

Fairer Scotland Duty Impact Assessment of The Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022

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Fairer Scotland Duty Summary

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

Background

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

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

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

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

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

Policy aims

The Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022 make provision to transfer the award of any individual in receipt of Working Age Disability Living Allowance to Adult Disability Payment, where an individual wishes to move to Adult Disability

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

Payment or would otherwise be required to apply for Personal Independence Payment.²

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

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

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

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

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

Expected outcomes

Our expected outcome is the safe and secure transfer, after the national launch of Adult Disability Payment in Summer 2022, of any individual in Scotland in receipt of Working Age Disability Living Allowance

National Outcomes

Adult Disability Payment and our case transfer principles and processes are closely aligned with the Healthier, Wealthier and Fairer Strategic Objectives, and contributes to the following National Outcomes:

- We respect, protect and fulfil human rights and live free from discrimination;
- We tackle poverty by sharing opportunities, wealth, and power more equally;
- We live in communities that are inclusive, empowered, resilient and safe; and

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

- We grow up loved, safe and respected so that we realise our full potential.

Summary of evidence

This Fairer Scotland Duty assessment has been developed drawing on a range of primary research, including 3 public consultations, engagement with those with lived experience via focus groups, as well as ongoing consultation with stakeholders through our independent Disability and Carers Benefits Expert Advisory Group and the Ill Health and Disability Benefits Stakeholder Reference Group.

This work also drew upon interviews conducted via the Scottish Government's Social Security Experience Panels. The Panels involve people with lived experience of the benefits that are coming to Scotland, and have over 2,400 members drawn from people across Scotland. In 2019, a further round of recruitment took place, targeting specific groups identified as being underrepresented such as ethnic minorities and young people.

A specific survey regarding the case transfer process was sent out to Experience Panel members in February 2019. 559 responses were received and a summary of these responses was published.

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

The Scottish Health Survey 2018 provides an accurate estimate of the number of disabled working age people in Scotland. For young people aged 16-24, 24% of young people have a limiting longstanding illness. This number raises to 30% for individuals aged between 25-34, 32% between 35-44, 46% between 45-54 and, finally, 60% between 55-64.

Based on statistics published by the Department for Work and Pensions in May 2021 there were approximately 44,000 people in receipt of Disability Living Allowance in Scotland, who were over 16 and under 65 and in receipt of Disability Living Allowance at the introduction of Personal Independence Payment on 08 April 2013. All individuals on Working Age Disability Living Allowance will therefore be aged between 25 and 74 when they transfer.

Since April 2020 there have been an average of approximately 100 cases per month moving from Disability Living Allowance to Personal Independence Payment. If this level continues, around 100 a month are likely to transfer to Adult Disability Payment from 29 August 2022 as a result of a request to transfer, reporting a relevant change of circumstances or as a result of an award review or renewal. Information from the Department for Work and Pensions suggests all current Working Age Disability Living Allowance individuals are on indefinite awards. Therefore, we anticipate the majority of individuals moving over to Adult Disability Payment will be as a result of reporting a relevant change of circumstances or because they have requested to transfer.

The link between poverty and disability

As noted in the Fairer Scotland Duty assessment for the Disability Assistance for Working Age People (Scotland) Regulations, research has shown that poverty

disproportionately affects those having a disability, with disabled people experiencing higher poverty rates than the rest of the population.³ UK-wide, disabled people make up 28% of people in poverty and a further 20% of people in poverty live in a household with a disabled person. This statistic is largely replicated in Scotland where around 410,000 households in poverty (42% of all households in poverty) include a disabled person or are disabled themselves.⁴

Scotland-wide, there are higher levels of material deprivation in households containing a disabled person, at 20% compared to households without a disabled person (at 8%). There are higher rates of food insecurity among disabled people (18%) compared to non-disabled people (5%). There is a higher likelihood of living in relative poverty after housing costs with a disabled person in the household (24% of families with a disabled person compared to 17% of families with no disabled members). If disability benefits are not counted towards household income, this raises to 30%. 'Family' in these circumstances referred to the core family in a household, comprising one or two adults and children, if any.

Disability and unemployment / under-employment are positively correlated. 14% of 'workless families' (defined as families where parents are predominately out of work or have little connection to the labour market; who live in social rented accommodation and are reliant on benefits for their income) have one or more children with a disability or long-term illness. Recent statistics have found that, compared to non-disabled people in the United Kingdom (81.7), disabled people had a significantly lower rate of employment (53.6%). In Scotland, a recent publication identified that 45.6% of disabled people were employed compared to 81.1% of non-disabled individuals. In 2018, almost half of disabled people between 16-64 in Scotland were economically inactive (49.7%), compared with 15.9% of non-disabled people.

35% of 'workless families' (defined as families where parents are predominately out of work or have little connection to the labour market; who live in social rented accommodation and are reliant on benefits for their income) have an adult with a disability or long-term illness. A further 25% of 'struggling to get by' families (unemployed or working part-time, half of which are single-parent families) have one or more adults with a disability or long-term illness. In households without children, 50% of 'insecure singles' (defined as workless, primarily single individuals living in social housing) had a disability or long-term health condition. This rises to 68% for 'detached singles'. This group is similar to the 'insecure singles' group with the addition that they are less likely to have internet access or to participate in cultural activities, making them more disconnected.

Even where one or more individual in the household is in employment, the same level of income secures a lower standard of living than it would for a household without someone with a disability or long-term health condition. This is because disabled people face higher costs than non-disabled people, such as the cost of specialist equipment, therapies and home adaptations to manage a condition. Travel costs too, may be higher as individuals have to afford the cost of taxis to and from hospital where it is not possible to use public transport (and/or public transport may not be available).

³ [THE Social Impact Rankings](#)

⁴ [Disability and poverty – Why disability must be at the centre of poverty reduction](#)

Research conducted by the Papworth Trust⁵ showed that the annual cost of bringing up a disabled child is three times greater than for a non-disabled child. Disabled people face higher costs than non-disabled people, such as the cost of specialist equipment, therapies and home adaptations to manage a condition.⁶ Travel costs too, may be higher as families have to afford the cost of taxis to and from hospital where it is not possible to use public transport (and/or public transport may not be available).

Poverty amongst disabled people is likely to be exacerbated in light of the COVID-19 crisis, UNICEF highlighted that: 'In the context of the COVID-19 pandemic, persons with disabilities may have increased risk',⁷ and the report in particular makes connections between the pandemic and poverty, with disabled people likely to be disproportionately impacted.

Summary of assessment findings

Improved procedure and advice

We are transferring individuals awards in line with our case transfer principles, developed through engagement with those with lived experience and in line with our Social Security principles of dignity, fairness and respect. We will transfer awards automatically and provide an Adult Disability Payment award at the same rate as their Disability Living Allowance award until we can carry out a review to check their entitlement to Adult Disability Payment based on their current circumstances. This is important as none of these awards will have been reviewed since 2013, and most individuals will be moving because they have reported a relevant change of circumstances that needs to be taken into account.

We will not require individuals to make an application and we will ensure they continue to get paid the right amount at the right time with no breaks in payment. We will also support all individuals through the review process after they have transferred. Individuals will have the same full rights to request a re-determination and appeal throughout the process as an individual making a new application to Adult Disability Payment.

All of this will make it significantly easier for individuals to have their awards moved to Adult Disability Payment and benefit from the improvements we have made to the Scottish systems for providing disability assistance, some of which are highlighted below.

Improved decision making

Where possible, we will use existing supporting information when undertaking the review of the individuals Adult Disability Payment award after the transfer process is complete. Individuals can provide us with supporting information themselves or can ask us for support in requesting it from other parties. We are working closely with other parts of the public sector to make it easy for individuals to nominate professionals to share information with us on their behalf.

Currently individuals have to obtain their own supporting information, which can result in them paying a charge for that information. If Social Security Scotland collect

⁵ [THE Social Impact Rankings](#)

⁶ [Joseph Rowntree Foundation – Income and Benefits](#)

⁷ [COVID-19 response: Considerations for Children and Adults with Disabilities](#)

this information on their behalf it potentially mitigates the risk of increasing the existing levels of adults living in poverty.

In the minority of cases where no formal sources of information are available, case managers will be able to use their discretion, informal sources of information and the advice and guidance available to them to reach a decision. This will ensure that individuals who do not have formal sources of information are not disadvantaged. It also has the potential to reduce barriers for some individuals to apply for the financial assistance they are entitled to. Therefore, this approach is likely to have a positive impact on reducing inequality.

For case transfer individuals, their Adult Disability Payment award will be based on their Disability Living Allowance award. Individuals will have the option to ask Social Security Scotland to get the forms and evidence already contained in Department for Work and Pensions records if the individual wishes it to be used. For those with stable and enduring conditions collecting further information may not be required.

Individual consultations

Our new approach to information gathering will reduce the number of consultations that will take place and, if a consultation is required, it will take place at a time and place that suits the needs of the individual. Consultations will take place primarily over the phone with individuals having the option to request that it take place in person at a time and place that suits them, including at home or a separate location of their choosing which meets their needs.

Reducing the number of consultations and conducting them in a way that suits the needs of individuals, will reduce the stress and anxiety caused and remove the requirement for individuals to travel long distances, often to unfamiliar locations. Where an individual participates in a consultation for Adult Disability Payment, they will be given a bespoke appointment duration based on the needs identified by the case manager. Social Security Scotland practitioners will be given the time they need to fully understand the impact of an individual's condition or disability.

The application of the eligibility criteria

We are taking steps to apply the eligibility criteria differently to how it is currently applied by the Department for Work and Pensions to ensure that all individuals are treated equally and fairly. The way in which eligibility and entitlement will be decided for Adult Disability Payment will be fundamentally different to how it is decided for Personal Independence Payment.

Unlike Department for Work and Pensions, we will not require evidence of every impact that the individual reports. We recognise that Department for Work and Pensions' approach presents particular challenges for individuals with limited mobility, or with variable health conditions such as Multiple sclerosis. This is because a GP is often not able to describe the impact of someone's health condition on their day to day mobility needs. Instead, the supporting information we require to make a decision on entitlement need only be consistent with the needs detailed by an individual on their application.

We will properly apply the reliability criteria. This means that someone can only be considered able to complete an activity if they can do so safely, repeatedly, in a reasonable time, and to an acceptable standard. Instead of this simply being a tick box exercise, this criteria will be enshrined in law and it will be used to ensure a full

account of how a individual experiences an activity such as moving around is produced. This will help ensure that individuals who are entitled to financial assistance will receive it and thereby positively impact on reducing inequalities.

Terminal illness

Our new definition of terminal removes the arbitrary six month time limit used in the current definition.

Allowing medical professionals to use their clinical judgement on a case-by-case basis will mean that a broader range of conditions will be able to be accounted for and, thus, allow more individuals to be entitled to Adult Disability Payment through Special Rules for Terminal Illness. This will also allow individuals who need support to receive it more quickly.

Individuals who are eligible for Adult Disability Payment through Special Rules for Terminal Illness will automatically be entitled to the enhanced rates of the daily living and mobility components. This will help mitigate the risk of increasing the number of individuals living in poverty.

Any individual currently in receipt of Working Age Disability Living Allowance who meets the Scottish rules on terminal illness but is not already on the highest rates of mobility and care, or who reports a relevant change of circumstances meaning they may meet the Scottish rules for terminal illness will be transferred to Adult Disability Payment through an expedited process. They will automatically be awarded the enhanced rates of the daily living and mobility components and will not be required to undergo a subsequent review.

Award duration and reviews

Awards will be rolling with no fixed end date and reviews will be light-touch. This will help to reduce stress and anxiety associated with coming to the end of an award for assistance before a review is complete.

By continuing entitlement while a review is taking place, we will further help to mitigate any fear of a financial cliff edge by ensuring that individuals continue to receive the assistance they are entitled to until a case manager has made a new determination. This process still enables Social Security Scotland to undertake reviews to determine continuing entitlement to Adult Disability Payment. 66% of respondents to our Consultation on Disability Assistance agreed with this approach alongside general agreement from our Experience Panels.

The introduction of indefinite awards for individuals with conditions which are unlikely to change will cut down on the number of unnecessary reviews of awards individuals will need to go through. We will consider whether an indefinite award is appropriate for those transferring from Working Age Disability Living Allowance when we review their award after they have transferred.

Re-determinations and appeals

Extending the time individuals have to request a re-determination to 42 days will have a positive impact as it will provide more time to seek advice or support when challenging a decision. This was stressed as being important by organisations who responded to our Consultation on Disability Assistance even though, overall, there was general agreement to the initial proposed time limit of 31 days (58%).

We noted concerns raised by a small number of respondents that a short timescale may deter individuals from challenging a decision. We want to ensure that no one is disadvantaged by time limits for challenging a decision. Extending the time individuals have to request a re-determination may help to encourage people to challenge a decision they do not agree with. If Social Security Scotland has made a mistake during initial decision, this will help to ensure that individuals receive administrative justice.

If an individual requests a re-determination of their transfer determination before we have been able to carry out a review, we have provided Social Security Scotland with 182 days to carry out the re-determination. This is because we will not have had the chance to consider the individuals entitlement to Adult Disability Payment and may need to ask the individual for further information and collect further supporting information on their behalf. This is likely to require more time than a standard re-determination. Social Security Scotland will however also seek to complete any re-determinations soon as reasonable practicable within that period.

This will be beneficial as it will ensure that individuals and their families or carers will have certainty about how long Social Security Scotland has to complete a re-determination. Similarly, by enabling individuals to appeal directly to the First-tier Tribunal should Social Security Scotland be unable to complete the re-determination process within the timescale, this will further reduce any uncertainty and, consequently, make people feel more confident in challenging a decision they do not agree with.

Short-term assistance

Continuing entitlement to Adult Disability Payment during the re-determination and appeals processes through the introduction of Short-term assistance will help to mitigate a loss in household income experienced in the current system wherein, during mandatory reconsiderations and appeals, individuals are not entitled to disability benefits.

Engagement with our Experience Panels found that participants believed that Short-term assistance would make it more likely for people to challenge decisions by Social Security Scotland. There was an emphasis on Short-term assistance reducing financial pressure and giving people more confidence in challenging decisions they did not agree with.

By introducing a two stage process to transfer individuals in receipt of Working Age Disability Living Allowance, we have ensured they are able to access short term assistance should they see a reduction in their level of award following the review of their award, or any re-determination of their initial transfer determination.

Scottish Commission on Social Security - scrutiny of the draft Regulations

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

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

Recommendations and Conclusion

This Fairer Scotland Duty assessment has identified that overall, the introduction of Adult Disability Payment to replace Disability Living Allowance for Adults and the process for transferring the awards of individuals currently in receipt of Working Age Disability living Allowance, where they would otherwise be required to apply for Personal Independence Payment, has the potential to have a positive impact on reducing inequality and tackling poverty for disabled people in Scotland.

Sign off

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