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Tax Law Review Committee

TLRC Discussion Paper

Tax and disability in the UK: review of trusts and other savings options

IFS Tax Law Review Committee

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Tax and disability in the UK: review of trusts and other savings options

Paul Brice*

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Preface

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Disclosures *The author is a trustee of a trust with a disabled beneficiary settled by a relative.*

This paper in part reflects concepts and material discussed in sections of Paul Brice's doctoral thesis, "Is the UK tax system effective in supporting disabled people?", supervised by the late Professor Glen Loutzenhiser, and available at:

https://ora.ox.ac.uk/objects/uuid:06d6fa64-0a65-4f10-ba75-d62c9bc96dab

Disclaimer *Nothing in this discussion paper constitutes advice nor should any part of it be relied upon for decision making. The paper does not purport to provide a comprehensive analysis of either tax or other matters relevant to trusts, savings, disability and associated regulations in the UK or elsewhere. Any person considering the trust or other matters discussed in the paper should obtain their own professional advice reflecting their particular circumstances.*

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1. Summary and recommendations

The nature of many people's disability may lead to profound concerns over their future financial provision.

There is a well-established disability trust regime in the UK for putting aside savings in respect of eligible disabled people. Disability trust regimes also operate in a number of other countries.

The UK disability trust regime offers a number of benefits - including tax treatments which tax a trust's income and gains as if these were those of the disabled person, rather than at higher trust rates.

This paper recommends that this regime continues with some modifications – and, to help contain costs, the publication by HMRC of an approved "model trust deed" and guidance which can be used as a basis for drafting.

However, drawing on overseas comparisons, the paper recommends the introduction of an additional simplified savings vehicle with many similarities to trusts to enable savings to be made by people for whom the complexity and cost of trusts may discourage their use.

This would mean that the peace of mind that can come from putting aside money for, say, the future of a disabled child can be available to a broad range of people, not just those who can afford the time and resources to set up and run trusts.

1.1 Introduction

People with severe disabilities can face profound limitations in earning potential. Without private financial support, many can be wholly reliant upon the state for their livelihoods and care.

In the UK, the state provides eligible disabled people with a range of public services, care and welfare benefits. However, state provision is subject to many limitations and constraints – and commentators suggest that the UK public finances are under considerable pressure. Moreover,

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analysis by the disability charity Scope[1] concludes that, for many disabled people and their families, state support may not address all of their "costs of disability".

It is very likely, therefore, that a severely disabled person and their family will have concerns over their long-term future financial provision. This leads to an understandable desire to put aside savings to meet future needs and unexpected costs; enhance financial security; and, potentially, finance training or other activities to improve quality of life and prospects. This desire may become particularly acute as, for example, a parent becomes elderly and worries about the future of a disabled child after they have passed away.

Notwithstanding this motivation to make financial provision, there are various reasons why a simple transfer to a disabled person may not be practical or desirable compared to making provision for non-disabled family members. For example, there may be issues of mental capacity leading to a need for oversight of the disabled person's financial affairs – such as through a Lasting Power of Attorney or Property and Financial Affairs Deputyship.

Further, if a disabled person holds savings above certain levels in their own name, this will result in a curtailment of means-tested welfare benefits or care – effectively absorbing all of the private provision that many families could manage to make.

There are currently two main alternatives for families wishing to make significant future provision for a disabled relative.

First, the family can set up a trust where the disabled person is not entitled to the assets or income until distributed to them (and, therefore, the income and assets are not taken account of for means testing until then – but once distributed they are taken into account). In the UK – as in Australia, Canada and the US - there are specific tax provisions relating to specialist trusts for disabled people which are discussed further in this paper.

But, depending on circumstances, trusts can be complex and costly to set up and administer, potentially excluding many families with moderate means. The paper fully acknowledges the services provided, for example, by Mencap[2]. However, depending on the nature and scale of any investments, establishing a trust requires set-up costs, including legal advice; and, potentially, ongoing costs such as tax compliance fees, investment advisory fees and legal advice as needed.

[1] "Disability Price Tag 2025", Scope, available at:
https://www.scope.org.uk/campaigns/disability-price-tag
Further commentary is provided in Section 2.5.

[2] Details of Mencap Trust Company. the services it provides, and details of its charges can be seen at:
https://www.mencaptrust.org.uk
The 2024/25 accounts indicate that the Company managed 306 active trusts with assets totalling £31.6 million.

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Further, the complexity of trusts may make them challenging to understand – and acting as a trustee intimidating.

An existing alternative – for example, if an elderly parent is concerned about a disabled child's future once the parent has passed away - is to give money to another close friend or relative such as a sibling in the hope that, if needed, they "do the right thing" for their disabled relative. Clearly, tax consequences aside, this informal arrangement is not without significant risk. The close friend or relative may die, divorce or become bankrupt - even if they want to "do the right thing".

Against this backcloth, the potential costs and complexity of trusts, and the risks associated with any informal arrangement, lead to the question of whether, particularly for more modest savings levels, there is a case for an additional, simpler way of allowing savings by or on behalf of a severely disabled person, making many of the advantages of trusts available to a broader group of people at lower cost and complexity. Drawing on examples from Canada and the US, this paper argues that there is a powerful case for such an arrangement to be provided through the UK's well-developed retail financial services industry – alongside the existing trust regime – at no material increased cost to the state.

From the outset, the paper acknowledges that determining policy around specialist savings options for disabled people is complex and nuanced – posing difficult questions around, for example, eligibility definitions given the very broad nature and implications of disability; and the interaction of savings arrangements with means testing for care and welfare benefits.

The paper suggests that, as a "base case", a simplified arrangement could have many symmetries of treatment in areas such as tax treatments and means testing with specialist disability trusts – but it highlights areas where there may be policy reasons to adopt alternative approaches.

The paper fully recognises that policy formulation around the paper's recommendations will require appropriate consultation with interested stakeholders.

Overall structure of the paper

The remainder of Part 1 of the paper provides key contextual and background information around disability and savings arrangements; and summarises the paper's conclusions and recommendations.

Part 2 of the paper provides more in-depth analysis to support the paper's findings including, amongst other areas, reviewing options for savings by and for disabled people – both trusts and other arrangements - in Australia Canada and the US.

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1.2 UK public support for disabled people

Current UK public financial and other provision for disabled people (and their carers) is multi-faceted and encompasses a range of benefit payments[3]; public services - including care; and other financial support such as grants. This paper acknowledges the extensive political debate around, for example, both disability benefit levels and eligibility and the future provision of social care – but its focus is solely on savings options for disabled people.

Benefits

Most direct financial support for disabled people is provided by the benefits system[4].

Certain benefits - such as Personal Independence Payment ("PIP") or Attendance Allowance - are specifically designed to help with "costs of disability" or caring and are not means-tested. The contributory New Style Employment and Support Allowance is also not technically means-tested but is reduced depending on pension or permanent health insurance income. Other benefits, such as Universal Credit, are means-tested.

The levels of available benefit for an individual vary markedly depending on circumstances – but, by way of example for people with severe disabilities, in 2025/26 a single individual over 25 with limited capability for work and work related activity ("LCWRA") might be eligible for *monthly* Universal Credit payments of some £823[5] (being the standard rate plus LCWRA); and *weekly* PIP payments at enhanced rates for both mobility and daily living of some £187[6] (an average of around £812 per month) – in addition to any other payments such as the housing element.

Public services – including care

Disabled people may be eligible for a range of public services such as healthcare under the NHS; SEND[7] education; and care provided, in England, under the Care Act 2014 (other legislation governs provision in Northern Ireland, Scotland and Wales).

[3] The 2023/24 DWP Annual Report and Accounts states on Page 23 that the total of specific pension age support for disabled people *and people with health conditions* in the year was £13.1bn; and for children and working age disabled people *and people with health conditions*, the total was £27.1bn - a total of £40.2bn. This *excludes* general benefits such as Universal Credit payable to eligible disabled people. Note that the definitions appear broader than in relation to disabled people alone as the data include "people with health conditions" who may not meet the definition of disabled.

[4] A summary of Government disability benefits and other financial support can be found at: https://www.gov.uk/financial-help-disabled

[5] For a summary of Universal Credit, see a UK Government summary at: https://www.gov.uk/universal-credit

[6] For a summary of PIP, see a UK Government summary at: https://www.gov.uk/pip

[7] Special Educational Needs and Disabilities.

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Importantly, the provision of social care - other than when provided in specific circumstances by the NHS[8] - is means-tested. The cost of social care varies from individual to individual – but for a person with severe lifelong disabilities might run into multiple tens of thousands of pounds per annum – if not more[9].

The UK public finances and potential system pressures

There has been considerable commentary around developing pressures on the UK public finances – and, in turn, pressures on public services such as health and social care.

For example, in Section 1.5 of their July 2025 Fiscal Risks and Sustainability Report[10], the Office for Budget Responsibility (OBR) wrote:

> **"1.5 Against this more challenging domestic and global backdrop, the scale and array of risks to the UK fiscal outlook remains daunting. [ ] Over the long term, the demographic pressures of an ageing population and rising costs of healthcare and other age-related expenditures are still, on current policy settings, projected to push borrowing above 20 per cent and debt above 270 per cent of GDP by the early 2070s."**

Building on the OBR's analysis and concerns expressed by a range of other commentators around potential risks to the UK public finances, it is understandable why friends and relatives

[8] "NHS Continuing Healthcare", NHS, at: https://www.nhs.uk/social-care-and-support/money-work-and-benefits/nhs-continuing-healthcare/

[9] The County Councils Network reported on 11 November 2024 – amongst other findings - that:

> "*Increased spending is driven by the complexity and type of care individuals are receiving, rather than increased numbers of people requiring support. The average level of weekly expenditure per individual has increased by 31% for working age and lifelong disabled adults between 2019 and 2024, from £565 to £735.*
>
> *Care packages for working age adults with the most complex learning disabilities have witnessed the most acute rise in placements costs. Individuals in this cohort typically receive a care package with an average weekly cost of £3,316 per person. This has increased by an average £1,299 in the last year. Support for working age adults with a learning disability is the single biggest element of council commissioning, representing 37% – £6.4bn – of all care and support costs and more than the total amount spent on over 65s.*"

See "New analysis reveals two-thirds of social care commissioning budgets are spent on working age and disabled adults, as councils call for this 'forgotten' group not to be overlooked", County Councils Network, 11 November 2024, at: https://www.countycouncilsnetwork.org.uk/new-analysis-reveals-two-thirds-of-social-care-commissioning-budgets-are-spent-on-working-age-and-disabled-adults-as-councils-call-for-this-forgotten-group-not-to-be-overlooked/

[10] The OBR's July 2025 Fiscal Risks and Sustainability Report is available at: https://obr.uk/docs/dlm_uploads/Fiscal-risks-and-sustainability-report-July-2025.pdf
Please note that an update to this report - "Economic and fiscal outlook – November 2025" - was provided by the OBR on 26 November 2025.

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might wish to set aside monies for the future care and provision of disabled people who are unable to provide for themselves.

1.3 Why outright gifts and savings may not be straightforward

Section 1.2 explained that certain (but not all) welfare benefits, and the provision of social care, are means-tested by reference to an individual disabled person's income and resources[11]. As a result, gifting monies to, or savings by, a disabled person to hold in their own name may result in welfare benefit or local authority-provided care curtailment if the gift or saving were to lead to the disabled person's means exceeding defined thresholds.

It follows that if a benefactor wishes to gift monies to ensure that a disabled person has appropriate provision for the long term, irrespective of future state provision, then there is little incentive for them to do so if such a direct gift were simply to reduce means-tested state provision pound-for-pound.

1.4 Trusts are one option – but they can be complex and costly

Trusts can be used to make provision for a disabled person. They have a number of advantages – including the independent stewardship of assets by trustees on behalf of people who may not be able to manage property themselves. However, notwithstanding services provided by, for example, Mencap[12], depending on their scope they may be costly and complex, potentially limiting their use to more substantial asset levels.

In relation to means testing, amounts held in a discretionary trust, for example, are not - by definition - those of a beneficiary until appointed to them and, as a general rule, they are not taken into account for UK benefits and care means testing unless and until the beneficiary actually receives a distribution from the trust: until that time, the disabled beneficiary is not *entitled* to receive anything – the use of funds is at the sole discretion of the trustees.

When distributions are made – in other words, the beneficiary becomes "in funds" - they *are* taken account of for means testing purposes, but in the meantime a trust allows for a potentially long-term build-up and preservation of assets in circumstances where, for example, the donor

[11] A synopsis of means testing is provided at Section 2.4.
[12] Details of Mencap Trust Company are provided at n2.

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may pre-decease the disabled beneficiary by many years. This allows a parent of a disabled child, for example, to set aside future provision to ensure that an element of funding is available should state provision for the disabled beneficiary become limited; or should the disabled beneficiary have a specific future need which is not met by the state.

Specialist provisions apply to compensation arrangements in respect of personal injury[13].

1.5 UK specialist disability trusts and tax

The UK – together with Australia, Canada and the US – operate specialist tax regimes for trusts for disabled beneficiaries. The UK regime is summarised in detail in Section 3.

The UK specialist disability trust regime contains a series of tax provisions which are outlined below. This regime was first introduced in an early form in 1975[14] and has been periodically modified since.

First, unless eligible for the usual exemptions (such as the annual gift exemption; the exemption for normal expenditure out of income; or, where applicable, the exemption for reasonable costs in paying for the care and maintenance of a disabled relative under Section 11(3) IHTA 1984), transfers into eligible trusts are Potentially Exempt Transfers for Inheritance Tax ("IHT") purposes, rather than Chargeable Lifetime Transfers - which means that the donor only has to survive 7 years for the gift to be free from IHT. This is in line with the current IHT regime for outright gifts to individuals.

Second, subject to various criteria and elections under a "Vulnerable Beneficiary" regime (which also applies to "bereaved minors" who have lost a parent), the income and capital gains of the trusts are taxed at the disabled beneficiary's marginal tax rates (as opposed to the higher rates applicable to discretionary trusts). In relation to trusts generally, Section 225 TCGA 1992 provides for relief from Capital Gains Tax in relation to a main residence occupied by a beneficiary, subject to a range of conditions.

Although the UK's disability trust regime offers a distinct framework for saving for eligible disabled beneficiaries, the regime is complex and can be costly to operate. Indeed, in the context of overall disability prevalence, it may only be used in respect of a small proportion of eligible disabled people: HMRC data supplied in October 2024 following a Freedom of Information

[13] For an analysis of the treatment of personal injury trusts for benefits and care means testing, see "Personal Injury Trusts, frequently asked questions", Frenkel Topping, at: https://www.frenkeltopping.co.uk/wp-content/uploads/2020/01/PFTL_ersonalInjuryTrusts_FAQsBro.pdf

[14] The regime was originally introduced in an early form in Paragraph 19 of Schedule 5 of Finance Act 1975 – but has been very heavily modified since.

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request suggests that only some 2,000 disabled trusts or trusts for Vulnerable Beneficiaries filed Self-Assessment tax returns in 2022/23 - with some 1,400 trusts claiming a total Income Tax relief of less than £5 million; and fewer than 500 claiming "negligible" Capital Gains Tax relief. Clearly, this number excludes trusts which are not required to file Self-Assessment tax returns (this represents a substantial proportion of the overall (i.e. not just disabled) trust population of more than 700,000 registered trusts) - and so may very well be somewhat less than the total population of disabled trusts[15].

1.6 Disability savings arrangements in Australia, Canada and the US

Trust-based arrangements

Australia, Canada and the US all operate specialist disability trust regimes. Their provisions vary: they are described in detail in Section 5 – including a table comparing the various regimes with the UK.

In general:

(i) Subject to meeting relevant conditions, assets of disability trusts in all countries are generally excluded from means testing - although Australian Special Disability Trusts have a defined overall asset limit of Aus $832,750 (c£406,000) excluding a “primary residence” in relation to social security concessions.

(ii) Very broadly, and similar to the UK Vulnerable Beneficiary regime as it applies to disabled people, Australia and Canada offer arrangements whereby income and gains are taxed in line with the beneficiary’s marginal tax rates – with Australia also offering an exemption from Capital Gains Tax for a “main residence”. The US system allows both for an annual trust exempt band in relation to federal tax; and for distributions to be deductible in arriving at a trust’s income, but taxable in the hands of the beneficiary at their marginal rate.

[15] HMRC statistics suggest that the vast majority of trusts overall do not file self-assessment returns. See “Statistics on trusts in the UK November 2024”, HMRC, updated 28 November 2024, at https://www.gov.uk/government/statistics/trust-statistics/statistics-on-trusts-in-the-uk-november-2024

As the Trusts Register also exempts some disabled trusts from registering where there is no taxable income or gains, HMRC may not have visibility on the total number of disabled trusts: for details of trust registration, see “Register a trust as a trustee”, HM Government, at: https://www.gov.uk/guidance/register-a-trust-as-a-trustee#when-to-register-trusts-that-are-not-taxable

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Non-trust-based arrangements: RDSPs and ABLE Accounts

Canada and the US have introduced separate specialist savings options for disabled people alongside their disability trust regimes - Registered Disability Savings Plans ("RDSPs") and ABLE Accounts respectively.

The objectives of, and specific provisions governing, these vehicles vary. For example, whilst earlier withdrawals are possible, the RDSP has a later life, pensions-type focus; and ABLE account programs are operated by states. Essentially, both arrangements permit savings by and for eligible disabled people for a range of purposes up to certain specified limits, with specific tax treatments - including certain tax reliefs; and with various "carve out" provisions in relation to means-tested benefits.

The take-up of both RDSPs and ABLE Accounts is significant - with some 263,000 active beneficiaries of RDSP's as of December 2022; and some 204,000 ABLE Accounts as of 31 March 2025.

A tabular synopsis of key aspects of RDSPs and ABLE Accounts is set out below. Further details are provided in Section 5.

Table 1.1. Comparing RDSPs and ABLE Accounts – highly summarised

	Canada – RDSPs **(Later life focus)**	**US – ABLE Accounts**
Eligibility	Eligible for Disability Tax Credit (a tax credit available to people with, broadly, severe and prolonged impairments, subject to assessment); Canadian citizenship; under the age of 60; and a valid Social Insurance Number.	Designated beneficiaries must have been blind or disabled by a condition that began before the individual's 26th birthday.
Means-testing impact	RDSPs are not included in provincial “asset tests” for means testing. The RDSP Plan Institute explains that income from RDSPs may affect benefits in some provinces and territories, although the account is exempt from most provincial disability and income assistance benefits.	First $100,000 is not taken into account for Supplemental Security Income (“SSI”) means testing. A range of other social security programs are unaffected (provided the account falls within limits) – see Section 5.3.

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Direct financial support from Government?	Yes – Canada disability grants and bonds (subject to eligibility).	No. Note that ABLE Accounts are operated by states.
Capped limits?	No annual limit but a maximum lifetime limit on contributions of CAN $200,000.	Overall limit of between $235,000 - $596,925. This varies between states.
Eligible expenses	Withdrawals can be spent on a broad range of expenditure. A number of conditions govern withdrawals before and from the age of 60 – including penalties if withdrawals are made within ten years of a government grant or bond being received by the Plan.	A broad range of "qualified disability expenses".
Tax treatment	Canadian government guidance explains that contributions are not tax-deductible and are not included as income of the beneficiary when withdrawn. Income and gains broadly roll up tax-free in the Plan, but the Canada disability savings grant and bond, investment income earned in the plan, and the proceeds from rollovers are included in the beneficiary's income for tax purposes when they are paid out of the RDSP.	Some states allow forms of tax relief for contributions – although these are not deductible for federal tax purposes. Contributions in excess of stipulated limits are subject to tax at 6% unless returned within a set time limit. Investment returns roll up tax-free. Payments for "qualified disability expenses" [broadly defined] are tax-free in the hands of beneficiaries - but other amounts are subject to tax.
Non-disabled person permitted to benefit?	No (see Section 5.6 for details of succession arrangements)	No (see Section 5.6 for details of succession arrangements)

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1.7 Options for improving the UK disability trust regime

Although the UK disability trust regime can offer a range of benefits – including independent stewardship of assets; and ringfencing of savings from means testing unless and until distributed to beneficiaries – as set out in Section 1.4, trusts can be complex and can be costly to administer, particularly over prolonged time periods if the accumulation of professional fees erodes the underlying asset base. This cost and complexity arguably may make the regime less suitable for setting aside more modest sums and limits its accessibility for many families.

However, the paper recommends that the regime is preserved, subject to a modest number of proposed amendments – noting that disability trust regimes also operate in Australia, Canada and the US. The comparative analysis between the UK and the disability trust regimes these countries set out in Section 5 does not reveal any compelling case for fundamentally modifying the UK arrangements.

However, in order to help streamline cost and complexity, this paper recommends consideration by HMRC of publishing a "Model Trust Deed" – in line with Australian Special Disability Trusts; and comments on three specific matters within the existing tax legislation where it considers improvements could be made. These three matters are summarised in Section 4.4 and in Appendix 3.

1.8 The case for an additional simplified savings vehicle

Although the paper recommends that the UK trust regime should be preserved, it finds that a simplified savings vehicle, operating alongside the existing trust regime, could be attractive as an additional means of setting aside savings for disabled people.

In summary, the aim of the simplified savings vehicle would be to enable those for whom a trust is not economically justifiable, or is overly-complex, to make orderly provision for themselves, or a disabled friend of relative.

The Canadian RDSP and US ABLE account illustrate how alternative savings arrangements for disabled people can sit alongside trusts – recognising the "later life" focus of RDSPs. Both of these vehicles have demonstrated significant take-up levels in their respective countries. The paper stresses the importance of considering the different social security and other support arrangements for disabled people in these countries compared to the UK when examining the vehicles' detailed provisions.

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A number of specific issues for consideration in relation to potential simplified arrangements for the UK are set out in Section 1.9 below and in Section 6. As a "base case", a simplified arrangement could have many symmetries of treatment with specialist disability trusts in areas such as tax – subject to a number of identified areas where there may be policy reasons to adopt alternative approaches.

There will be individual circumstances where a beneficiary could be eligible for both types of savings arrangement - trust or simplified savings account. The paper recommends that the choice of appropriate vehicle in specific situations (including the possibility of both) should be left to those setting up the arrangements - having taken appropriate advice. Specifically, it is envisaged that a simplified savings vehicle with prescribed financial limits would not be suitable for a very substantial bequest - whereas a trust may well be. Illustrative examples of the use of both types of arrangement are set out at Appendix 4.

1.9 Key policy parameters for a simplified savings vehicle

Eligibility

If policy for a simplified savings vehicle were to be framed broadly around symmetry with the existing trust arrangements, then eligibility could be by reference to the definition of a "disabled person" set out in Paragraph 1 of Schedule 1A of the Finance Act 2005 – reproduced at Appendix 2.

However, it may be that alternative eligibility criteria could be considered appropriate: for example, drawing on the eligibility criteria for the US ABLE Account, use of the simplified vehicle could be limited to people with more severe disabilities arising early in life.

The paper envisages that simplified savings vehicles could receive funds from the disabled person themselves – in addition to third party benefactors.

The paper recognises that the precise eligibility definition would need to be considered as part of policy formulation – and that this matter is one which should rightfully be debated.

Tax treatments

From a tax perspective, the paper considers two key options for the tax treatment of specialist vehicles: "tax neutral" - essentially taxing the returns to the vehicle at the beneficiary's marginal rates; and "tax-advantaged" – perhaps excluding income and gains within the vehicle from tax within certain limits.

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Gifts into the vehicle would be treated as Potentially Exempt Transfers for IHT purposes (in line with eligible disability trusts).

The "tax neutral" treatment would be broadly in line with the objectives of the existing trust regime assuming Vulnerable Beneficiary elections; and would facilitate simplified savings arrangements without providing additional tax advantages compared to trusts. Depending on a beneficiary's overall income, and the nature of a specialist savings vehicle's investments, it may be that under the "tax neutral" option, a beneficiary's applicable marginal Income Tax rates after applying the Personal Allowance, Starting Rate for Savings and / or Personal Savings Allowance in respect of interest income are low in any event. However, as for Trustees under the Vulnerable Beneficiary regime, there could clearly be compliance costs in calculating and submitting an annual summary of income and gains to HMRC.

Policy motivations to offer tax advantages might include removing a requirement to submit tax returns in relation to income and gains arising in the vehicle – thereby reducing costs and complexity. Other motivations could include incentivising savings – in line with existing ISAs. However, the paper recognises that such advantages might be subject to, amongst other matters, financial limits and defined boundaries on types of eligible expenditure.

Under both the "tax neutral" and "tax-advantaged options", distributions from the vehicle would not be taxed in the hands of the beneficiary.

Providers and governance

The paper envisages a relatively standardised simplified arrangement – available from a broad range of retail financial services providers. The arrangement would be managed by the donor or a nominated parent, guardian, attorney or deputy within defined policy and legal parameters.

Relationship with means testing

In line with existing trust arrangements, the paper recommends that savings within a simplified vehicle – whether tax neutral or tax-advantaged - would sit outside of means testing arrangements for welfare benefits and care. Means-testing the savings within a simplified vehicle would likely discourage its use. Beyond symmetry with the treatment of trusts, savings by or for disabled people offer a range if advantages – including having a cushion to meet unexpected expenditure; and providing peace of mind and security both for the disabled person and, for example, for parents keen to ensure long term provision for their disabled child after they have died.

Whilst distributions from trusts *are* usually taken account of for means testing purposes, there is a policy question as to how withdrawals from simplified arrangements should be treated in order

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to provide equivalence with trusts: withdrawn amounts would belong to the disabled person, whereas with a trust arrangement property can be owned by the trust for the use of the disabled person.

In order to achieve equivalence with trusts, and in order not to disincentivise use, the paper suggests that consideration is given to permitting withdrawals for defined purposes without affecting means-tested benefits and care. Policy would need to consider appropriate parameters for the vehicle, including financial limits; succession arrangements on the death of the disabled person; and the nature of permitted expenditure.

1.10 A simplified vehicle in operation – illustration

By way of illustration, if a disabled person or person responsible for managing their affairs (where they lacked capacity) wished to open a simplified account, then possible steps might include:

1. They contact a bank or other authorised financial institution to open a simplified account for themselves / another disabled person (as applicable).
2. They apply for the simplified account providing evidence of their / the beneficiary's disability status and provide details of who can operate the account with supporting evidence (such as copies of Lasting Powers of Attorney).
3. The account is opened using standard terms for these accounts and money is put in within any policy limits.
4. Returns accrue in accordance with the terms of the account – which follow policy guidelines around investment risk (unless an interest-only account).
5. If the tax-neutral treatment is used, the person responsible for managing the account provides details of their / the third party beneficiary's (as applicable) other income to an online questionnaire from the provider each year and the provider deducts tax (if any) and remits to HMRC accordingly.
6. If the tax-advantaged treatment is used, there is no further tax compliance needed.
7. When withdrawals are made, the responsible person submits a brief online form to the provider summarising what the payments are for (for the record – not for provider "approval") and requesting payment. For means testing purposes:
    a. If, following policy formulation for the accounts, the withdrawals are taken account of in means testing, details are notified automatically as applicable to the DWP (for benefits) / Local Authority (for social care) when the money is paid out; or
    b. if not, the money is simply paid out with the records held on the account at the provider.

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1.11 Recommendations

Based on its analysis, this paper recommends:

(i) The continuity of the existing disability trust regime - subject to the consideration of the proposed legislative amendments set out in Section 4.5; and the introduction by HMRC of a “Model Trust Deed” in line with Australian Special Disability Trusts in order to streamline set-up time and costs.

(ii) The introduction of an additional simplified savings arrangement for eligible disabled people (as described in 1.8 above) with, as a base position, a "tax neutral" treatment of income and gains within the vehicle - aligned with the beneficiary's own tax position (similar to the existing disability trust regime with Vulnerable Beneficiary elections in place).

Distributions from the vehicle would not be taxed in the hands of beneficiaries; and similar to specialist disability trusts, gifts to the vehicles would be Potentially Exempt Transfers for IHT purposes unless eligible for the usual exemptions (such as the annual gift exemption; the exemption for normal expenditure out of income; or, where applicable, the exemption for reasonable costs in paying for the care and maintenance of a disabled relative under Section 11(3) IHTA 1984).

The simplified arrangement would be “standardised” and made available through authorised retail financial providers.

The simplified arrangement would be managed by the donor or an approved third party such as an attorney or deputy.

Savings within the simplified arrangement would not be taken account of in means testing (providing symmetry with many trust arrangements). There is a policy question as to whether distributions from the simplified arrangement could be excluded from means testing within certain parameters – for example, for certain defined categories of expenditure.

As set out in Section 1.9, it may be that tax advantages could be incorporated as part of policy formulation – perhaps to simplify compliance or incentivise use. However, such advantages might be subject to, amongst other matters, financial limits and defined boundaries on types of eligible expenditure.

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Either way, whether tax neutral or tax-advantaged, the simplified arrangement would sit alongside the existing trust regime. This paper recommends that the choice of appropriate vehicle in specific situations should be left to those setting up the arrangements - having taken appropriate advice - mindful of the arrangements' likely different cost and complexity profiles. Specifically, it is envisaged that a simplified savings vehicle with prescribed financial limits would not be suitable for a very substantial bequest - whereas a trust may well be.

In short, whilst the paper recommends that the existing trust regime should be maintained, the case for a non-trust alternative simplified disability savings regime seems powerful. It could help bring levels of security and peace of mind to disabled people and their families facing uncertain futures; and, in particular, helping those with modest amounts of savings who naturally want to provide for disabled friends or relatives properly, recognising future uncertainties - but are deterred by both means testing and the complexity and costs of a trust from leaving funds direct to them.

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2. Supporting analysis

Disability in the UK and its implications

2.1 Disability - definitions and implications

There are numerous definitions and implications of "disability"[16]. Generalisation in relation to the setting of disability-related tax (and other) policy can be dangerous without applying appropriate definitional specificity.

UK legislation contains a number of definitions of disability in differing contexts: for example, sections 6(1) and (2) of the Equality Act 2010 define Disability for the purposes of the Act as follows:

> **"Disability**
>
> **(1) A person (P) has a disability if—**
>
> **(a) P has a physical or mental impairment, and**
>
> **(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.**
>
> **(2) A reference to a disabled person is a reference to a person who has a disability"**

[16] In their Standard Rules on the Equalization of Opportunities for Persons with Disabilities, the United Nations ('UN') say of disability (under "Fundamental concepts in disability policy"):

"The term 'disability' summarizes a great number of different functional limitations occurring in any population in any country of the world. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature."

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This definition - which underpins, for example, non-discrimination in relation to disability - emphasises both the impact and duration of any impairment; and highlights that such an impairment may be physical or mental.

Some impairments may have limited, if any, impact on aspects of a person's day-to-day life including their ability to participate in work and other activities. Such impairments may also be transitory in nature. Conversely, complex, lifelong and severe impairments may result in a disabled person being unable to work; being immobile without assistance; and, in some cases, needing "24 hour" lifetime care.

Given both the broad range of definitions and implications of disability, policy for any specialist disability savings arrangement will need to consider appropriate eligibility criteria.

Section 3.6 below, together with Appendix 2, summarises the eligibility criteria which apply to the existing UK disability trusts regime. Section 6.3 comments on potential eligibility criteria for the specialist savings arrangements proposed by this paper.

2.2 Models of disability and the UK National Disability Strategy

By way of background, a considerable literature describes different models of disability[17]. Historically, many commentators suggest that disability was reflected in a "medical model" - whereby a disability was something that needed to be "fixed".

Whilst there are a number of variants, contemporary social policy is increasingly orientated around the "social model" of disability. The disability charity Scope describes this as follows[18]:

> **"The social model of disability is a way of viewing the world, developed by disabled people. Scope's Everyday Equality strategy is based on this model of disability.**
>
> **The model says that people are disabled by barriers in society, not by their impairment or difference. Barriers can be physical, like buildings not having accessible toilets. Or**

[17] See, for example, "Conceptualizing disability: Three models of disability", Olkin for the American Psychological Association, 28 March 2022 at: https://www.apa.org/ed/precollege/psychology-teacher-network/introductory-psychology/disability-models

[18] "Social model of disability", Scope, at: https://www.scope.org.uk/social-model-of-disability

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> **they can be caused by people's attitudes to difference, like assuming disabled people can't do certain things.**
>
> **The social model helps us recognise barriers that make life harder for disabled people. Removing these barriers creates equality and offers disabled people more independence, choice and control.**
>
> **Not everyone uses the social model and that's ok. How anyone chooses to talk about their impairment is up to them."**

In July 2021, the UK Government published a National Disability Strategy[19]. The Strategy has a strong emphasis on the removal of barriers to participation by disabled people in a full range of activities, including work, recreation, and civic life.

One potential benefit of a specialised savings vehicle might be for eligible disabled people to fund activities not otherwise met by the state which could help facilitate their participation.

2.3 Disability in the UK - statistical overview

Each year, the Department of Work and Pensions releases a statistical synopsis of certain information relating to the income and circumstances of UK households - the "Family Resources Survey". The latest publication is in respect of 2023/24[20].

A synopsis of two selected components of these data, together with two items of selected data from an ONS report entitled "The employment of disabled people 2024"[21], is set out at Appendix 1.

The data illustrate that[22]:

[19] "National Disability Strategy", HM Government, 28 July 2021, at: https://www.gov.uk/government/publications/national-disability-strategy

[20] Family Resources Survey ("FRN"): financial year 2023 to 2024, Department of Work and Pensions, published 27 March 2025, at: https://www.gov.uk/government/statistics/family-resources-survey-financial-year-2023-to-2024/family-resources-survey-financial-year-2023-to-2024#disability-1

[21] "The employment of disabled people 2024", Office of National Statistics, updated 20 November 2024 and available at: https://www.gov.uk/government/statistics/the-employment-of-disabled-people-2024/the-employment-of-disabled-people-2024

[22] FRN, n20, Section 5.

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1. Although a substantial proportion - some 25% - of the UK population are classified as disabled, the nature and implications of their disabilities, and the segmentation of impairment types by age group, vary markedly.
2. As of June 2024, the disability employment gap - being the difference between in the employment rate between non-disabled and disabled people in employment in the UK between the ages of 16 and 64 - was 28.6%.
3. The implications of disability between disability types varies - with different percentages of people perceiving themselves as "limited a lot" depending on the nature of their impairment(s).

2.4 UK state support for disabled people and means testing

As described in Section 1.2, current UK public financial and other provision for disabled people (and their carers) is multi-faceted - and encompasses a range of benefit payments; public services - including care; and other financial support such as grants. Many benefits designed to provide help with "costs of disability" are not means tested – but others are.

Section 1.2 explained that, in addition to certain benefits, the provision of social care - other than when provided in specific circumstances by the NHS[23] - is means-tested.

For context, a UK Government circular to local authorities published in February 2025 summarises the means testing limits in England as follows:[24].

> **"The capital limits, specified in regulations made under the Care Act 2014, set the levels of capital (excluding any capital that has been disregarded) that a person can have while qualifying for financial support from their local authority. For people receiving care other than as a permanent resident in a care home, local authorities have discretion to set higher capital limits if they wish.**
>
> **A person with assets above the upper capital limit is responsible for the full cost of their care in a care home. A**

[23] "NHS Continuing Healthcare", NHS, at: https://www.nhs.uk/conditions/social-care-and-support-guide/money-work-and-benefits/nhs- continuing-healthcare/

[24] "Social care - charging for care and support 2025 to 2026: local authority circular," Department for Health & Social Care, 3 February 2025 at: https://www.gov.uk/government/publications/social-care-charging-for-local-authorities-2025-to-2026/social-care-charging-for-care-and-support-2025-to-2026-local-authority-circular

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> **person with assets between the capital limits will pay what they can afford from their income, plus a means-tested contribution from their assets (calculated as £1 per week for every £250 of capital between the capital limits). A person with assets below the lower capital limit will pay only what they can afford from their income.**
>
> **For the next financial year (2025 to 2026), the capital limits will remain at their current level: £23,250 for the upper capital limit and £14,250 for the lower capital limit."**

In assessing how much a person may need to contribute to their care from their income, local authorities must make allowance for qualifying Disability-Related Expenditure ("DRE")[25]; and must ensure that a person is left with a minimum income under a Minimum Income Guarantee ("MIG")[26].

There are a range of provisions addressing avoidance through the "deprivation of capital": these provisions act as an anti-avoidance framework to prevent people gifting assets or putting them beyond reach so as to avoid paying for their care[27].

Finally, a proposed cap on the amount a person would need to contribute to their social care was abolished by the Government on 29 July 2024[28].

2.5 Financial implications of disability

For a number of people, their disability may result in no material impact to their earnings capacity - albeit they may need to meet additional "costs of disability" (such as care or equipment) to the extent not funded by the state. Conversely, other disabled people may be

[25] See, for example, "Disability-related expenses (DRE)", Carers UK at: https://www.carersuk.org/help-and-advice/financial-support/benefits-if-you-are-disabled-ill-or-injured/disability-related-expenses/

[26] See Department of Health & Social Care, n24, under "Minimum income guarantee".

[27] See, for example, "Factsheet 40: Deprivation of assets in social care", Age UK, September 2025 at: https://www.ageuk.org.uk/siteassets/documents/factsheets/fs40_deprivation_of_assets_in_social_care_fcs.pdf

[28] See "Adult social care charging reform: further details", HM Government, updated 12 September 2024, which states that: *"Following an announcement by the Chancellor of the Exchequer on 29 July 2024, the planned adult social care charging reforms, which were inherited from the previous government, will not be taken forward in October 2025"*, at: https://www.gov.uk/government/publications/build-back-better-our-plan-for-health-and-social-care/adult-social-care-charging-reform-further-details

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unable to work and be completely reliant upon the state - or private providers - for their care, accommodation and living expenses.

There are multiple studies exploring the financial implications of disability. The disability charity Scope publishes an annual report - the "Disability Price Tag". The 2025 edition of this report[29] - which sets out the various assumptions upon which it is based - states that:

> **"What did the 2025 Disability Price Tag report find?**
>
> **Our latest findings show that disabled households need an extra £1,095 each month on average. This is just to have the same standard of living as non-disabled households.**
>
> **As inflation is expected to rise over the next five years, the extra cost of disability is estimated to reach £1,224 per month by 2029 to 2030 financial year.**
>
> **This comes as the Government plans to rip billions from the welfare budget.**
>
> **Life costs more for disabled people.**
>
> **Medical equipment, higher energy bills, and specialist support all add up.**
>
> **Personal Independence Payment (PIP) is meant to help, but it's falling short. The average PIP payment is £465 a month across households, not enough to cover their extra costs of £1,095 per month, leaving a £630 shortfall. By 2030, the estimated shortfall will reach £704. These figures do not take account the impact of proposed cuts in PIP.**
>
> [ ]

It is vital to emphasise that the summary above is clearly subject to its various assumptions. Nonetheless, it highlights that disabled people and their families often need to meet additional costs to maintain living standards equivalent to non-disabled households; and that, depending

29 Scope, n1.

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both on impairment and financial circumstances, setting aside monies for the future to cover unexpected care, equipment or other costs can be challenging.

2.6 Decision-making and financial management for people lacking mental capacity - synopsis of legal frameworks

Mental capacity - overview

Whilst most disabled people may be perfectly able to make all necessary decisions around their health and care, and management of their financial affairs, those who lack the mental capacity to do so may not be able to take responsibility for their finances.

The test of mental capacity is, broadly, governed by the Mental Capacity Act 2005 ("MCA").

Sub-sections 1-4 of Section 2 of the MCA are reproduced below:

> **"2. People who lack capacity**
>
> **(1) For the purposes of this Act, a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.**
>
> **(2) It does not matter whether the impairment or disturbance is permanent or temporary.**
>
> **(3) A lack of capacity cannot be established merely by reference to—**
>
> **(a) a person's age or appearance, or**
>
> **(b) a condition of his, or an aspect of his behaviour, which might lead others to make unjustified assumptions about his capacity.**
>
> **(4) In proceedings under this Act or any other enactment, any question whether a person lacks capacity within the**

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> **meaning of this Act must be decided on the balance of probabilities.**

Deputyships, the Court of Protection and Lasting Powers of Attorney

The Court of Protection may grant "deputyships" to people entrusted to manage key aspects of decision-making for people lacking the capacity to do so. Those deputyships fall into two categories - Personal Welfare; and Property and Financial Affairs[30].

Subject to appropriate accountability to the Office of the Public Guardian[31] (and ultimately to the Court of Protection), appointed deputies are required to take such decisions as are necessary and appropriate in the areas of their appointment on behalf of a person without the mental capacity to do so - in general terms acting in their "best interests" in taking those decisions[32].

Separately, people with mental capacity may grant Lasting Powers of Attorney ("LPA") to other people - including, in relation to financial matters, in respect of Property and Financial Affairs[33]. Very broadly, such an arrangement can facilitate the making of decisions on behalf of a person when that person has lost the capacity to do so for themselves - although there are circumstances when, unless specified otherwise, an LPA can be used where a person still has decision-making capacity[34].

Given reported delays in accessing the Court of Protection, this paper is mindful in formulating its proposals of the need not to add material additional burdens to the Court's workload.

2.7 Summary

The prevalence of disability in the UK is substantial - but the nature of impairments and their implications for disabled people, their carers and providers across different age groups are highly

30 See "Deputies: make decisions for someone who lacks capacity", HM Government, at: < https://www.gov.uk/become-deputy >

31 See HM Government, n30.

32 See HM Government, n30.

33 See "Make, register or end a lasting power of attorney", HM Government, at: < https://www.gov.uk/power-of-attorney >

34 See "When can a Lasting Power of Attorney be used?", The Law Society, 23 February 2023, at: https://www.lawsociety.org.uk/contact-or-visit-us/helplines/practice-advice-service/q-and-as/when-can-a-lasting-power-of-attorney-be-used#:~:text=A%20registered%20property%20and%20financial,their%20health%20or%20persona

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diverse. Independent commentary suggests that "costs of disability" can exceed available state support.

The state presently provides a broad range of welfare benefits and public services - including care - for eligible disabled people. Certain welfare benefits are not means-tested - but others, together with the cost of care, are means-tested.

Against this background, Section 3 summarises current savings options for and by disabled people in the UK.

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3. Disability and current UK savings options

3.1 Motivations for saving and future provision

The motivations for setting aside money for or by disabled people are clearly varied.

For example, a substantial gift might be made absolutely and without restriction to a disabled person who is able to work and lead an independent life in precisely the same way as would be the case to a non-disabled recipient. Similarly, a high-earning disabled person may invest in a range of savings for a range of reasons unconnected with their disability.

On the other hand, Part 1 of this paper explained that, mindful of any uncertainties around the future of the public finances, disabled people and any benefactors may wish to set assets aside for the future provision and care of a disabled person where they are unable to provide for themselves.

Against this backcloth, potential advantages from making savings and provision by and for disabled people include:

- Savings can support financial security and financial independence, reducing reliance on emergency support.
- Eligibility for state benefits or care can change depending on government policy from time to time, possibly at short notice, so having savings provides back-up support for the disabled person can assist in mitigating the impact of any benefit or care curtailment.
- Disabled individuals often face higher living costs, including medical expenses, adaptive equipment, and personal care. Having access to savings can help act as a cushion against significant periodic expenditure demands without compromising the ability to meet essential day-to-day expenditure.
- Access to savings may enable a disabled individual to access specialist education or training which is not provided by the state – in turn better positioning them to access the job market or grow their career.
- Financial insecurity can significantly impact mental health. Knowing that savings will not jeopardise means-tested benefits can alleviate stress and promote well-being.

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- If funded by the disabled person themselves, savings can encourage saving behaviour, which could help improve financial stability.

3.2 UK savings options available to all eligible savers

For completeness, and subject to relevant mental capacity provisions regarding the management of a person's financial affairs and to means testing, there are a broad range of retail and other savings options available to all eligible savers, including disabled people: these include various forms of deposit accounts, ISAs and other investments - together with other assets such as property.

The scope of this paper is to consider specific savings options for disabled people - given their individual circumstances. These alternatives have therefore been noted here solely for completeness.

3.3 The existing trust-based regime for disabled beneficiaries - overview

Various legislative provisions providing tax accommodations in respect of trusts with disabled beneficiaries have evolved over a number of decades.

The specific provisions are complex and outlined in Sections 3.6 – 3.10 below. Very broadly they allow for: (i) specific Inheritance Tax reliefs in relation to eligible trusts where a beneficiary is disabled; and (ii) subject to a Vulnerable Beneficiary ("VB") election, and annual trustee claims, both income and capital gains arising in an eligible trust to be taxed at a disabled beneficiary's marginal tax rates (as opposed to - usually higher - trustee rates). The Inheritance Tax and VB regimes are separate - and it may be that an individual trust is eligible for one set of reliefs but not the other.

Anti-avoidance provisions have been introduced to, for example, limit the extent of distributions to non-disabled beneficiaries where trusts for the disabled benefit from Inheritance Tax reliefs. These are explained further in Section 3.6.

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3.4 Statistical overview of disability trust usage

The UK Government provides both periodic analyses of structural and non-structural tax reliefs.

The analysis of structural tax reliefs at December 2024[35] states under the "IHT" tab in relation to "Trusts for the mentally and physically disabled" that *"[ ] Information on the usage of this relief is reported to HMRC, but the relevant data is not held in a centralised form, and the cost of gathering for statistical purposes is disproportionate.*"

Separately, however, HMRC provided information in response to a Freedom of Information request submitted by the author which suggests that only some 2,000 specialist disability trusts filed Self-Assessment tax returns in 2022/23 - with some 1,400 trusts claiming a total Income Tax relief of less than £5 million in total; and fewer than 500 claiming "negligible" Capital Gains Tax relief.

As discussed in Section 1.5 above, HMRC observe that the number of trusts filing Self-Assessment returns each year will not be identical to the total number of disabled persons' trusts: given the proportion of trusts generally not filing Self-Assessment returns, the total of trusts filing returns could be very considerably lower than the total population. For example, trusts which are not required to file Self-Assessment tax returns may include trusts investing in certain types of investment bond where, very broadly and subject to various conditions, part surrenders of up to 5% per annum of the original amount invested are not subject to any tax charge[36].

3.5 Definitions and boundaries for disability trust eligibility

The eligibility definitions for both trusts where a Vulnerable Beneficiary ("VB") election is made (for Income and Capital Gains Tax purposes); and trusts for a disabled person (for Inheritance Tax purposes) are linked in that, for trusts commencing after Finance Act ("FA") 2013, eligible beneficiaries for both types of trust include a "disabled person" as defined in

[35] Available through UK Government, official statistics, "Structural tax reliefs" at December 2024 (updated as of 5 December 2024), "List of structural tax reliefs where cost estimates are unavailable (December 2024)" (as an open document spreadsheet) - at: https://www.gov.uk/government/statistics/minor-tax-expenditures-and-structural-reliefs

[36] Under 507 ITTOIA 2005. Note that this is not a special tax treatment for disabled people.

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Schedule 1A FA 2005; but the VB definition is extended to cover "relevant minors"[37] who have lost a parent and receive property in trust on their death - but who are not disabled.

This paper focuses on savings for disabled people and so the position of "relevant minors" is not considered further. For simplicity and clarity's sake, it seems that the tax regime in respect of trusts for disabled persons could be delinked from the tax regime in respect of "relevant minors".

An abbreviation of the current definition of a disabled person in Paragraph 1 of Schedule 1A FA 2005 (set out in full at Appendix 2) is:

> ***"(a)a person who by reason of mental disorder within the meaning of the Mental Health Act 1983 is incapable of administering his or her property or managing his or her affairs,***
>
> ***(b et seq) a person in receipt of [a broad, defined range of disability-related benefits]"***

The broad nature of disability-related benefits covered by the definition means that eligible beneficiaries may have a range of impairment types; and may well have decision-making capacity. However, the benefits set out in Paragraph 1 of Schedule 1A are very specifically care and disability-related benefits – with, in some cases, the eligibility threshold set where relevant at the highest or middle rate of benefits which are graded. Qualifications and clarifications to the provisions of Paragraph 1, including in relation to eligibility for certain benefits, are provided in Paragraphs 2-8.

3.6 Summary of key Inheritance Tax provisions governing trusts for disabled beneficiaries

Overview

The trusts regime in Inheritance Tax Act ("IHTA") 1984 which provides for disabled people covers the following circumstances and types of trust:

[37] Defined in Section 39 FA 2005.

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1. "Pre-1981 trusts" - where property was settled into trust before 10 March 1981, the date of Sir Geoffrey Howe's 1981 Budget in the "International year of disabled persons". These trusts are covered by section 74 IHTA 1984.
2. Trusts meeting certain criteria which are established with a qualifying disabled beneficiary. These trusts are covered by section 89 to 89C IHTA 1984.

Note that the trusts in 2 above include self-settled trusts by people expecting to meet the stated disability criteria. These trusts are covered by section 89A IHTA 1984.

The effect of a number of the provisions is that a gift into an eligible trust for a disabled person is not an immediately chargeable lifetime transfer for Inheritance Tax purposes and therefore is not subject either to an initial tax charge or to the periodic charges to tax otherwise incurred every ten years under section 64 IHTA: the settled property is instead treated as comprised in the estate of the disabled beneficiary and in principle suffers IHT on the death of the disabled beneficiary. Unless benefiting from another IHT exemption, the original gift into the trust is treated as a Potentially Exempt Transfer by the donor who therefore has to survive 7 years and be excluded from benefit – the standard conditions for any lifetime gift to an individual.

The original requirements of section 89 IHTA trusts broadly included that not less than half of the settled property which was applied was applied for the benefit of the disabled person during their lifetime, although there were exceptions.

This requirement was changed in the Finance Act 2013 in relation to trusts created on or after 8 April 2013. Any capital or income that is applied can only now be applied for the benefit of the disabled beneficiary during their lifetime although it can be retained in trust and be paid to a non-disabled beneficiary on death. However, up to the lower of £3000 or "*3% of the amount that is the maximum value of the settled property during the period in question*" can be appointed annually to someone other than the disabled beneficiary.

There is no need to make an election to obtain the IHT treatment in respect of disabled trusts: the IHT treatment is automatic if the conditions are satisfied.

3.7 Summary of key Capital Gains Tax provisions - irrespective of any Vulnerable Beneficiary election

Irrespective of whether there is a Vulnerable Beneficiary election, there will be a Capital Gains Tax uplift on the death of the disabled person.

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In relation to trusts generally (again, not just in relation to disabled trusts), Section 225 TCGA 1992 provides for relief from Capital Gains Tax in relation to a main residence occupied by a beneficiary, subject to a range of conditions.

3.8 Summary of key Income Tax and Capital Gains Tax provisions governing trusts for Vulnerable Beneficiaries

Chapter 4 of the Finance Act 2005 introduced a new Income Tax and Capital Gains Tax regime for trusts for Vulnerable Beneficiaries: section 23(7) of the Act provides that one category of Vulnerable Person is a disabled person (as defined in Schedule 1A of the Finance Act 2005 (the "Act")).

Subject to various eligibility criteria, the regime provides - through formulae set out in sections 25-29 (Income Tax); and sections 30-33 (Capital Gains Tax) - that the income and capital gains arising in the trust are taxed as if they were those of the vulnerable person (as opposed to at any higher trustee rates). The operation of the regime can be complex - requiring an assessment of the tax which would have been paid if received by the vulnerable beneficiary, and a corresponding reduction in the trust liability, with tax pooling arrangements in respect of distributions. Section 4.4 below recommends a simplification of this regime. As part of these provisions, if an election is made, the full individual annual Capital Gains Tax exemption will be available rather than the normal trust exemption of one half of the annual exemption – noting that this applies for trusts where the beneficiary is a disabled person in any event (see 3.9 below).

Access to these tax treatments requires that trustees make an irrevocable Vulnerable Person election under section 37 of the Act, together with annual elections to apply the special tax treatments in the Vulnerable Beneficiary regime in each tax year. It is possible to make an election on part only of the trust fund if it is ringfenced for that particular person. In other words, unlike the IHT regime (subject to the *de minimis* carve-outs in Finance Act 2013 discussed above), the trust does not have to be exclusively for the benefit of the disabled person if a specific fund is earmarked for the Vulnerable Person.

3.9 Tax rates and allowances

Where trustees of section 89 trusts do not make Vulnerable Person Elections under Section 37 of the Finance Act 2005, together with annual elections for special income and capital gains tax treatment, unless the trust has income less than £500, the income of a discretionary trust (other

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than dividends) is taxed at the Trustee rate of, in 2025/26, 45%; and dividends are taxed at a rate of 39.35%. If not mandated to the beneficiary, the income of interest in possession trusts (where the beneficiary is entitled to the income as it arises) is taxed at 20% other than in respect of dividends which are taxed at 8.75%.

In respect of capital gains, trustees benefit from a Trustee Annual Exempt Amount of £3,000 in 2025/26 where the beneficiary is a disabled person (irrespective of any Vulnerable Beneficiary election) but beyond this amount gains are taxed at 24%. If the beneficiary does not fall within the definition of disabled person, then the Annual Exempt Amount is £1,500. The progressive reduction in the Capital Gains Annual Exempt Amount may mean that more trusts are now likely to need to report smaller gains.

Where no Vulnerable Beneficiary election has been made, a beneficiary of a discretionary trust (whether a disabled person's trust or not) receiving a distribution from the trust can, where the "tax pool" of accumulated income tax paid by the trust is sufficient, reclaim the tax attributable to the distribution in excess of their own marginal tax rate by submitting a Form R40 to HMRC. Such a distribution may affect entitlement to means-tested benefits. As set out in Appendix 3, this operation of the tax pool even where the election has been made can be highly complex in practice.

3.10 Trust arrangements and means-tested benefits and care

Very broadly, given that assets owned by, or the income arising from, in particular, a discretionary trust are not those of the beneficiary until appointed out, then the assets owned by the trust will not be taken into account when assessing means-tested benefits, care or housing provision. The position is different in relation to interest in possession trusts where the beneficiary is entitled to the income as it arises and therefore this can be taken into account for means testing benefits.

This treatment is regularly highlighted by organisations summarising the treatments of specialist disability trusts. For example, the disability charity Scope writes: "A trust…can stop money and property counting in means testing for benefits or social care, including supported living"[38].

[38] "Trusts to support a disabled person, Why you would use a trust", Scope, available at: https://www.scope.org.uk/advice-and-support/leaving-money-to-disabled-person-in-will-trust?gad_source=1&gad_campaignid=20292776336&gbraid=0AAAAADrhH8GdonUkp2QTMkYpZ0gFA0kG0&gclid=EAIaIQobChMI2Yq_n5SHjwMV1qNQBh3brCD5EAAYASAAEgJMKvD_BwE

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Subject to the disregard for certain compensation payments in respect of personal injury[39], once appointed to a beneficiary outright, assets or income *can* become subject to means-testing.

[39] Frenkel Topping, n13, at 6.

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4. Critical analysis of the existing UK trust regime

4.1 Introduction

At its heart, the present regime allows for (i) assets to be settled as Potentially Exempt Transfers[40] for the benefit of eligible disabled people without incurring the initial and periodic charges usually faced by most types of trust - but with the disadvantage that on the death of the disabled beneficiary the assets are subject to IHT then; and (ii) subject to Vulnerable Beneficiary elections, facilitating the taxation of a trust's income and gains at a beneficiary's marginal rates - rather than at the higher rates which would otherwise apply to trusts.

Certain benefits and limitations with the existing regime are summarised below - before comparative analysis with the disability trust regimes in Australia, Canada and the US is provided in Section 5.

4.2 Benefits of the existing regime

The disabled person's trust regime does offer three key benefits: first, trusts facilitate the independent stewardship of assets in relation to people who may not be able to manage them for themselves and without recourse to the Court of Protection - and the regime allows such trusts to exist without undue tax penalty.

Second, trusts can survive long after a benefactor (donor) dies and so a trust provides a vehicle - operated through the Trust Deed and the stewardship of the Trustees - to facilitate appointments to the disabled beneficiary long into the future once the donor has passed away. If the disabled beneficiary dies earlier, then the capital can then pass to other relatives such as siblings - albeit with a possible IHT charge on the disabled beneficiary's death.

Finally, assets in the outright ownership of a disabled person, and their associated income, are likely to impact the availability of means-tested welfare benefits and care provision - whereas assets held within the discretionary trust umbrella do not (see Section 3.10). This means that appointments can be planned on a longer-term basis over the beneficiary's lifetime long after the

[40] Note that certain dispositions for family maintenance may be exempt under Section 11 IHTA1984.

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donor has died but the donor (usually a parent) is secure in the knowledge that their child has been properly provided for under the supervision of independent trustees.

For the avoidance of doubt, appointments out to the beneficiary *can* affect means-tested benefits at that time - but in the meantime the funds can grow within the trust.

4.3 Problems of cost and complexity

Trust arrangements generally may suffer from challenges of cost, complexity and time requirements - meaning that, for many disabled people and their families, they may not offer a cost-effective and streamlined way of setting monies aside for the future.

Associated costs can, depending on the specific trust, include initial and ongoing legal, tax compliance and investment advisory fees - which, over time, can accumulate substantially. The nature and scale of the costs of setting up and running a trust will clearly vary from trust to trust.

One recommendation of this paper is the introduction by HMRC of a “Model Trust Deed” in line with Australian Special Disability Trusts in order to help streamline set-up time and costs.

Costs aside, the complexity of trusts may make them hard to understand; and the concept of assuming a trusteeship by, say, a relative intimidating given the range of fiduciary and other obligations (such as tax compliance) associated with being a trustee.

4.4 Specific legislative issues

Appendix 3 sets out three proposed areas for legislative amendment in the existing regime derived from a definitive textbook in the area of trusts and taxation – “Trust Taxation and Private Client Tax Planning”, 5th Edition, Emma Chamberlain, Matthew Harrison and Richard Wallington ("Chamberlain et al"), Sweet & Maxwell, 2024.

The three areas cover a potential streamlining of the treatment of income for eligible Vulnerable Beneficiary trusts; a possible modification of tax pool arrangements where the Special Income Tax Treatment is applied to a trust; and identified concerns with the drafting of the Conditions in Section 89(A)(2) and (3) IHTA 1984. The authors also suggest that there is no particular reason to combine the Income Tax and Capital Gains Tax treatments of disability trusts with will trusts for the children of a deceased parent and that the Vulnerable Beneficiary regime should only apply to disability trusts.

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4.5 Overall assessment

The existing UK trust-base regime offers benefactors with sufficient means such as family members the ability to set aside assets for disabled people - some of whom may be unable to manage their own financial affairs. It also allows for "self-settled" arrangements for people who have a reasonable expectation of becoming disabled – subject to the interaction of these arrangements with the social care funding regime.

Nonetheless, notwithstanding specialist services offered by organisations such as Mencap[41], the trust regime is complex and can be costly to administer - particularly over prolonged time periods where, depending on the trust, the accumulation of professional fees can erode the underlying asset base. Further, Section 4.4 above has identified a number of specific matters within the existing legislation where it considers improvements could be made.

The next section of this paper reviews disability trust arrangements in Australia, Canada and the US.

[41] See “Wills and Trusts service”, Mencap, at: https://www.mencap.org.uk/advice-and-support/wills-and-trusts-service?gad_source=1&gbraid=0AAAAAD-szliE60tZYx6M7Xq0R946J8qW9&gclid=EAIaIQobChMImc3ZmaztiAMVopRQBh0QgyA8EAAYASA

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5. Comparative analysis: Australia, Canada and the US

5.1 Overview

In considering options for enhancing the existing UK trust-based disability-related savings regime, or proposing alternative vehicles, this section sets out brief comparative analysis of trust and other disability-related savings regimes in Australia, Canada and the US. These countries have been selected on the basis that they have specific trust provisions for disabled beneficiaries and, in the case of Canada and the US, offer alternative savings regimes - the Registered Disability Savings Plan ("RDSP") and ABLE Accounts respectively, with RDSPs having a later life focus.

As with comparative analysis generally, extreme care is needed before drawing conclusions given, for example, different public service and welfare benefit structures in place in different countries. Further, the legislation and detailed provisions governing these various arrangements are considerable: what follows in this section is highly summarised - and solely designed to illustrate key features of the arrangements for the purposes of considering savings options for the UK. Importantly, this section does not seek to provide an in-depth critical analysis of each regime.

5.2 Synopsis of disability trust regimes in Australia, Canada and the US

Australia

Australia operates a system of Special Disability Trusts. The stated aim of the government is to encourage people to make provision for the future[42]:

[42] For Australian government guidance around Special Disability Trusts, see "Disability and Carers - Special Disability Trusts", at: https://www.dss.gov.au/disability-and-carers-programs-services/special-disability-trusts

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> **"It's important to plan for the future, for when parents and carers are no longer able to provide support and care themselves."**

Australian government guidance[43] summarises the basis of the Special Disability Trusts as follows:

> **"A Special Disability Trust helps families and carers to provide funds for a family member with severe disability. This can be for their current or future care and accommodation needs.**
>
> **The Special Disability Trust provides certain social security means test concessions for the beneficiary and eligible contributors to the trust. Families and carers have been able to establish a Special Disability Trust since 2006."**

Note that, from a policy perspective, the Australian government guidance above acknowledges that: (i) the focus of the regime is on "current and future care and accommodation"; and (ii) the regime explicitly benefits from certain means test concessions (discussed overleaf) – albeit that the trusts are relevant for both social security and non-social security recipients.

The trusts are - broadly, and subject to a range of conditions - taxed at the beneficiary's marginal Income Tax rate[44]. In relation to Capital Gains, under Section 118.85 of the Income Tax Assessment Act 1997, gifts to a Special Disability Trust do not crystallise a gain on transfer into the trust; and an asset's base cost in the trust is uplifted to its market value at the time of transfer in. Similar to Australian residents disposing of their main home, subject to specified conditions Special Disability Trusts can also benefit from an exemption from Capital Gains Tax in relation to a "main residence" – including where this is disposed of within two years of the beneficiary's

[43] "Special Disability Trusts", Australian government, at: https://www.dss.gov.au/income-support-payments/special-disability-trusts

[44] For an Australian government overview, see "Reporting the income of a special disability trust", at: https://www.ato.gov.au/general/trusts/specific-rules-for-some-trusts/reporting-the-income-of-a-special-disability-trust/

> *"The tax rules for special disability trusts are designed so that the net income of the trust is taxed at the principal beneficiary's marginal tax rate..."*

Trusts may also benefit from certain state tax concessions (such as Stamp Duty and Land Tax in respect of transfers of land into a trust in the State of Victoria): https://www.revenuesa.sa.gov.au/forms-and-publications/information-circulars-and-revenue-rulings/information-circulars/ic_079

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death[45]. The location of the beneficiary and trust assets need to be identified before all applicable tax effects are accounted for.

Special Disability Trusts are permitted to have one principal beneficiary who must meet the requirements for having a "severe disability"[46]. Australian government guidance[47] explains that a trust ends on the earlier of the death of the beneficiary; the date the trust's assets have been spent on the beneficiary; or any earlier date required by law.

In relation to maintaining eligibility for means-tested benefits[48], the trusts benefit both from a "gifting concession"[49] for immediate family members (effectively not impacting eligible donors' social security pensions through asset deprivation) of Aus $500,000 (approximately £250,000). There is also a limit on assets available to the principal beneficiary of Aus $832,750 (approximately £416,000)[50], indexed annually on 1 July, *excluding* a "primary residence"[51], without affecting means-tested benefits. Should the assets exceed this amount, then the excess will be subject to means testing[52.] In terms of income, Australian government guidance[53] explains that "[n]o income of or distributions from the special disability trust are assessable under the social security income test."

Under Clause 2.1 of the Model Trust Deed (see overleaf), broadly the Trustee must pay out or accumulate the income of the Trust Fund, subject to the "discretionary spending" provisions outlined below, "for the primary purpose and for other purposes primarily for the benefit of the Principal Beneficiary [as defined in the remainder of the clause]". "Primary Purpose" means the reasonable care and accommodation of the Principal Beneficiary as determined by the Trustee from time to time - but "shall not include such daily living costs or expenses of the Principal Beneficiary". Under Clause 1.7, the settlor is excluded from influencing or benefiting from the trust.

[45] See Main Residence guidance published by the Australian Tax Office at: https://www.ato.gov.au/forms-and-instructions/capital-gains-tax-guide-2021/whats-new/real-estate-and-main-residence/main-residence

[46] See "The principal beneficiary", Australian government, at: https://www.servicesaustralia.gov.au/principal-beneficiary-special-disability-trust?context=21876

[47] See paragraph 1.6 of "Special Disability Trusts Questions and Answers", Australian government, November 2014, at: https://www.health.gov.au/sites/default/files/2025-07/special-disability-trusts-questions-and-answers.pdf

[48] See "means testing of special disability trusts", Social Security Guide 4.14.3.40, version 1.334 released 15 December 2025, Australian government, at: https://guides.dss.gov.au/social-security-guide/4/14/3/40

[49] See "Gifting concession for special disability trusts". Social Security Guide 4.14.4.20, version 1.335 released 2 January 2026. Australian government, at: https://guides.dss.gov.au/social-security-guide/4/14/4/20

[50] See "The effects of a Special Disability Trust", Australian government, at: https://www.dva.gov.au/families-and-dependants/financial-programs-and-services/income-support-for-partners/the-effects-of-a-special-disability-trust

[51] Australian government, n48.

[52] Australian government, n48.

[53] Australian government, n48.

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In addition to reasonable spend on care and accommodation needs, together with certain medical and maintenance expenses[54], the arrangements permit "discretionary spending" on a very broad range of expenses (such as vehicle, recreation and computer costs) up to annual limits (presently Aus $14,750 - approximately £7,300)[55].

The Australian government publishes a "Model Trust Deed" containing the "compulsory clauses needed for accessing the social security concessions"[56]. Government guidance[57] explains that:

> **"…[the] model trust deed has been developed to help families who have decided to set up a Special Disability Trust. This trust deed contains the clauses which are essential for a trust to comply with the requirements of the special disability trust legislation."**

The Model Trust Deed provides a basis for accessing the regime – and seems to mitigate levels of professional fees when compared to "starting afresh" in drafting a deed. However, its suitability will need to be considered in the light of a beneficiary's specific circumstances.

In terms of scale of use, a 2018 study[58] by the Social Policy Research Centre at the University of New South Wales commented that:

> **"The most up to date government figures available publicly (from June 2016) show there are presently 1,781 Special Disability Trusts in Australia, with a total value of $149.9 million, and with the average value of the trusts quite low at $84,174.61. This research found that this data may be misleading as many Special Disability Trusts are established in wills, and some that have been established while the donors are still living may have been established**

[54] See "How to use Special Disability Trusts", Australian government, at: https://www.servicesaustralia.gov.au/how-to-use-special-disability-trust-funds?context=21876

[55] See Social Security Guide, 4.14.3.35 "Special disability trusts - discretionary spending", Australian government, 15 December 2025, at: https://guides.dss.gov.au/social-security-guide/4/14/3/35

[56] See "Model trust deed for special disability trusts", Australian government, at: https://www.health.gov.au/resources/publications/model-trust-deed-for-special-disability-trusts?language=en

[57] Australian government, n56.

[58] "Special Disability Trusts", Davy, Laurens, Kayess and Bates, Social Policy Research Centre at the University of New South Wales, June 2018, at 1.

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> **with a small amount of funds that families intend to add to over time."**

Canada

There are two principal types of trusts in Canada targeted at disabled beneficiaries - "Henson Trusts"[59] and Qualified Disability Trusts[60] ("QDTs")[61]. A Henson Trust may also be a QDT.

Additionally, a new section of the Income Tax Act of Canada, section 60.011, allows for the tax-deferred “rollover” of specified types of “registered investment” (essentially, forms of retirement savings plan) from a deceased person to a lifetime benefit trust for a disabled child or grandchild.

By way of background, Henson Trusts are discretionary trusts which have many similarities to the UK trust-based regime - including, subject to drafting, protecting beneficiaries from being means-tested in respect of trust assets for the purposes of welfare benefits[62].

QDTs are testamentary trusts which have been available for the 2016 and subsequent taxation years. The primary benefit of a trust qualifying as a QDT is that it will be subject to the graduated tax rates which apply to individuals rather than higher rates usually applicable to Canadian trusts[63].

To qualify as a QDT, the following criteria must be met:

[59] "Henson Trusts" are discretionary trusts named after the hallmark decision in Ontario (The Minister of Community and Social Services) v Henson, (1987) 28 E.T.R. 121, (sub nom. Ontario (Director of income Maintenance) v. Henson), 26 O.A.C. 332, 1987 CarswellOnt 654 (Div.Ct.); affirmed (1989), 36 E.T.R. 192, 1989 CarswellOnt 542 (C.A.). The purpose of this type of trust is to create an absolutely discretionary trust where the beneficiary does not have any legal claim to the property held in the trust such that there is income deferral and therefore it will not be included as part of provincial and federal qualification for disability benefits. The Henson decision followed on the heels of the seminal decision in Quinn v. Manitoba (Executive Director of Social Services), [1981] 5 W.W.R. 565, 9 Man. R. (2) 161, 124 D.L.R. (3d) 715, 9. E.T.R. 312, 1981 CarswellMan 105 (C.A.).

[60] For a Canadian government overview, “T3 Trust Guide – 2024, under Chart 1, “Types of Trusts” “, see: https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/t4013/t3-trust-guide.html#P1302_146510

[61] A synopsis of these and other arrangements is provided by STEP in Canada, “How can I make sure my child who has a disability is provided for when I die?” at: https://advisingfamilies.org/canada/information-portal/caring-for-others/how-can-i-make-sure-my-disabled-child-is-provided-for-when-i-die/

[62] This point was reaffirmed by the Canadian Supreme Court in 2019. See S.A. v. Metro Vancouver Housing Corp., 2019 SCC 4, [2019] 1 S.C.R. 99.

[63] See the preamble of the Income Tax Act of Canada (“ITA”) subsection 122(1) which carves out QDTs and Graduated Rate Estates (“GRE”). QDTs are defined in subsection 122(3).

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1. The trust must be a testamentary trust at the end of the taxation year that arose on, and as a consequence, of an individual's death[64].
2. The trust must be factually resident in Canada for the taxation year[65].
3. An election must be made in the trust tax return each year, jointly with one or more beneficiaries ("electing beneficiaries"); and the social insurance number ("SIN") of the electing beneficiaries needs to be included.
4. The electing beneficiaries must be named beneficiaries of the trust created under the will[66].
5. The electing beneficiaries must each qualify for the Disability Tax Credit [67] (see below); and
6. Each electing beneficiary may only make one QDT election.

As set out in 5 above, each electing beneficiary must qualify for the Disability Tax Credit [68] ("DTC") - a tax credit available to people with, broadly, severe and prolonged impairments or multiple significant limitations, subject to assessment.

The qualification for a QDT is very time sensitive. A testamentary trust must make the QDT election in the trust tax return every year, either jointly or with one or more beneficiaries. This presents some practical difficulties as currently there is no ability to file a late election to be a QDT. Moreover, where an electing beneficiary is incapable of making a joint election, this may necessitate a court appointment of a guardian to meet the technical requirements of making a joint election.

Once QDT status is obtained, it must be meticulously maintained on an ongoing basis. There is a clawback of the marginal rate benefit afforded to a QDT (referred to as a "recovery tax") applicable to a particular taxation year of a trust that was a QDT in a preceding year if any of the following scenarios apply[69]:

1. None of the beneficiaries at the end of the taxation year is an electing beneficiary for a preceding year. This means that in the year of death of the last-to-die electing beneficiary, the QDT will be subject to recovery tax.

[64] Subparagraph (a)(i) of the definition of "qualified disability trust" in ITA subsection 122(3).

[65] Subparagraph (a)(ii) of the definition of "qualified disability trust" in ITA subsection 122(3). It would not be possible for a testamentary trust established outside of Canada to be a QDT under this condition. ITA subsection 94(4) provides that the deemed resident trust rules under ITA section 94 do not apply to QDTs. Therefore, a foreign trust with a foreign settlor who becomes resident in Canada will not be a QDT, and neither will a foreign trust with a Canadian resident electing beneficiary with a related Canadian resident settlor. To become factually resident in Canada, the trustee of the foreign trust becomes Canadian resident.

[66] Paragraph (b) of the definition of "qualified disability trust" in ITA subsection 122(3).

[67] See definition of "qualified disability trust" in ITA subsection 122(3). Subparagraphs 118.3(1)(a) and (b) deal with the Disability Tax Credit.

[68] See "Disability tax credit (DTC)". Canadian government, at: https://www.canada.ca/en/revenue-agency/services/tax/individuals/segments/tax-credits-deductions-persons-disabilities/disability-tax-credit.html

[69] See ITA subsection 122(2).

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2. The trust ceases to be resident in Canada. This occurs when the "mind and management" of the trust (usually the trustee) has departed Canada for another jurisdiction. The QDT under such circumstances has a deemed year end on the departure date, which would necessitate a careful review of the trust administration to ensure that the "mind and management" of the QDT remains in Canada; and
3. When a capital distribution is made to someone who is not an electing beneficiary.

The recovery tax applies to amounts that are not distributed to an electing beneficiary and is the equivalent of the tax that would have been paid by the trust in the earlier years if the amount had been retained in the trust and taxed at the highest marginal rate[70]. Credit is given for tax already paid on the amount.

Assets within both Henson Trusts and QDTs may be protected from means testing for the purposes of welfare and other benefits, although distributions out of the trust may be taken into account. However, the arrangements vary from province to province. For example, the professional services firm Walsh King write of the position in British Columbia[71]:

> **"Most payments from a trust must be included in the income test [one element of welfare benefit means-testing]. However, the following payments are exempt:**
>
> **1. Distributions from the trust for disability-related costs.**
>
> **2. Distributions from the trust for the acquisition of a family unit's place of residence.**
>
> **3. Distributions from the trust used for registered education savings plan (RESP) contributions.**
>
> **4. Distributions from the trust used for RDSP contributions [see below].**
>
> **Disability-related costs include medical devices, caregiver services, education, renovations or maintenance to a housing unit to accommodate needs resulting for a**

[70] See, Grace Chow and Ian Pryor, Taxation of Trusts and Estates: A Practitioners Guide 2024, Part 1, Chapter 2(f) – Disability Trusts on page 85.

[71] "What you need to know about disability planning in B.C.", Walsh King, at: < https://walshking.com/2017/11/06/what-you-need-to-know-about-disability-planning-in-bc/ >

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> **person's disability, and any other item or service that promotes the person's independence.**
>
> **The bottom line? You can use trusts to pay the beneficiary's medical expenses while preserving their disability assistance."**

Note that, unless a Henson Trust is a QDT, or a Preferred Beneficiary election is made[72], the income and gains of a Henson Trust will be taxed at the highest federal and provincial / territorial marginal tax rate (reflecting some similarity to the UK discretionary trust regime before any Vulnerable Beneficiary election) - whereas QDTs are subject to the graduated tax rates applicable to individuals, subject to a range of conditions and "recovery tax" provisions,

The provisions associated with the Henson Trust and QDT regimes are complex - and which arrangement will be appropriate for an individual will be circumstance-specific.

Lifetime Benefit Trust

As set out above, Section 60.011 of the Income Tax Act of Canada allows for the tax-deferred rollover of specified types of "registered investment" from a deceased person to a lifetime benefit trust for an eligible disabled child or grandchild.

The proceeds must be used to purchase a qualifying registered annuity, with the trustee as the named annuitant, paying the proceeds into the trust in regular instalments over the life of the disabled beneficiary. The disabled family member must be the sole beneficiary of the trust during his or her lifetime; and the terms of the trust must make the income and capital out of the trust available for the "comfort, care and maintenance" of the disabled beneficiary.

This type of structure will allow the proceeds of the annuity to accumulate in a traditional Henson-style trust, preserving the beneficiary's entitlement to provincial or territorial income support and programming.[73] If the trust qualifies simultaneously as a Henson-style trust, under provincial rules, and as a lifetime benefit trust, under Section 60.011, it will presumably allow the best of both worlds – income support preservation and tax deferral. In certain provinces like

[72] A provision contained in subsection 108(1) of the Income Tax Act (Canada) which, subject to various conditions, permits certain trust income to be taxed as income of the beneficiary.

[73] Note that this style of planning works across most provinces in Canada except Alberta.

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Ontario, however, this dual outcome is difficult to achieve beyond 21 years because of the rule against accumulations[74].

The US

Similar to Australia, Canada and the UK, the US operates a trust-based system for disabled beneficiaries - Qualified Disability Trusts[75] ("QDisTs" - a specific form of US Special Needs Trust). These trusts cannot be self-settled.

Their funds can allow a (sole) disabled beneficiary to maintain eligibility for certain benefits: beneficiaries' entitlement to Social Security Disability Insurance ("SSDI" - payable to people who are not able to work having become disabled) is unaffected by a trust. Eligibility for Supplemental Security Income ("SSI") - which is means-tested - may be affected by distributions from a trust[76].

In 2025, these trusts had an exempt band of up to $5,100 in respect of US federal Income Tax. Tax is payable at US trust tax rates. However, certain expenses - including distributions to beneficiaries - are deductible in arriving at the trusts' taxable income, with the distributions taxable in the hands of beneficiaries. Taxable distributions from Qualified Disability Trusts are not subject to the tax on the unearned income of children ("Kiddie Tax")[77].

Note that these trusts have a number of conditions - including that a disabled beneficiary must be under the age of 65 when the trust is established[78].

[74] This rule generally prohibits the accumulation of income in a trust beyond a specific period of time, generally 21 years. At the end of that period of time, the income must be paid out each year to the settlor or a beneficiary. For a general discussion of accumulations rules, see Adam Parachin, “Trusts and Accumulations of income” (2009) 29 E.J. 41.

[75] US IRC §642(b)(2)(C)(ii).

[76] See "Distributions from Special Needs Trusts: In Kind Distributions, Credit Cards, Debit Cards or Gift Cards”, Special Needs Alliance, at: https://www.specialneedsalliance.org/wp-content/uploads/2024/12/Distributions-from-Special-Needs-Trusts-In-Kind-Distributions-Credit-Cards-Gift-Cards-or-Debit-Cards.pdf
This states that:

> *"Remember, a special needs trust (SNT) is a trust that is exempt for purposes of eligibility for SSI and MA even if the trust holds assets that came from the individual getting SSI or MA. "Exempt" means that the assets in the trust are not counted when determining eligibility for those means-tested programs. The assets themselves are also not counted for purposes of public housing (including Section 8) rent calculation, although the creation of the trust may affect rent. Distributions can, however, affect eligibility for all of these programs, so when you make a distribution from the trust, you need to make sure that the distribution does not affect your beneficiary's public benefit eligibility."*

[77] See IRC §1(g)(4)(C). For background information related to "Kiddie Tax", see "Instructions for Form 8615, Tax for Certain Children Who Have Unearned Income", IRS at: https://www.irs.gov/pub/irs-pdf/i8615.pdf
Page 3 of this guidance states that: "Taxable distributions from a Qualified Disability Trust are considered earned income for the purposes of completing Form 8615".

[78] See both IRC §642(b)(2)(C)(i) and "SOI Tax Stats - Definitions of selected terms and concepts for income from trusts and estates", IRS, definition of a Qualified Disability Trust, at: https://www.irs.gov/statistics/soi-tax-stats-definitions-of-selected-terms-and-concepts-for-income-from-trusts-and-estates

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5.3 Alternative disability savings regimes in Canada and the US - RDSPs and ABLE accounts: overview

Both Canada and the US also operate non-trust-based savings mechanisms for disabled beneficiaries - RDSPs and ABLE accounts respectively. The tax treatments of each mechanism are summarised in Section 5.4. General overviews of each arrangement are provided below.

Canada - RDSPs

Beyond its Henson and QDT trusts regime, Canada has introduced Registered Disability Savings Plans ("RDSPs") which, in summary, allow for monies to be invested with an authorised provider on behalf of a disabled person[79]. Contributions may be supplemented with Canadian Government grants and bonds (discussed below).

Of RDSP's and their related provisions, Section 3 of the Canada Disability Savings Act 2007 states that:

> **"The purpose of this Act is to encourage long term savings through registered disability savings plans to provide for the financial security of persons with severe and prolonged impairments in physical or mental functions."**

Note that, whilst withdrawals – Disability Assistance Payments (DAPs) - may in certain circumstances be made before 60, RDSPs are seen as a form of long-term pension savings vehicle given that disabled people may have limited access to the Canada Pensions Plan[80]. There are clawback arrangements if DAPs are made within ten years of a government grant or bond being received by the Plan[81]. Recurring "Lifetime Disability Payments" (LDAPs) are required to be made from the end of the year in which the beneficiary turns 60, calculated using a prescribed formula[82].

[79] For a brief history of RDSPs, see "A Quick History of the RDSP", RDSP Plan Institute, at: https://www.rdsp.com/2020/10/08/a-quick-history-of-the-rdsp/

[80] For brief background and details of withdrawals, see "How do you get your money out?", RDSP Plan Institute, at: < https://www.rdsp.com/tutorial/how-do-you-get-your-money-out/#:~:text=Early%20withdrawals%20mean%20that%20funds,were%20deposited%20into%20the%20account. >

[81] For details of withdrawal penalties, see RDSP Plan Institute at n80.

[82] For details of LDAPs, see RDSP Plan Institute at n80.

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The nature of RDSPs as being seen as later-life savings vehicles is important when considering any comparison with the UK where people may be eligible for state pension in addition to other benefits.

A Canadian government explanatory note[83] explains that - similar to QDT's - eligibility for an RDSP requires the beneficiary to be eligible for Canadian Disability Tax Credit ("DTC" - see 5.2 above).

An RDSP may be supplemented with means-tested state contributions – including grants and bonds. Canadian governmental guidance describes the Canada disability savings grant as follows[84]:

> **"The grant is an amount that the Government of Canada pays into an RDSP. The government will pay a matching grant of 300%, 200%, or 100%, depending on the beneficiary's adjusted family net income and the amount contributed.**
>
> **[ ]**
>
> ***An RDSP can get a maximum of $3,500 in matching grants in one year and up to $70,000 over the beneficiary's lifetime. A beneficiary's RDSP can receive a grant on contributions made until December 31st of the year in which the beneficiary turns 49."***

The same governmental guidance describes a separate Canada disability savings bond payable into RDSPs as follows:

> **"The bond is an amount paid by the Government of Canada directly into an RDSP. The government will pay a bond of up to $1,000 a year to low-income Canadians with disabilities. No contributions have to be made to get the bond. The lifetime bond limit is $20,000. A bond can be**

[83] For details provided by the Canadian Government, "Registered disability savings plan rules", see: <https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/registered-disability-savings-plan-rdsp.html >

[84] For details provided by the Canadian Government, "Canada disability savings grant and Canada disability savings bond", see: https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/registered-disability-savings-plan-rdsp/canada-disability-savings-grant-canada-disability-savings-bond.html

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> **paid into an RDSP until the year in which the beneficiary turns 49."**

RDSPs are subject to a range of conduct, investment and anti-avoidance provisions - including the purposes for which funds may be used[85]. Subject to detailed provisions, there is no annual limit on contributions to an RDSP - but the maximum lifetime amount that can be contributed is capped at CAN $200,000[86].

Although the position varies by province, the RDSP Institute write that: "*the RDSP is exempt from most provincial disability and income assistance benefits. It does not get clawed back and it does not reduce disability benefits payments*."[87]

RDSPs can be opened with a variety of Canadian financial institutions: the Canadian government sets out guidance for opening an RDSP[88]. RDSPs can be set up by an eligible disabled person or, if they lack capacity, a Qualifying Family Member. Various provisions govern options for subsequent qualifying persons to have oversight of the plan[89].

The US - ABLE accounts

Separate to the Qualified Disability Trust provisions outlined above, the US Tax Code contains provisions in respect of "ABLE accounts" - also known as "529A accounts" (the statutory authority being IRC §529A). The IRS explains that[90]:

> **"The Achieving a Better Life Experience (ABLE) Act of 2014 allows states to create tax-advantaged savings programs for eligible disabled people (designated beneficiaries). Funds from these 529A ABLE accounts can help designated beneficiaries pay for qualified disability**

85 Canadian government, "What types of payment are made from an RDSP?" at: https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/registered-disability-savings-plan-rdsp/payments-rules/what-types-payments-made-rdsp.html

86 Canadian government, "The contribution limit for RDSPs", at: https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/registered-disability-savings-plan-rdsp/rdsp-limits-transfers-rollovers.html

87 See "RDSP Tutorial", RDSP Institute, at: https://www.rdsp.com/tutorial/provincial-resources/

88 See Canadian government guidance, "Opening an RDSP", at: https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/registered-disability-savings-plan-rdsp/opening-rdsp.html

89 See Canadian government guidance, "Who can open an RDSP", at: https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/rc4460/registered-disability-savings-plan.html#Who_can_open_an_RDSP

90 See IRS guidance, "ABLE Accounts - Tax Benefit for Disabled people", at: https://www.irs.gov/government-entities/federal-state-local-governments/able-accounts-tax-benefit-for-people-with-disabilities

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> **expenses. Distributions are tax-free if used for qualified disability expenses."**

"Qualified disability expenses" are broad and cover expenses including, amongst others, transport, training, health, legal fees and living expenses[91].

Designated beneficiaries must have been blind or otherwise disabled before age 26 to be eligible[92]: not all disabled people are eligible. The ABLE account provider ABLEnow explains that[93]:

> **"Individuals who meet the age of onset requirement must also have a qualifying disability. Physical, intellectual and mental disabilities may qualify someone to open an ABLE account.**
>
> **If you are entitled to Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) based on blindness or disability, you are automatically eligible to establish an ABLE account. About 70% of ABLEnow customers open their account based on their eligibility for SSI or SSDI.**
>
> **About 30% of ABLEnow customers open their account by self-certifying that they have a qualifying disability and a signed disability diagnosis from a qualified physician."**

The inter-relationship between ABLE accounts and means-tested benefits is a central aspect of the policy behind ABLE accounts. The ABLE National Resource Center writes that[94]:

> **"Living with a disability is expensive. According to the National Disability Institute (NDI) report, The Extra Costs of Living with a Disability in the U.S., adults with disabilities**

[91] The statutory definition of "qualified disability expenses" is found in IRC §529A(e)(5).

[92] See IRC §529A(e)(1) for eligibility requirements; and US Social Security Administration Program Operations Manual System TN122 (03/24), Section B3 "Designated beneficiary", at: https://secure.ssa.gov/poms.nsf/lnx/0501130740

[93] "Who is ABLE eligible?", ABLEnow, at: https://www.ablenow.com/blog/articles/who-is-able-eligible/

[94] See " About ABLE Accounts, Able National Resource Center - "Why is it important to have an ABLE account?", accessible at: https://www.ablenrc.org/what-is-able/what-are-able-acounts/

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> **require, on average, 29 percent more income to achieve an identical standard of living as a household of the same size and income where no one has disabilities. Millions of individuals with a disability depend on public benefits for income, health care, food and housing. Many needs-based programs restrict eligibility to people with less than $2,000 in countable resources (cash and funds in a non-ABLE checking account, saving account and some retirement accounts). If a person saves more than this limit, they risk losing critical benefits they need.**
>
> **Saving in an ABLE account allows people with disabilities to keep benefits if they need them. Up to $100,000 of ABLE funds is not a countable resource for Supplemental Security Income (SSI). Any amount of funds in an ABLE account up to the state plan limit does not affect someone's current or future eligibility for programs like FAFSA (Free Application for Federal Student Aid), HUD (Housing and Urban Development), SNAP (Supplemental Nutrition Assistance Program), Medicaid, Medicare, SSDI (Social Security Disability Insurance) or VRS (Vocational Rehabilitation Services). Funds invested in an ABLE account grow tax-free and can be used for a broad range of expenses including food, housing, transportation, education, employment, medical expenses and more."**

Any party, including the beneficiary, can contribute to an ABLE account[95]. The accounts are overseen by states with some variations in provisions between states[96]. ABLE accounts are subject to annual and cumulative contribution limits with some variance between states[97]. In

[95] See US Social Security Administration Program Operations Manual System Section SI 01130.740 under "2. Contributions to ABLE account": "Contributions may be made by any person. ("Person," as defined by the Internal Revenue Code (IRC), includes an individual, trust, estate, partnership, association, company, or corporation.)" – at: https://secure.ssa.gov/poms.nsf/lnx/0501130740

[96] For details, see "Compare State Programs", Able National Resource Center, at: https://www.ablenrc.org/compare-states/
See also US Social Security Administration n90: "An ABLE program can be established by a State (or State agency or instrumentality of a State). An eligible individual can open an ABLE account through the ABLE program in any State, if the State permits it."

[97] See IRS publication 907, "Tax Highlights for Persons with Disabilities" (for use in preparing 2024 returns), "ABLE Account", "Contribution Limitation" at 8. Accessible at: https://www.irs.gov/pub/irs-pdf/p907.pdf

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2025, subject to certain state variations, the maximum annual contribution is US $19,000[98] (the annual gift exemption), with additional amounts permitted in certain circumstances when the beneficiary is working.

As set out above, there is a $100,000 overall limit for ABLE accounts before they are taken account for US SSI means testing[99]. ABLE accounts have overall limits which vary by state.

In relation to benefits other than SSI, the ABLE National Resource Centre explains that[100]:

> **"Any amount of ABLE savings up to the plan limit, which can between $235,000 - $596,925 depending on the plan, will NOT affect eligibility for:**
>
> > - **Social Security and Disability Insurance (SSDI), or**
> > - **Housing Assistance - Housing and Urban Development programs (HUD),**
> > - **Supplemental Nutrition and Assistance Program (SNAP),**
> > - **Free Application for Federal Student Aid (FAFSA),**
> > - **Medicare Parts A, B, C, or D, Medicare Savings Programs, and Extra Help, or**
> > - **Any type of Medicaid benefit including Medicaid waiver services."**

[98] See Social Security Administration, "Spotlight on Achieving a Better Life Experience (ABLE) accounts (2025 edition)", question 14, "How much can be contributed annually to an ABLE account?", available at: https://www.ssa.gov/ssi/spotlights/spot-able.html?tl=13

[99] Social Security Administration, n96, under "Treatment of ABLE under Federal Means-Tested Programs - SSI Program": *"We disregard the first $100,000. Only assets above $100,000 count as a resource. If an ABLE balance exceeds $100,000 by an amount that causes you to exceed the SSI resource limit -- whether alone or with other resources, we suspend the SSI payment until the countable resources are below the allowable limit."*

[100] "ABLE Account Contribution Limits (2025)", ABLE National Resource Center, at: https://www.ablenrc.org/able-account-contribution-limits-2025/

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In terms of governance, the SEC write that an eligible person aged 18 or older can open an ABLE Account[101]. If they are a minor or lack capacity, then the SEC explains that there is a prescribed order of people who can open an account on their behalf.

5.4 The specific tax treatments of the alternative regimes

RDSPs

Canadian government guidance explains that[102]:

> **"Contributions to an RDSP are not tax deductible and can be made until the end of the year in which the beneficiary turns 59. Contributions that are withdrawn are not included as income to the beneficiary when they are paid out of an RDSP. However, the Canada disability savings grant (grant), the Canada disability savings bond (bond), investment income earned in the plan, and the proceeds from rollovers are included in the beneficiary's income for tax purposes when they are paid out of the RDSP."**

Essentially, therefore, the guidance above explains that the arrangements do not provide relief for, nor do they tax (in the RDSP), private contributions, but accumulated investment returns and state contributions are taxed when paid out to beneficiaries. Canadian government guidance for RDSP issuers sets out in detail how different payment types are determined and how they are taxed[103].

[101] See "Updated Investor Bulletin: An Introduction to ABLE Accounts", Securities and Exchange Commission, 15 September 2023, at: https://www.sec.gov/resources-for-investors/investor-alerts-bulletins/ib_able_accounts

[102] Canadian government, n83.

[103] See "Registered Disability Savings Plan (RDSP) provider user guide ", Chapter 4, "Payments" – including Section 4.5, “Taxation”, Canadian government, at: https://www.canada.ca/content/dam/canada/employment-social-development/programs/disability/savings/issuers/user-guide/registered-disability-savings-plan_user-guide_en.pdf

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ABLE accounts

The tax treatment of contributions to ABLE accounts varies between states with some allowing forms of tax relief[104]. Excess contributions beyond stipulated limits in a year must be returned to contributors within a set time limit or the excess is subject to tax at 6%[105].

Until paid out to beneficiaries, returns earned by ABLE accounts can accumulate tax-free[106].

Distributions from ABLE accounts to meet “Qualified disability expenses” are tax-free in the hands of the beneficiary with any excess subject to tax[107]. Other distributions will be taxable in the hands of the beneficiary in accordance with a pro-rating formula which takes account of the proportion of qualifying disability expenses relative to distributions made[108].

5.5 Take-up and financial statistics

The statistics below for both RDSPs and ABLE accounts confirm significant levels of take-up for both arrangements.

Canada - RDSP's

The Canadian Government publishes a variety of statistics around the use of RDSPs. The last available publication as of 31 December 2022[109] suggested that, since the inception of RDSPs in 2008, a cumulative total of some 280,000 people had held an RDSP at some point since the start of the programme.

As of 31 December 2022, there were some 263,000 beneficiaries with active RDSP's. This equated to some 36.3% of individuals aged up to 49 and eligible for the Canadian Disability Tax Credit. The total value of RDSP assets as of 31 December 2022 was some Can $8.8 billion. Total amounts paid into RDSPs until that date comprised:

[104] The ABLE National Resource Center provides guidance around aspects of the tax treatment of ABLE accounts - "ABLE and tax benefits". This includes an online states comparator tool. The guidance is available at: https://www.ablenrc.org/able-and-tax-benefits/

[105] IRS, n100 at 8. Statutory basis in IRC §4973(h) which imposes a 6% tax on excess contributions to certain tax-favoured accounts, including ABLE accounts under §529A.

[106] ABLE National Resource Center, n104.

[107] IRS, n97, "Distributions" at 8 and 9. Statutory basis at IRC §529(c)(1)(B)(i).

[108] IRS, n97, "Distributions" at 8 and 9. Statutory basis at IRC §529(c)(1)(B)(ii).

[109] "Canada Disability Savings Program: 2022 Key Statistics", Canadian government, at: https://www.canada.ca/en/employment-social-development/programs/disability-savings/reports/2022-key-statistics.html#

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▪ Canadian Disability Savings Bonds	Can $1.7bn
▪ Canadian Disability Savings Grants	Can $4.0bn
▪ Individual contributions	Can $2.6bn

US - ABLE accounts

The organisation ABLE Today states that as at 31 March 2025[110]:

- There were some 204,000 ABLE Accounts.
- The accounts had a total of some $2.46bn of Assets under Management.
- The accounts had an average balance of some $12,000.

Note that the legislation introducing ABLE Accounts was only introduced in 2014.

5.6 Tabular synopsis of structures reviewed

A tabular synopsis of the various arrangements in this chapter, set against the UK trust-based regime, is set out below:

[110] See ABLE Today, "ABLE National Data", as at Q1 (31 March) 2025, at: https://static1.squarespace.com/static/627f1a6a6fa11065b43d167b/t/686eb33b64396f33855e13b7/1752085308640/Q4+2024+Q1+2025+National+ABLE+Data.pdf

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Area ***Trusts***	**UK**	**Australia**	**Canada**	**US**
Specialist disability trust regime?	Yes	Yes	Yes	Yes
Financial caps and limits?	No	In relation to social security concessions, there are a number of limits. There is an overall asset limit of Aus $832,750 excluding a primary residence (for means testing); and a "gifting concession" of Aus $500,000. There is an Aus $14,750 annual limit in relation to "discretionary expenditure" (not on reasonable accommodation or care expenses). Note that the trust's funds are largely intended to meet the "reasonable care and accommodation needs" of the principal beneficiary.	Non-discretionary QDTs may be subject to limits (which vary by province) around asset levels for the purposes of the benefit "asset test".	No

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Area	UK	Australia	Canada	US
Third party or self-funded?	Both	Principally third party – with only very limited circumstances for funding from beneficiary.	Both Henson Trusts and QDTs must be third-party funded. Lifetime Benefit Trusts can be funded by eligible family members with specified registered investments that cannot be otherwise held in regular testamentary trusts.	Both
Ringfenced from means-testing?	If the trust is discretionary, amounts held in trust are generally not taken into account for care and benefits means-testing - but distributions to beneficiaries are. The position of non-discretionary trusts will depend on beneficiary entitlements.	Yes - provided various tests are met around asset levels and expenditure (see “Financial caps and limits?” above). There are various rules around deprivation in relation to donor social security benefits if a beneficiary dies within 5 years of a gift to the trust.	Assets within both Henson Trusts and (discretionary) QDTs may be protected from means testing for the purposes of welfare and other benefits, although distributions out of the trust may be taken into account. The arrangements vary from province to province.	Beneficiaries' entitlement to Social Security Disability Insurance ("SSDI" - payable to people who are not able to work having become disabled) is unaffected by a trust. Eligibility for Supplemental Security Income ("SSI") - which is means-tested - may be affected by distributions from a trust.

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Area	UK	Australia	Canada	US
Tax treatment	If Vulnerable Beneficiary elections are made, it is possible to achieve broad tax neutrality with respect to the beneficiary's own tax position for Income Tax, Capital Gains Tax. For Inheritance Tax purposes, gifts into trust can be treated as a PET if meet eligibility criteria (or may be exempt if meet exemption requirements).	Broadly, trust income is taxed at the beneficiary's marginal Income Tax rate. In relation to Capital Gains, gifts to a Special Disability Trust do not crystallise a gain on transfer – and the asset's base cost in the trust is uplifted to its market value at the time of transfer. Subject to certain conditions, Special Disability Trusts also benefit from an exemption from Capital Gains Tax in relation to a “main residence” – including where this is disposed of within two years of the beneficiary's death. The trust may benefit from certain state tax concessions (such as in respect of Stamp Duty or Land Tax in relation to certain transfers of land to the trust in the State of Victoria).	Unless a Henson Trust is a QDT, or a Preferred Beneficiary election is made, the income and gains of a Henson Trust will be taxed at the highest federal and provincial / territorial marginal tax rate, whereas, subject to a range of conditions and "recovery tax" provisions, QDT's are subject to the graduated tax rates applicable to individuals. Broadly, tax on the rollover of the specified registered investment on death into a Lifetime Benefit Trust is deferred.	In 2025, these trusts had an exempt band of up to $5,100 in respect of US federal Income Tax. Certain expenses - including distributions to beneficiaries - are deductible in arriving at the trusts' taxable income (which is taxed at trust rates), with the distributions taxable in the hands of beneficiaries. Taxable distributions from Qualified Disability Trusts are not subject to US "Kiddie Tax" on unearned income.

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Area	UK	Australia	Canada	US
Non-disabled person permitted to benefit?	Up to the lower of £3000 or "3% of the amount that is the maximum value of the settled property during the period in question" can be appointed annually to someone other than the disabled beneficiary.	No – while the disabled beneficiary is alive a trust may have only one principal beneficiary who must meet the definition of "severe disability".	QDTs need at least one "electing beneficiary" who is eligible for DTC. "Recovery tax" may be payable if capital is distributed to a non-electing or non-eligible beneficiary. Henson Trusts can have both disabled and non-disabled beneficiaries. A Lifetime Benefit Trust must have an eligible disabled person as beneficiary.	Only upon the death of the disabled beneficiary.
Tax treatment on death of disabled person	The settled property is treated as comprised in the estate of the disabled beneficiary and may give rise to IHT on the death of the disabled beneficiary.	There are no inheritance or estate taxes in Australia. However, there are various tax provisions on vesting. Assets received from a deceased's estate may trigger a Capital Gains Tax liability when disposed of by an eligible recipient.	There are no inheritance or estate taxes in Canada. However, trust assets may trigger a Capital Gains Tax liability as a deemed disposition at market value on death. For QDTs, "recovery tax" provisions may apply to distributions to non-eligible beneficiaries.	If the estate exceeds the Exclusion Amount of nearly $14m, then the trust assets would be subject to Federal Estate Taxes (note that this seems a remote possibility given the scale of the Exclusion Amount).

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Succession on death of disabled person	Following the death of the disabled person, the income and capital of the trust fund are held on trusts set out or appointed outright.	Following the death of the disabled person, the trust terminates and the assets will vest in the nominated residual beneficiaries.	Henson Trusts must prescribe how the trust assets are to be distributed upon the beneficiary's death. QDT classification is specific to the electing beneficiary. On the death of such beneficiary, the classification may cease unless there is a continuing electing beneficiary to keep the QDT classification valid. Otherwise, a recovery tax may apply.	If the trust has secondary beneficiaries, the assets pass to them net of any taxes or clawbacks of Medicaid payments.
Other specialist savings accounts	**UK**	**Australia**	**Canada**	**US**
Other specialist savings account regime?	No	No	Yes – RDSPs	Yes - ABLE Accounts. Note that ABLE Accounts are operated by states.
Eligibility	n/a	n/a	Eligible for Disability Tax Credit (a tax credit available to people with, broadly, severe and prolonged impairments, subject to assessment); Canadian citizenship; under the age of 60; and a valid Social Insurance Number.	Designated beneficiaries must have been blind or disabled by a condition that began before the individual's 26th birthday.

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Area	UK	Australia	Canada	US
Means-testing impact	n/a	n/a	RDSPs are not included in provincial "asset tests" for means testing. The RDSP Plan Institute explains that income from RDSPs may affect benefits in some provinces and territories – although the account is exempt from most provincial disability and income assistance benefits.	First $100,000 not taken into account for Supplemental Security Income ("SSI") means testing. A range of other social security programs are unaffected (provided the account falls within limits) – see Section 5.3.
Direct financial support from Government?	n/a	n/a	Yes – Canada disability grants and bonds (subject to eligibility).	No. Note that ABLE Accounts are operated by states.
Capped limits?	n/a	n/a	No annual limit but a maximum lifetime limit on contributions of CAN $200,000.	Overall limit of between $235,000 - $596,925. This varies between states.
Eligible expenses	n/a	n/a	Withdrawals can be spent on a broad range of expenditure. A number of conditions govern withdrawals before and from the age of 60 – including penalties if withdrawals are made within 10 years of ten years of a government grant or bond being received by the Plan.	A broad range of "qualified disability expenses".

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Area	UK	Australia	Canada	US
Tax treatment	n/a	n/a	Canadian government guidance explains that contributions are not tax-deductible and are not included as income of the beneficiary when withdrawn. Income and gains broadly roll up tax-free in the Plan, but the Canada disability savings grant and bond, investment income earned in the plan, and the proceeds from rollovers are included in the beneficiary's income for tax purposes when they are paid out of the RDSP.	Some states allow forms of tax relief for contributions – although these are not deductible for federal tax purposes. Contributions in excess of stipulated limits are subject to tax at 6% unless returned within a set time limit. Investment returns can roll up tax-free. Payments for "qualified disability expenses" [broadly defined] are tax-free in the hands of beneficiaries - but other amounts are subject to tax.
Non-disabled person permitted to benefit?	n/a	n/a	No	No

		Australia	Canada	US
Tax treatment on death of disabled person	n/a	n/a	Any government grants, bonds and investment growth (but not contributions) passing to the disabled person's estate are subject to tax.	If the estate exceeds the Exclusion Amount of nearly $14m, then the ABLE account would be subject to Federal Estate Taxes (note that this seems a remote possibility given the scale of the Exclusion Amount).
Succession on death of disabled person	n/a	n/a	An RDSP must be closed and funds – net of any required government grant and bond repayments – will be paid to the disabled person's estate.	Beneficiaries may approve a successor beneficiary to inherit the account assets after various deductions. If no beneficiary is designated, the funds in the account are distributed in accordance with the deceased's will and testament.

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5.7 Comparative analysis – summary

This section has not sought to provide a critical analysis of these various arrangements. However, it has highlighted that:

1. Similar to the UK, Australia, Canada and the US all have specialist disability trust regimes.
2. The specific tax and other provisions governing these schemes vary - but in Australia and Canada they can result in income being taxed at beneficiaries' marginal tax rates (similar to the UK Vulnerable Beneficiary regime). US QDisTs allow for an Income Tax exempt band but are taxed at trust rates: however, distributions are tax-deductible but taxed in the hands of beneficiaries at their applicable rates.
3. The arrangements allow for varying degrees of means-testing asset "ringfencing" or concessions.
4. Both Canada and the US offer alternative savings vehicles - RDSP's and ABLE Accounts - in respect of disabled people: again, the nature of these arrangements varies (for example, RDSPs have a later-life focus, although earlier withdrawals are possible) - but they both benefit from various forms of tax relief and means-testing concessions.
5. The take-up statistics for both RDSP's and ABLE Accounts are significant - noting that the legislation introducing ABLE accounts only came into force in 2014.

Against this backcloth, Section 6 considers alternative options to the trust-based regime for the UK.

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6. Consideration of alternative options for the UK

6.1 Introduction

Section 4.3 commented on the challenges of cost and complexity associated with the existing UK trust regime for disabled beneficiaries.

This paper does not suggest that the regime should be ceased or fundamentally overhauled: subject to its limitations, the UK trust regime offers the opportunity for benefactors to set aside, and safeguard, monies for the future of eligible disabled beneficiaries, many of whom who may not have the capacity to manage their own affairs. The comparative analysis with Australia, Canada and the US in Section 6 shows that these countries also use specialist disability trust regimes.

Nonetheless, trust cost and complexity are real issues to consider - particularly given the risk of asset erosion over time with fees and other costs.

Against this backcloth, drawing on the examples of both ABLE accounts and RDSPs, there seems to be considerable merit in introducing an alternative, simplified savings vehicle for eligible disabled people. The UK has a well-developed retail financial services industry which could offer such arrangements on a standardised basis. This section outlines a number of parameters for consideration in designing a simplified savings vehicle.

Crucially, whilst the RDSP and ABLE Account are illustrative examples of alternative mechanisms, their specific attributes (such as the RDSP being focused on later life provision), alongside differences between the social security and public services systems in the UK compared to Canada and the US – mean that in any policy formulation it will be vital not to "cherry pick" aspects of these arrangements without evaluating the position within the specific landscape of UK public provision.

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6.2 Potential alternative options - outline parameters

This paper suggests that, as a “base case”, a simplified arrangement could have many symmetries of treatment in areas such as tax and means testing with specialist disability trusts – but it highlights areas where there may be policy reasons to adopt alternative approaches.

In terms of policy formulation for a simplified savings arrangement, the examples of the RDSP and ABLE Account illustrate that tax design is an important - but by no means the only - aspect of these arrangements.

Other areas for policy consideration include eligibility criteria; the interaction with means-tested benefits and care; and whether, and to what extent, there should be limitations on either contributions or overall amounts permitted under a simplified vehicle. These and other matters such as governance and investment criteria are addressed below.

6.3 Eligibility criteria

If policy for a simplified savings vehicle were to be framed broadly around symmetry with the existing trust arrangements, then eligibility could be by reference to the definition of a “disabled person” set out in Paragraph 1 of Schedule 1A of the Finance Act 2005 – reproduced at Appendix 2. However, it may be that alternative eligibility criteria could be considered appropriate: for example, drawing on the eligibility criteria for the US ABLE Account, use of the simplified vehicle could be limited to people with more severe disabilities arising early in life. The paper recognises that precise definition would need to be considered as part of policy formulation – and that this matter is one which should rightfully be debated.

6.4 Potential tax treatments

In all circumstances, in line with existing eligible disability trusts, this paper proposes that gifts into the vehicle would be treated as Potentially Exempt Transfers for IHT purposes - unless the gifts were eligible for the usual exemptions (such as the annual gift exemption; the exemption for normal expenditure out of income; or, where applicable, the exemption for reasonable costs in paying for the care and maintenance of a disabled relative under Section 11(3) IHTA 1984).

In terms of income and gains earned by the specialist vehicle, the paper considers two key options for the: "tax neutral" - essentially taxing the returns to the vehicle at the beneficiary's

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marginal rates; and "tax advantaged" – perhaps excluding income and gains within the vehicle from tax within certain limits.

The "tax neutral" treatment would be broadly in line with the objectives of the existing trust regime with Vulnerable Beneficiary elections and would facilitate simplified savings arrangements without providing additional tax advantages. Depending on a beneficiary's overall income, and the nature of a specialist savings vehicle's investments, it may be that under the "tax neutral" option, a beneficiary's applicable marginal Income Tax rates after applying the Personal Allowance, Starting Rate for Savings and / or Personal Savings Allowance in respect of interest income are low in any event. However, as for Trustees under the Vulnerable Beneficiary regime, there could clearly be compliance costs in calculating and submitting the position to HMRC.

Policy motivations to offer tax advantages might include removing a requirement to submit tax returns in relation to income and gains arising in the vehicle – thereby reducing costs and complexity. Other motivations could include incentivising savings – in line with existing ISAs. However, the paper recognises that such advantages might be subject to, amongst other matters, financial limits and defined boundaries on types of eligible expenditure.

Under both the tax neutral and tax-advantaged options, distributions from the vehicle would not be taxed in the hands of the beneficiary.

6.5 Interaction with means-tested benefits and care

As a general principle, in line with the existing discretionary disability trust regime, this paper proposes that the design of these accounts should be configured such that their capital and income are, as far as possible, not subject to means-testing.

If this were not to be the case, potential savers and benefactors may query the value of the arrangements and, if in a position to do so, default to a (more complex and expensive) trust or simply rely on siblings "to do the right thing" with the attendant risks of this approach.

Whilst distributions from the vehicle might be subject to means testing (as would be the case from trusts), there is a policy case for considering a carve-out of certain types of payment where these are to meet defined types of expenditure so as not to disincentivise use. This paper fully acknowledges that this would need consideration as part of policy formulation.

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6.6 Governance arrangements and succession

It is proposed that savings in the simplified structure could be made by both the disabled person and third party benefactors.

For disabled people with capacity, any simplified savings structure could permit them to make decisions regarding both the distribution of assets; and in relation to other matters such as account investment strategy.

Where a disabled person lacks capacity, those permitted to make "best interests" decisions around the savings account on their behalf could be people with a valid Lasting Power of Attorney; or Property & Financial Affairs deputies appointed by the Court of Protection. Matters concerning succession to the vehicle where the disabled person lacks capacity would need consideration.

It is proposed that the existing safeguards governing Attorneys or Deputies would be sufficient for simplified accounts.

6.7 Potential providers of savings products - and charges

The UK has a well-developed retail savings and investment market with numerous providers of savings arrangements. Consultation with the financial services industry in the formulation of both policy and the specification of simplified structures would be a sensible step in ensuring that any finally agreed structure is one which will secure industry support.

Separately - but importantly - there seems to be a strong case to include a reasonable cap on charges as part of any arrangement[111] so as to ensure that an account is not progressively depleted by costs.

[111] See, for example, in relation to certain pensions arrangements, "Cost and charge restrictions", the Pensions Regulator, at: https://www.thepensionsregulator.gov.uk/en/document-library/scheme-management-detailed-guidance/funding-and-investment-detailed-guidance/cost-and-charge-restrictions

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6.8 A simplified vehicle in operation – illustration

As set out in Section 1.10, and by way of illustration, if a disabled person or person responsible for managing their affairs (where they lacked capacity) wished to open a simplified account, then possible steps might include:

1. They contact a bank or other authorised financial institution to open a simplified account for themselves / another disabled person (as applicable).
2. They apply for the simplified account providing evidence of their / the beneficiary's disability status and provide details of who can operate the account with supporting evidence (such as copies of Lasting Powers of Attorney).
3. The account is opened using standard terms for these accounts and money is put in within any policy limits.
4. Returns accrue in accordance with the terms of the account – which follow policy guidelines around investment risk (unless an interest-only account).
5. If the tax-neutral treatment is used, the person responsible for managing the account provides details of their / the third party beneficiary's (as applicable) other income to an online questionnaire from the provider each year and the provider deducts tax (if any) and remits to HMRC accordingly.
6. If the tax-advantaged treatment is used, there is no further tax compliance needed.
7. When withdrawals are made, the responsible person submits a brief online form to the provider summarising what the payments are for (for the record – not for provider “approval”) and requesting payment. For means testing purposes:
    a. If, following policy formulation for the accounts, they are taken account of in means testing, details are notified automatically as applicable to the DWP (for benefits) / Local Authority (for social care) when the money is paid out; or
    b. if not, the money is simply paid out with the records held on the account at the provider.

6.9 Choosing between arrangement types

As explained in Section 1.8, this paper acknowledges that there will be individual circumstances where a beneficiary could be eligible for both types of savings arrangement - trust or simplified savings account.

As set out in Section 1.11, this paper recommends that the choice of appropriate vehicle in specific situations should be left to those setting up the arrangements - having taken appropriate advice - mindful of the arrangements' likely different cost and complexity profiles. Specifically,

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it is envisaged that a simplified savings vehicle with prescribed financial limits would not be suitable for a very substantial bequest - whereas a trust may well be.

Illustrative examples of the operation of both arrangement types are set out at Appendix 4.

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7. Conclusions

This paper has set out reasons for disabled people and their benefactors wishing to set aside monies for future care and provision - particularly where the disabled person may be unable to provide for themselves; or where they may need to incur substantial expenditure on account of their disability.

The paper has evaluated both existing specialist trust-based savings mechanisms in the UK; and, using comparative analysis, considered alternative savings options.

Similar to the UK, Australia, Canada and the US offer specialist disability trusts for savings - albeit with varying tax treatments and other provisions.

Alongside these trusts, both Canada and the US offer alternative savings vehicles for disabled people - RDSP's and ABLE accounts respectively. The rationales, structure and boundaries for these vehicles vary; and they need to be seen alongside the welfare and other support arrangements in each country. Nonetheless, they have proven to be credible alternatives - evidenced by their take-up statistics.

Against this backcloth, whilst supporting the continuity of the UK disability trust regime - and making proposals for enhancements to it, drawing on, for example, the Australian Model Trust Deed - this paper recommends the introduction of an additional, simplified savings vehicle for eligible disabled beneficiaries with, as a “default” position, many symmetries to the treatment of trusts (including in relation to means testing for benefits and social care).

If policy for a simplified savings vehicle were to be framed broadly around symmetry with the existing trust arrangements, then eligibility could be by reference to the definition of a “disabled person” set out in Schedule 1A of the Finance Act 2005 – reproduced at Appendix 2. However, it may be that alternative eligibility criteria could be considered appropriate: for example, drawing on the eligibility criteria for the US ABLE Account, use of the simplified vehicle could be limited to people with more severe disabilities arising early in life. The paper recognises that precise definition would need to be considered as part of policy formulation – and that this matter is one which should rightfully be debated.

The paper suggests a “default” tax neutral treatment of income and gains within the vehicle aligned with the beneficiary's own tax position - similar to the existing Vulnerable Beneficiary trust regime for disabled people. However, it may be that tax advantages could be incorporated

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as part of policy formulation - subject to, for example, appropriate financial limits and defined boundaries on types of eligible expenditure. The paper recognises that any tax advantages would need to be fully justified: one reason might be to avoid the complexities of tax compliance and associated returns; another might be to incentivise take-up.

In line with the trust regime, the paper recommends that transfers into the vehicle should be treated as Potentially Exempt Transfers for IHT purposes; and that distributions should not be taxed in the hands of the beneficiary.

In making the recommendation for a simplified savings vehicle, the paper recognises the practicalities and policy choices involved in defining and rolling out such an arrangement. Specifically, it acknowledges that care would be needed to define - in addition to the tax treatment - parameters such as eligibility; financial limits; investment parameters; uses of funds; governance arrangements; and, crucially, the interaction with means-tested benefits and care. The paper advocates engagement both with key disability organisations and the retail financial services industry in policy formulation.

In summary, given projected future pressures on public finances and the challenges faced by many disabled people over extended periods, this paper argues that there is a strong case for both disabled people and their benefactors who wish to set aside monies for their future care and provision - but where the trust regime may not be appropriate on the grounds of cost and complexity - to be able to do so in a cost-effective and secure manner. Designed well, a simplified savings arrangement could offer a practical vehicle to facilitate this – sitting alongside the existing, well-established trust regime.

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Appendix 1 - Synopsis of statistical data around disability in the UK

Introduction

The following sections set out data extracted from the 2023/24 Family Resources Survey (FRN)[112] unless otherwise stated.

Disability prevalence

A chart from the FRN setting out overall disability prevalence by age group over the ten years to 2023/24 is reproduced below. This shows a percentage prevalence of 25% across all age groups. This reflects an increase of 4.9 million people over the ten-year period.

[112] FRN, n20.

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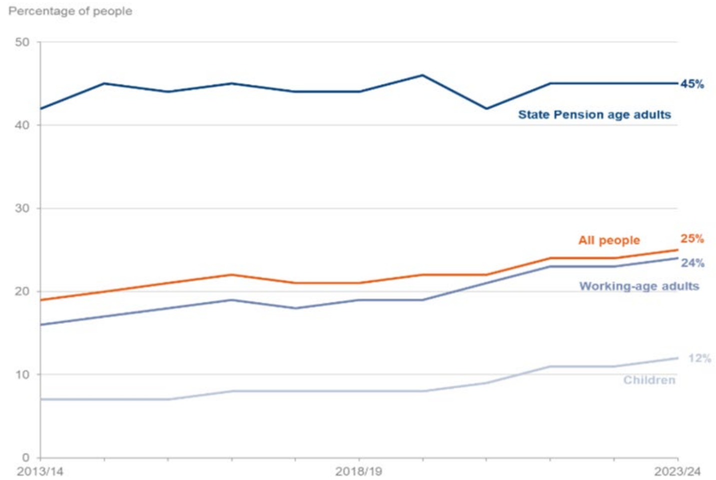
Disability prevalence by age group, FYE 2014 to FYE 2024, United Kingdom

> One in four people were classified as disabled.

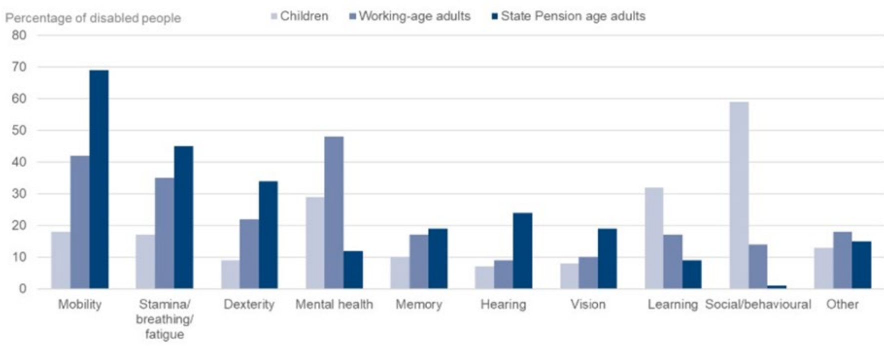


Impairment types by age group

The chart below sets out a synopsis of impairment types across children, working-age adults and state pension adults:

Impairment types reported by disabled people, by age group, 2023 to 2024, United Kingdom

> Impairment types reported by disabled people varied by age group.



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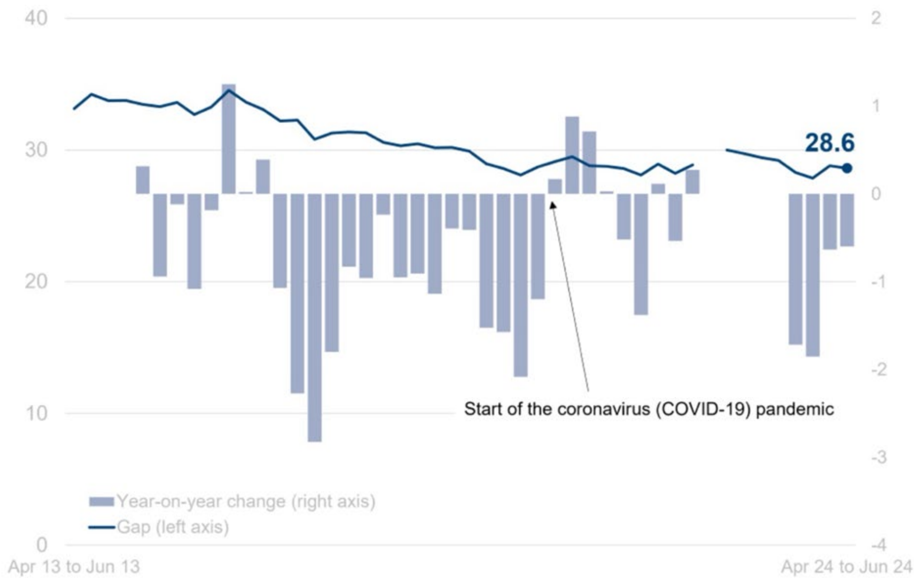
The "disability employment gap"

Of particular relevance to this paper and considerations around savings for future provision, the chart below[113] sets out the "disability employment gap" for people aged 16-64 - showing the percentage of disabled people not in employment relative to the equivalent percentage for non-disabled people:

Historical downward trends in the disability employment gap have slowed in the last four years

Figure 4: Disability employment gap (percentage point), people aged 16 to 64, UK, April to June 2013 to April to June 2024



Source: Labour Force Survey – data and definitions can be found in supplementary data table MSR001.

Impact of different conditions on day-to-day activities

Finally, the chart below[114] sets out the extent to which different impairments and health conditions may have an impact on a person's day-to-day activities – with (together with progressive illness not included elsewhere in the chart) autism; mental illness or other nervous disorders; and severe or specific learning difficulties being associated with the highest degrees of limitations ("Disabled, limited a lot"):

[113] Sourced from "The employment of disabled people 2024", Department of Work & Pensions, updated as at 20 June 2025 and available at: https://www.gov.uk/government/statistics/the-employment-of-disabled-people-2024/the-employment-of-disabled-people-2024

[114] From the DWP information at n113.

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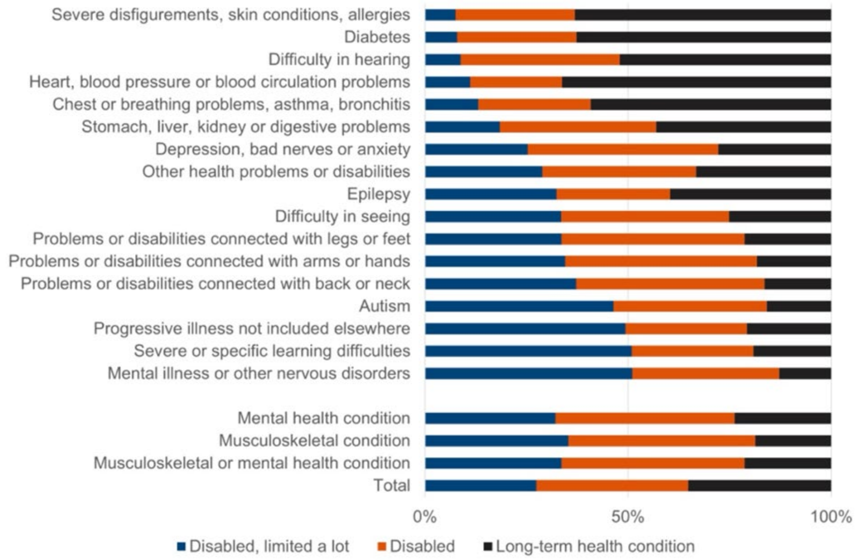
Some long-term health conditions are associated with a greater impact on a person's day-to-day activities

Figure 9: Proportion of people with a long-term health condition, or classed as disabled, including those limited a lot, by main health condition, people aged 16 to 64 years, UK, 2023/24



Source: Annual Population Survey – data can be found in supplementary data table POP003.

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Appendix 2 - The current definition of a disabled person in Paragraph 1 of Schedule 1A Finance Act 2005

"Disabled person" means—

(a) *a person who by reason of mental disorder within the meaning of the Mental Health Act 1983 is incapable of administering his or her property or managing his or her affairs,*

(b) *a person in receipt of attendance allowance,*

(ba) *a person in receipt of disability assistance for older people,*

(c) *a person in receipt of a disability living allowance by virtue of entitlement to—*

(i) *the care component at the highest or middle rate, or*

(ii) *the mobility component at the higher rate,*

(ca) *a person in receipt of disability assistance for children and young people by virtue of entitlement to—*

(i) *the care component at the highest or middle rate in accordance with regulations made under section 31 of the SS(S)A 2018, or*

(ii) *the mobility component at the higher rate in accordance with regulations made under section 31 of the SS(S)A 2018,*

(d) *a person in receipt of personal independence payment*

(da) *a person in receipt of disability assistance for working age people by virtue of entitlement to—*

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(i) *the daily living component at the standard or enhanced rate in accordance with regulations made under section 31 of the SS(S)A 2018, or*

(ii) *the mobility component in accordance with regulations made under section 31 of the SS(S)A 2018,*

(e) *a person in receipt of an increased disablement pension,*

(f) *a person in receipt of constant attendance allowance, or*

(g) *a person in receipt of armed forces independence payment.*

Please note that qualifications and clarifications to the above provisions, including in relation to eligibility for certain benefits, are provided in Paragraphs 2-8 of Schedule 1A.

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Appendix 3 - Summary of potential legislative amendments to the existing trust-based regime

Introduction

This appendix sets out three proposed legislative amendments to the operation of the existing UK disability trust regime. They are derived from a definitive textbook in the area of trusts and taxation - Trust Taxation and Private Client Tax Planning, 5th Edition, Emma Chamberlain, Matthew Harrison and Richard Wallington ("Chamberlain et al"), Sweet & Maxwell, 2024.

The three proposed amendments are as follows:

1. Vulnerable Beneficiary trusts - Special Income Tax Treatment - potential streamlined treatment of income

The Special Income Tax Treatment for Vulnerable Beneficiary trusts provides relief to the extent that the trust's liability to tax on income exceeds that which would otherwise be paid by the Vulnerable Beneficiary.

Chamberlain et al write[115]:

> **"The apparently simple objective is obscured by some impenetrable drafting. A much easier option would be to the treat the trust as transparent for income tax purposes so that all income was taxed as the beneficiary's income whether or not he received it at all. It could then be put down on his tax return and no trust return would be needed at all."**

[115] Chamberlain et al, at section 47.33.

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This paper acknowledges that there may be circumstances where a beneficiary would not otherwise be required to prepare a tax return - and so in these cases the proposal may be simply switching the burden of obligation from the trustees to the beneficiary. Nonetheless, given the complexity referred to, this simplification measure could be a helpful way of mitigating trust costs and administration.

2. Possible modification of tax pool arrangements where Special Income Tax Treatment applied

Chamberlain et al write[116]:

> **"[Distributions from discretionary trusts] are treated as distributing a net amount from which tax at the rate applicable to trusts [45%] has been deducted. This distribution is treated as a repayable credit in the hands of the beneficiary."**

Building on their comments around the simplification of the Special Income Tax Treatment (see 1 above), the authors query whether the complexity of the tax pool when the Special Income Tax Treatment is used is necessary - and whether simply deeming the income to be that of the Vulnerable Beneficiary as it arises would obviate the need for tax pool calculations.

The authors also suggest that there is no particular reason to combine the Income Tax and Capital Gains Tax treatments of disability trusts with will trusts for the children of a deceased parent and that the vulnerable beneficiary regime should only apply to disability trusts.

3. Conditions in Section 89A(2) and (3) IHTA 1984 - reconciliation

Section 89A IHTA 1984 provides for self-settled trusts where the donor has a condition which is expected to lead to a disability within the meaning of section 89(4).

Sections 89A(1)-(4) read as follows:

(1) *This section applies to property transferred by a person ("A") into settlement on or after 22nd March 2006 if—*

[116] Chamberlain et al, at section 47.36.

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(a) *A was beneficially entitled to the property immediately before transferring it into settlement,*

(b) *A satisfies the Commissioners for Her Majesty's Revenue and Customs that, when the property was transferred into settlement, A had a condition that it was at that time reasonable to expect would have such effects on A as to lead to A becoming a person falling within any paragraph of the definition of "disabled person" in paragraph 1 of Schedule 1A to the Finance Act 2005.*

(c) *the property is held on trusts—*

(i) *under which, during the life of A, no interest in possession in the settled property subsists, and*

(ii) *which secure that Conditions 1 and 2 are met.*

(2) *Condition 1 is that if any of the settled property or income arising from it is applied during A's life for the benefit of a beneficiary, it is applied for the benefit of A.*

(3) *Condition 2 is that any power to bring the trusts mentioned in subsection (1)(c) above to an end during A's life is such that, in the event of the power being exercised during A's life, either—*

(a) *A or another person will, on the trusts being brought to an end, be absolutely entitled to the settled property, or*

(b) *on the trusts being brought to an end, a disabled person's interest within section 89B(1)(a) or (c) below will subsist in the settled property.*

(4) *If this section applies to settled property transferred into settlement by a person, the person shall be treated as beneficially entitled to an interest in possession in the settled property.*

Of the Conditions set out above, Chamberlain at al write[117]:

> **"It is far from easy to reconcile Conditions 1 and 2 [ ]. It would appear that Condition 1 is concerned with an advancement-type power (to pay or apply capital), whereas**

[117] Chamberlain et al, at section 47.69.

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> **Condition 2 is concerned with a power of appointment, and the restriction is intended to ensure that if such a power is exercised during the disabled person's life it must either end the trust (i.e. by an outright appointment) or appoint onto trusts creating a disabled person's interest (falling within ss.89B(1)(a)or 89(1)(c)). This requirement makes little sense.**
>
> ***(i) If the trusts are terminated with the disabled person receiving the settled property, this is a "nothing" for IHT purposes.***
>
> ***(ii) If another person becomes absolutely entitled, the disabled person will make a PET but the ability to do this seems difficult to reconcile with condition 1 as there must be no power to benefit someone else.***
>
> ***(iii) If the property becomes held in a disabled trust, for another, he will likewise make a PET."***

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Appendix 4 - illustrative examples of the use of both the existing trust and proposed simplified savings regimes

Example 1 - Jane and her family

Jane is 19 and has a rare genetic syndrome meaning that she will never be able to work or live independently.

She is presently living with her parents Robert and Julie who are both schoolteachers. Following extensive discussion with specialists and other parents, Robert and Julie decide that it would be best for Jane to move into a "supported living" arrangement with three other young people with learning disabilities organised by a local disability charity with on-site care financed by the local authority.

As Jane has no independent wealth, and only receives benefits as income, her care is to be met in full by the local authority.

Robert and Julie are concerned about Jane's future and longer-term pressures on public finances. They would like to set aside some monies just in case Jane's care were to be depleted in the future. They would also like Jane to be able to enjoy training courses and other events which she could not afford from her benefits.

Having reviewed the options available with their resources, they consider that a trust-based structure with Jane as a beneficiary would not be economically viable. They decide to set up one of the new simplified savings structures suggested in this paper for Jane and plan to put aside some £5-10,000 per year into it both to meet the costs of occasional training and events which Jane herself could not afford; and to build a contingency fund for Jane's future care if this became threatened in the future.

As the structure is one of the new qualifying savings structures suggested by this paper, it is not taken account for the purposes of means-testing Jane's benefits or care. The provisions of the

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structure allow for returns to be taxed at Jane's marginal tax rates. The funds are invested in a medium to low-risk portfolio targeting inflation protection with a very modest real return.

As Property & Financial Affairs deputies for Jane, Robert and Julie are nominees for managing the account and are able to make decisions around any expenditure to be met from it.

Over time, they actually spend some £500-1,500 per year on training and events for Jane, with the balance rolling up to provide a contingency for future care costs.

Example 2 - William and his grandmother

William is 24. He was involved in a cycling accident aged 13 and suffered head injuries leading to a loss of mental capacity. He is wheelchair-bound and needs intense care. No third parties were involved in the accident and there was therefore no personal injury damages claim nor insurance proceeds.

William's grandmother is wealthy and, concerned about William's future - he may live a further 50 years or more - settles £0.75 million into a discretionary disability trust where William is the sole beneficiary.

William's mother and a family friend who is a Chartered Accountant are appointed trustees.

As William has no independent savings or earnings, he receives both benefits (Universal Credit and PIP); and a number of hours of care financed by the local authority at his parents' home following an assessment of his needs.

The present living and care arrangements are, for the time being, satisfactory and no distributions are made in the short term from the trust. The trustees make the necessary elections for Vulnerable Beneficiary status and the income and gains of the trust are taxed at William's marginal rates. Investment advisers manage the trust's funds under an agreed mandate, reporting to the Trustees.

The original transfer by William's grandmother was a Potentially Exempt Transfer for Inheritance Tax purposes. In the event, she survives more than 7 years after settling the monies and no Inheritance Tax is payable by William's grandmother in respect of the initial transfer.

The accumulated trust balance remains invested and available to meet William’s future needs.

Example 3 – Sarah

Sarah contracted Motor Neurone Disease ("MND") aged 24 and is finding aspects of her life and activities increasingly limited. She is eligible for a number of disability benefits.

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Her expectation is that she will only be able to work - increasingly part-time - for another 2-3 years; and then will need extensive care and not be able to work.

Before contracting MND, Sarah was developing a career in the design of tools using Artificial Intelligence for investment portfolio design. She has limited wealth as she has a large mortgage. However, she would love to set aside monies to enable her to have the best access to technology to support people with MND after she stops work and thinks that, after her current living expenses, she can set aside some £8-10,000 each year for the next 2-3 years.

Having considered her options, she considers a “self-settled” disability trust may be too expensive to set up and run. As she meets the eligibility criteria, Sarah sets up one of the simplified disability savings accounts proposed by this paper and progressively saves some £17,000 before her limitations mean that she can no longer work sufficient hours to accumulate further monies. The monies are invested with a registered financial institution as part of a standardised arrangement. Sarah appoints her mother and father as people able to make financial decisions with the funds in the account.

When Sarah is no longer able to work, the funds in the account are used over time to provide technological and other support not provided by the state to maximise Sarah's quality of life.

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