

# **The Disability Assistance for Children and Young People (Amendment) (Scotland) Regulations 2021**

**Business and Regulatory Impact Assessment**

**June 2021**

## **Business and Regulatory Impact Assessment**

### **Title of proposal**

The Disability Assistance for Children and Young People (Amendment) (Scotland) Regulations 2021

### **Purpose and intended effect**

### **Background**

1. The Social Security (Scotland) Act 2018<sup>1</sup> (the 2018 Act) sets out the broad framework for the delivery of devolved social security in Scotland. On 1 April 2020, the Scottish Ministers took executive and legal competence for disability benefits, including Disability Living Allowance for Children (DLAC), Attendance Allowance (AA) and Personal Independence Payment (PIP).
2. These benefits will continue to be delivered during a transition period by the Department for Work and Pensions (DWP) under the terms of an Agency Agreement agreed with the Scottish Government, to ensure the safe and secure devolution of disability benefits.
3. The Scottish Government is replacing DLAC, PIP and AA with new forms of assistance under the 2018 Act. These new benefits will be delivered by Social Security Scotland on behalf of Scottish Ministers with most determinations carrying a right of appeal to the First-Tier Tribunal for Scotland's Social Security Chamber.

The first form of disability assistance the Scottish Government is delivering is Child Disability Payment (CDP). This was formerly known as Disability Assistance for Children and Young People. It replaces DLAC for children and young people in Scotland between three months and 18 years of age. In addition to supporting new applications, Scottish Ministers will make provision for the transfer of responsibility for delivering disability benefits for children and young people under the age of 18 who receive DLAC in Scotland from the Department for Work and Pensions (DWP) on behalf of Scottish Ministers to Social Security Scotland, and for changing the disability benefits for these children and young people from DLAC to CDP. The cases and supporting information for these clients will transfer to Social Security Scotland systems once new applications functionality for the respective devolved benefit is in place. Over 700,000 existing clients will require to be transferred from the Department for Work and Pensions (DWP) to Social Security Scotland as devolved benefits 'go live'.

4. Based on estimates provided by the Scottish Government's Communities Analysis Division, there are 57,000 children and young people who will transfer to CDP from DLAC.

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<sup>1</sup> <http://www.legislation.gov.uk/asp/2018/9/contents/enacted>

5. Scottish Ministers have set out a number of case transfer principles which we have used to guide the development of our approach to case transfer. Our commitment to equalities will run through all of these principles and also guides our overall approach. The principles are:

- **Correct payment at the correct time** – ensuring that the case transfer process is designed so that clients will receive the same amount for the Scottish benefit as they received for the corresponding UK benefit to include checks at the point of transfer
- **No re-applications** - we will not require clients to re-apply for their benefit as part of the case transfer. We will work with DWP to move clients automatically to Social Security Scotland and the corresponding new Scottish benefit.
- **No face to face DWP re-assessments** - we will ensure that no-one will be subject to a face to face re-assessment by DWP when new applications for Adult Disability Payment open. DWP do not conduct face to face assessments for DLA Child renewals, so this is not a consideration for DLA Child case transfer.
- **Complete as soon as possible** – Whilst the previously set out timetable will no longer be possible due to the impacts of Covid-19, Scottish Ministers have been clear that they want to complete the transfer of cases as soon as is possible in a way that will not create unacceptable risks for clients.
- **Clear communication with clients** – we will inform our clients the date their case will be transferred and will keep them informed at the various stages of the case transfer process.

6. The Disability Assistance for Children and Young People (Scotland) Regulations 2021 set out how CDP will be delivered and makes provision for the transfer of responsibility for delivering disability benefits for children and young people under the age of 18 who receive DLAC in Scotland from the Department for Work and Pensions (DWP) on behalf of Scottish Ministers to Social Security Scotland, and for changing the disability benefits for these children and young people from DLAC to CDP.

7. The amendments being introduced by these regulations are being made with the purpose of aligning existing rules on CDP entitlement with the policy intention which is to help improve outcomes for disabled children and young people by providing financial assistance to help meet the additional costs associated with care and mobility needs, as a result of having a disability. To achieve this we are doing the following :

Amendments relating to the effect of time spent in care homes and in legal detention

- ensuring that children and young people who are in-patients in a hospital or hospice are not treated as though they are in legal detention and will continue to be paid their care component of CDP;
- clarifying the date when payment of the care component will stop when an individual is admitted into a care home or legal detention.

#### Amendments relating to age criteria

- ensuring that young people can remain on Child Disability Payment past the age of 18 in specific circumstances;

#### Amendments to the past presence test

- dis-applying the past presence test to serving members of the armed forces and civil servants;
- making changes to the temporary absence from the Common Travel Area (CTA) to allow Scottish Ministers to temporarily stop payment of CDP rather than end entitlement. The temporary absence can be for up to 13 weeks for any reason, or up to 26 weeks if the absence is in connection with arrangements made for the medical treatment of the individual, provided the absence is not expected to last more than 52 weeks;
- clarifying that an individual should be capable of having an advance award made where they will satisfy the past presence condition in the next three months.

#### Amendments relating to the mobility component

- clarifying the policy intention as regards the higher rate mobility component to make it clear that clients have to meet the conditions of entitlement for a higher rate of payment for 13 weeks before the new rate of entitlement can begin.

#### Amendments regarding a late report of a change of circumstances

- clarifying the date when an increase in entitlement can take effect when a change of circumstances is reported late.

#### Amendments regarding changes in residence between Scotland the rest of the United Kingdom

- clarifying that when an individual fails to report a move from Scotland to either England and Wales, or Northern Ireland, the date that their CDP payment will stop is 13 weeks after the date of the move;
- making it clearer that entitlement to CDP begins on the day after the day on which the person's entitlement to Disability Living Assistance ends.

#### Amendments relating to re-determination and appeals

- to clarify when the period of time Social Security Scotland has to conduct a re-determination runs from the date the First-tier Tribunal decides that a re-determination request has been made in such form as the Scottish Ministers require.

#### Amendments to Short-Term Assistance

- to make clear that short-term assistance is payable during the period between the First-tier Tribunal setting aside their own decision and then making a new determination;
- to include admission to alternative accommodation to the scenarios when an individual is not entitled to short-term assistance in respect of the care component of CDP;

- clarifies that Scottish Ministers are to make a determination without application when ending an individual's entitlement to short-term assistance.

#### Amendments relating to Case Transfer

- to correct citations to the Social Security Contributions and Benefits Act 1992;
- to clarify interpretation to ensure clients with severe visual impairment receive the correct rate of the mobility component;
- to clarify the effective date of determinations without application that result from a change to a relevant past Disability Living Allowance award whether the change to that award was made under the UK or Northern Irish rules.

#### **Objective**

8. The Social Security (Scotland) Act 2018 will allow Scottish Ministers to create a distinctly Scottish approach to developing a new social security system which has dignity and respect at its core.

9. Child Disability Payment is intended to improve outcomes for disabled children and young people, by providing financial assistance to help meet the additional costs of living with a disability or health condition. This includes physical or mental disabilities and health conditions which have a significant adverse effect on an individual's daily activities.

10. The impact of introducing Child Disability Payment in place of Disability Living Allowance for Children (DLAC) has been reviewed in the principal regulations Business and Regulatory Impact Assessment (BRIA). This BRIA will focus on the changes we are making to the Disability Assistance for Children and Young People (Scotland) Regulations 2021, and should be read in conjunction with the other impact assessments conducted for the policy. This includes:

- the Child Rights and Wellbeing Impact Assessment;
- the Island Communities Impact Assessment;
- the Equality Impact Assessment); and
- the Fairer Scotland Duty Assessment.

11. The Scottish Health Survey 2018 provides an accurate estimate of the number of disabled children and young people in Scotland. Within the 0-15 age group, 18% of children have a limiting longstanding illness.<sup>2</sup> For young people aged 16-24, 24% of young people have a limiting longstanding illness.

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<sup>2</sup> Scottish Health Survey (2018) <https://www.gov.scot/publications/scottish-health-survey-2018-supplementary-tables/>

12. In 2019, there were 867,345 children aged 15 and below in Scotland<sup>3</sup>. As of August 2020, there were 41,811 children entitled to Disability Living Allowance for Children (DLAC)<sup>4</sup>. This accounts for roughly 4.8% of this demographic.

13. UK wide, disabled people have higher poverty rates than the general population. Disabled people make up 28% of people in poverty. A further 20% of people who are in poverty live in a household with a disabled child. In Scotland 410,000 households in poverty (42%) include a disabled person. Disabled young adults in the UK aged 16-24 years have a particularly high poverty rate of 44%.

14. Scotland-wide, there are higher levels of child material deprivation in households containing a disabled person, at 20% compared to households without a disabled person (at 8%). There are higher rates of food insecurity among disabled people (18%) compared to non-disabled people (5%). There is a higher likelihood of living in relative poverty after housing costs with a disabled person in the household (24% of families with a disabled person compared to 17% of families with no disabled members).

15. Disability and unemployment/under-employment are positively correlated. 14% of 'workless families' (defined as families where parents are predominately out of work or have little connection to the labour market; who live in social rented accommodation and are reliant on benefits for their income) have one or more children with a disability or long-term illness. A further 17% of 'struggling to get by' families (unemployed or working part-time, half of which are single-parent families) have one or more children with a disability or long-term illness<sup>5</sup>. Child material deprivation in households containing a disabled person reaches 20% compared to 8% of households without a disabled person.

16. Even where one or more parent in the household is in employment, within families with a disabled child, the same level of income secures a lower standard of living than it would for a disabled person. Research conducted by the Papworth Trust<sup>6</sup> showed that the annual cost of bringing up a disabled child is three times greater than for a non-disabled child. Disabled people face higher costs than non-disabled people, such as the cost of specialist equipment, therapies and home adaptations to manage a condition.<sup>7</sup> Travel costs too, may be higher as families have to afford the cost of taxis to and from hospital where it is not possible to use public transport (and/or public transport may not be available).

## **Rationale for Government Intervention**

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<sup>3</sup> NRS Scotland Mid-Year Population Estimates (2019) <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/mid-year-population-estimates/mid-2019>

<sup>4</sup> DWP Stat-Xplore (Accessed April 2021)

<sup>5</sup> <https://www.gov.scot/publications/poverty-perspective-typology-poverty-scotland/pages/5/>

<sup>6</sup> Papworth Trust, Disability in the United Kingdom 2010, in <https://www2.le.ac.uk/departments/law/research/cces/documents/the-energy-penalty-disability-and-fuel-poverty-pdf>

<sup>7</sup> <https://www.jrf.org.uk/income-and-benefits/>

17. Our assessment of the Disability Assistance for Children and Young People (Amendment) (Scotland) Regulations 2021 and CDP overall in relation to Business and Regulatory impact was undertaken using the five principles of Better Regulation, as follows:

18. **Proportionate:** The Scottish Government will look to identify and minimise any indirect impacts, for example administrative burdens, on local government, private businesses or third sector organisations as a result of the introduction of CDP.

19. The equivalent UK benefit, DLAC, will reduce in caseload as CDP 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.

20. In the short term, there may be additional work for some third sector organisations as they make arrangements for their staff to incorporate knowledge of the new benefit 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 CDP and case transfer, and intends to create data sharing processes with relevant public bodies. It is anticipated that this will reduce the burden of providing information to individuals that public agencies currently undertake, by creating formal data sharing agreements and processes with one Agency, Social Security Scotland.

21. **Consistent:** CDP builds on the Social Security (Scotland) Act 2018 framework of a new system that is underpinned by dignity, fairness and respect.

22. CDP will be delivered on an entitlement basis to eligible people. Decision-making will be person-centred and operational guidance for case managers within Social Security Scotland will be created in line with the rules within the regulations, to provide a framework for consistent decision making across all applications.

23. There will be provision in place to challenge the decision of Social Security Scotland through a re-determination and all applicants will have the right of appeal to the First-Tier Tribunal (FtT) for Scotland.

24. Where possible the principal regulations and the amendment regulations and the associated policies have been aligned with those for Adult Disability Payment to provide a consistent approach for clients, and services who will support them, to make applications for disability assistance and navigate Scotland's social security system.

25. **Accountable:** All decisions made relating to an application for Disability Assistance will be provided to clients 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 clients are informed of how the decision relating to their benefit application was assessed.

26. 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.

27. We will ensure that clients understand their right to have their decision re-determined by Social Security Scotland and to request an appeal to the FtT if they are unsatisfied with the decision. This includes their right to appeal directly to the FtT if Social Security Scotland is unable to complete the re-determination process before 56 days have elapsed. Families and carers of children and young people entitled to CDP 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 CDP. This will help to ensure that individuals are not discouraged from challenging a decision they do not agree with or seeking administrative justice.

28. If for any reason clients feel their new CDP award is incorrect at the point of transfer, they will be able to request a re-determination and appeal any such re-determination through Social Security Scotland.

29. Clients can continue to request a revision or supersession to their DLAC award through DWP, even after it has ended on transfer.

30. **Transparent:** We will develop a communications strategy for each form of disability assistance, including CDP and case transfer. This will aim to ensure that clients and their families or carers, the third sector, local government, education sectors and advice providers are aware of the benefit, know how to apply and understand the eligibility criteria. Where a decision is made that an individual is not entitled, Social Security Scotland will provide a reason why, as set out in the Social Security (Scotland) Act 2018, to ensure that decisions are understood and that our processes are as transparent as possible.

31. We will publish guidance on CDP and case transfer in a way that takes account of differing communication needs, so that entitlement is clearly understandable. Social Security Scotland will create a bank of CDP 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.



32. Social Security Scotland will produce communications materials in other languages on request. Social Security Scotland communications will work with community radio and foreign language press to provide messaging on CDP and case transfer to communities. In some circumstances printed marketing materials may not be the right way to engage with these 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.

33. We published the first Benefit Take-Up Strategy<sup>8</sup> (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.

34. 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 roundtable events which will be co-designed with important organisations to explore solutions to issues such as stigma, barriers to access, and the human rights-based approach.

35. **Targeted only where needed:** CDP 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 CDP in a way that is consistent with the principles of dignity, fairness and respect. For those clients whose entitlement will be transferred from DLAC to CDP, they will not be required to re-apply for their benefit.

36. As described above, these regulations set out how children and young people can be entitled to CDP and detail how clients' entitlement will be transferred from DLAC to CDP. We have undertaken analysis, based around the anticipated eligibility criteria, to scope potential caseload size. In 2019, there were 867,345 children aged 15 and below in Scotland<sup>9</sup>. In August 2020, there were 41,811 children entitled to Disability Living Allowance for Children (DLAC)<sup>10</sup>. This accounts for roughly 4.8% of this demographic. Scottish Fiscal Commission forecasts estimate that we could receive approximately 2,000 new applications for Child DLA in 2021/22<sup>11</sup>. It should be noted however that there is still uncertainty about how the pandemic will impact on the forecasts.

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<sup>8</sup> [Benefit Take-up Strategy](#)

<sup>9</sup> NRS Scotland Mid-Year Population Estimates (2019) <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/mid-year-population-estimates/mid-2019>

<sup>10</sup> DWP Stat-Xplore (Accessed April 2021)

<sup>11</sup> Source: Scottish Fiscal Commission: <https://www.fiscalcommission.scot/wp-content/uploads/2021/01/Scotlands-Economic-and-Fiscal-Forecasts-January-2021-Chapter-5-Social-Security-Supplementary-Tables.xlsx>

37. When children and young people transfer from DLAC to CDP, the rates and component they are entitled to will remain unchanged. The Social Security (Scotland) Act 2018 sets out the duty on Scottish Ministers to promote uptake of benefits for eligible individuals, and the Act requires Ministers to set out in parliament a benefit uptake strategy. 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 from third sector or private organisations.

38. It is expected that the introduction of CDP and the beginning case transfer 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**

39. 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 Equality Impact Assessment which represented the Scottish Government's work on the impact of social security policy on people with protected characteristics prior to the consultation.

40. There were 521 formal written responses submitted, of which 241 were from organisations and 280 from individual respondents. Of the 241 organisational responses, 81 were received from stakeholder groups relating to children/young people, equalities and human rights, disability and long term conditions, and carers. The independent analysis of the responses along with the Scottish Government response were published on 22 February 2017<sup>12</sup>. In addition, the Equality Impact Assessment that was published alongside the Social Security (Scotland) Bill was used to inform the partial Equality Impact Assessment for these Regulations.

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

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<sup>12</sup> <https://www.gov.scot/publications/analysis-written-responses-consultation-social-security-scotland/>

42. Two surveys regarding the case transfer process was 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.<sup>13</sup> These surveys confirmed that of most importance to panel members was that they continue to receive the correct payment at the correct time.

43. We have been working with relevant stakeholders to specifically target disabled people from seldom heard groups as part of our engagement. For example, we have reached out to the Inclusive Communications Stakeholder Reference group to seek users who come from seldom heard groups. This is a continuous exercise and more information from this work is imminently forthcoming.

44. 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, namely Disability Assistance for Children and Young People (now known as CDP), and replacement benefits for PIP and AA<sup>14</sup>. The consultation closed on 28 May 2019, having received 263 replies, of which 74 were from stakeholder organisations and 189 were from individuals.

45. Regarding disability assistance, an initial framing exercise for the partial Equalities Impact Assessment relating to disability assistance was carried out in 2017 involving a range of internal Scottish Government stakeholders. In addition to highlighting a number of positive impacts and potential barriers, the exercise enabled significant data gaps to be identified. This in turn led to the targeted consultation with stakeholders representing people with protected characteristics which was undertaken during the Consultation on Disability Assistance between 5 March and 28 May 2019.

46. The Scottish Government has also undertaken ongoing consultation with stakeholders through our independent Disability and Carers Benefits Expert Advisory Group (DACBEAG) as well as the Ill Health and Disability Benefits Stakeholder Reference Group. DACBEAG is chaired by Dr Jim McCormick and comprises individuals with significant practical experience of the UK 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.

47. 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.

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<sup>13</sup> 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/>

<sup>14</sup> <https://www.gov.scot/publications/social-security-consultation-disability-assistance-scotland/>

48. Despite the continuing impact of coronavirus, work with Experience Panels has continued, with user testing on digital material that will be available on the Social Security Scotland website. Specifically with regards to case transfer, framing exercises have been taking place in 2020 and will continue to take place with a range of internal Scottish Government stakeholders. This will give information to people who are considering making a CDP application. We focused on making sure that information was easy to find, understand and navigate.

## **Business**

49. A full Business and Regulatory Impact Assessment was carried out for the principal regulations. In that assessment it was estimated that for 2022-23, the financial impact to the Scottish Government of the cost of introduction of Child Disability Payment is to be £275 million. Since February 2020, the Scottish Fiscal Commission updated the Child Disability Payment forecast. The revised financial impact to the Scottish Government of the cost of introduction of Child Disability Payment for 2022-23 is now estimated to be £269 million. The impact of the benefit is going to be dispersed across the country and sectors of the economy.

## **Scottish Firms Impact Test**

50. 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.

51. It is expected that the introduction of these regulations could cause additional requests for information and support from existing advice services. As a new policy, this may result in additional pressure on advice agencies to become informed. The Scottish Government will continue to engage with the advice services sector as the programme to implement the social security system in Scotland progresses.

52. The Scottish Government does not believe that the commencement of case transfer or the introduction of CDP and the changes made to the eligibility criteria will have an adverse impact on the competitiveness of Scottish companies or the third sector within Scotland, the UK, or elsewhere in Europe or the rest of the world. The change 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. 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.

53. There may be some negligible impact on businesses 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.

### **Business Forms**

54. No new business forms will be brought in with the implementation of the proposed legislation.

### **Competition Assessment**

55. The Scottish Government does not believe that CDP or case transfer will have an adverse impact on the competitiveness of Scottish companies or the third sector within Scotland, the UK, or elsewhere in Europe or the rest of the world. CDP 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. 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 CDP.

56. Any procurement required to support the administration of CDP or commencement of case transfer 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.

### **Legal Aid Impact Test**

57. Clients applying for CDP 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.

58. If for any reason clients feel their new CDP award is incorrect at the point of transfer, they will be able to request a re-determination and appeal any such re-determination through Social Security Scotland.

59. Clients can continue to request a revision or supersession to their DLAC award through DWP, even after it is has ended on transfer.

60. It is not envisaged that there will be any greater demands placed on the legal aid system as a result of implementing this change, principally because the caseload is unlikely to change significantly. Legal assistance is available to individuals and is subject to a financial eligibility test based on the "disposable income" and "disposable capital" of the applicant.

61. 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.

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

### **Enforcement, sanctions and monitoring**

63. On-going stakeholder engagement with key organisations – such as the Child Poverty Action Group, Rights Advice Scotland, Young Scot, DACBEAG, and our Ill Health and Disability Benefit Stakeholder Reference Group – will provide the Scottish Government with an opportunity to monitor the impact of introducing CDP.

64. The Communities Analysis Division (CAD) within the Scottish Government will also run a comprehensive evaluation programme to consider the impact of introducing CDP.

65. 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.

### **Implementation and delivery plan**

66. The Scottish Government will begin accepting applications for assistance from new clients who do not receive either a UK or Scottish Government disability benefit first, and at a later date, existing DWP clients will transfer to Social Security Scotland without having to make a new application. Social Security Scotland will handle all aspects of the client's case to minimise stress and anxiety.

67. A communications strategy will be developed in advance of the launch of CDP and commencement of case transfer, which will aim to ensure that children and young people, their families and carers, the third sector, local government, education sector and advice providers are aware of the introduction of CDP, and understand the eligibility criteria. We will develop the communications strategy so that it will be linked in with wider Scottish Government initiatives for improving outcomes for disabled people. The Scottish Government plans to publish its Disability Benefits Evaluation Strategy in Summer 2021 which will explore the effectiveness of specific policy changes for clients.

### **Summary and recommendation**

68. In summary, the Scottish Government has identified evidence that the introduction of CDP and commencement of case transfer will contribute an additional 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 CDP.

69. 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 CDP opens for new applications, the transfer process of clients from DWP to Social Security Scotland, and beyond.

### **Declaration and publication**

70. 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:

71. 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:**

**Date:**

**Minister's name** – Ben Macpherson

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



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