

# **Business and Regulatory Impact Assessment**



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(refer to official guidance available here: <https://www.gov.scot/publications/bria-guidance/>)

## The Social Security Information-sharing (Scotland) Amendment Regulations 2022

### Background

- Section 85 of the Social Security (Scotland) Act 2018 (“the 2018 Act”) provides legal gateways for Scottish Ministers to share social security information with others for social security and other prescribed functions.
- The Social Security Information-sharing (Scotland) Regulations 2021 (“the 2021 Regulations”) prescribed further persons and functions for which social security information may be shared. The legal gateways provided by these regulations are necessary for the delivery of Scottish Child Disability Payment and other related welfare services.
- Child Disability Payment launched in 2021 as the first of a number of devolved disability benefits that the Scottish Government is in the process of launching. Scottish disability benefits will replace the equivalent reserved disability benefits provided by the UK Department for Work and Pensions. The next disability benefit to be launched is Adult Disability Payment in 2022, which will replace the UK Personal Independence Payment in Scotland when it launches.
- The information-sharing legal gateways needed for Adult Disability Payment are largely provided in the 2018 Act and the 2021 Regulations. However, some minor amendments to these gateways will be needed to ensure the gateways are up-to-date and fully cover all information-sharing requirements for Adult Disability Payment and related welfare services.

### Objective

- The Social Security Information-sharing (Scotland) Amendment Regulations 2022 (“the Amendment Regulations”) will amend the 2021 Regulations to:
  - update the legal gateway under which Scottish Ministers may share social security information with suppliers of Accessible Vehicles and Equipment (AVE) to include Adult Disability Payment as another function for which information may be shared;
  - update the legal gateway under which Scottish ministers may share social security information with local authorities for the function of determining whether an individual is entitled to a ‘blue badge’ to include a statutory reference to the relevant legislation that will make Adult Disability Payment a qualifying criterion for a ‘blue badge’;
  - add a new function for which local authorities may request social security information from Scottish Ministers for the purpose of

assessing an individual's income when determining how much the individual should be charged for social care services provided to them by the local authority.

- These amendments will ensure that Scottish individuals who are entitled to adult disability assistance can continue accessing the full range of benefits and welfare services that those on UK Personal Independence Payment can access after Adult Disability Payment launches in 2022.

### **Rationale for Government intervention**

- The Amendment Regulations are necessary to prevent Scottish individuals and local authorities from becoming disadvantaged by the devolution of Scottish disability assistance.
- Without the legal gateways provided by the Amendment Regulations, individuals who start receiving Adult Disability Payment would have greater difficulty accessing support in the form of AVE or applying for 'blue badges' because Social Security Scotland would not have a legal gateway to share information with AVE suppliers or local authorities for these purposes. This would place the burden of proving the individual is eligible for those services entirely on the shoulders of that individual. Meanwhile individuals elsewhere in the UK who receive Personal Independence Payment would still be able to get support from Department for Work and Pensions, who can share eligibility information on the individual's behalf.
- Scottish local authorities would also face greater difficulty accurately assessing the income of individuals who are in receipt of local authority-funded social care. Without the legal gateway provided by the Amendment Regulations, local authorities would not be able to check with Social Security Scotland what disability assistance the client is receiving, meaning the client would have to provide that information. This would result in the local authority assessment become delayed or inaccurate, leading to social care charges that are less fair.

### **Consultation**

Consultation on the Social Security (Scotland) Bill, which would later become the Social Security (Scotland) Act 2018, took place in July 2016. This consultation remains relevant since the core purpose of the proposed instrument is to update regulations made under section 85 of the 2018 Act to make them function coherently for Adult Disability Payment. Over 500 formal responses were received to the 2016 consultation and a response by Scottish Government was published in February 2017.

During development of the instrument, the Information Commissioner's Office will be consulted, in accordance with Article 36(4) of the UK GDPR, to ensure the proposed legislation is compliant with data protection legislation and privacy-by-design principles.

High level consultation has taken place with the Convention for Scottish Local Authorities (COSLA) and individual councils throughout the development and

launch of Scottish disability assistance. We have consulted local authorities on the proposed legal gateways necessary to ensure services, benefits and grants can continue to be delivered seamlessly as Scottish disability benefits are launched. Their advice and feedback is factored into the drafting of the regulations.

## **Options**

### **Option 1 – preferred option**

Introduce legislation that will provide the legal gateways required for Adult Disability Payment to be launched and delivered without any interruption or disadvantage to individuals who receive adult disability assistance.

#### Sectors and groups affected

- Individuals in receipt of Adult Disability Payment
- Social Security Scotland
- AVE suppliers
- Local authorities

#### Benefits

- Individuals in receipt of Adult Disability Payment can access support in the form of AVE without having to take on the burden of providing information to the AVE supplier by themselves
- Individuals applying for a 'blue badge' from their local authority by virtue of their Adult Disability Payment award can apply without having to take on the burden of proving their eligibility by themselves
- Local authorities can accurately assess the income of an individual who receives Adult Disability Payment when assessing how much that individual should be charged for local authority-funded social care, making the charges fairer

#### Costs

- No significant costs

### **Option 2**

Do nothing.

#### Sectors and groups affected

- Individuals in receipt of Adult Disability Payment
- Social Security Scotland
- AVE suppliers
- Local authorities

#### Benefits

- No significant benefits

## Costs

- Individuals in receipt of Adult Disability Payment become disadvantaged in comparison to their UK counterparts who receive Personal Independence Payment
- Local authority decision-making about charges for social care costs become less fair

## **Scottish Firms Impact Test**

No impact is anticipated on Scottish businesses.

## **Competition Assessment**

No impact is anticipated on competition.

## **Consumer Assessment**

No impact is anticipated on consumers.

## **Test Run of Business Forms**

The instrument does not introduce any new forms.

## **Digital Impact Test**

The instrument will provide the legal gateways for sharing information. It does not provide any particular requirements for sharing digitally or otherwise.

## **Legal Aid Impact Test**

No impact is anticipated on demand for legal aid.

## **Enforcement, Sanctions and Monitoring**

The Information Commissioner's Office can investigate a public authority if they believe that it may be failing to comply with the terms of the Data Protection Act 2018 or the associated Code of Practice.

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.

The 2018 Act places a duty on the Scottish Ministers to publish an annual report on the performance of the Scottish social security system. On-going engagement with key stakeholders will also provide the Scottish Government with an opportunity to monitor the impact of the policy.

Audit Scotland will monitor and report on the delivery of the social security system, including Social Security Scotland.

## **Implementation and Delivery Plan**

The instrument will bring into force the necessary legal gateways for information sharing relevant to Adult Disability Payment in time for the launch of Adult Disability Payment in 2022. Work is underway within Scottish Government to prepare for the launch of Adult Disability Payment, including setting up information sharing channels and processes that will utilise the new legal gateways. Once the instrument comes into force, the new information sharing channels and processes will be activated.

### **Post-implementation review**

The launch of Scottish disability assistance is an ongoing process that will be subject to constant review and potential revision as work progresses. The implementation of this instrument will be reviewed regularly and any changes required will be incorporated into the wider legislative plan for delivery of Scottish disability assistance over the coming years.

## **Summary and Recommendation**

It is recommended that Option 1 is taken – introducing new legislation to create the necessary legal gateways – because it has tangible benefits, no significant costs, and there are no viable alternatives besides doing nothing. Doing nothing has no tangible benefits and significant costs, therefore it cannot be recommended.

## **Declaration and Publication**

I have read the Business and Regulatory Impact Assessment and I am satisfied that it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed: Ben Macpherson**

**Date: 9 December 2021**

**Minister's name: Ben Macpherson**

**Minister's title: Minister for Social Security and Local Government**

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