

Carer Support Payment – Data Protection Impact Assessment

Data Protection Impact Assessment

Carer Support Payment

The Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023

Version date: September 2023

Review date:

These regulations make provision to establish Carer Support Payment, a replacement benefit in Scotland to UK Carer's Allowance, and to transfer entitlement of Carer's Allowance recipients in Scotland to Carer Support Payment.

The text of the proposed legislation/amendment is attached at Annex A.

This Data Protection Impact Assessment (DPIA) works in conjunction with the [Article 36\(4\) ICO](#) consultation form submitted in advance of this, as the proposal requires consultation with the Information Commissioner's Office (ICO).

1. Contact and schedule information

1.1	SG department	Social Security Policy Division, Scottish Government
1.2	Contact email	CarerSupportPayment@gov.scot
1.4	Is your proposal primary legislation, secondary legislation or other form of statutory measure?	The provisions are being made through secondary legislation.

2. Introductory information

	Questions	Comments
2.1	Summary of proposal	<p>These regulations make provision to establish Carer Support Payment, a replacement benefit in Scotland for Carer's Allowance, and to transfer entitlement of Carer's Allowance recipients in Scotland to Carer Support Payment.</p> <p>Carer's Allowance is an income-replacement benefit for carers that is currently delivered in Scotland by the Department for Work and Pensions (DWP) under an Agency Agreement.</p> <p>Carer Support Payment though not a payment for care, will provide some financial support and recognition for those who care, and possibly have given up or limited their employment because of caring responsibilities.</p> <p>Upon launch, the benefit will pay the same rate as DWP (£76.75 per week for 2023/24) to clients who provide 'regular and substantial care' of 35 hours or more of care a week to a person in receipt of a qualifying disability benefit. Only one award of the benefit can be made in respect of care provided to a given cared for person.</p> <p>The client must also not be earning more than an earnings threshold (£139 per week for 2023/24) and not be in full-time study. New claims applicants will be paid every four weeks. People whose benefits are transferring will be paid either weekly or every four weeks, in line with how their Carer's Allowance is paid.</p> <p>The regulations will also make provisions for entitlement during temporary breaks in care, backdating of entitlement, calculation of earnings, as well as several cross-cutting areas such as residence, re-determinations and appeals.</p>

	Questions	Comments
		<p>Delivery of the benefit will develop and utilise existing functionality within the Social Security Scotland core case management platform, Social Program Management (SPM). SPM is already in use for the case management of several live Scottish benefits.</p>
2.2	<p>Description of the personal data involved</p> <p>Please also specify if this personal data will be special category data, or relate to criminal convictions or offences</p>	<p>The nature of data to be collected is as follows:</p> <ul style="list-style-type: none"> • Name; • Date of birth; • Address; • Address history for a period of up to 6 months; • Contact details; • Household information; (including partner's details where applicable): This is required because where a carer is living with their partner their receipt of Carer Support Payment can affect some income-related benefits their partner is receiving. • Information on the person being cared for: This is required because Carer Support Payment can only be paid to someone who is caring for another person, and we need to be able to identify and contact this person • National insurance number: • Details of benefits received currently: This is because receipt of Carer Support Payment can affect entitlement to some other benefits, and receipt if other benefit can affect the amount of Carer Support Payment we can pay • Details of benefits previously received for a period of up to 12 months; As above, this is because receipt of Carer Support Payment can affect entitlement to some other benefits, and receipt if other benefit can affect the amount of Carer Support Payment we can pay. Historical information is required for situations where the Carer Support

	Questions	Comments
		<p>Payment award needs to be backdated.</p> <ul style="list-style-type: none"> • Details of benefits paid to the person being cared for: For a carer to be eligible for Carer Support Payment the person they are caring for needs to be in receipt of a specified disability benefit. • Data concerning health, disability and illness: information will be processed about when the carer or the person being cared for spends time in a hospital or similar institution. This is because there are limits to the amount of time we can pay Carer Support Payment when the carer does not meet the 35 hours a week caring requirement. The limits are different if the carer is not providing care because they, or the person they care for is in hospital or a similar institution • Details of Appointee, Power of Attorney or Legal Guardian: this data will be needed where a carer, or the person they care for, has someone acting on their behalf in respect of their benefits, so that we can contact the appropriate person with information and questions about their Carer Support Payment award. • Bank account details; • Immigration and residency status: this is needed to ensure that the individual meets the residence criteria for Carer Support Payment which is not available to • Details or earnings from employment: As an income replacement benefit, Carer Support Payment can't be paid to people earning more than £130 per week after some deductions and information on earnings is needed to assess eligibility • Details of tax and pension contributions: Earnings are

	Questions	Comments
		<p>assessed net of tax and pension contributions so we need this information to assess eligibility accurately</p> <ul style="list-style-type: none"> • Details of some expenses where relevant, including business expenses, childcare or other care expenses: for the purposes of assessing eligibility for Carer Support Payment, some expenses can be deducted from earnings before the threshold is applied so information on these expenses is needed to assess eligibility accurately • Information on legal detention (special category data): this is required because Carer Support Payment can't be paid to an individual in legal detention, and detention of the person being cared for may affect Carer Support Payment. Further information is provided at 2.3. <p>This data will be processed in order to make determinations of entitlement for new clients applying for Carer Support Payment, and to assess the impact on ongoing Carer Support Payment awards of changes in clients' circumstances. As applicants can be entitled if they are over the age of 16, this means clients may include both adults and children. The people being cared for by recipients of Carer Support Payment may also be children.</p> <p>This data may include information on health, disability and illness. This includes, as set out above, information on when a carer or cared for person is in hospital or a similar institution and the cared for person's receipt of a qualifying disability benefit, which is a key requirement for the carer to be able to receive Carer Support Payment. Data processed in relation to the cared for person's disability benefits is the minimum data possible to ensure that we</p>

	Questions	Comments
		<p>can determine entitlement to Carer Support Payment. We require their personal details for identification, the level of their benefit award and the period for which it is in payment. Where a cared for person is receiving support under the Special Rules for Terminal Illness this data may be required in a small number of circumstances where it is a needed for the carer to be able to access support sooner. There is no requirement, however to know any details of the cared for person's condition.</p> <p>Administering Carer Support Payment will involve the processing of data relating to legal detention which would be special category data as it relates to criminal offences. Processing of this data is required for social security purposes. This is because a carer can't be eligible for Carer Support Payment while in legal detention. Where the person being cared for goes into legal detention this will also affect the carer's Carer Support Payment award.</p> <p>However, the data we are processing does not pertain to the nature of the conviction for the individual. It is only in regard to whether they have been legally detained for the purposes of social security and the primary purpose is not for law enforcement. No data relating to actual convictions will be gathered and if this information is inadvertently shared with use we have a redaction process in place to ensure that this data is permanently removed. More detail around this will be included in the Operational Data Protection Impact Assessment.</p> <p>It should also be noted that the data that will be collected, including data relating to legal detention are not new requirements introduced by these regulations but would follow the general social security approach for existing live Scottish benefits.</p>

	Questions	Comments
2.3	<p>Will the processing of personal data as a result of the proposal have an impact on decisions made about individuals, groups or categories of persons?</p> <p>If so, please explain the potential or actual impact. This may include, for example, a denial of an individual's rights, or use of social profiling to inform policy making.</p>	<p>Personal data will be used to inform decisions on a client's entitlement to Carer Support Payment and to make payments to them at the point of application, and where benefits are transferred from Carer's Allowance. Personal data will also be used for maintenance of ongoing awards (where clients report a change of circumstances or we receive information about a change of circumstances), including for clients who have transferred to Carer Support Payment from Carer's Allowance.</p> <p>Although the processing of personal data itself will not target specific individuals, groups or categories of persons, it should be noted that the overall group of people the benefit will support are unpaid carers, and that unpaid carers may be at greater risk of poverty than the wider population. Carer Support Payment will also disproportionately affect women as currently more than two thirds of Carer's Allowance recipients are women. As all carers must be caring for an individual in receipt of a disability benefit, these changes will also involve the processing of personal data for disabled people, some of whom will be children.</p> <p>For both new applications of the benefit and case transfers, decisions on entitlement will carry full re-determination and appeal rights. These would be set out in formal notifications to be sent to be client. There is a risk that case transfer clients will not be fully aware of their rights to full re-determination and appeal. This will be mitigated through a communications framework for all clients whose benefits are transferred with letters detailing this process. Delivery of these requirements will follow the existing social security approach for other devolved benefits.</p> <p>In some cases, the processing of Carer Support Payment applications may impact</p>

	Questions	Comments
		<p>the cared for person's entitlement to other linked benefits and premia administered by the DWP and others, and to other income-replacement benefits administered by DWP and the Veterans Agency on behalf of MoD. This is because Carer Support Payment, as an income-replacement benefit, is treated as income for some income-related benefits, but carers can also receive additional amounts in these benefits in recognition of their caring role. As a payment provided to a carer, Carer Support Payment can also affect some disability premiums paid to the person they are caring for, where these are provided to meet the costs of care.</p> <p>Both the carer and the cared for person will be made aware of this through application and pre-application content, and as part of the wider communications strategy which will take a similar approach to previous devolved benefit roll outs. The carer will be encouraged to discuss their application with the person they care for. The cared for person will also be notified when a carer makes an application for the benefit. The notification will contain content on how their other benefits may be affected, information on how and where to seek further advice, and advise them they can contact Social Security Scotland if they disagree with the application.</p> <p>In line with applications for existing Scottish benefits, applicants will also be asked to complete an Equality Monitoring and Feedback form along with their application form for Carer Support Payment. The data collected through Equalities Monitoring is used to analyse groups who are using the service in to investigate how Social Security Scotland services and processes work for different groups of people, and to understand whether groups with protected characteristics are able to adequately access social security payments. The equalities data is also analysed by</p>

	Questions	Comments
		<p>outcome of application to assess if there is any variation. This information may be used to inform future policy and/or continuous improvement activities in order to maximise benefit take-up and reduce barriers to accessing social security benefits in Scotland.</p> <p>The Equality Monitoring and Feedback form is optional and there is no requirement for the individual to complete the form in order to access Carer Support Payment. Our Privacy Notice sets out in the section on 'Legal basis for processing your data' that the equalities survey is optional and explains the information it asks for. For additional protection all equalities data is retained in a separate location to the client record in a pseudonymised state.</p> <p>Automated decision making</p> <p>Automated decision making will be used for applications for Carer Support Payment. This is possible because of the relatively straightforward eligibility criteria and the accessibility of information to systems to assess eligibility. Decisions will only be automated where there is a positive outcome overall for the individual. Where the automated process finds that a client doesn't meet one or more of the eligibility criteria, the automated processing will stop and the details would be passed to a member of Social Security Scotland staff to consider. Social Security Scotland will ensure individuals are aware that this processing is being undertaken.</p> <p>The automated decision making process replicates the process that a member of staff would follow by checking the relevant eligibility criteria, and there is no machine learning or bias that would be introduced by the use of automated decisions.</p> <p>Decisions involving special category data – whether or not a client or cared for</p>

	Questions	Comments
		<p>person is in legal detention – would not be automated.</p> <p>The use of automated decision making for Carer Support Payment is considered to be compliant with UK GDPR under Article 22(1). It will provide a more efficient service for clients, allowing faster decisions to be made on the most straightforward cases, and client advisors to focus on the more complex cases that require more detailed consideration. This is considered the most appropriate and cost effective way make straightforward decisions where the benefit is awarded, considering the importance of ensuring the benefit is delivered in a way which represents value for money for Scottish taxpayers. No profiling will take place in decision making as part of Carer Support Payment. Clients will also be made aware of the use of automated decision making and their right to request a review of this, as set out below.</p> <p>Information will be provided to clients in online guidance and in the award notifications they will receive following a decision on their Carer Support Payment Award. This will provide information on the use of automated decision making and a link to our Privacy Notice, and also other methods of contact, telephony or how to write to the Data Protection Officer if they require further information. The Privacy Notice is being updated with information on the use of automated decision making in Carer Support Payment.</p> <p>In considering the information that should be included in Carer Support Payment notifications, it is important to ensure that we avoid any confusion for client around their rights.</p> <p>The right to request a review of automated decision making is distinct from a client's right to request an overall re-determination, followed by an appeal if</p>

	Questions	Comments
		<p>they disagree with the decision on their benefit award overall. For Carer Support Payment the individual has the right to re-determination and appeal as stated in Social Security (Scotland) Act 2018, where they disagree with a decision on their award. Clients are advised of this on their Award notification.</p> <p>The amount of time a client has to request a re-determination of this decision is different to the timeline for review of the processing using automated decision making. To ensure clients not confused by the separate rights to a review of the use of automated decision making, and the timelines which apply, more information on this will be included within our Privacy Notice, or shared with the client when further information is requested, rather than directly on the notification.</p>
2.4	<p>Necessity, proportionality and justification</p> <p>What issue/public need is the proposal seeking to address?</p> <p>What policy objective is the legislation trying to meet?</p> <p>Were less invasive or more privacy-friendly options considered, and if so why were these options rejected?</p> <p>Are there any potential unintended consequences with regards to the provisions e.g., would the provisions result in unintended surveillance or profiling?</p> <p>Have you considered whether the intended processing will have appropriate safeguards in place? If so briefly explain the nature of those safeguards and how any</p>	<p>The Scotland Act 2016 made provision to devolve limited aspects of social security powers to Scottish Ministers, including carer benefits.</p> <p>The Social Security (Scotland) Act 2018 received Royal Assent on 1 June 2018 and sets out the overarching legislative framework for the delivery of devolved forms of social security assistance. Executive competence for Carer's Allowance transferred to Scottish Ministers on 03 September 2018, while DWP continues to deliver an operational service to Carer's Allowance clients resident in Scotland.</p> <p>These regulations provide for the creation of the replacement benefit to DWP's Carer's Allowance for clients resident in Scotland. The new benefit seeks to recognise the contribution of unpaid carers to Scotland and would help carers access opportunities outside of their caring responsibilities, provide more financial stability, and recognise different caring situations.</p>

	Questions	Comments
	<p>safeguards ensure the balance of any competing interests in relation to the processing.</p>	<p>They are part of the Scottish Government's wider vision that all unpaid carers are supported on a consistent basis to allow them to continue caring in good health and wellbeing, allowing for a life of their own outside of caring.</p> <p>These regulations will also ensure safe and secure transition for existing Carer's Allowance clients resident in Scotland to Carer Support Payment.</p> <p>As part of design and development of the new claims journey, gathering and processing of personal data has been carefully considered and as much as possible reuses existing mechanisms developed for other Scottish benefits. Personal data is only being gathered where necessary for the purposes of processing applications and maintaining claims.</p> <p>The data, forms and evidence required to be transferred from DWP to Social Security Scotland will only be what is required for the creation and ongoing management on a Carer Support Payment award. Any data, forms and evidence requested from DWP will be approved by DWP's data sharing board and follow principles of minimisation of data sharing to only what is required and to reuse existing mechanisms.</p> <p>The intended processing will have technical, administrative and physical safeguards in place.</p> <p>Technical safeguards will be in place through existing system controls and controls that will be developed to ensure secure transfer and sharing of personal data between the DWP, His Majesty's Revenue and Customs (HMRC) and Social Security Scotland.</p> <p>Administrative safeguards will be in place through procedural controls and standards</p>

	Questions	Comments
		<p>in place across Social Security Scotland including for business continuity and disaster recovery.</p> <p>Safeguards will also be in place around the use of automated decision making. Guidance on this will be provided to staff working on Carer Support Payment, and the systems will provide an audit trail of decision making. Accuracy checks will also be put in place, and Social Security Scotland uses strict access controls for IT code. Systems are tested after any system updates or new releases to ensure these remain accurate and there are no negative effects on processing.</p> <p>Physical data protection safeguards will be in place through existing procedures to ensure the protection of devices and locations for collecting, processing and storing data.</p> <p>Further detail on these safeguards can be found in the Operational Data Protection Impact Assessment.</p>
2.5	<p>Will the implementation be accompanied by guidance or by an associated Code of Conduct?</p> <p>If the latter, what will be the status of the Code of Conduct? (statutory or voluntary?)</p>	<p>The implementation of the proposals is principally guided by the Social Security Scotland Charter and the Civil Service Code of Conduct (Scotland).</p> <p>Implementation will also be supported by operational and decision-making guidance with input from colleagues with relevant interest across the Directorate, including policy and legal (SGLD) and will be tested before the benefit launches.</p> <p>All Social Security Scotland staff are bound by the Civil Service Code of conduct, to ensure individual confidentiality, integrity and accuracy of personal data.</p>

3. Data Controllers

Organisation		Social Security Scotland	
Activities		Social Security Scotland collect and store personal data in order to make determinations of entitlement to devolved benefits and for the ongoing management of client awards.	
Is the organisation a public authority or body as set out in Part 2, Chapter 2, Section 7 of the Data Protection Act 2018?		Yes	
Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 6 for the collection and sharing of personal data – general processing	Article 6(1)(e) – processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.	Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 9 – special category data or Article 10 – criminal convictions data	<p>Article 9 (g) – processing is necessary for reasons of substantial public interest, on the basis of law which shall be proportionate to the aim of maximising benefit take-up and reducing barriers to accessing social security benefits in Scotland. Processing will respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and interests of the data subject.</p> <p>Article 9(2)(b) - processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the</p>

			<p>field of employment and social security and social protection law in so far as it is authorised by [domestic law] or a collective agreement pursuant [to domestic law] providing for appropriate safeguards for the fundamental rights and the interests of the data subject.</p> <p>Processing satisfies the conditions of Schedule 1 of the Data Protection Act 2018 in that, processing is necessary for the exercise of a function conferred on Social Security Scotland. An Appropriate Policy is held.</p> <p>Processing of criminal offence data will be required for Carer Support Payment. To assess eligibility or process a change in a client's circumstances we will need to know if they have been admitted to or have left legal detention. We accept that this would be considered criminal offence and therefore special category data, The processing of this information is</p>
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			required for Social Security Purposes as provided for in the Data Protection Act 2018 at Schedule 1 Part 1 Paragraph 1. In line with this we have an appropriate policy document in place for our processing of this data which includes our policy on retention of this data.
Law Enforcement – if any law enforcement processing will take place – lawful basis for processing under Part 3 of the Data Protection Act 2018	For law enforcement purposes Social Security Scotland is a competent authority in paragraph 2 of Schedule 7, (Scottish Ministers devolved through the Social Security Act 2018).	Legal gateway for any sharing of personal data between organisations	N/A - Existing legal gateways will apply. In line with ICO Data Sharing Code of Practice, as required by Section 121 of the Data Protection Act 2018.

Organisation	Department for Work and Pensions (DWP)
Activities	DWP collect and store personal data in order to make determinations of entitlement and maintain for Carer's Allowance benefit payments in England, Wales and Scotland, until those Scottish cases have been transferred to Scottish Government as Carer Support Payment. DWP also process and maintain other linked and income-related benefits impacted by Carer Support Payment, as well as qualifying disability benefits required for Carer Support Payment benefit entitlement.
Is the organisation a public authority or body as set out in Part 2, Chapter 2, Section 7 of the Data Protection Act 2018?	Yes

<p>Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 6 for the collection and sharing of personal data – general processing</p>	<p>Article 6(1)(e) – processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.</p>	<p>Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 9 – special category data or Article 10 – criminal convictions data</p>	<p>Article 9(2)(b) - processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law in so far as it is authorised by [domestic law] or a collective agreement pursuant [to domestic law] providing for appropriate safeguards for the fundamental rights and the interests of the data subject.</p> <p>Processing satisfies the conditions of Schedule 1 of the Data Protection Act 2018 in that, processing is necessary for the exercise of a function conferred on Social Security Scotland. An Appropriate Policy is held.</p> <p>Processing of criminal offence data will be required for Carer Support Payment. To assess eligibility or process a change in a client's circumstances we will need to know if they have been admitted to or have</p>
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			<p>left legal detention. We accept that this would be considered criminal offence and therefore special category data, The processing of this information is required for Social Security Purposes as provided for in the Data Protection Act 2018 at Schedule 1 Part 1 Paragraph 1. In line with this we have an appropriate policy document in place for our processing of this data which includes our policy on retention of this data</p>
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Organisation	His Majesty's Revenue & Customs (HMRC)		
Activities	HMRC collect and store personal data in order to process and maintain information regarding a client's earnings and tax liability. This information is required in order to determine entitlement and maintain Carer Support Payments for carers in Scotland.		
Is the organisation a public authority or body as set out in Part 2, Chapter 2, Section 7 of the Data Protection Act 2018?	Yes		
Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 6 for the collection and sharing of personal data – general processing	Article 6(1)(e) – processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.	Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 9 – special category data or Article 10 – criminal convictions data	Article 9(2)(b) - processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection

			<p>law in so far as it is authorised by [domestic law] or a collective agreement pursuant [to domestic law] providing for appropriate safeguards for the fundamental rights and the interests of the data subject.</p> <p>Processing satisfies the conditions of Schedule 1 of the Data Protection Act 2018 in that, processing is necessary for the exercise of a function conferred on Social Security Scotland. An Appropriate Policy is held.</p> <p>Article 10 N/A - data processing does not pertain to the nature of the conviction for the individual and is only in regard to whether they have been legally detained for the purposes of social security.</p>
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Organisation	Ministry of Defence (MoD)
Activities	MoD collect and store personal data in order to process and maintain War Pension Scheme Supplementary Allowances which cannot be paid at the same time as Carer Support Payments. They also process and maintain Armed

		Forces Independence Payments which is a qualifying benefit for cared for persons who may be subject to a carer's Carer Support Payment claim.	
Is the organisation a public authority or body as set out in Part 2, Chapter 2, Section 7 of the Data Protection Act 2018?		Yes	
Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 6 for the collection and sharing of personal data – general processing	Article 6(1)(e) – processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.	Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 9 – special category data or Article 10 – criminal convictions data	<p>Article 9(2)(b) - processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law in so far as it is authorised by [domestic law] or a collective agreement pursuant [to domestic law] providing for appropriate safeguards for the fundamental rights and the interests of the data subject.</p> <p>Processing satisfies the conditions of Schedule 1 of the Data Protection Act 2018 in that, processing is necessary for the exercise of a function conferred on Social Security Scotland. An Appropriate Policy is held.</p> <p>Article 10N/A - data processing does not</p>

			pertain to the nature of the conviction for the individual and is only in regard to whether they have been legally detained for the purposes of social security.
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Organisation		Northern Ireland Department for Communities	
Activities		The Northern Ireland Department for Communities collect and store personal data in order to make determinations of entitlement and maintain for Carer's Allowance payments in Northern Ireland.	
Is the organisation a public authority or body as set out in Part 2, Chapter 2, Section 7 of the Data Protection Act 2018?		Yes	
Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 6 for the collection and sharing of personal data – general processing	Article 6(1)(e) – processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.	Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 9 – special category data or Article 10 – criminal convictions data	Article 9(2)(b) - processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law in so far as it is authorised by [domestic law] or a collective agreement pursuant [to domestic law] providing for appropriate safeguards for the fundamental rights and the interests of the data subject.

			<p>Processing satisfies the conditions of Schedule 1 of the Data Protection Act 2018 in that, processing is necessary for the exercise of a function conferred on Social Security Scotland. An Appropriate Policy is held.</p> <p>Article 10 N/A - data processing does not pertain to the nature of the conviction for the individual and is only in regard to whether they have been legally detained for the purposes of social security.</p>
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4. Consultation

	Questions	Comments
4.1	<p>Have you consulted with the ICO using the Article 36(4) form?</p> <p>(please provide a link to it)</p> <p>If the ICO has provided feedback, please include this.</p>	<p>We have consulted with the ICO using the Article 36 (4) form. This is included at Annex D.</p> <p>Feedback from the ICO is also included at Annex E.</p>
4.2	<p>Do you need to hold a public consultation and if so has this taken place? What was the result?</p>	<p>A public consultation on Carer Support Payment (which had a working title of Scottish Carer's Assistance at the time) took place between February and May 2022. The consultation formally closed on 23rd May 2022 and the results were analysed by an external researcher, Why Research.</p>

	Questions	Comments
		<p>In total, there were 192 responses to the consultation. The consultation set out a number of proposals in relation to Carer Support Payment and a majority of respondents agreed with each of these.</p> <p>These covered questions on:</p> <ul style="list-style-type: none"> • eligibility criteria for the benefit at launch, • proposed policy around re-determinations timescales • propose policy on suspensions of benefit awards, when the benefit would be set to £0 and short-term assistance for carers • proposed policy on awarding extra money to carers • future eligibility changes for the benefit after the completion of case transfer. <p>There were no specific questions concerning data protection or privacy. Further detail on the key findings of the public consultation can be found in Annex F.</p>
4.3	Were there any Comments/feedback from the public consultation about privacy, information or data protection?	<p>While there were no detailed comments on information sharing as part of the feedback to the public consultation it is worth noting that one of the key themes from the consultation was the importance of the launch of Carer Support Payment and the replacement of Carer's Allowance in Scotland with Carer Support Payment not doing anything which would disrupt carers' existing support or wider benefits. The sharing of information between Social Security Scotland and UK Government departments and Northern Ireland will allow us to ensure that Carer Support Payment will have the same links with wider support as Carer's Allowance and prevent any disruption to benefits.</p> <p>Two surveys of experience panel members and a series of individual and group interviews focused on the case transfer process itself, including when clients should be notified, what information they</p>

	Questions	Comments
		<p>should be given, what order clients should be transferred in, and what information should be transferred, These were carried out in Spring 2019 and the results published:</p> <ul style="list-style-type: none"> • DWP benefits case transfers: survey findings - gov.scot (www.gov.scot) • Social Security Experience Panels: designing the benefits case transfer process - gov.scot (www.gov.scot) <p>Due to the technical nature of the provisions and the engagement on the process to date it was not considered necessary to undertake a formal consultation on the draft regulatory provisions for case transfer. We continue to engage with stakeholders whilst we design the processes for case transfer.</p> <p>Both case transfer surveys sought feedback from experience panel members on the processes for transfer. Responses to the first survey showed a strong preference that no client should have to reapply for their benefit as part of the case transfer process. In the second set of interviews with experience panel members participants were presented with the different types of information that Social Security Scotland may take over as part of a client's case transfer. Participants were asked how they felt about Social Security Scotland taking over the different information types. It was explained that some information is essential for Social Security Scotland to take over as part of a client's case, including payment information, personal information (such as a client's address and contact information) and award information. All participants asked agreed that this information should be transferred as part of a client's case. Nearly all those asked were happy with Social Security Scotland taking over application information. Again, the majority of participants were happy for information submitted for evidence to be taken over. Views were mixed on taking over</p>

	Questions	Comments
		<p>assessment information and case management information.</p> <p>Some participants saw no problems with Social Security Scotland taking over assessment information and thought it would be better for Social Security Scotland to have all the information that DWP currently hold as part of a client's case. Some participants requested that Social Security Scotland staff view the contents of previous assessments with a critical eye if the information is to be transferred. However, some participants thought that assessment information should not be taken over. The most common reason for this was that participants did not feel the information from their assessment was accurate or correct. Participants spoke of their previous experience of assessments with DWP and some said they would like a fresh start with Social Security Scotland.</p> <p>Some participants wanted case management information to be transferred so that there was a fully comprehensive record of a client's circumstances. However, many participants saw this information as irrelevant and questioned whether it would be needed. Similarly to assessment information, some participants also spoke of wanting a fresh start with Social Security Scotland and therefore didn't want this information transferred.</p>

5. Further assessment and risk identification

	Question	Comments
5.1	Will the proposal require the creation of new identifiers, or require the use of existing ones?	<p>Delivery of the benefit will reuse existing mechanisms introduced for other Scottish benefits that will retrieve identifiers for claimants when sharing data with the DWP.</p> <p>The DWP hold Global Unique Identifiers (GUIDs) for each individual who claims benefits that they administer. To obtain a GUID from DWP, SPM will share the claimant's name, date of birth and</p>

	Question	Comments
		<p>postcode. If there is a match with information held by DWP, a GUID will be shared and stored within SPM.</p> <p>The GUID is then used to share data on other data necessary to make determinations of entitlement and to maintain entitlement for claimants of Carer Support Payment. SPM may hold a GUID already obtained for a Carer Support Payment client if they had previously claimed another Scottish benefit. Where this is the case, the identifier will be reused when requesting data from DWP for the purposes of administering Carer Support Payment.</p>
5.2	<p>Will the proposal require regulation of:</p> <ul style="list-style-type: none"> • technology relating to processing • behaviour of individuals using technology • technology suppliers • technology infrastructure • information security 	<p>In practice, DWP will encrypt the data and the Scottish Government will decrypt on arrival. All data will be accessed – identity and access mapping will be completed.</p> <p>The existing infrastructure and security used by Social Security Scotland to transfer data from DWP will be utilised. There are no legislative measures relating to technology for these changes.</p> <p>Technology already used to provide other Social Security Scotland payments will be used to support the payment of CSP.</p> <p>Social Security Scotland have technical and operational controls in place to safeguard individuals.</p>
5.3	<p>Will the proposal require establishing or change to operation of an established public register (e.g. Accountancy in Bankruptcy, Land Register etc.) or other online service/s?</p>	N/A
5.4	<p>Please provide details of whether the proposal will involve the collection or storage of data to be used as evidence or use of investigatory powers (e.g.in relation to fraud, identify theft, misuse of public funds, any</p>	<p>The data will not be collected or stored for the explicit purpose of use as evidence. However, the stored data could be used to investigate fraud. This is also the case for other Scottish benefits already live.</p>

	Question	Comments
	possible criminal activity, witness information, victim information or other monitoring of online behaviour)	For law enforcement purposes Social Security Scotland is a competent authority in paragraph 2 of Schedule 7 of the Data Protection Act 2018 (Scottish Ministers devolved through the Social Security Act 2018). Any processing will satisfy the conditions as per The Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences, and the Data Protection Act 2018 Part 3 which sets out a separate regime for law enforcement authorities in the UK.
5.5	Would the proposal have an impact on a specific group of persons e.g. children, vulnerable individuals, disabled persons, persons with health issues, persons with financial difficulties, elderly people? (Please specify) In what way?	<p>This proposal relates to the collection of data and information in relation to new applications for Carer Support Payment and the transfer of data and information on adults in Scotland currently in receipt of Carer's Allowance so will have a direct impact on the client, the individual to whom the benefit is paid (in the case of an appointee), as well as the cared for person. The main data subject will be unpaid carers, who are at increased risk of poverty. As mentioned in section 2.3, it is anticipated that a large proportion of CSP recipients will be women in particular. Data relating to the cared for person will relate to disabled adults and children. The client themselves may also be an adult with a disability, and a significant number of current CA clients are above State Pension age, and would therefore be categorised as elderly.</p> <p>Impact assessments have also been drafted, including an Equalities Impact Assessment and Children's Rights and Wellbeing Impact Assessment, with the intention that these will be laid alongside the draft regulations in September 2023. Links to these assessments can be found in Annex F.</p>

	Question	Comments
5.6	<p>Is there anything potentially controversial or of significant public interest in the policy proposal as it relates to processing of data? For example, is the public likely to view the measures as intrusive or onerous?</p> <p>Are there any potential unintended consequences with regards to the provisions e.g. would the provisions result in unintended surveillance or profiling.</p> <p>Have you considered whether the intended processing will have appropriate safeguards in place? If so briefly explain the nature of those safeguards and how any safeguards ensure the balance of any competing interests in relation to the processing.</p>	<p>There is nothing potentially controversial or of significant public interest in relation to the processing of data for Carer Support Payment. For case transfer, client research has confirmed that the majority of clients are supportive of transfer of information to allow the new benefit to be set up rather than being required to complete a new application for a benefit they consider they are already entitled to. Carer Support Payment will process data for the same purpose, in a similar manner, to how Carer's Allowance is currently processed by DWP. There are no identified potential unintended consequences.</p> <p>The processing of data will follow the same high security standards already in place within Social Security Scotland for the processing of new applications.</p> <p>A security risk assessment is completed for all new processes and one will be completed for Carer Support Payment. This will be contained in the Operational Data Protection Impact Assessment.</p> <p>The operational DPIA will consider the data subject rights of individuals associated with the processing and payment of Carer Support Payment and ensure that any risks are mitigated to ensure the rights of data subjects are not impacted.</p>
5.7	<p>Are there consequential changes to in other legislation that need to be considered as a result of the proposal or the need to make further subordinate legislation to achieve the aim?</p>	<p>Changes will need to be made to existing Scottish and UK legislation as a consequence of introducing Carer Support Payment. These changes will be made through provisions in the schedule to the Carer Support Payment regulations and through consequential amendments regulations in Scotland and UK wider Section 104 Orders.</p> <p>These changes will ensure that Carer Support Payment can be delivered as set out above, and the relevant data processing and sharing requirements are</p>

	Question	Comments
		considered here and will be set out further in the Operational DPIA
5.8	<p>Will this proposal necessitate an associated code of conduct? If so, what will be the status of the code of conduct (statutory, voluntary etc.)?</p>	<p>The implementation of the proposals is principally guided by the Social Security Scotland Charter and the Civil Service Code of Conduct (Scotland).</p> <p>Implementation will also be supported by operational guidance with input from colleagues with relevant interest across the Directorate, including policy and legal (SGLD) and will be tested before the benefit launches.</p>
5.9	<p>Have you considered whether the intended processing will have appropriate safeguards in place, for example in relation to data security, limitation of storage time, anonymisation? If so briefly explain the nature of those safeguards</p> <p>Please indicate how any safeguards ensure the balance of any competing interests in relation to the processing.</p>	<p>Social Security Scotland are not proposing to use anything over and above the existing safeguarding measures which are in place for new cases which include:</p> <ul style="list-style-type: none"> • Pseudonymisation of equalities data • Redaction of personal data received on documents during the application process • Retention schedule to minimise personal data where there is no longer purpose to retain. • Social Security Scotland, will adhere to a policy of data minimisation in the transfer of information from DWP and HMRC. • The processing of data will follow the same high security standards already in place within Social Security Scotland for the processing of new applications. • A security risk assessment is completed for all new processes and one will be completed for Carer Support Payment. This will be contained in the Operational Data Protection Impact Assessment.

	Question	Comments
5.10	<p>Will the processing of personal data as a result of the proposal have an impact on decisions made about individuals, groups or categories of persons? If so, please explain the potential or actual impact. This may include, for example, a denial of an individual's rights or use of social profiling to inform policy making.</p>	<p>Personal data will be used to inform decisions on a client's entitlement to carer benefits and make payments to them. For both new applications and case transfers, decisions on entitlement will be subject to full re-determination and appeal rights.</p> <p>There is a risk that clients will not be fully aware of their right to full re-determination and appeal.</p> <p>This will be mitigated through a communications framework for all clients whose case is transferred with letters detailing this process.</p> <p>In some cases, the processing of Carer Support Payment applications may impact the cared for person's entitlement to other linked benefits and premia administered by the DWP. This is because of DWP rules that these benefits/premia cannot be in payment at the same time.</p> <p>All clients are also asked to complete an Equality Monitoring and Feedback form along with the application form for each benefit delivered by Social Security Scotland. The data collected is used to identify who is using the service, to investigate how Social Security Scotland processes work for different groups of people and to understand whether groups with protected characteristics are able to adequately access social security payments. The equalities data is also analysed by outcome of application to assess if there is any variation.</p> <p>For additional protection all equalities data is retained in a separate location to the client record in a pseudonymised state.</p>
5.11	<p>Will the proposal include automated decision making/profiling of individuals using their personal data?</p>	<p>No profiling takes place.</p> <p>Automated Decision Making processing does apply - Article 22(1) the right not to be subject to automated decision making doesn't not apply as Article 22(2)(b) is applicable.</p> <p>There is statutory law that determines the entitlement to Carer Support Payment</p>

	Question	Comments
		<p>through Social Security (Scotland) 2018 Act and Carer Support (Scotland) Regulations 2023 . These allow Social Security Scotland to determine and award the benefit.</p> <p>Straight through processing ensures that the individual's award is processed on time, accurately without putting any undue burden on the client allowing Social Security Scotland to meet the demand for this benefit allowing intake to be managed effectively ensuring accurate payment with no delay to the individuals.</p> <p>There is no machine learning in this process the decision making is based on the entitlement conditions, there will be no bias in the decision making.</p> <p>Social Security Scotland has responsibility to provide secure, accurate and efficient award of benefit to individuals of Scotland and also to protect the public finances by putting in place the most financially effective process that meets all requirements. The welfare system of Scotland is a public funded service.</p> <p>Article 22(2)(b) of the UK GDPR does not require the law to expressly provide that a decision can be made based solely on automated processing.</p> <p>Social Security Scotland can demonstrate that straight through processing of Scottish Carers Assistance is a reasonable way of complying with the statutory law. The Data Protection Act 2018 (DPA 2018) (Chapter 2, Part 2, Section 14 (3)(b)).</p> <p>Social Security Scotland can demonstrate that appropriate safeguard are in place to comply with The Data Protection Act 2018 (DPA 2018) (Chapter 2, Part 2, Section 14 (4) to ensure individuals are aware of the processing and able to exercise their rights.</p>

	Question	Comments
5.12	Will the proposal require the transfer of personal data to a 'third country'? (Under UK GDPR this is defined as country outside the UK.)	No – there will be no transfer of personal data to organisations in a third country outside of the UK. In limited circumstances, there may be a small number of cases where individuals outside of the UK will be entitled to Carer Support Payment. In these cases, interaction would be with the data subject directly and not with any data controllers or processors within those countries.

6. Risk Assessment

Detailed discussion of risks and mitigations will be set out in the Operational Data Protection Impact Assessment.

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity (Red/Amber Green)	Result
<p>6.1.1 Risk to individual rights</p> <ul style="list-style-type: none"> • right to be informed • right of access • right to rectification • right to erasure • right to restrict processing • right to data portability • right to object • rights in relation to automated decision making and profiling <p>Will this initiative result in any detriment if individuals do not want their personal data to be processed? This is particularly relevant if special category data is being processed</p>	<p>Detailed discussion of risks and mitigations will be set out in the Operational Data Protection Impact Assessment.</p> <p>The Personal information to be processed is required to enable Social Security Scotland to meet its statutory requirement in providing Social Security Assistance, the data being processed under public task with the legal basis being GDPR Article 6 (1) (e). There is no profiling and the appropriate safeguards for processing using automated decision making will be in place and document on the Operational DPIA.</p> <p>Work has been undertaken to ensure only the minimum amount of personal information is gathered and stored only for the appropriate time.</p> <p>There is a process in place for managing all subject rights requests.</p>	Low	Green	Mitigated

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity (Red/Amber Green)	Result
<p>6.2.1 Privacy risks</p> <p>Purpose limitation</p>	<p>Detailed discussion of risks and mitigations will be set out in the Operational Data Protection Impact Assessment.</p> <p>Social Security Scotland has a Privacy Notice that is accessible on My Gov. Outward letters and telephony messaging also advise individuals where to find information regarding the processing of their information. Data Sharing Agreements will be in place with stakeholders following the ICO Data Sharing code of practice, where clear purpose is documented and adhered to.</p>	<p>Low</p>	<p>Green</p>	<p>Mitigated</p>
<p>6.2.2 Privacy risks</p> <p>Transparency – data subjects may not be informed about the purposes and lawful basis for the processing, and their rights</p>	<p>Detailed discussion of risks and mitigations will be set out in the Operational Data Protection Impact Assessment.</p> <p>Social Security Scotland has a Privacy Notice that is accessible on My Gov. Outward letters and telephony messaging also advise individuals where to find information regarding processing of their information.</p>	<p>Low</p>	<p>Green</p>	<p>Mitigated</p>

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity (Red/Amber Green)	Result
<p>6.2.3 Privacy risks</p> <p>Minimisation and necessity</p>	<p>Detailed discussion of risks and mitigations will be set out in the Operational Data Protection Impact Assessment.</p> <p>Necessity of the data to be processed has been determined based on the minimum amount of personal information required for assessing entitlement.</p>	Low	Green	Mitigated
<p>6.2.4 Privacy risks</p> <p>Accuracy of personal data</p>	<p>The personal data gathered is from the client, their representative or an Other Government Department where the client has an established relationship.</p> <p>Detailed discussion of risks and mitigations will be set out in the Operational Data Protection Impact Assessment.</p>	Low	Green	Mitigated
<p>6.3.1 Security risks</p> <p>Keeping data securely Retention</p>	<p>Detailed discussion of risks and mitigations will be set out in the Operational Data Protection Impact Assessment.</p>	Low	Green	Mitigated

Risk	Solution or mitigation	Likelihood (Low/Med/High)	Severity (Red/Amber Green)	Result
<p>6.3.2 Security risks</p> <p>Transfer – data may be lost in transit</p>	<p>Established secure transfer routes will be re-used for previous transitions. Data is encrypted at rest and in transit. Data Sharing Agreements will be in place detailing both parties roles and responsibilities in relation to safeguarding individual personal information. Detailed discussion of risks and mitigations will be set out in the Operational Data Protection Impact Assessment.</p>	Low	Green	Mitigated
<p>6.3.3 Security risks</p>	<p>Detailed discussion of risks and mitigations will be set out in the Operational Data Protection Impact Assessment.</p>	Low	Green	Mitigated
<p>6.4.1 Other risks</p> <p><will this impact on children?></p>	<p>Child personal information will be processed however Social Security Scotland have in place a high level of security and safeguards to protect all client data including children. Detailed discussion of risks and mitigations will be set out in the Operational Data Protection Impact Assessment.</p>	Low	Green	Mitigated

Data Protection Officer (DPO)

The DPO may give additional advice, please indicate how this has been actioned.

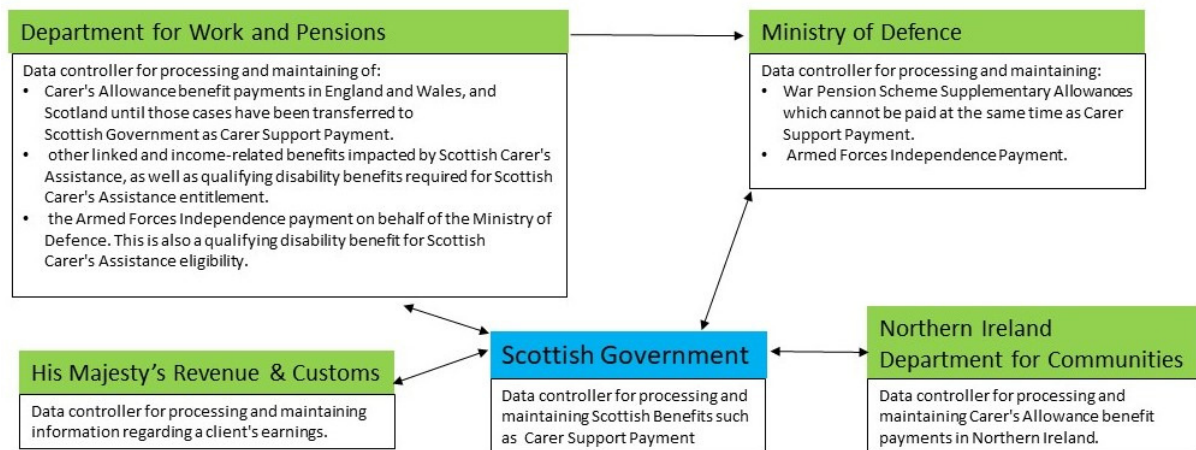
Advice from DPO	Action
The DPO has been consulted in the development of the Article 36(4) form and DPIA for legislation and is content with the consideration given to privacy and notes the engagement with data protection and information governance during the development of these materials. No high level risks are remaining.	No action needed,

I confirm that the impact of these provisions has been sufficiently assessed in compliance with the requirements of the UKGDPR and Data Protection Act 2018

Name and job title of a IAO or equivalent	Date each version authorised
Ian Davidson, Deputy Director of Social Security Policy Division	18 August 2023

ANNEX A – copy of/link to proposed legislation

Annex B – A data flow map showing data flowing directions between agencies which act as data controllers for processing and maintaining related social security benefits data.



ANNEX C – copy of Privacy Notice (if applicable)

[Social Security Scotland - Privacy Statement](#)

ANNEX D – Article 36(4) form

<p>1. Article 36(4) Enquiry Form</p> <p>This form is for public authorities that are developing a legislative proposal or statutory guidance that relates to personal data. It will provide a template for you to enter information relevant to Article 36(4) of the UK General Data Protection Regulation (UKGDPR) in order to streamline the process of consulting with the Information Commissioner's Office (ICO).</p>	
Title of proposal:	Scottish Carer's Assistance (SCA) including Carer's Additional Person Payment (CAPP)
Your department:	Carer Benefits and Case Transfer Unit – Social Security Policy Division, Scottish Government
Is your proposal primary legislation, secondary legislation or a statutory measure?	Secondary legislation.

Name of primary legislation your measure is based on (if applicable)	Social Security (Scotland) Act 2018
Provide a broad summary of which aspects of your proposal relate to personal data	<p>Scottish Carer's Assistance will replace UK Carer's Allowance, currently delivered by Department for Work and Pension (DWP) with Scottish Carer's Assistance and include the creation of a new payment, Carer's Additional Person Payment.</p> <p>Processing of personal data is required to make a determination for new clients and for case transfer from DWP (where data will be transferred so that people in Scotland who are getting Carer's Allowance from the DWP can get Scottish Carer's Assistance from Social Security Scotland instead).</p> <p>There will also be Data Sharing arrangements in place.</p>
What stage is your legislation or statutory measure at and what are your timelines?	<p>We are at the consultation stage and are consulting with stakeholders as well as the wider public. Timelines for introduction of the benefit (and the associated regulations timelines) are still to be confirmed – the current UK Carer's Allowance benefit has complex links with other benefits which will remain reserved so devolution of the benefit is a joint project with the Department for Work and Pensions. We are working with the DWP to agree timings and hope to be able to confirm these soon.</p>

Question	Comments
What issue/public need is the proposal seeking to address?	Following agreement between the UK and Scottish Governments, responsibility for some carer benefits has been devolved. We are creating a new Scottish benefit to replace UK Carer's Allowance for carers in Scotland – and we are calling this 'Scottish Carer's Assistance' for now. The consultation sets out proposals for Scottish Carer's Assistance, including a new additional payment for carers in receipt of SCA who are caring for more than one person – we are calling this 'Carer's Additional Person Payment' for now.
Does your proposal create a new power or obligation for the processing of personal data?	Yes Regulations would need to detail the type of information clients need to provide in order to access SCA and the additional payment.
Does your proposal relate to the collection of personal data?	Yes. A range of personal data will need to be collected to assess eligibility for Scottish Carer's Assistance and Carer's Additional Person Payment, to make payments, and to maintain awards.
If you've answered yes to the above question, what data items might this include?	For payment of benefits this will include names, addresses, email and telephone contact information, National Insurance numbers, earnings data, residence data, bank/payment details for the carer. Also personal details of the person being cared for. Information about clients and benefit awards will be shared as part of the case transfer process.
And is this information collected directly from the data subject or from elsewhere? Please provide further details.	For payment of benefits some information will be collected directly from the data subject but some information would be provided by other government departments – e.g. DWP, HMRC, MOD. We would also require data from the carer about the person they care for.
Would your proposal affect a specific group? E.g. children, vulnerable individuals, elderly?	Yes. Proposals will affect unpaid carers and the people they care for. The majority of cared for people will be disabled people due to the eligibility criteria of the benefit.

<p>Does your proposal relate to the processing 'special categories' of personal data, or 'criminal convictions or offences data'?¹</p>	<p>Yes. Application forms will ask for (though not require) equality monitoring information which will ask about protected characteristics. Criminal offences data will not be processed however data on unacceptable client behaviour may be shared for the purposes of safeguarding Agency staff.</p>
<p>Does your proposal involve the sharing of personal data with another government department or 3rd party that you were not previously sharing with?</p>	<p>No.</p>
<p>Is there anything potentially controversial or of significant public interest in your policy proposal?</p>	<p>There is likely to be public interest in the policy as Scottish Carer's Assistance will replace an existing UK benefit, received by over 80,000 carers in Scotland, about which carers and stakeholder organisations have raised concerns – so interest in the changes being made is likely. Previous Scottish benefit changes and launches have also attracted public interest.</p> <p>Timetables for Scottish Carer's Assistance have changed as a result of the impact of coronavirus on the work to devolve social security. The proposals in the consultation have been informed by prior consultation and research, however, carers and stakeholders may have different views on the priorities for change.</p>
<p><u>Have you conducted a data protection impact assessment on your proposed legislation?</u></p>	<p>Not yet – we are still consulting on our proposals but a Data Protection Impact Assessment will be completed alongside the development of the benefit and the regulations.</p>

¹To note: By 'special categories' we mean personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data about a person's sex life or sexual orientation.

NEXT STEPS

This form should be reviewed by your Data Protection Officer before being submitted to the ICO.

To submit the form, email a copy to the ICO inbox at legcon@ico.org.uk.

You should copy and paste the below text into the subject line of your email to ensure your request is dealt with promptly.

Email subject line: Art 36(4) - Consultation request - [\[insert your department\]](#) - [\[insert title of proposal\]](#)

ANNEX E: Article 36(4) form



MEETING REPORT (SCOTLAND OFFICE)

Purpose:	Article 36(4) meeting with Scottish Government on the Scottish Carer's Assistance
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Date:	28 June at 13pm
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Location:	Teams
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ICO attendees:	Dominique Mitchell (DM), Senior Policy Officer
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External attendees:	Jane Sterry – Scottish Government Pabby Johnson – Scottish Government Dawn Kane – Scottish Government Euan Geddes – Scottish Government
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Meeting Summary	Background <p>The Social Security (Scotland) Act 2018 provided for the creation of a new social security system and established Social Security Scotland (SSS), an Executive Agency of the Scottish Government.</p> <p>The Scottish Carers Assistance regulations, yet to be drafted, will allow for the processing of data to assess eligibility for the Scottish Carer's Assistance. The regulations will give new powers to SSS to process personal data in relation to the Scottish Carer's Assistance and will:</p> <ul style="list-style-type: none">• establish the Scottish Carer's Assistance including the creation of a new payment, the Carer's Additional Person Payment, which will be delivered by Social Security Scotland on behalf of Scottish Ministers, and will replace Carer's Allowance which is currently delivered by the Department for Work and Pensions (the DWP); and• enable the transfer of entitlement for carers in Scotland currently in receipt of Carer's Allowance onto Scottish Carer's Assistance which will require the DWP to share personal data with SSS.
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The Scottish Government advised that the roll out of this payment will begin in 2023 with a national launch in 2024. The public consultation closed in May and the Scottish Government are analysing the responses ahead of drafting the regulations.

It was noted that this benefit will have complex links to the Carer's Allowance and there is a need to maintain those links so carers receive same level of support as they were receiving under the DWP. In terms of the processing the Scottish Government should consider:

- What risks and harms may arise as a result of the processing and;
- If in the DPIA, it is identified that there is a high risk to the rights and freedoms of any individual that you cannot mitigate then the Scottish Government [must consult with us](#).

ICO advice

The ICO has provided advice below, including recommendations, beneath relevant headings which are to be considered by the Scottish Government. The advice is focused in parts on the data sharing aspect of this proposal as the regulations, as well as the Data Protection Impact Assessment (DPIA), had yet to be drafted at the point of meeting. It is noted that some advice is for Scottish Government in relation to what it should consider in drafting the regulations and some advice is highlighted as being relevant to consider when it comes to operationalisation and compliance with data protection law.

Lawful, fair and transparent

The first principle of the UK GDPR is that the processing of personal data is lawful, fair and transparent. Advice for each of these elements is provided below.

Lawful

It is key that personal data can flow as intended, the Scottish Government will wish to ensure that the

necessary legal gateways are in place for all involved controllers and processors.

Specifically each controller must have a valid Article 6 [lawful basis](#) for processing personal data and if processing [special category data](#), such as health data, an identified Article 9 condition.

To ensure that all controllers are able to rely on a valid lawful basis the Scottish Government may at this stage wish to complete a data flow map, particularly as it has been highlighted that there are “complex links” with other benefits which means there may be various data flows as well as controllers and processors. Completing a data flow map will help the Scottish Government to establish who the those relevant controllers and processors will be and consider whether they have existing powers to process data for the purposes set out in the new legislation or whether those controllers will require new powers, duties or obligations.

Transparency / Right to be Informed

The following advice is provided for the Scottish Government to consider when SSS move to implementation of the benefit.

Individuals have the [right to be informed](#) about the collection and use of their personal data.

Currently individuals are receiving the UK Carer’s Allowance from the DWP. After the transfer of information their data will be processed by Social Security Scotland. It will be key that individuals receive meaningful privacy information so that they understand that their data will be processed by Social Security Scotland for Scottish Carer’s Assistance and the Carer’s Additional Person Payment. This needs to be made clear to individuals so they can exercise their information rights. Therefore the DWP and SSS should consider updating their privacy notices.

The Scottish Government should consider how privacy information will be provided to those individuals with whom it does not have a direct relationship with but whose data may be processed ie those individuals

being cared for. This will avoid "[invisible processing](#)". The Scottish Government may want to consider this risk within a Data Protection Impact Assessment (DPIA) and in advance of any data sharing.

Our guidance on the [right to be informed](#) contains useful checklists on what information should be provided, when, and how, we also have detailed guidance at [the right to be informed](#).

Fairness

As well as ensuring that data is being processed lawfully and transparently the Scottish Government should consider the [fairness](#) of the processing and in particular whether the proposed processing would result in any unjustified adverse impacts on individuals and to ensure that appropriate safeguards and mitigations are put in place as necessary. The Scottish Government should also consider the reasonable expectations of those individuals, particularly where the Scottish Government are receiving data from the DWP which those individuals may not be expecting. If there will be any unexpected processing it must be justified and documented in advance.

It will be key to consider what powers the SSS will be given to process the personal data and whether there a risk of function creep? How will this be managed? We have more guidance on this in [purpose limitation](#).

Data minimisation

[Data minimisation](#) requires that the processing of personal data is adequate, relevant and limited to what is necessary in relation to the purpose for which it is being processed.

Broadly there will be those individuals in receipt of the benefit(s) but also the data of those individuals being cared for. Will the legislation specify what data should be processed or will they create broad new powers? If it specifies the data then the Scottish Government should consider carefully what data is adequate, relevant and necessary for the purpose for which it is being processed. Is it proportionate? What risks are presented? If it creates broad new powers what are

the risks of excessive or inadequate processing? The Scottish Government should consider whether guidance may be required?

Criminal offence data

The UK GDPR gives extra protection to “*personal data relating to criminal convictions and offences or related security measures*” and we refer to this as [criminal offence data](#). Whilst the Article 36(4) form states that “*Criminal offences data will not be processed*” it should be noted that in order to process criminal offence data it either needs to be under the control of official authority or a specific [condition from Schedule 1](#) of the DPA 2018 must be identified. The Scottish Government should consider whether the regulations will or should provide official authority to relevant controllers to process criminal offence data.

Data sharing

We discussed that there would be data sharing between DWP and the Scottish Government in order to facilitate the implementation of these benefits. In terms of compliance with data protection law it is worth highlighting the [ICO’s data sharing hub](#) and within that the [data sharing code of practice](#). The code contains practical guidance on how to share data fairly and lawfully, and how to meet your accountability obligations. The sections on [fairness and transparency in data sharing](#), [the rights of individuals](#) will be particularly relevant.

The Article 36(4) form also references that data sharing agreements will be in place. The [Data sharing agreements](#) section of our Data Sharing Code of Practice will be useful and details what a DSA should cover.

In relation to the regulations that will be drafted the Scottish Government will want to consider whether there are legal gateways available in order to share data.

Data Protection Impact Assessment / Risk assessment

Whilst completing a DPIA for the Article 36(4) process is not a legal obligation we do advise that it is a useful tool to think through the risks associated with the legislation. The form notes the development of the DPIA.

It is recommended that completing a DPIA, particularly as the Scottish Government moves to preparing the legislation, as the analysis will allow consideration of what should go in the bill and what guidance or other safeguards and mitigations may be required.

The Article 36(4) form states that carers and stakeholders have 'raised concerns' about this new benefit, where appropriate and particularly where these concerns relate to privacy or data protection, you may wish to address these concerns within the risk assessment of the DPIA.

One impact that was highlighted was the need to ensure that carers receive the same level of support under SSS as they were receiving under the DWP, and that carers would not be over or under paid. It is key that any risks to individuals rights and freedoms are identified, assessed and mitigated. We have specific guidance on '[how do we identify and assess risks](#)' in our DPIA guidance.

When identifying and assessing risks it may be useful to consult our Harms taxonomy at [Data Protection Harms](#). It sets out a framework and contains examples of possible harms.

It is also recommended that a separate DPIA is undertaken specifically for the data sharing aspect of this proposal due to the complexity of the sharing and to identify any risks associated with it. As various government departments will be involved in sharing personal a DPIA will allow the Scottish Government to ensure there are the necessary legal gateways in place to allow for the sharing and more broadly work through each of the data protection principles and how the sharing will comply with each.

Next Steps

- Ensure you have consulted with the Scottish Government's data protection team and or your Data Protection Officer on the proposals.
- Please provide a copy of the legislative DPIA and regulations once drafted for us to review.
- Once you have firmed up what data sharing will be taking place, do provide us with an update including what new powers and obligations to share data there may be

ANNEX F – Key findings of Carer Support Payment public consultation

Carer Support Payment from Launch

The consultation paper outlined a number of proposals in relation to Carer Support Payment (which had a working title of 'Carer Support Payment' at the time of the consultation) and a majority of respondents agreed with each of these.

- When considering how Carer Support Payment services could be designed to suit carers' needs, respondents focused on a need for a choice of communication methods, straightforward processes and types of support needed by carers as well as concerns over the rules about the current Carer's Allowance (Q1).
- Respondents cited a wide range of organisations and forms of support that Carer Support Payment could link to. A key form of support was carers' centres that can provide information and local help in accessing and completing paperwork as well as performing an advocacy role (Q2).
- A majority of respondents (68%) agreed with the proposed residency criteria for Carer Support Payment. A large minority agreed that carers should need to live in Scotland or that residency should be the main consideration. Furthermore, a significant minority felt it is not possible to care for someone living outside the carer's area or a long way outside Scotland. However, there were some calls for flexibility in the arrangements, for example, when a carer close to the Scottish border provides care for a Scottish resident. Views on the 'past presence test' were mixed (Qs3-5).
- Almost three quarters of respondents agreed with the proposed re-determination timescale's for Carer Support Payment. These were noted as being fair and reasonable, allowing more time to collate information and pull a case together and to obtain support and advice. There were some comments that Social Security Scotland should not need a longer period to make a decision than carers have to request a re-determination. A small minority of respondents felt the proposed timescale's were too long (Qs 6-7).
- 64% of respondents agreed with the proposals on when payments of Carer Support Payment should be suspended, with comments that the reasons given for suspension were appropriate with suspension only taking place in severe or serious circumstances. Many comments focused on the negative financial impact that stopping qualifying disability benefits can have on a carer. A large minority of respondents felt Carer Support Payment should continue until a person's situation is resolved, particularly as the carer will still be required to provide care (Qs 8-10).
- 67% of respondents agreed with the proposals for when an award of Carer Support Payment should be set to £0. The key reasons were that this offers a more flexible approach or it will be easier as carers will not have to reapply for their benefit (Qs 11-12).
- A large majority (85%) of respondents agreed with the proposal to pay Carer Support Payment to carers when the person they are caring for is receiving short-term assistance. The key reason for this was that the carer will still have caring

responsibilities and should not be penalised financially during this process (Qs 13-15).

Extra money for carers in Scotland

- 62% of respondents agreed that Carer's Allowance Supplement should be paid alongside carer's regular payments of Carer Support Payment in future. However, a significant minority supported payment of a lump sum. There were some suggestions that carers should have a choice as to how they would like to receive this payment (Qs 16-18).
- 72% of respondents agreed with the proposed eligibility criteria for Carer's Additional Person Payment. This was felt to recognise the financial burden faced by carers and an acknowledgement of caring responsibilities. However, there was some criticism of the proposed amount of £10, with suggestions that this should be increased and some disagreement with the criteria relating to a minimum of 20 hours additional care per person (Qs 19-20).
- 73% of respondents agreed with the proposed payment frequency for Carer's Additional Person Payment (Qs 21-22).
- 63% of respondents agreed with the proposal to target Carer's Additional Person Payment to carers who are getting payments of Carer Support Payment. This was seen to be fair, sensible, logical and reasonable, though there were some calls for the payment to be made to all carers with an underlying entitlement to Carer Support Payment (Qs 23-25).

Changes to Carer Support Payment

- Almost all respondents (97%) agreed with the proposed future change to allow carers in full-time education to get Carer Support Payment. It was felt this would help to remove barriers and encourage carers to go into education. A number of benefits were highlighted including personal and professional development, career improvement, gaining of qualifications and improved mental health and wellbeing (Qs 26-27).
- A large majority (79%) of respondents agreed with the proposed future change to allow carers to add together hours spent caring for two people to reach the 35 hour caring requirement. Key was the recognition of multiple caring circumstances. A large minority felt that it is the total number of hours spent caring that is important rather than the number of people cared for. There was some concern about bureaucratic and administrative complications (Qs 28-29).
- Almost all respondents (89%) agreed with the proposed future change to continue to pay Carer Support Payment for 12 weeks after the death of a cared for person. This additional time period was perceived to allow people time to adapt to changed circumstances as well as helping to reduce financial and emotional stress (Qs 30-31).
- A similar number of respondents (87%) agreed with the proposed future change to continue to pay Carer Support Payment for 12 weeks when a cared for person goes into hospital or residential care. Respondents noted that carers will still have a caring role to fulfil and may face additional financial costs in terms of fuel, parking and other travel expenses (Qs 32-33).

- 82% of respondents agreed with the proposed future change to increase the earnings limit for Carer Support Payment. A key comment was that carers should be given the opportunity to earn more where possible as this can help to bring about financial stability and alleviate poverty as well as being beneficial to mental health and wellbeing. However, there were comments that the earnings limit should be higher than the proposed £158 per week (Qs 34-35).
- 67% of respondents agreed that the earnings threshold should be set at a level which would allow carers to work 16 hours a week alongside their caring role. While a significant minority approved of this threshold, some others commented that this limit is too low and should be increased (Qs 36-37).
- A majority (77%) of respondents agreed with the proposal to look at a 'run on' after a carer earns over the earnings limit in future. This was seen to be helpful to those with variable earnings as well as making life easier as it would help to provide some stability to carers while they adapt to changes (Qs 38-39).
- A large majority (86%) of respondents agreed that a payment for long term carers should be considered further. This was perceived to help provide financial support and stability to carers. There were also suggestions that this payment should be available to a wider range of carers, including those in receipt of a state pension. (Qs 40-41).
- In considering what a payment should look like and who it should be for, respondents made a wide range of suggestions, although there was little consensus in what this payment should be (Q42).
- When asked to provide other views about the proposals for future changes to Carer Support Payment, most comments echoed points from earlier questions (Q43).

Impact Assessments

- Fewer than half of the respondents chose to answer any questions on the impact assessments (Qs 44-48).
 - In terms of those who share protected characteristics, respondents focused on women, disabled people, those within ethnic minority groups, sexual orientation and age. While views on the proposals were largely positive, it was felt that there is a need to engage with these groups and communicate with them utilising a variety of approaches.
 - The key impacts on island communities were felt to be limited services available and the cost of accessing these services.
 - Respondents felt that these proposals would help to reduce socio-economic disadvantage.
 - It was felt that the proposals would lead to improvements for young carers.
 - There could be economic benefits both to businesses and to carer employees.