

Business and Regulatory Impact Assessment (BRIA) summary

Title of Proposal

The Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022

Purpose and intended effect

Background

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

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

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

Objective and rationale

The Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022 make provision to transfer the award of any individual in receipt of Working Age Disability Living Allowance to Adult Disability Payment, where an individual wishes to move to Adult Disability Payment or would otherwise be required to apply for Personal Independence Payment.²

The eligibility criteria for Adult Disability Payment differs from the eligibility criteria for Disability Living Allowance and broadly aligns with the eligibility criteria for Personal Independence Payment. However, the Scottish Government has made improvements to the application process, the way awards are made, and the collection of supporting information about an individual's disability or health condition, to make the processes involved in assessing entitlement for Adult Disability Payment less onerous and to improve decision-making.

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

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

The Scottish Government has also introduced a new individual consultation service to aid the decision making process. This will be substantially different from the assessments used to determine entitlement to Personal Independence Payment by the Department for Work and Pensions.

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

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

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

This impact assessment is one of a package to accompany the regulations. The others are: Equality Impact Assessment; Children's Rights and Wellbeing Impact Assessment; Island Communities Impact Assessment; Data Protection for Legislation Impact Assessment and the Fairer Scotland Duty Assessment.

Rationale for Government intervention

A Business and Regulatory Impact Assessment was undertaken for the main regulations making provision for Adult Disability Payment, the Disability Assistance for Working Age People (Scotland) Regulations. As The Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations make provision for transferring individuals to Adult Disability Payment, we have considered any specific or differential impact these Regulations will have. As the miscellaneous amendments in the Regulations are for the purpose of providing clarity to existing provisions, these have not been considered further.

The assessment Business and Regulatory impact was undertaken using the five principles of Better Regulation, as follows

Proportionate: In introducing Adult Disability Payment, the Scottish Government looked to identify and minimise any indirect impacts, for example administrative burdens, on local government, private businesses or third sector organisations as a result of the introduction of Adult Disability Payment. The equivalent United Kingdom benefit, Disability Living Allowance, will reduce in caseload as Adult Disability Payment is delivered by the Scottish Government and cases are transferred to Social Security Scotland.

This will likely lead to a neutral impact in the longer term on the administrative burdens on other public agencies, private businesses and third sector

organisations. In the short term, there may be additional work for public agencies and some third sector organisations as they make arrangements for their staff to incorporate knowledge of the replacement benefit and the case transfer process into their current systems. Social Security Scotland has committed to undertaking much of the administrative responsibility, as far as possible, on behalf of people accessing disability assistance, including those transferring from the Department of Work and Pensions to Social Security Scotland, and has created data sharing processes with relevant public bodies.

It is anticipated that as case transfer completes this will continue to reduce the burden of providing information to individuals that public agencies currently undertake when applying for disability benefits or as part of the review of existing entitlement, by creating formal data sharing agreements and processes with one Agency, Social Security Scotland.

There is also expected to be a neutral impact on medical professionals as a result of our new definition of terminal illness. They will still be expected to use their clinical judgement to determine whether an individual has a terminal illness with the primary difference being that, instead of a DS1500 form, they will be required to fill out a Benefits Assistance Under Special Rules in Scotland (BASRiS) form as evidence. There may be some short-term effects as medical professionals adjust to using the BASRiS form and taking a different approach but, overall, this should not place additional burdens on medical staff.

The case transfer process should similarly have neutral impact in that it relies on the information and evidence already contained in Department for Work and Pensions records, meaning no further information is required for a case to complete the transfer process. While cases transferring from Disability Living Allowance to Adult Disability Payment will require a review once they have transferred, the volumes are likely to be low and for the reasons already outlined processes have been designed to minimise administrative burdens on public agencies that may be required to engage in any review process.

Consistent: Adult Disability Payment builds on the Social Security (Scotland) Act 2018 framework of a new system that is underpinned by dignity, fairness and respect. Adult Disability Payment is being delivered on an entitlement basis to eligible people. Decision-making will be person-centred and operational guidance for case managers within Social Security Scotland has been created in line with the rules within the regulations which will provide a framework for consistent decision making across all applications. This includes guidance provided to practitioners of Social Security Scotland which will be utilised should a individual be invited to attend a consultation.

Where possible the Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) regulations and the associated policies have been aligned with those for Child Disability Payment and Adult Disability Payment to provide a consistent approach for individuals, and services who will support them, to make applications for disability assistance and navigate Scotland's social security system. Specific decision making and operational guidance is being developed to support the case transfer process.

Accountable: All determinations made relating to an application for disability assistance or determinations made as a result of the case transfer process will be provided to individuals in a communication method that meets their needs. All information used, and rationale for the decision, will be included within this communication to ensure that individuals are informed of how the decision relating to their application was assessed.

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

We will ensure that individuals understand their right to have their determination re-determined by Social Security Scotland and to request an appeal to the First Tier Tribunal (FtT) if they are unsatisfied with the outcome of the re-determination. Individuals have the same rights to request re-determinations and appeal when the transfer as they do when making a new application. This includes their right to appeal directly to the FtT if Social Security Scotland is unable to complete the re-determination process within the required time.

Individuals will also be made aware of the existence of Short-Term Assistance (STA) which can be applied for during re-determinations and appeals on ongoing awards of Adult Disability Payment. This will help to ensure that individuals are not discouraged from challenging a decision they do not agree with or seeking administrative justice by having to manage, for a time, with reduced income.

Transparent: Our case transfer processes are designed in line with our published case transfer principles, developed through engagement with stakeholders and those with lived experience. We have developed a communications strategy for each form of disability assistance and the related case transfer process, including Adult Disability Payment. This will aim to ensure that individuals and their families or carers, the third sector, local government, education and health sectors and advice providers are aware of the benefit, know how to apply, understand the eligibility criteria, and if they are already in receipt of a disability benefit ensure they understand how and when they can expect their case to transfer. Where a determination is made that an individual is not entitled to assistance, Social Security Scotland will provide a reason why, as set out in the Social Security (Scotland) Act 2018, to ensure that determinations are understood and that our processes are as transparent as possible.

We will publish guidance on Adult Disability Payment in a way that takes account of differing communication needs, so that entitlement is clearly understandable. Social Security Scotland will create a bank of Adult Disability Payment stakeholder resources and content in accessible formats that will be proactively supplied to relevant stakeholder organisations through the National Stakeholder Engagement team, for organisations to distribute to people in local communities.

The languages we proactively translate materials into were selected through stakeholder consultation. These are: BSL, Farsi, Mandarin, Cantonese, Urdu, Gaelic, Polish, Arabic, braille and easy read formats. Social Security Scotland will produce communication materials in other languages on request. Social Security

Scotland communications will work with community radio and foreign language press to provide messaging on Adult Disability Payment to communities, including information on case transfer. In some circumstances printed marketing materials may not be the right way to engage with communities and where this is the case we will provide an engagement approach through work carried out by the National Stakeholder Engagement and Local Delivery functions.

We published the first Benefit Take-Up Strategy (October 2019) under the provision of the Social Security (Scotland) Act 2018. The strategy sets out Scottish Ministers' work supporting benefit take-up to date. It also introduced a series of new activities and initiatives aimed at increasing awareness of and access to Scottish benefits and supporting those who are eligible to apply.

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

We are also working to ensure that individual consultations are as transparent as possible. This includes recording consultations as standard (with the individual having the ability to opt out should they choose) so that a record of the conversation is kept.

We have also considered how informal observations should be applied in individual consultations. Practitioners will be provided with specific guidance, training and resources regarding informal observations. Individuals must also be made aware of what informal observations are, why they are being made, and the impact they will have. All informal observations will also be made known to the individual so that they have the opportunity to challenge or comment on the observation. This will provide a transparent consultation service by ensuring that individuals are aware of what is being reported and recorded.

Targeted only where needed: Adult Disability Payment is intended to help mitigate the additional costs of having a disability. The rules for the benefit are set out in regulations and each new application will undergo an application process which will assess eligibility for Adult Disability Payment in a way that is consistent with the principles of dignity, fairness and respect.

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

to Adult Disability Payment will be as a result of reporting a relevant change of circumstances or because they have requested to transfer.

All individuals who transfer to Adult Disability Payment under these regulations will have their award reviewed once the case transfer process is complete. Case managers will, where authorised, help individuals gather supporting information through the previously mentioned data-sharing agreements. We are not looking to gather an exhaustive list of sources of formal information. It need only be sufficient to determine, on the basis of probabilities, that an individual meets the eligibility criteria for Adult Disability Payment. It is only when there is no other way to gather accurate information about the needs of a individual that they will be invited to attend a individual consultation.

As set out above, the Social Security (Scotland) Act 2018 sets out the duty on Scottish Ministers to promote uptake of benefits. Increased benefit uptake is likely to have a positive impact on businesses and the economy because more individuals will be in receipt of benefits which will be used to purchase a range of goods and services.

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

Consultation

In July 2016 the Scottish Government launched a public consultation to support the development of a framework that would become the Social Security (Scotland) Bill. This received more than 200 responses to questions relating to disability benefits with an even split between organisational and individual responses. In particular comments were invited on a partial Business and Regulatory Impact Assessment.

There were 521 formal written responses submitted, of which 241 were from organisations and 280 from individual respondents. The 241 organisational responses included stakeholder groups representing human rights, disability and long term conditions organisations covering a variety of disabilities and conditions, and carers. The independent analysis of the responses along with the Scottish Government response were published on 22 February 2017³ in addition to the Business and Regulatory Impact Assessment that was published alongside the Social Security (Scotland) Bill.

The Scottish Government has set up Social Security Experience Panels with over 2,400 people across Scotland registered as panel members when the Panels opened in 2017. The Panels involve people with lived experience of the benefits that are coming to Scotland. In July 2019 recruitment to the Experience Panels

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

was reopened. We have been working with relevant stakeholders to specifically target disabled people from seldom heard groups as part of our engagement.

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

The Consultation on Disability Assistance built on the work on the Experience Panels and was published on 5 March 2019. In line with the principles of dignity, fairness and respect, the Scottish Government sought the views of the people of Scotland on the three proposed disability assistance benefits, including Adult Disability Payment.⁵ The consultation closed on 28 May 2019, having received 263 replies, of which 74 were from stakeholder organisations and 189 from individuals.

The Scottish Government has also undertaken ongoing consultation with stakeholders through our independent Disability and Carers Benefits Expert Advisory Group as well as the Ill Health and Disability Benefits Stakeholder Reference Group. The Disability and Carers Benefits Expert Advisory Group is chaired by Dr Jim McCormick and comprises individuals with significant practical experience of the United Kingdom social security system, from a range of professional backgrounds. It is independent of the Scottish Government. The Group's role is to advise Scottish Ministers on specific policy options for disability assistance and carers benefits due to be delivered in Scotland.

The Ill Health and Disability Benefits Stakeholder Reference Group was set up in March 2016 to inform and influence the development of policy options relating to devolved Disability Assistance. This group has advised on the potential impact of policy decisions as well as user and stakeholder engagement.

On 21 December 2020, the Scottish Government launched a public consultation on its proposals for the delivery of Adult Disability Payment and on the draft impact assessments. The consultation ran until 15 March 2021. The consultation received 127 responses from individuals and stakeholder organisations. We have taken a number of actions in response to the consultation feedback including:

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

4 See <https://www.gov.scot/publications/social-security-experience-panels-case-transfer-survey-findings/> and <https://www.gov.scot/publications/social-security-experience-panels-designing-case-transfer-process-main-report/>

5 <https://www.gov.scot/publications/social-security-consultation-disability-assistance-scotland/>

eligibility criteria is currently applied by the Department for Work and Pensions.

In addition to the above, the views of people with lived experience have been captured through a range of user research and stakeholder engagement activities held throughout Scotland. These events have provided stakeholders the opportunity to feed into the early development of policy discussions, raising awareness of the consultation and further exploring the views of stakeholders and service users in more depth. The events have also provided the Scottish Government opportunity to engage specifically with particular groups that would be impacted by the proposed policy.

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

Options

Option 1: Do Nothing

The transfer of powers to Scotland to make provision for Adult Disability Payment is set out in the Scotland Act 2016 and Social Security (Scotland) Act 2018. Therefore, not taking over powers from the Department for Work and Pensions was not considered to be a viable option.

The Department for Work and Pensions are currently delivering Disability Living Allowance on behalf of Scottish Ministers under an agency agreement. The agency agreement requires that cases are managed under Department of Work and Pensions business as usual processes. At present, awards for Disability Living Allowance can continue in payment but as soon as an award needs active management, for example an award review or consideration of a reported relevant change of circumstances an individual will instead be invited to apply for Personal Independence Payment. If the Department for Work and Pensions were to stop making Disability Living Allowance payments to individuals resident in Scotland and the Scottish Government did not provide a process to transfer individuals onto a replacement Scottish benefit, then up to 44,000 people entitled to Disability Living Allowance would be worse off as they would no longer receive a payment. While these individuals would then be able to make an application for Adult Disability Payment, this would be contrary to our clearly stated case transfer principles, adding a significant burden to individuals. It would not be possible to guarantee that there would be no breaks in payment between their Disability Living Allowance award ending and their Adult Disability Payment award ending.

There are not considered to be any benefits to this option.

Option 2: Ask the Department for Work and Pensions to continue to invite individuals in receipt of Disability Living Allowance to apply for Personal Independence Payment after the national launch of Adult Disability Payment.

The current agency agreement with the Department for Work and Pensions means that they have not forecasted or provided for the processing of applications to Personal Independence Payment from this cohort after the national launch of Adult Disability Payment. This would involve asking this cohort of individuals to apply for Personal Independence Payment (a benefit that individuals find stressful and lacking transparency, and one leading to a high level of inaccurate decisions and lack of support for individuals) in circumstances where someone making a new application does not. This would also be contrary to key commitments made by Scottish Ministers that from the launch of Adult Disability Payment, individuals will be transferred before they have to undergo a DWP face-to-face assessment process.

The Department for Work and Pensions would need to agree such a change to the current agreement and may either not be able to support the additional volumes or require Scottish Ministers to meet additional costs.

There are not considered to be any benefits to this option, as the reduction in complexity for Social Security Scotland is significantly outweighed by the additional stress and anxiety for individuals and the additional burden on the Department for Work and Pensions.

Option 3: Provide for individuals in receipt of Working Age Disability Allowance to transfer to Adult Disability Payment after national launch, where they report a relevant change of circumstances, are due an award review or award renewal or request to transfer (recommended option)

This will ensure that individuals are transferred safely and securely to Social Security Scotland in circumstances where their award can no longer be managed by the Department for Work and Pensions, that they are able to benefit from the improvements we have made to the Scottish system, that support is in place throughout the transfer and review process, and that we meet existing agreements with the Department for Work and Pensions.

Sectors and groups affected

The impact of Adult Disability Payment is going to be dispersed across the country and sectors of the economy. To estimate the cost of Adult Disability Payment, it is possible to look at estimates of the cost of Personal Independence Payment when the Scottish Government took executive competence as estimated by the Scottish Fiscal Commission's forecasts conducted earlier this year. They estimated that the cost of Personal Independence Payment would be £1.583 billion in 2020/21. This rises to £1.65 billion in 2021/2022 and £1.714 in 2022/23.⁶

The overall additional cost of the provisions within these regulations are expected to be below the Scottish Fiscal Commission's £5 million annual materiality threshold for small measures.

Scottish Firms Impact Test

Scottish businesses, including the third sector, responded to the A New Future for Social Security consultation during summer 2016. Responses were received from

⁶ <https://www.fiscalcommission.scot/forecast/scotlands-economic-and-fiscal-forecasts-february-2020/>

14 private businesses and 5 business organisations all of which requested that their responses remain anonymous.

Stakeholder events were also run in tandem with the Consultation on Disability Assistance between 5 March and 28 May 2019 to obtain as wide a view as possible on the forthcoming Scottish social security system. Views were received from many different types of interested stakeholder organisations, such as Child Poverty Action Group in Scotland, Citizens Advice Scotland, the Scottish Association for Mental Health (SAMH), Engender, CEMVO Scotland, Rights Advice Scotland, LEAD Scotland, MND Scotland, National Deaf Children's Society, Royal Blind and Scottish War Blinded, the National Association of Welfare Rights Advisers, Down's Syndrome Scotland, Royal College of Paediatrics and Child Health, Scotland, One Parent Families Scotland, Children's Hospices Across Scotland (CHAS), The Poverty Alliance, Epilepsy Scotland and Glasgow Disability Alliance.

As part of the Consultation on Adult Disability Assistance, we also ran a series of online engagement events to raise the profile of the consultation and to enable as many people as possible to contribute their views. Events were attended by representatives from third sector organisations, welfare rights advisors and members of the public including many individuals with experience of social security and disability benefits. Stakeholder organisations involved in running and/ or attending consultation events included Inclusion Scotland, Versus Arthritis, RNIB, Sight Scotland, People First Scotland, and the Scottish Refuge Council.

It is expected that the introduction of these regulations could cause some additional requests for information and support from existing advice services. However, the volume of those in receipt of Working Age Disability Living Allowance is low and those that will be transferring under these regulations even lower. The Scottish Government will continue to engage with the advice services sector as the programme to implement the social security system in Scotland progresses.

The Scottish Government does not believe that the introduction of case transfer processes from Working Age Disability Living Allowance to Adult Disability Payment will have an adverse impact on the competitiveness of Scottish companies or the third sector within Scotland, the United Kingdom, or elsewhere in Europe or the rest of the world. Additionally, the Scottish Government does not expect there to be any significant impact on the operational business of local authorities or health boards as a result of introducing this provision.

There may be some impact on public sector agencies and third sector organisations operating in Scotland in relation to the way the new Social Security Scotland agency delivers the devolved benefits compared to the status quo. These changes are unlikely to place significant demands on third sector organisations providing advice and support for people receiving and enquiring about social security payments and should not require a significant change to their operations.

Competition Assessment

The Scottish Government does not believe that Adult Disability Payment or the transfer processes will directly or indirectly limit the number of suppliers, nor does it limit the ability of suppliers to compete or reduce suppliers' incentives to compete vigorously.

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

The Motability Scheme is currently the only national scheme that is open to eligible individuals in receipt of the higher rate mobility component of Disability Living Allowance that can take advantage of certain tax exemptions that makes running a heavily discounted vehicle and equipment scheme financially sustainable. In ensuring that there is a devolved equivalent, we anticipate that the impact upon the existing supply chain of accessible vehicles and equipment will be nominal.

The Scottish Government has launched the Accessible Vehicles and Equipment Scheme to ensure that individuals in Scotland who receive a qualifying rate of disability assistance will be able to lease a range of cars, scooters and powered wheelchairs directly from a choice of accredited providers.

Accreditation under the Accessible Vehicles and Equipment Scheme is intended to allow other suppliers to join the Scheme – the Scheme does not directly or indirectly limit the number of suppliers, nor does it limit the ability of suppliers to compete or reduce suppliers' incentives to compete vigorously. Potential suppliers have a mechanism to request a review of a decision to refuse accreditation.

Social Security Scotland will arrange to pay the qualifying part of an individual's disability assistance to the accredited provider for the duration of a lease. Individuals who select the scheme to meet their mobility needs will not be subject to a credit check and will have access to a range of affordable choices directly from providers. Arrangements are in place for those transferring from the Department for Work and Pensions to Social Security Scotland to simultaneously transfer into the Accessible Vehicles and Equipment Scheme with their existing vehicle.

In the current system, assessments are carried out by private companies who do so on behalf of the Department for Work and Pensions. Their assessors then produce reports which are used by Department for Work and Pensions decision makers to determine entitlement to Personal Independence Payment. In Scotland, this is carried out by Independent Assessment Services (formerly ATOS) or Capita.

We are replacing health assessments with individual consultations. Consultations will be carried out by health and social care practitioners in Social Security Scotland. There is therefore no need to put any contracts out to tender.

- **Will the measure directly or indirectly limit the number or range of suppliers?**

No

- **Will the measure limit the ability of suppliers to compete?**

No

- **Will the measure limit suppliers' incentives to compete vigorously?**

No

- **Will the measure limit the choices and information available to consumers?**

No

Legal Aid Impact Test

Individuals applying for Adult Disability Payment will have a right to request a re-determination of their entitlement by Social Security Scotland, and have a right of appeal to the First-Tier Tribunal for Scotland's Social Security Chamber.

It is envisaged that there will marginal additional demands placed on the legal aid system as a result of implementing this change. The caseload is unlikely to change significantly. Legal assistance is available to individuals and is subject to a financial eligibility test based on the "disposable income" and "disposable capital" of the applicant. Current recipients of Disability Living Allowance are already able to access legal aid to appeal entitlement decisions. The availability of Short Term Assistance in the Scottish system may mean that more individuals feel able to request a re-determination and to appeal.

It is a demand led budget and will continue to be available to individuals to appeal an entitlement decision to the First-tier Tribunal, to the Upper Tribunal, the Court of Session or Supreme Court. The Scottish Government does not expect any new impact on the legal aid budget, and expects legal assistance through the statutory scheme of Advice and Assistance, and Advice by Way of Representation will continue.

It is also expected that as a result of the extensive consultation and co-designed service design process, the decision making quality of Social Security Scotland will be improved and reduce appeals to tribunal by individuals as a result.

Enforcement, sanctions and monitoring

Under section 97 of the Social Security (Scotland) Act 2018, the Scottish Commission on Social Security (the Commission) was asked to provide a scrutiny report on the regulations. On 10 February 2022, the Scottish Government provided draft regulations to the Commission, with a policy note to accompany the regulations. The Commission published its scrutiny report on 30 March 2022, making 8 recommendations and 4 observations in relation to the draft regulations.

The Scottish Government will publish its formal response to this report when laying these regulations before the Scottish Parliament.

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

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

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

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

The Scottish Ministers have also committed to engaging with, and reporting regular progress to, the Islands Strategic Group to ensure that those representing the interests of island communities and others with experience of the current system, are fairly represented in the development and delivery of the Scottish social security system.

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

Implementation and delivery plan

The Scottish Government intends to begin transferring individuals in receipt of Working Age Disability Living Allowance to Social Security Scotland from the national launch of Adult Disability Payment on Summer 2022. Social Security Scotland will handle all aspects of the individual's transfer to minimise stress and anxiety.

A communications strategy was developed in advance of the launch of Adult Disability Payment and the transfer process, which aims to ensure that individuals, their families and carers, the third sector, local government, health sector and advice providers are aware of the introduction of Adult Disability Payment, and understand the eligibility criteria, as well as understanding how and when their award will transfer if relevant. We will develop the communications strategy so that it will be linked in with wider Scottish Government initiatives for improving outcomes for disabled people.

Post-implementation review

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

Summary and recommendation

In summary, the Scottish Government has identified evidence that the introduction of Adult Disability Payment will constitute an investment into the Scottish economy. It is anticipated that these funds will be used to pay for care, goods and services and therefore businesses could benefit from the introduction of Adult Disability Payment. It is not considered that the introduction of a case transfer mechanism to transfer an estimated 100 individuals a month from Disability Living Allowance to Adult disability Payment will make a material difference to that assessment.

Any impact to businesses as a result of these regulations should be positive or neutral. The Scottish Government have worked closely with stakeholders to develop the policy and will continue to do so until Adult Disability Payment until the process of transferring individuals' awards from Department for Work and Pensions to Social Security Scotland has completed.

Declaration and publication

The Cabinet Secretary or Minister responsible for the policy (or the Chief Executive of non-departmental public bodies and other agencies if appropriate) is required to sign off all BRIAs prior to publication. Use appropriate text from choices below:

- Sign-off for Partial BRIAs:

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: Ben Macpherson

Date: 06 May 2022

Minister's name – Ben Macpherson

Minister's title – Minister for Social Security and Local Government

Scottish Government Contact point: Mhairi Wilson, Case Transfer Policy Officer