reviewed, we make the decision to make provision for those individuals over the state pension age to access both the daily living and the mobility component at the rate they would have been awarded were they under the state pension age when they undergo the first review for Adult Disability Payment following case transfer. This also ensures parity with those moving from Disability Living Allowance to Personal Independence Payment and ensures that individuals in Scotland are not disadvantaged compared to those in the rest of the UK.

- **Allowing for voluntary transfer:** Consideration of the data on outcomes for those transferring from Disability Living Allowance to Personal Independence Payment highlighted that in the last three years in Scotland around 40% received a higher award. We have, therefore, followed the current model and allowed individuals in receipt of Working Age Disability Living Allowance the choice to request to have their awards transferred to Adult Disability Payment. This has not been considered necessary for those transferring from Personal Independence Payment to Adult Disability Payment given the limited number of ways in which the entitlement criteria differ and the provision of appropriate backdating mechanisms in these circumstances.
- **Tailored communications for case transferees and signposting to support:** User research and engagement with stakeholder organisations including the Disability and Carer Benefits Expert Advisory Group, highlighted the challenges to individuals in understanding whether or not they would be better off on Working Age Disability Living Allowance or Adult Disability Payment. We have developed an overarching communications and engagement plan for case transfer that includes clear information and messaging specifically targeted towards individuals who are currently receiving Disability Living Allowance, including wider messaging about the case transfer journey. We are also developing information specifically about the differences between Disability Living Allowance and Adult Disability Payment. Social Security Scotland also have processes in place to signpost transferring individuals to independent support organisations in the third sector as well as referral to the advocacy service where this is deemed appropriate. Local delivery will also have individual support advisors located nationally to support individuals face to face where this is their preference.
- **Maintaining access to the Accessible Vehicle Equipment Scheme, and providing support should access be lost following review:** Provision is in place for all individuals transferring from the DWP to Social Security Scotland to ensure seamless transition from the Motability Scheme to the Scottish Government's Accessible Vehicle Equipment Scheme. An individual moving from Disability Living Allowance to Adult Disability Payment will continue to have access to their Motability vehicle on the same terms following the interim transfer determination. At present, individuals receiving Disability Living Allowance with a vehicle from the Motability scheme have access to a transitional support payment⁵ in the event of losing their entitlement following reassessment from Disability Living Allowance to Personal Independence Payment. To maintain the same level of protection we are looking at ways in which we can offer an equivalent payment following a review under Adult Disability Payment rules. By offering this protection to Disability Living Allowance individuals we are not putting other Adult Disability Payment case transfer individuals at a disadvantage as they would have already had access to it when their award moved from Disability Living Allowance to Personal Independence Payment.
- **Maintaining payment frequencies:** User research confirmed continuing to receive their payment at the right time is a top priority for individuals as any change to frequency of payments can have a detrimental effect on the

⁵ [About the transitional support package | Motability Scheme](#)

management of household finances. This group of individuals have been receiving the same frequency of payments since at least 2013 so it is important to maintain this stability. Information from the DWP suggests around 69% of Working Age Disability Living Allowance individuals are already on the 4 weekly in arrears payment cycle that is standard for Adult Disability Payment. Around 7% are on a weekly in advance payment cycle, which is currently only available to those in receipt of Adult Disability Payment who meet the special rules for terminal illness. We have therefore decided to open up this payment frequency to individual's transferring from the DWP who are already receive their payments weekly in advance. Around 24% are on a 3 weekly in arrears and 1 week in advance payment cycle that is not available in Adult Disability Payment. For these individuals we will maintain individuals current payment schedule as we move them onto a 4 weekly in arrears payment cycle by providing for a week of overlapping entitlement to both Disability Living Allowance and Adult Disability Payment, at the end of the individual's Disability Living Allowance award. While our understanding is the that there should be no individuals current in receipt of Personal Independence Payment currently on a 3+1 payment cycle, given the importance to maintaining payment cycles highlighted by user research for the Working Age Disability Living Allowance we have also decided to make similar provision for those transferring from Personal Independence Payment as a precaution.

Age

This cohort is made up of individuals who are currently aged between 25 and 74 (i.e. those who were under 65 when Personal Independence Payment was introduced in April 2013. Therefore, the cohort is estimated to include approximately 12,000 people who will be over State Pension age (66) in August 2022.

We are not aware of any evidence that suggests moving an individual from Disability Living Allowance to Adult Disability Payment would in itself create any further particular inequalities for this protected characteristic. However, user research has indicated that given the length of time individuals have been in receipt of a stable award of Disability Living Allowance, the process of transfer and review may be more challenging for some older individuals, especially any with dementia, who may face additional barriers to engaging with the processes. We are, therefore, taking forward a number of proposals to help mitigate any potential negative impacts as noted above including:

- ensuring tailored communications and signposting to support;
- suspending the relevant age rule to allow those over the state pension age full access to the daily living and mobility components at the transfer and review determinations; and
- ensuring stability of payment frequency.

Disability

The following table presents a summary of the main disabling condition for the cohort from DWP Stat-Xplore statistics. It should be noted that DWP data only records one disability / condition per recipient, therefore, the data presented does not fully capture information for people with multiple conditions.

Main Disabling Condition	DLA Caseload in Scotland in May 2021
Learning Difficulties	6,770
Arthritis	5,670
Psychosis	4,360
Psychoneurosis	3,150
Disease Of The Muscles, Bones or Joints	2,670
Neurological Diseases	2,470
Back Pain - Other / Precise Diagnosis not Specified	2,030
Multiple Sclerosis	1,550
Cerebrovascular Disease	1,450
Epilepsy	1,230
Blindness	1,040
Heart Disease	1,030
Other conditions (fewer than 1,000 in each group)	10,680

We did not find any evidence that suggested the creation of particular inequalities for this protected characteristic. We believe that the changes made when introducing Adult Disability Payment will have a positive impact on disabled people in Scotland, including those that will transfer to Adult Disability Payment from Working Age Disability Living Allowance. These include:

- replacing Department for Work and Pensions private sector health assessments with individual consultations undertaken by practitioners of Social Security Scotland with experience in the provision of health and social care, including a proportion with specific experience in mental health and learning disabilities;
- significantly reducing the number of face-to-face consultations that will need to be carried out due to our improved approach to gathering supporting information, decision making and, where a consultation is necessary, undertaking the majority of these by phone;
- making it easier for individuals with a terminal illness to be entitled to Adult Disability Payment through Special Rules Terminal Illness by allowing medical practitioners to use their clinical judgement and removing the six month time limit from our definition of terminal illness;
- helping to reduce the stress and anxiety experienced due to the perception of reaching a financial cliff edge by making rolling awards;
- improving the accuracy and consistency of decision making by properly applying the reliability criteria;
- 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 individual'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 First Tier Tribunal should Social Security Scotland be unable to do so within the specified timescale; and
- helping to encourage individuals to seek administrative justice should they believe Social Security Scotland has made a mistake through Short Term Assistance, mitigating a drop in the level of household income while also protecting people by making Short Term Assistance non-recoverable.

User research carried out for the principal regulations for Adult Disability Payment, showed the experience of undergoing a face-to-face assessment for Personal Independence Payment was extremely stressful and anxiety inducing with some user experience participants stating that it had an impact on their health. Our discussions with experience panel members currently in receipt of Working Age Disability Living Allowance showed nervousness at having to move to Personal Independence Payment because of the prospect of having to undergo a DWP face-to-face assessment. Some even indicated they, or others they knew, were reluctant to report a change in their circumstances for this reason.

User research showed individuals were in general happy about the prospect of moving to the Scottish system and had a general understanding of the different assessment, review, re-determination and appeals processes in place. It also, however, showed a lack of understanding over the main areas of difference between the rules and award components for Disability Living Allowance and Adult Disability Payment. When we talked about these differences and discussed the intended process to review awards following the interim transfer determination, some individuals were concerned about us using the existing evidence held by DWP as part of this process and what would happen if the review did result in a reduction in their level of award. Finally, as with our considerations on age, above, user research also indicated a concern that the process of transfer and review itself could be more challenging for some individuals with a learning disability, developmental disorder or with a mental health condition who may experience additional barriers engaging with the processes.

As noted above, we are therefore taking forward a number of proposals to help mitigate any potential negative impacts and ensure the positive impacts of Adult Disability Payment are shared by those transferring onto the assistance, including:

- ensuring tailored communications and signposting to support;
- providing an accelerated transfer route where an individual may meet the Scottish rules on terminal illness;
- giving individuals a choice on whether existing evidence held by DWP is used as part of the review of their award;
- ensuring access to short term assistance should an individual receive a reduced award following a re-determination of the interim transfer determination or the review determination;
- increasing the time available to conduct a re-determination of the initial transfer determination; and
- ensuring stability of payment frequency.

Marriage and civil partnership

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

Pregnancy and maternity

We are not aware of any evidence that suggests these regulations create any particular inequalities for this protected characteristic. As noted in the equality impact assessment for the principle regulations introducing Adult Disability Payment, we do not currently have any data on the number of disabled people that fall under this protected characteristic. Joint research carried out by Engender and Inclusion Scotland looked at the issues facing disabled women. Part of this research highlighted perceptions of disabled women regarding their ability to parent or whether they should become pregnant. Respondents also discussed the fear of having their children removed from their care due to the perception that they were not able to adequately care for them.

Engender proceeded to discuss instances where a disabled woman was able to carry out tasks relating to caring for children which resulted in them being judged as not entitled to disability benefits. The example provided detailed how a mother was able to prepare a meal for her child but not herself, requiring another person to do it. Because she was able to make a meal for her child, she was deemed not to be entitled to assistance. When asked what improvements could be made, key amongst them was a need for equalities training.

People employed by Social Security Scotland will be required to undertake equality training in-line with our commitment to delivering a service based on the values of dignity, fairness and respect. We will also trust what individuals tell us about their needs during the application process and during consultations where they take place. This will help to ensure that individuals who fall within the protected characteristics, including pregnancy and maternity, do not experience discrimination when undergoing the review following transfer to assess their entitlement to Adult Disability Payment or engaging with Social Security Scotland more broadly.

Race

We are not aware of any evidence that suggests these regulations create any particular inequalities for this protected characteristic. 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. Although we do not have statistics showing the number of people within Scotland who are in receipt of disability benefits and who belong to minority ethnic groups, we know that they generally make up 3.7% of those with a reported learning disability or developmental disorder.

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. This work is also helping to inform our approach to carrying out reviews of individuals entitlement to benefits, including the review for those currently in receipt of Working Age Disability Living Allowance following transfer.

Furthermore, Social Security Scotland will create a range of Adult Disability Payment stakeholder resources and content in accessible formats that will be proactively supplied to relevant stakeholder organisations through the National Stakeholder Engagement team, for organisations to distribute to people in local communities. As noted above, this will include specific tailored communication for those transferring from the Department for Work and Pensions, including information on Disability Living Allowance. The languages we proactively translate materials into were selected through stakeholder consultation. These are: BSL, Farsi, Mandarin, Cantonese, Urdu, Gaelic, Polish, Arabic, braille and easy read formats.

Social Security Scotland will produce communications materials in other languages on request. Social Security Scotland communications will work with community radio and foreign language press to provide messaging on Adult Disability Payment 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.

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.

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 will also be available to those transferring from Working Age Disability Living Allowance where an individual is already using one of these alternative payment methods.

Religion and Belief

We are not aware of any evidence that suggests these regulations create any particular inequalities for this protected characteristic. According to data published by Scottish Surveys Core Question in 2019,⁶ 50% of respondents identified as having “no religion” while 47% identified as Christian (“Church of Scotland”, “Roman Catholic” or “other Christian”), 2% as Muslim, and 2% as an “other religion”.

Once age was taken into account, in comparison to those with no religious affiliation, a lower proportion of “other” religious groups reported good/very good general health and a higher proportion reported having a limiting long-term condition. “Other Christians” reported a higher level of good/very good general health than the “no religion” reference group. We have not identified any particular barriers resulting from our policy approach which may affect people with the protected characteristic of religion and belief.

Sex

Of the estimated 44,000 people included in the cohort, in May 2021 48% are recorded on the case management systems of the Department for Work and Pensions as male and 52% female (DWP Stat-Xplore). We are not aware of any evidence that suggests these regulations create any particular inequalities for this protected characteristic. Data from the Paperworth Trust⁷ found that women are slightly more likely than men to be disabled in the United Kingdom (23% of females compared to 19% of males). A report by the Women’s Budget Group⁸ has also found that, overall, women are twice as likely to rely on social security as men.

There is evidence that gender inequalities are likely to have become even more pronounced in light of the COVID-19 pandemic. When healthcare systems come under pressure it becomes increasingly likely that women will take on further caring responsibilities.⁹ Responses to our public consultation on Adult Disability Payment highlighted that many disabled women have caring responsibilities themselves and have taken on increased responsibilities as a result of the pandemic. We also know from engagement with stakeholders that there are specific issues which arise for disabled women. This was also a key theme in feedback received through our recent consultation. For example, Engender have highlighted that women are far more likely to experience domestic violence and abuse and that this is compounded for disabled women. Engender also highlighted that, for many women who attend Department for Work and Pensions face-to-face assessments, they face specific barriers due to assessors making assumptions based on stereotypical gendered roles. They noted that there has not been enough research conducted on the topic to provide a detailed analysis. This was linked to research¹⁰ examining the gendered history of ‘incapacity benefits’ which asserts that awards tended to punish women who engaged in household labour because it was viewed as potential work activity for women, while men undertaking similar activities did not face such scrutiny at an assessment. The research further linked this to Department for Work and Pensions

⁶ Scottish Surveys Core Questions 2019 - gov.scot (www.gov.scot)

⁷ [papworth-trust-disability-facts-and-figures-2018.pdf](#)

⁸ Social Security, Gender and Covid-19 - Womens Budget Group (wbg.org.uk)

⁹ [GiHA-WG-Advocacy-Brief-Gender-Impact-COVID19.pdf](#) (un.org)

¹⁰ What do we want from the Government at Holyrood (engender.org.uk)

data which shows that men are more likely to be awarded the enhanced rate of the daily living component (52%) compared to women (46%).

We will select cases for transfer before they would be subject to a face-to-face assessment with the DWP. When we review the award, we will not carry out functional examinations of individuals. By removing functional examinations in all circumstances, there is less opportunity for gendered assumptions to affect expectations around daily living activities and mobility in a consultation. The consistent application of the 'reliability criteria' to ensure that individuals' full range of needs are taken into account should also ensure consistency and fairness and limit the possibility of women being penalised for undertaking certain activities such as household labour.

Sexual orientation and gender reassignment

We are not aware of any evidence that suggests these regulations create any particular inequalities for this protected characteristic. In 2017, 2.4% of people in Scotland identified their sexual orientation as "Lesbian, Gay, Bisexual or other." A report by the Equality Network¹¹ found that Lesbian, Gay, Bisexual, Transgender/Transsexual (LGBT+) disabled people were more likely to experience discrimination than LGBT+ non-disabled people with 59% reporting experiencing prejudice or discrimination within the last month at the time of the report compared to 47% of non-disabled LGBT+ individuals.

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

During our engagement with individuals, those who had undergone gender reassignment discussed feelings of being 'outed' by this process as they had to reiterate that they had changed gender and often felt disparaged by assessment staff. They also expressed frustration that the system could not cope with their attempts to amend their existing identity information, such as name and gender, within the current system. Some people we engaged with who had undergone a Personal Independence Payment assessment in the current system reported experiencing homophobia/ transphobia by assessors. They also spoke of dismissive and disrespectful attitudes towards their shared living arrangements with same-sex partners.

Agency staff will be recruited who embody values of dignity and respect and all training for new staff will include LGBT+ awareness and be underpinned by human rights principles. We anticipate that these measures will have a positive effect on people whose awards transfer to Adult Disability Payment with these protected characteristics.

¹¹ The Scottish LGBT Equality Report — Equality Network (equality-network.org)

Monitoring and review

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

The Communities Analysis Division within the Scottish Government will also run a comprehensive evaluation programme to consider the impact of the changes made to introduce new forms of Scottish disability assistance, with a full suite of equalities data for new applicants. As part of the programme, thematic evaluation projects will be commissioned to examine the impact of key policy changes on the delivery of disability benefits and how this has been experienced by the individual. Initially there will be four core evaluation projects, including one specifically on case transfer.

Within the case transfer evaluation project, we will explore the journey and outcomes for individuals transferring from Working Age Disability Living Allowance to Adult Disability Payment, given the differing entitlement rules and award components. Given the on-going nature of the case transfer process, we will ensure that projects are planned and timetabled carefully to allow for relevant learning to be incorporated into the transfer process in the shorter term, but also allow for interaction with parallel projects that may have longer timescales, in order to ensure we have an overall picture of the full case transfer process.

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.

Recommendations and conclusions

This EQIA process has identified that overall, the Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022 has the potential to have the same positive impacts for working age adults in Scotland who share protected characteristics as identified in the assessment of the impact of the principal regulations introducing Adult Disability Payment.

The process has identified a number of adaptations to the transfer process to ensure that these positive impacts can be equally accessed by those transferring into Adult Disability Payment from Working Age Disability Living Allowance and to mitigate any potential negative impacts of the transfer and review processes themselves. These are set out in the key findings section above. Where legislative provision is required to implement these adaptations, these have already been incorporated into the draft regulations. Others, such as developing tailored communications for case transferees, including information on Disability Living Allowance are currently underway and will need to be put in place in good time prior to the commencement of case transfer for this cohort.

Authorisation

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