

Equality Impact Assessment

Title of policy	The Social Security Information-sharing (Scotland) Amendment Regulations 2022 (“the Amendment Regulations”)
Summary of aims and desired outcomes of policy	<p>The Amendment Regulations are required for the launch of Adult Disability Payment to ensure that the gateways are able to fully cover all information-sharing requirements for Adult Disability Payment (ADP) and related welfare services.</p> <p>The aim is to amend specific details within the existing social security information-sharing legislation so that it is updated for ADP coming into force.</p> <p>This will ensure that clients on ADP will receive the same assistance and support as clients on UK Disability Living Allowance for Children do.</p> <p>Currently the Social Security Information-Sharing (Scotland) Regulations 2021 (“the 2021 Regulations”) already specify a number of additional persons, for the purposes of section 85(2) of the Social Security (Scotland) Act 2018, who may be required to share information for use by Ministers in carrying out their social security functions. These are functions conferred on them by the Social Security (Scotland) Act 2018, or by regulations made under that Act. The Amendment Regulations are minor modifications to these 2021 Regulations.</p>
Directorate: Division: Team:	Social Security Directorate Programme Management and Delivery Information Governance Policy

Executive Summary

1. There is a general equality duty to promote equality for listed public authorities with a focus on: advancing equality of opportunity, eliminating unlawful discrimination and fostering good community relations. The Equality Act 2010 covers the protected characteristics of: age, disability, sex, gender reassignment, sexual orientation, race, religion or belief and pregnancy and maternity. When assessing the impact of applying a revised policy or practice such as the Amendment Regulations in this instance, the specific duty must take into account each of these protected characteristics.

Specifically the Amendment Regulations will amend the 2021 Regulations in order to:

- i). update the definition of suppliers of Accessible Vehicles and Equipment (AVE) in Regulation 2 to include ADP as part of the accreditation scheme.
- ii). amend Regulation 4 to update the definition of the function under which Scottish Ministers may share social security information with local authorities in order to determine whether an individual is entitled to a “blue badge” to include a statutory reference to the relevant consequential amendments that will make ADP a qualifying criterion.
- iii). add a new function under Regulation 4 which allows for local authorities to request social security information from Scottish Ministers in relation to assessing an individual’s income when determining how much the individual should be charged for social care services funded by the local authority.

Background

2. Social Security Scotland is an Executive Agency of the Scottish Government and will eventually be making payments to 1.4 million citizens in Scotland, with a value in excess of £3 billion per year. The Scottish Government will, in coming years, be responsible for delivering benefits for disabled people, to replace the current disability benefits delivered by the Department for Work and Pensions on behalf of the UK Government. Social Security Scotland began administering social security benefits in September 2018, and has since started paying Carer’s Allowance Supplement, Pregnancy and Baby, Early Learning and School Age Payments, Best Start Foods, Funeral Support Payments, the Young Carer Grant and most recently Child Disability Payment. Adult Disability Payment will replace the UK Personal Independence Payment in 2022.

3. The Scottish Government is committed to delivering a system of social security founded on core principles of fairness, dignity and respect. As part of that approach, this new social security system will rely upon the ability of Social Security Scotland to obtain information from others in order to make determinations of entitlement to benefits, and to make the application process for those benefits as simple as possible for individuals. The new legal gateways are needed in order to allow the necessary information-sharing for ADP so that the delivery of benefits can continue without any interruption or stress for the client.

4. This Equality Impact Assessment (EQIA) relates to the Amendment Regulations made under Section 85 the 2018 Act. Potential impacts of the Amendment Regulations on each of the protected characteristics have been taken into account and are outlined below.

Section 85 of the Social Security (Scotland) Act 2018 facilitates information sharing in connection with social security functions (as defined in subsection (10)). Subsection (5) allows the Scottish Ministers to give information which they hold for the purpose of a social security function to one of the persons listed in subsection (2), provided it is given for a purpose specified in regulations under subsection (5).

5. Social Security Scotland will need to share information about ADP recipients with other persons listed in subsection (2) in order to allow those persons to fulfil their legal duties, and to process information about individuals in order to determine their eligibility for services such as blue badges and supply of AVE.

6. This impact assessment not only builds upon the previous EQIA in relation to Child Disability Payment completed on the 28th January 2021, but it also builds on the previous partial EQIA which was completed and published alongside the Consultation on Social Security in Scotland that ran from the 29 July 2016 until 30 October 2016 and the full EQIA for the Social Security (Scotland) Bill published 20 June 2017.

The Scope of the EQIA

7. The scope of this impact assessment is restricted to the impact of the Amendment Regulations on individuals applying for ADP and entitled to forms of assistance delivered by Social Security Scotland under the 2018 Act. The impact assessment therefore seeks to identify impacts of the following on the protected characteristics:

- the power to share information held by Scottish Ministers in connection with their functions in relation to devolved social security under the Social Security (Scotland) Act 2018, with other persons to enable those persons to fulfil their legal duties.

Data Gaps

8. DWP does not hold administrative data on gender re-assignment, marital status, religion or sexual orientation. Pregnancy data is only held where this is the main reason for incapacity.

9. We are aware that there are significant gaps in our data. There is no robust data relating to the proportion of people of any age in Scotland to whom the gender reassignment protected characteristic would apply.

10. The available data in relation to religion and belief is also very limited: 48.7% Scots over 16 in 2016 identified as having "no religion" and 47.3 % were Christians (Church Scotland, Roman Catholic or "Other Christian").

Key Findings

11. Although the key findings are presented under each of the protected characteristics, an issue identified for one group may be relevant for other protected characteristics.

Age:

12. Data from the 2011 Census shows that, in the general population in Scotland, 16% are aged 0-14; 13% are aged 15-24; 13% are aged 25-34; 14% were aged 35-44; 15% were aged 45-54; 13% were aged 55 to 64; and 17% were aged 65 or above. The census also showed that 48.5% of the Scottish population were male and 51.5% were female.

13. The Amendment Regulations do not have direct, positive or negative impacts upon the elimination of unlawful age based discrimination, harassment and victimisation.

Disability:

14. In relation to the protected characteristic of disability, the impact assessment identified no direct positive or negative impacts from the Amendment Regulations.

15. Based on forecasts by the Scottish Fiscal Commission¹ by 2023/24 an estimated 80% of Social Security Scotland's expenditure will be on disability benefits, recipients of which have reported incapacity. It is therefore important that these are taken into account in any interactions with the agency.

16. The Scottish Government has pledged to ensure better communication so that individuals who have difficulty communicating can receive information and can express themselves in ways that are more suited to that individual. The Scottish Government has also pledged to providing information in an easier and accessible way for individuals who have a sensory, physical or mental disability. These commitments have been reflected in law and contained in sections 4 and 5 of the Act.

17. Social Security Scotland is working to embed an inclusive communication approach across everything that it does, working with stakeholders, using their expertise, insight and experience to continue to improve the services it delivers. Its approach will be to make the service inclusive by design, with specialist support such as interpretation available where necessary for those who need it especially for ADP.

18. It has already taken the following steps to make its service inclusive:

- letters, forms, online guidance and communication materials are written for a reading age of nine;

¹ <http://www.fiscalcommission.scot/publications/scotlands-economic-and-fiscal-forecasts/scotlands-economic-and-fiscal-forecasts-may-2019/>

- online content is compatible with screen reader software on Jaws, Voiceover and Non Visual Desktop Access (NVDA) platforms;
- interpretation, translation and transcription services are able to support over 100 languages;
- British Sign Language (BSL) video relay service is available through Contact Scotland;
- deafblind interpreters, Text Relay and electronic note taker services can be provided;
- letters, information and guidance are available in braille, large print, easy read and various audio formats.

19. The Amendment Regulations are not, however, directly concerned with the provision of information to clients of Social Security Scotland. Where Social Security Scotland does utilise information provided to it by a third party, that information may be disclosed to the client either as part of an appeal or a subject access request under the Data Protection Act 2018.

20. Where Social Security Scotland does disclose that information, it will make all reasonable attempts to ensure that the client is able to access that information in a format that is accessible to them.

21. Beyond the potential impact above relating to communications the Amendment Regulations do not have direct or indirect, positive or negative impacts upon the elimination of unlawful disability based discrimination, harassment and victimisation.

Gender Reassignment:

22. The Amendment Regulations are neutral with regard to gender reassignment. No specific concerns were raised during the consultation on the original Social Security (Scotland) Bill in relation to information sharing and gender reassignment.

23. However, a number of potential risks have been identified for the future operational procedures of the agency. It is important that where the agency knows about it, a person is not misgendered and their wishes about how they should be addressed are reflected in: correspondence; face to face interactions; and papers that may be passed to other persons.

24. Care must be taken in any interactions with third parties that personal information is not disclosed either intentionally or unintentionally that is not relevant to either Scottish Ministers social security functions, or those persons' legal duties in relation to ADP.

25. The Amendment Regulations themselves do not have direct or indirect, positive or negative impacts upon the elimination of unlawful gender based discrimination, harassment and victimisation.

Maternity/Paternity status:

26. The Scottish Government's Pregnancy and Parenthood in Young People Strategy highlights that young mothers are considerably more reliant on state benefits and tax credits than older mothers – a position that remains the case as the child ages.

27. No concerns or impacts were identified or raised throughout the consultation process. The Amendment Regulations are neutral with regard to Maternity/Paternity status. An individual's Maternity/Paternity status is relevant to establishing an individual's entitlement to certain devolved forms of assistance.

28. Care must be taken in any interactions with third parties that personal information is not disclosed either intentionally or unintentionally that is not relevant to either Scottish Ministers social security functions, or those persons' legal duties.

29. The Amendment Regulations do not have direct or indirect, positive or negative impacts upon the elimination of unlawful maternity/paternity based discrimination, harassment and victimisation.

Race:

30. Data from the 2011 Census relating to ethnicity in the Scottish population shows the proportion of the population identifying with various ethnicity as: All people 5,295,403 of which White 96.0%; Mixed or multiple ethnic groups 0.4%; Asian, Asian Scottish or Asian British 2.7%; African 0.6%; Caribbean or Black 0.1%; Other ethnic groups 0.3%.

31. Our commitment to accessible communication includes making sure that we do not create language barriers for people who communicate in languages other than English, who make up 7% of the Scottish population.

32. It is anticipated that, consistent with sections 4 & 5 of the Act, where there is a requirement to communicate in another language, this information will already have been captured through the original application process.

33. Care must be taken in any interactions with third parties that personal information is not disclosed either intentionally or unintentionally that is not relevant to either Scottish Ministers social security functions, or those persons' legal duties in respect of ADP.

34. Beyond the potential impact above relating to communications the Amendment Regulations do not have direct or indirect, positive or negative impacts upon the elimination of unlawful race based discrimination, harassment and victimisation.

Sex:

35. Data from the 2011 Census shows that 48.5% of the Scottish population were male and 51.5% were female. Respondents to the consultation raised concerns that

fraud investigations might unfairly target women who receive a higher proportion of some disability related benefits.

36. Figures extracted from the Consultation on Social Security in Scotland, Annex A: Partial Equality Impact Assessment (EQIA) show the gender split for each of the disability related benefit circa 2015/16:

	Disability Living Allowance	Personal Independence Payment	Attendance Allowance	Carers Allowance
Female	51%	55%	65%	68%
Male	49%	45%	35%	32%

37. However, a number of potential risks have been identified for the future operational procedures of the agency.

38. It is known that where gender information was recorded, around four out of every five incidents of domestic abuse in 2017-18 had a female victim and a male accused². While this impact was raised in relation to women, men are also subject to domestic abuse and it is important to acknowledge that this can also occur across a range of familial and other relationship types.

39. Care must be taken in any interactions with third parties that personal information is not disclosed either intentionally or unintentionally that is not relevant to either Scottish Ministers social security functions, or those persons' legal duties.

40. The Amendment Regulations and the Code of Practice do not have direct or indirect, positive or negative impacts upon the elimination of unlawful sex based discrimination, harassment and victimisation.

Sexual Orientation:

41. There is limited data available from the Scottish Surveys Core Questions (SSCQ) 2018 which was published in 2019 showing the self-identified sexual orientation percentages to be: Heterosexual 95%; LGB & other 2%. It is felt that the figures are likely to under-report the percentage of lesbian, gay or bisexual or other (LGBO) people within society due to a number of reasons. These may include that some people will not have told friends and family about their sexual identity and may not want to be open with an interviewer. There could also be significant distrust as to what the interviewer would use this information for.

42. There is no available data regarding the sexual orientation of people who are applying for benefits already delivered by DWP.

43. However, it is likely that some of the same impacts highlighted around gender reassignment might also apply in terms of use of correct terminology and avoidance of stereotyping or false assumptions about relationships and family structures.

² <https://www.gov.scot/publications/domestic-abuse-recorded-police-scotland-2017-18/>

44. The Amendment Regulations do not have direct or indirect, positive or negative impacts upon the elimination of unlawful discrimination, harassment and victimisation based on sexual orientation.

Religion and Belief:

45. The analysis of religion in the 2011 Census shows the proportion of the population identifying with various religions as: 32.4% Church of Scotland; 15.9% Roman Catholic; 5.5% Other Christian; 0.2% Buddhist; 0.3% Hindu; 0.1% Jewish; 1.4% Muslim; 0.2% Sikh; 0.3% Another Religion; 36.7% No Religion; 7.0% Not Answered.

46. There were no religious or faith related concerns expressed in the consultation.

47. The Amendment Regulations have no direct or indirect positive or negative impacts upon the elimination of unlawful religion and belief based discrimination.

Recommendations and Conclusion

48. The overall conclusion of the impact assessment, at this stage, is that the Amendment Regulations themselves will have no significant impact on people with protected characteristics.

49. Monitoring the impact of social security offences Investigations on people with protected characteristics will be a continuous process. If and when any unintended consequences are identified steps will be taken to rectify them. Ongoing stakeholder engagement will be an important part of this monitoring. The Charter reflects the requirements set out in the Act that the Scottish social security system advances equality and non-discrimination.

50. The stated aim of the Scottish Government is to ensure the system remains fit for purpose and will report to Parliament how well the service is operating and whether any changes are required. It will collect and monitor data in order to make evidence based decisions and changes to policy should those be required.

Authorisation

I confirm that the impact of The Social Security Information-sharing (Scotland) Amendment Regulations 2022 has been sufficiently assessed against the needs of the equality duty:

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Ian Davidson Deputy Director, Social Security Policy Division	15 October 2021
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