

Title of proposal

The Disability Assistance for Older People (Consequential Amendment and Transitional Provision) (Scotland) Regulations 2024

Purpose and intended effect

Background

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

The Scottish Government has launched Child Disability Payment to replace Disability Living Allowance for Children in Scotland and has also launched Adult Disability Payment to replace Personal Independence Payment. The Scottish Government will replace Attendance Allowance with Pension Age Disability Payment under the 2018 Act. As with Child Disability Payment and Adult Disability Payment, Social Security Scotland will deliver Pension Age Disability Payment on behalf of Scottish Ministers.

Pension Age Disability Payment will be open to new applications from individuals who are over State Pension age in Scotland. Those with an award of Attendance Allowance will have their award transferred to Pension Age Disability Payment, guided by the case transfer principles.²

Receipt of Pension Age Disability Payment may entitle an individual to other forms of assistance, such as premiums, discounts, exemptions or disregards. These are generally referred to as 'passport' benefits and entitlements.

As part of the Scottish Government's commitment to a safe and secure transfer of disability benefits from the Department for Work and Pensions to Social Security Scotland, it is intended that Pension Age Disability Payment will entitle an individual to the same passported entitlements as Attendance Allowance.

Where those passported entitlements fall within the competence of Scottish Ministers, the Disability Assistance for Older People (Consequential Amendment and Transitional Provision) (Scotland) Regulations 2024 set out to amend existing secondary legislation to reflect the introduction of Pension Age Disability Payment, and ensure access to passported entitlements remains the same as for Attendance Allowance in Scotland.

¹ [Social Security \(Scotland\) Act 2018 \(legislation.gov.uk\) - https://www.legislation.gov.uk/act/2018/9/content/enacted](https://www.legislation.gov.uk/act/2018/9/content/enacted)

² [Social security case transfer: policy position paper - https://www.gov.scot/publications/social-security-case-transfer-policy-position-paper/](https://www.gov.scot/publications/social-security-case-transfer-policy-position-paper/)

Legislative provisions

The consequential regulations will allow individuals who are entitled to Pension Age Disability Payment to benefit from the same exemptions, concessions or reliefs, in devolved areas, as individuals who are entitled to Attendance Allowance. Extending such provisions to individuals in receipt of Pension Age Disability Payment is straightforward because Attendance Allowance and Pension Age Disability Payment share substantially the same rates and eligibility criteria.

The consequential regulations also make provision for individuals who are in receipt of Short-term Assistance. Short-term Assistance is available where Social Security Scotland has made a determination to reduce or stop an on-going Scottish Government benefit and that determination is subject to a request for re-determination or an appeal.

Short-term Assistance will be available until the First-tier Tribunal for Scotland has made a determination, and is non-recoverable except in cases of fraud or error. Where a person is eligible, the value of Short-term Assistance will be the difference between the longstanding award paid prior to the reduction and the new level of award. This includes when that amount is now £0 because entitlement to the individual's award has stopped.

Short-term Assistance is not available in the UK Government system. Providing support in this way is another example of where Scottish Ministers are removing barriers in the Scottish social security system. As Short-term Assistance can be paid in respect of more than one form of Scottish Government assistance, the consequential regulations make clear that the scope of the amendment extends only to circumstances where Short-term Assistance is paid as a result of a qualifying Pension Age Disability Payment award being stopped or reduced.

The consequential amendments make amendment to the following pieces of secondary legislation:

- The Social Security (Invalid Care Allowance) Regulations 1976
- The Council Tax (Discounts) (Scotland) Regulations 1992
- The National Assistance (Assessment of Resources) Regulations 1992
- The Advice and Assistance (Scotland) Regulations 1996
- The Civil Legal Aid (Scotland) Regulations 2002
- The Council Tax (Discounts) (Scotland) Consolidation and Amendment Order 2003
- The National Bus Travel Concession Scheme for Older and Disabled Persons (Eligible Persons and Eligible Services) (Scotland) Order 2006
- The Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012
- The Home Energy Assistance Scheme (Scotland) Regulations 2013
- The Council Tax Reduction (Scotland) Regulations 2021
- The Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023

The consequential amendments also make amendments to the Disability Assistance for Working Age People (Scotland) Regulations 2022 to include references to Pension Age Disability Payment where there are currently references to Attendance Allowance. These amendments ensure that individuals cannot be entitled to Adult Disability Payment and Pension Age Disability Payment simultaneously, and introduces a reference to Pension Age Disability Payment within the regulations so that backdated payment of Adult Disability Payment under Special Rules for Terminal Illness is reduced by any Pension Age Disability Payment received during the same period.

The regulations also make transitional provision to remove the right of individuals who are over State Pension age in Scotland from applying for Attendance Allowance. This aligns with the ability to apply for Pension Age Disability Payment under the Disability Assistance for Older People (Scotland) Regulations 2024 when Pension Age Disability Payment launches in each local authority area.

Objective

The 2018 Act allows Scottish Ministers to create a distinctly Scottish approach to developing a new social security system which has dignity and respect at its core.

Pension Age Disability Payment entitlement and the consequential access to passported benefits are intended to improve outcomes for disabled people by providing financial assistance to help with the additional costs of living with a disability or health condition.

Rationale for government intervention

These consequential amendments, in relation to their business and regulatory impact, were assessed using the five principles of Better Regulation, as follows:

Proportionate: The Scottish Government will look to identify and minimise any indirect impacts, for example administrative burdens, on local government, private businesses, or third sector organisations as a result of the introduction of the Disability Assistance for Older People (Consequential Amendments and Transitional Provision) (Scotland) Regulations 2024.

The equivalent UK benefit, Attendance Allowance, will reduce in caseload in Scotland as Pension Age Disability Payment 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.

In the short term, there may be additional work for public agencies and some third sector organisations as they make arrangements for their staff to incorporate knowledge of the replacement benefit into their current systems. Social Security Scotland has committed to undertaking much of the administrative responsibility on behalf of people accessing disability assistance, including Pension Age Disability Payment, and intends to utilise data sharing processes with relevant bodies.

Consistent: Pension Age Disability Payment builds on the new social security framework in Scotland under the 2018 Act that is underpinned by dignity, fairness and respect.

Pension Age Disability Payment will be delivered on an entitlement basis for 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 of the principal regulations for Pension Age Disability Payment. This will provide a framework for consistent decision-making across all applications.

Where possible, the Disability Assistance for Older People (Scotland) Regulations 2024 and the associated policies have been aligned with those of Child Disability Payment and Adult Disability Payment to provide a consistent approach across disability benefits for individuals when interacting with Social Security Scotland.

The Disability Assistance for Older People (Consequential Amendment and Transitional Provision) (Scotland) Regulations 2024 ensure that individuals are entitled to the same passported entitlements within the legislative competence of Scottish Ministers regardless of whether they are in receipt of Pension Age Disability Payment or Attendance Allowance and still awaiting their case to transfer.

Accountable: The Social Security Charter sets out, in plain and clear English, what people are entitled to expect from the Scottish social security system, including how they should be treated and how their application will be processed. Complaints regarding Social Security Scotland can be directed to the Scottish Public Services Ombudsman.

The Scottish Government will ensure that individuals understand their right to request a re-determination of their Pension Age Disability Payment determination by Social Security Scotland, and to request an appeal to the Social Security Chamber of the First-tier Tribunal for Scotland if they are unsatisfied with the outcome of the re-determination. This includes their right to appeal directly to the First-tier Tribunal if Social Security Scotland is unable to complete the re-determination process before 56 days have elapsed.

Individuals will also be made aware of the existence of Short-term Assistance, which can be utilised where Social Security Scotland has made a determination to reduce or stop a longstanding Scottish Government benefit award and that determination is subject to a request for re-determination or an appeal. Short-term Assistance will ensure that individuals do not face a reduced income while undergoing a re-determination or appeal of an ongoing award. This will help to ensure that individuals are not discouraged from challenging a determination they do not agree with, or seeking administrative justice by having to manage, for a time, with a reduced income.

Transparent: A communications strategy will be developed for Pension Age Disability Payment. Similar strategies have been developed for Child Disability Payment and Adult Disability Payment. This will aim to ensure that those applying and their families or carers, the third sector, local government, health boards and

advice providers are aware of the benefit, and understand the application process and eligibility criteria.

Where a determination has been made that an individual is not entitled to Pension Age Disability Payment, Social Security Scotland will provide the reason for this outcome through a notice of determination under section 40 of the 2018 Act to ensure that determinations are understood and that processes are as transparent as possible.

Information on passporting will also be made available through different channels, for instance through a determination letter provided with a successful Pension Age Disability Payment award, so that those receiving Pension Age Disability Payment are aware of the passported benefits they may be able to access.

Guidance will be published on Pension Age Disability Payment in a way that takes account of differing communication needs, so that entitlement rules are clear and understandable. Social Security Scotland will create a bank of Pension Age 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. The languages that Social Security Scotland actively translate materials to were selected through stakeholder consultation. These are British Sign Language, Farsi, Mandarin, Cantonese, Urdu, Gaelic, Polish, Arabic and easy read formats.

Social Security Scotland will provide communication materials in other languages on request. Social Security Scotland communications will work with community radio and foreign language press to provide messaging on Pension Age Disability Payment to communities. In some circumstances, printed marketing materials may not be the right way to engage with communities and where this is the case, an engagement approach through work carried out by the National Stakeholder Engagement and Local Delivery teams will be provided.

The second Benefit Take-Up Strategy was published in October 2021 under the provision of the 2018 Act.³ The strategy sets out Scottish Ministers' work supporting benefit take-up to date. It also introduced a series of new activities and initiatives aimed at increasing awareness of, and access to, Scottish Government benefits and supporting those who are eligible to apply.

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

³ [Social Security \(Scotland\) Act 2018: benefit take-up strategy - October 2021 - https://www.gov.scot/publications/social-security-scotland-act-2018-benefit-take-up-strategy-october-2021/](https://www.gov.scot/publications/social-security-scotland-act-2018-benefit-take-up-strategy-october-2021/)

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

Based on information from the Department for Work and Pensions' Stat-Xplore service, there were around 150,000 individuals in May 2023 with an entitlement to Attendance Allowance in Scotland whose awards would transfer to Pension Age Disability Payment.⁴ Individuals with an award of Attendance Allowance that will be transferred to Pension Age Disability Payment will not be required to make a new application.

As set out above, the 2018 Act sets out a duty on Scottish Ministers to promote take-up of benefits under the Scottish social security system. Increased benefit take-up 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.

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

Consultation

Within government

Officials within the Social Security Directorate have consulted with officials across the Scottish Government on the necessary consequential amendments required to ensure a safe and secure transfer to Pension Age Disability Payment.

Officials within each area requiring amendments to be taken forward have been engaged in the legislative development process to ensure the accuracy of the amendments being taken forward as part of this legislation.

Public consultation

In July 2016, the Scottish Government launched a public consultation to support the development of a framework that would become the Social Security (Scotland) Bill. This received more than 200 responses to questions relating to disability benefits

⁴ [Stat-Xplore - Home \(dwp.gov.uk\) - https://stat-xplore.dwp.gov.uk/](https://stat-xplore.dwp.gov.uk/)

with an even split between organisational and individual responses. In particular comments were invited on a partial Business and Regulatory Impact Assessment.

There were 521 formal written responses submitted in total, of which 241 were from organisations and 280 from individual respondents. The 241 organisational responses included stakeholder groups representing human rights, disability, long term conditions and carers. The independent analysis of the responses along with the Scottish Government response were published on 22 February 2017,⁵ in addition to the Business and Regulatory Impact Assessment that was published alongside the Social Security (Scotland) Bill.

The Scottish Government set up Social Security Experience Panels, with over 2,400 people across Scotland registered as panel members when the Panels opened in 2017. The Panels involve people with lived experience of the benefits that the Scottish Government has executive and legal competence for. In July 2019, recruitment to the Experience Panels was reopened. The Scottish Government have been working with relevant stakeholders to specifically identify disabled people from seldom heard groups for further 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.^{6,7} 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 of the Experience Panels and was published on 5 March 2019. In line with the principles of dignity, fairness and respect, the Scottish Government sought the views of the people of Scotland on the three proposed disability assistance benefits, including Pension Age Disability Payment.⁸ The consultation closed on 28 May 2019, having received 263 replies, of which 74 were from stakeholder organisations and 189 from individuals.

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

DACBEAG was chaired by Dr Jim McCormick and comprised of individuals with significant practical experience of the social security system in the United Kingdom, from a range of professional backgrounds. It was independent of the Scottish Government. The Group's role was to advise Scottish Ministers on specific policy

⁵ [Analysis of written responses to the consultation on social security in Scotland - https://www.gov.scot/publications/analysis-written-responses-consultation-social-security-scotland/](https://www.gov.scot/publications/analysis-written-responses-consultation-social-security-scotland/)

⁶ [DWP benefits case transfers: survey findings - https://www.gov.scot/publications/social-security-experience-panels-case-transfer-survey-findings/](https://www.gov.scot/publications/social-security-experience-panels-case-transfer-survey-findings/)

⁷ [Social Security Experience Panels: designing the benefits case transfer process - https://www.gov.scot/publications/social-security-experience-panels-designing-case-transfer-process-main-report/](https://www.gov.scot/publications/social-security-experience-panels-designing-case-transfer-process-main-report/)

⁸ [Disability assistance in Scotland: consultation - https://www.gov.scot/publications/social-security-consultation-disability-assistance-scotland/](https://www.gov.scot/publications/social-security-consultation-disability-assistance-scotland/)

options for disability assistance and carers benefits due to be delivered by the Scottish Government.

In November 2020, officials presented the Scottish Government's policy position on Pension Age Disability Payment to the Disability and Carers Benefits Expert Advisory Group (DACBEAG). This was revisited in discussions with DACBEAG in November 2021.

On 24 August 2022, the Group shared advice on Pension Age Disability Payment,⁹ and Scottish Ministers responded on 1 March 2023.¹⁰ On 3 November 2022 officials met with DACBEAG to discuss case transfer, and DACBEAG provided further advice in December 2022 which was broadly supportive of the proposed case transfer process.

In November 2022, a meeting of the IHDBSRG was held, giving Group members an opportunity to consider the Scottish Government's policy position, while also allowing officials to assess the impact of the Scottish Government's policy position on third sector organisations. A similar session was held for wider stakeholders in January 2023.

The views of people with lived experience have been captured through a range of ongoing user research and specific stakeholder engagement activities since 2022. This engagement has provided stakeholders the opportunity to feed into the development of Pension Age Disability Payment.

In April 2023, the Scottish Government held a stakeholder engagement session to assist in the development of an Equality Impact Assessment for Pension Age Disability Payment. This session allowed the Scottish Government to discuss impacts that have been identified across all protected characteristics, and ensured stakeholders had an opportunity to raise any further potential impacts for further consideration.

Options

Option 1: take no action

The transfer of powers to Scottish Ministers to make provision for Pension Age Disability Payment is set out in the Scotland Act 2016 and the Social Security (Scotland) Act 2018. Therefore, not delivering a replacement for Attendance Allowance is not considered a viable option. This has been impact assessed under a Business and Regulatory Impact Assessment (BRIA) for the principal Pension Age Disability Payment regulations.

⁹ [Disability and Carer Benefits Expert Advisory Group - Pension Age Disability Payment: advice - https://www.gov.scot/publications/disability-and-carer-benefits-expert-advisory-group-pension-age-disability-payment-advice/](https://www.gov.scot/publications/disability-and-carer-benefits-expert-advisory-group-pension-age-disability-payment-advice/)

¹⁰ [Disability and Carer Benefits Expert Advisory Group - Pension Age Disability Payment: response from ministers - https://www.gov.scot/publications/disability-and-carer-benefits-expert-advisory-group-pension-age-disability-payment-response-from-ministers/](https://www.gov.scot/publications/disability-and-carer-benefits-expert-advisory-group-pension-age-disability-payment-response-from-ministers/)

If the Disability Assistance for Older People (Consequential Amendment and Transitional Provision) (Scotland) Regulations 2024 are not introduced, the Scottish Government's commitment to ensure that individuals in Scotland receiving Pension Age Disability Payment remain entitled to the various passported entitlements, premiums and disregards that are relied upon would not be fulfilled.

Option 2: introduce the regulations (recommended option)

This legislation will safeguard access to various passported entitlements, premiums and disregards for both individuals who newly apply for Pension Age Disability Payment, and individuals with an award of Attendance Allowance that transfers to Social Security Scotland.

Through making this legislation, Scottish Ministers are fulfilling the commitment to safeguard such entitlements by ensuring a safe and secure transfer to the Scottish social security system.

Sectors and groups affected, benefits and costs

As this instrument delivers technical amendments to ensure continued access to various entitlements, premiums and disregards, the Scottish Government is not aware of specific sectors or groups that will be affected by the legislation. Any impact will be neutral as the regulations ensure continuation of current practice when Attendance Allowance is replaced in Scotland.

By amending devolved legislation to include references to Pension Age Disability Payment, individuals who newly apply for Pension Age Disability Payment can expect to have the same access to devolved passported entitlements as is currently available for Attendance Allowance.

The Scottish Government is introducing a number of improvements to Pension Age Disability Payment, and is committed to promoting social security under the Benefit Take-up Strategy.¹¹ Combined with an ageing population,¹² it can be expected that entitlement to Pension Age Disability Payment will likely increase. However, the eligibility criteria for Pension Age Disability Payment largely aligns with that of Attendance Allowance.

This BRIA assesses the costs of making the necessary legislative changes to safeguard access to passported entitlements. However, the impact of population changes and benefit take-up can be expected to have a longer term impact. An assessment of the overall costs of Pension Age Disability Payment is included in the BRIA for the principal Pension Age Disability Payment regulations.

¹¹ [Social Security \(Scotland\) Act 2018: benefit take-up strategy - October 2021 - https://www.gov.scot/publications/social-security-scotland-act-2018-benefit-take-up-strategy-october-2021/](https://www.gov.scot/publications/social-security-scotland-act-2018-benefit-take-up-strategy-october-2021/)

¹² [Scotland's Census 2022 - https://www.scotlandscensus.gov.uk/2022-results/scotland-s-census-2022-rounded-population-estimates/#section4](https://www.scotlandscensus.gov.uk/2022-results/scotland-s-census-2022-rounded-population-estimates/#section4)

Council tax

The council tax amendments make provision for access to council tax discount, reduction and exemption schemes for Pension Age Disability Payment. This aligns with the provisions that are in place for Attendance Allowance.

The amendments include access to such schemes for those in receipt of Short-term Assistance while their longstanding award of Pension Age Disability Payment is subject to a re-determination or appeal. This may have a short-term impact on the number of individuals qualifying for discount, reduction or exemption from council tax.

The number of people with qualifying Attendance Allowance awards will decrease as the number of individuals with a qualifying Pension Age Disability Payment award increases.

As take-up of Pension Age Disability Payment is expected to increase, the amount of foregone council tax will also increase. However, as the eligibility criteria for Pension Age Disability Payment is largely aligned with Attendance Allowance, the costs associated with this provision is only expected to be marginal due to the inclusion of Short-term Assistance within the relevant schemes. This aligns with amendments made in relation to Child Disability Payment and Adult Disability Payment.

Concessionary travel

Transport Scotland offers free bus travel to older people and disabled people who are in receipt of Attendance Allowance. As people in Scotland over the age of 60 are entitled to free bus travel, all individuals who satisfy the age criteria for Attendance Allowance in Scotland are already eligible for free bus travel.

This also means that individuals in receipt of Pension Age Disability Payment will have satisfied the age criteria for free bus travel in Scotland. In 2021, 94% of people aged 60 or over had a free bus pass, and 78% of disabled people with a free bus pass made use of a companion card to allow someone to travel with them.¹³

This amendment will ensure parity of treatment between Attendance Allowance and Pension Age Disability Payment in relation to eligible disabled people. This ensures that those entitled to Pension Age Disability Payment continue to have access to a free companion card, in alignment with Attendance Allowance.

The eligibility criteria for Pension Age Disability Payment largely aligns with Attendance Allowance, and therefore there are existing systems in place for processing passported applications into the National Concessionary Travel scheme.

However, the Scottish Government expects that the differences in approach to delivering Pension Age Disability Payment will likely lead to more individuals being entitled to access passported benefits. In the long term, this will have a

¹³ [Scottish Transport Statistics 2021 - https://www.transport.gov.scot/media/51286/chapter-02-bus-and-coach-travel-scottish-transport-statistics-2021.pdf](https://www.transport.gov.scot/media/51286/chapter-02-bus-and-coach-travel-scottish-transport-statistics-2021.pdf)

corresponding cost impact for companion travel only, as anyone resident in Scotland who is aged 60 and over is already entitled to free bus travel. As Pension Age Disability Payment is demand-led, it is not currently possible to quantify the potential cost impacts on concessionary travel schemes of increased take-up compared to Attendance Allowance.

Legal aid

The Scottish Legal Aid 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 proof 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.

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.

Attendance Allowance is not a passporting benefit for this purpose, but Attendance Allowance is disregarded when calculating an individual's available resources for legal aid purposes. The legislation makes equivalent provision so that Pension Age Disability Payment and Short-term Assistance, while a longstanding Pension Age Disability Payment award is under re-determination or appeal, are disregarded in the same manner as Attendance Allowance.

Energy efficiency grants

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. In the longer term, if the scheme under the 2013 regulations is re-established, then additional costs may be incurred due to these changes as even though the grants are discretionary, the number of individuals eligible to apply due to an award of Pension Age Disability Payment may increase.

Residential accommodation provided by local authorities

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 Pension Age Disability Payment will not be regarded as an available resource when determining an individual's available resources. At the time of legislating, the cost of this provision is expected to be neutral. However, in the longer-term, this will likely have an additional cost on local authorities if the number of people entitled to Pension Age Disability Payment increases.

Carer Support Payment

Carer Support Payment is replacing Carers Allowance in Scotland. Under the current Carer Support Payment regulations, an individual may be entitled to Carer Support Payment if they care for someone who receives certain disability benefits. This includes Attendance Allowance.

This amendment will ensure that Pension Age Disability Payment is treated in the same way as Attendance Allowance. Individuals who apply for Carer Support Payment are required to meet the eligibility criteria. This considers the individual's age and residency status, their earnings, the number of hours they provide care for and whether they are studying certain courses if aged between 16 and 19.

As the Carer Support Payment eligibility criteria mainly assesses the carer's circumstances and is already provided to carers who care for someone receiving Attendance Allowance, it is unlikely that the inclusion of Pension Age Disability Payment will have a significant impact on costs. However, in the longer-term, there may be additional costs for Social Security Scotland if the number of people entitled to Pension Age Disability Payment increases.

Regulatory and EU alignment impacts

Intra-UK trade

Is this measure likely to impact on intra-UK trade?

No

International trade

Is this measure likely to impact on international trade and investment?

No

EU alignment

Is this measure likely to impact on the Scottish government's policy to maintain alignment with the EU?

No

Scottish firms impact test

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

Additionally, the Scottish Government does not expect there to be any significant impact on the operational business of local authorities or health boards as a result of these regulations. Local authorities currently work to provide a number of these passported benefits and disregards through current provision relating to Attendance Allowance. It will be important for local authorities to become aware of Pension Age Disability Payment to treat people receiving it in the same way.

There may be some impact on public sector agencies and third sector organisations operating in Scotland in relation to the way Social Security Scotland delivers Scottish Government benefits compared to the status quo. These changes are unlikely to place significant demands on third sector organisations providing advice and support for people, and have been separately assessed for the principal Pension Age Disability Payment regulations.

Competition assessment

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

Any procurement required to support the administration of Pension Age Disability Payment will be subject to the Procurement Reform (Scotland) Act 2014 and The Public Contracts (Scotland) Regulations 2015, which together provide a national legislative framework for sustainable public procurement, which supports Scotland's economic growth through improved procurement practice.

- Will the measure directly or indirectly limit the number or range of suppliers?
No
- Will the measure limit the ability of suppliers to compete?
No
- Will the measure limit suppliers' incentives to compete vigorously?
No
- Will the measure limit the choices and information available to consumers?
No

Consumer assessment

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

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

Test run of business forms

No new business forms will be introduced as a result of these regulations. The Scottish Government has assessed the impact of Pension Age Disability Payment more generally as part of a BRIA for the principal Pension Age Disability Payment regulations.

Digital impact test

Scottish Ministers do not foresee that there will be any adverse impacts now, or in the future, of these regulations in relation to their delivery in the current and future digital context. The Scottish Government has assessed the digital impact of Pension Age Disability Payment more generally as part of a BRIA for the principal Pension Age Disability Payment regulations.

Legal aid impact test

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

The right to appeal to the First-tier Tribunal (Social Security Chamber) is provided for under section 46 of the 2018 Act, and the First-tier Tribunal has the power to determine entitlement under section 49 of the 2018 Act. Currently, Civil Legal Aid or Assistance By Way of Representation (ABWOR) is not available for social security matters before the First-Tier Tribunal. Advice and Assistance is available to provide advice to a person in relation to social security matters, however legal aid funding for representation before the First-Tier Tribunal in relation to social security matters is not available.

Civil Legal Aid will continue to be available to individuals to appeal an entitlement decision to the Upper Tribunal, Court of Session or Supreme Court.

It is therefore 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 subject to a financial eligibility test based on the 'disposable income' and 'disposable capital' of the individual.

The Scottish Government expects that the re-determination process will ensure most determinations are made correctly. If nevertheless someone remains dissatisfied and wishes to appeal to the First-tier Tribunal, Social Security Scotland will do all it can to help an individual with an appeal. This includes providing information about the process, providing the right form to make an appeal and signposting to organisations who can support the individual throughout the process.

As highlighted in the costs section, these regulations make provision for Pension Age Disability Payment and Short-term Assistance within legal aid legislation. This is to ensure that they are disregarded when calculating an individual's available resources, for legal aid purposes, in the same instances as they are for people currently receiving Attendance Allowance in Scotland.

Enforcement, sanctions and monitoring

If required, ongoing stakeholder engagement with key organisations will provide the Scottish Government with an opportunity to monitor the impact of the changes made by these regulations.

Our published evaluation strategy demonstrates our commitment to evaluating the impact of changes made in the devolution of all disability benefits and Communities

Analysis Division within Scottish Government will consider the requirements for Pension Age Disability Payment in the development of evaluation plans post-2025.¹⁴

The 2018 Act places a duty on the Scottish Ministers to report annually to the Scottish Parliament on the performance of the Scottish social security system during the previous financial year. The report is to describe what Scottish Ministers have done in that year to meet the expectations on them as set out in the Social Security Charter.

Implementation and delivery plan

The Scottish Government will begin accepting new applications for Pension Age Disability Payment as part of a pilot and phased approach. This approach will comprise of two phases for new applications in specified local authority areas. These two phases will commence on 21 October 2024 and 24 March 2025 respectively. New applications from individuals in all other Scottish local authority areas will then be accepted from 22 April 2025.

Existing awards of Attendance Allowance from the Department for Work and Pensions will transfer to Social Security Scotland without individuals having to make a new application.

A communications strategy will be developed in advance of the launch of Pension Age Disability Payment and the start of the case transfer process. This will aim to ensure that individuals, their families and carers, the third sector, local government, health sector and advice providers are aware of the introduction of Pension Age Disability Payment, and understand the eligibility criteria. Communications will be linked with wider Scottish Government initiatives for improving outcomes for disabled people and older people.

Post-implementation review

As outlined above, our published evaluation strategy demonstrates our commitment to evaluating the impact of changes made in the devolution of all disability benefits and Communities Analysis Division within Scottish Government will consider the requirements for Pension Age Disability Payment in the development of evaluation plans post-2025.

Summary and recommendation

In summary, as it is expected that the number of people with entitlement to Pension Age Disability Payment may increase in the long term, there could also be an increase in those receiving passporting benefits as a result. It is anticipated that those additional benefits that hold monetary value will be used to pay for care, goods

¹⁴ [Devolution of disability benefits: evaluation strategy - https://www.gov.scot/publications/evaluating-devolution-disability-benefits/](https://www.gov.scot/publications/evaluating-devolution-disability-benefits/)

and services and therefore business could benefit from the introduction of these consequential amendments as part of the launch of Pension Age Disability Payment in Scotland.

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

Declaration and publication

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

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

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

Signed: Shirley-Anne Somerville

Date: 9 May 2024

Minister's name: Shirley-Anne Somerville MSP

Minister's title: Cabinet Secretary for Social Justice

Scottish Government contact point: Joseph Scullion