

# Social Justice and Social Security Committee

## SSI cover note

3<sup>rd</sup> Meeting, (Session 6), 27 January 2022

<b>Title of Instrument:</b>	<a href="#">Disability Assistance for Working Age People (Scotland) Regulations 2022</a>
<b>Laid Date:</b>	<b>17 December 2021</b>
<b>Reporting deadline:</b>	<b>11 February 2022</b>
<b>Type of instrument:</b>	<b>Affirmative</b>

### Parliamentary procedure:

The affirmative procedure means that an instrument cannot be made and come into force unless the Parliament has voted to approve it (rule 10.6.1 of standing orders).

Affirmative instruments are first looked at by the DPLR Committee before being considered by the lead committee (usually the committee which examined the Bill for the Act that the SSI is made under or whose remit is most aligned).

It is usual practice for the lead committee to take evidence from the relevant Scottish minister in advance of considering the instrument. The committee can ask the minister and any officials questions about the SSI.

During its formal consideration, a member of the Scottish Government proposes, by motion, that the lead committee recommend that the instrument or draft instrument be approved. The committee has up to 90 minutes to debate the motion.

The lead committee must report its recommendation to Parliament within 40 days of the SSI being laid. If the committee agrees the SSI should be approved, the whole of the Parliament then gets a chance to vote on it in the Chamber. If the lead committee decides the SSI should not be approved, the Parliamentary Bureau decides whether MSPs should vote on it in the Chamber.

## Background

1. The following accompanying documents were prepared alongside the draft regulations: [Policy Note](#), [Children's Rights and Wellbeing Impact Assessment](#), [Island Communities Impact Assessment](#), [Data Protection Impact Assessment](#), [Fairer Scotland Duty Summary](#), [Equality Impact Assessment](#) and [Business and Regulatory Impact Assessment](#).
2. Further information and suggested themes for discussion are also available in the SPICe paper (paper 2).
3. A copy of the Policy Note is included in the annexe.

## Delegated Powers and Law Reform Committee consideration

4. The DPLR Committee considered the instrument at its meeting on [18 January 2022](#) and noted a number of drafting errors.
5. In correspondence with the Scottish Government, the DPLR Committee highlighted a number of drafting issues as outlined in the Committee's [report](#). The Committee has called on the Scottish Government to lay an amending instrument to rectify the errors in time for the instrument coming into force on 21 March 2022.

## For decision

6. The Committee must decide whether or not to agree the motion, and then report to Parliament accordingly, by 11 February 2022.
7. The Committee is also invited to delegate responsibility for the drafting and publication of a short, factual report to the Convener and Clerk.

**POLICY NOTE****THE DISABILITY ASSISTANCE FOR WORKING AGE PEOPLE (SCOTLAND)  
REGULATIONS 2022****SSI 2022/XXX**

The above instrument will, if approved by the Scottish Parliament, be made in exercise of the powers conferred by sections 31(2), 36(2), 41(4)(a), 43(5), 51(1), 52 and 95 of the Social Security (Scotland) Act 2018. Some of those powers are subject to negative procedure and others to affirmative procedure. The powers are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 and section 33(3) of that Act makes the instrument subject to the affirmative procedure.

This instrument sets out the rules and eligibility criteria for Adult Disability Payment (ADP), a form of assistance to provide support to disabled individuals between the ages of 16 and (subject to some exceptions) state pension age to mitigate the additional costs of living with a disability or health condition. This new form of social security assistance will replace Personal Independence Payment (PIP) in Scotland.

This instrument also includes provision to transfer individuals who live in Scotland and receive PIP (which has been administered by the Department for Work and Pensions (DWP) on behalf of Scottish Ministers), to instead receive ADP, to be administered by Social Security Scotland on behalf of the Scottish Ministers. It also includes provisions for individuals who wish to move from Child Disability Payment (CDP) onto ADP, and provisions for those who move from Scotland to reside in other parts of the UK, or to Scotland. It further provides for when Short-term Assistance is to be given to those who have been in receipt of ADP.

**Policy Objectives**

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

This form of assistance will replace Personal Independence Payment (PIP) in Scotland for individuals aged between 16 and (subject to some exceptions) state pension age who are making an application for disability assistance. This new form of devolved social security assistance will be delivered by Social Security Scotland on behalf of the Scottish Ministers. The regulations include provisions detailing the eligibility criteria, rates of assistance, and making of applications and payments.

ADP consists of two components. The daily living component provides assistance for individuals who face increased barriers to carrying out daily living activities as a result of physical or mental condition(s) and/or disability. An individual may receive this component at either a standard rate or an enhanced rate. The mobility component provides assistance for individuals who face increased barriers to carrying out mobility activities as a result of physical or mental condition(s) and/or disability. An individual may receive this component at either a standard rate or an enhanced rate. Reflecting the Scottish Government's approach

to social security, ADP is intended to be person centred, taking into account the specific needs of each client.

The eligibility criteria for ADP broadly aligns with the eligibility criteria for PIP. However, the Scottish Government is making 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 process of applying for ADP less onerous and to improve decision-making. The Scottish Government is introducing a new client consultation service (referred to as 'assessments' in the Regulations) to aid the decision making process where a determination on entitlement cannot be made on the application and supporting information alone. This will be substantially different from the assessments used to determine entitlement to PIP by DWP.

ADP will be delivered by Social Security Scotland from 21 March 2022, with an initial application period comprising of three phases for new applications in specified local authority areas. In Phase 1, from 21 March 2022, new applications will be able to be made in Perthshire and Kinross, City of Dundee and Western Isles. In Phase 2, from 20 June 2022, applications will also be able to be made in Angus, North Lanarkshire and South Lanarkshire. Finally, in phase 3, from 18 July 2022, applications will additionally be able to be made in Fife, City of Aberdeen, Aberdeenshire, Moray, North Ayrshire, East Ayrshire and South Ayrshire. Social Security Scotland will then accept new applications from individuals in all other Scottish local authority areas from 30 August 2022.

### **Applications for ADP by individuals entitled to Child Disability Payment (CDP)**

The regulations also include provisions in relation to applications for ADP by individuals who are entitled to CDP. Where an individual who is entitled to CDP makes an application for ADP, the regulations make provision, alongside the Disability Assistance for Children and Young People (Scotland) Regulations 2021, to ensure that where the individual becomes entitled to ADP, the individual's entitlement to ADP will commence immediately after their CDP entitlement will cease.

### **Case Transfer from PIP to ADP**

The regulations include provisions for the transfer individuals who live in Scotland and receive PIP (which has been administered by the Department for Work and Pensions (DWP) on behalf of Scottish Ministers), to instead receive ADP, to be administered by Social Security Scotland on behalf of the Scottish Ministers.

Scottish Ministers have developed a safe and secure 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 as far as possible:

- no individual will be required to re-apply for their benefit;
- no individuals will be subject to a DWP face-to-face assessment after ADP is launched nationally;
- 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.

When an individual's disability benefit has been selected for transfer, Scottish Ministers will receive from DWP data and information relevant to the individual's most recent Personal Independence Payment award. Once Scottish Ministers have received this information, the regulations make provision for the Scottish Ministers to notify the individual of the intention to transfer them to ADP. This notice will set out the process for that transfer.

Scottish Ministers will use the information from DWP to make a determination without application of the individual's entitlement to ADP on a like-for-like basis within a fixed period set out in the notice of intention to transfer. This period can be extended if both Scottish Ministers and the Secretary of State for Work and Pensions agree there is good reason to do so. The individual will be notified of any extension of the period and the reasons for it.

The determination of the individual's entitlement to Adult Disability Payment will also end the corresponding award of Personal Independence Payment. A determination of entitlement in respect of Adult Disability Payment made as a result of the case transfer process comes with the same rights to re-determination and appeal as any other determination made under section 52 of the Social Security (Scotland) Act 2018.

Where a case is selected for transfer because the individual has reported a relevant change of circumstance, or where an individual reports a change of circumstance before their transfer is complete, a further review determination will be made of their entitlement after the individual has been transferred onto ADP. This review will take into consideration the change of circumstance and making any necessary adjustments to the individual's entitlement. This review determination will occur as soon as reasonably practicable after the transfer process is completed.

Where Social Security Scotland have identified a terminally ill client, either from the information provided by DWP or additional information from the individual, provision has been made to ensure that they will be entitled to both components of ADP at the enhanced rate.

Scottish Ministers will identify individuals who will transfer from Personal Independence Payment to Adult Disability Payment using the residential address held by DWP in the individual's Personal Independence Payment record. An individual will be assumed to meet the residence and presence conditions for Adult Disability Payment at the point of transfer if they have a Scottish postcode.

If Scottish Ministers determine after transfer that an individual should not have transferred because they fail to meet the residence and presence conditions, a further determination without application will be made that will nullify the case transfer Adult Disability Payment determination and the resulting entitlement. This will also nullify the termination of the Personal Independence Payment award.

All individuals appointed by DWP in respect of a Personal Independence Payment award will be temporarily deemed to act as an appointee for the purposes of Adult Disability Payment until it is reasonably practicable for Scottish Ministers to consider whether to make an appointment under the Social Security (Scotland) Act 2018.

### **Short-term assistance**

The regulations also make provision for Short-term assistance (STA). An individual may be eligible for STA if they have been previously entitled to ADP and, as a result of a subsequent determination, their ADP entitlement has reduced or stopped. If the individual has requested a re-determination of this subsequent determination of their ADP entitlement, they may also apply to receive STA whilst their ADP award is under review. The STA they receive will make up the difference between the lower amount of ADP that they have become entitled to and the amount that they were previously entitled to. This means they will continue to receive their previous level of entitlement until the conclusion of the award review.

### **Suspension of assistance**

Provisions relating to the suspension of assistance are included in the draft Regulations. Regulation 38 sets out the specific circumstances in which entitlement can be suspended. The Regulations also set out the considerations that Scottish Ministers must make before suspending payment of assistance, the individual's right to request a review of the suspension, the information that should be provided to the individual when a suspension occurs, the circumstances in which a suspension should end and the effect of a suspension ending.

### **Public Consultation on ADP**

Between 21 December 2020 and 15 March 2021, the Scottish Government undertook a public consultation on its proposals for the delivery of ADP. The consultation received 127 responses from individuals and stakeholder organisations, and a summary of these responses can be found in the analysis of written responses. The Scottish Government published a response to the public consultation 25 June 2021.

### **Public Consultation on Disability Assistance**

Between 5 March and 28 May 2019, the Scottish Government undertook a public consultation on its proposals for the delivery of disability assistance. The consultation received 263 responses from individuals and stakeholder organisations, and a summary of these responses can be found in the analysis of written responses.<sup>1</sup> The views expressed within the consultation responses helped shape the proposals for CDP, and the Scottish Government published its response in October 2019. Respondents were broadly supportive of the policy proposals, although several changes were made to our approach to disability assistance in response to the consultation, including:

- extending the time limit for requesting a re-determination of a decision made by Social Security Scotland from 31 to 42 calendar days;
- if Social Security Scotland is unable to complete a re-determination within 56 calendar days, an individual has a right to appeal to the First-Tier Tribunal for Scotland;
- ensuring that children and young people in receipt of the mobility component can continue to be paid the mobility component when in legal detention.

In January and February 2019, two surveys regarding the case transfer process for disability assistance were sent out to Experience Panel members. 404 and 559 responses were received respectively. A series of individual and group interviews were also conducted. Results from both surveys and the interviews were published in 2019. These surveys confirmed that of most

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<sup>1</sup> <https://www.gov.scot/publications/consultation-disability-assistance-scotland-scottish-government-response/pages/2/>

importance to panel members was that they continue to receive the correct payment at the correct time.

Additionally, the Scottish Government has been working with relevant stakeholders to specifically engage with disabled people from seldom-heard groups as part of its ongoing wider case transfer strategy. This research and engagement with stakeholders has been key to developing a set of case transfer principles to guide the development of the approach to case transfer.

A policy position paper on case transfer was published in February 2019.<sup>2</sup>

Officials met with the Disability and Carers Benefits Expert Advisory Group (DACBEAG) to discuss case transfer in June 2020. The Group provided their full advice in July.

### **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 (SCoSS) was asked to provide a scrutiny report on the regulations. In June 2021, the Scottish Government provided redrafted regulations to SCoSS, with a policy note to accompany the regulations. SCoSS published its supplementary scrutiny report on 1 October 2021, making 24 recommendations and two observations in relation to the draft regulations.

Some of the case transfer provisions were provided to SCoSS for information. However, the case transfer provisions are made under section 95 of the Social Security (Scotland) Act 2018. As such, Scottish Ministers are not required to refer them to SCoSS for formal scrutiny.

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

### **Impact Assessments**

A Business and Regulatory Impact Assessment (BRIA) Equalities Impact Assessment, Island Communities Impact Assessment, Fairer Scotland Duty Impact Assessment, Data Protection Impact Assessment and a Children's Rights and Wellbeing Impact Assessment are all provided with this instrument. It is anticipated from the analysis in these impact assessments that the commencement of ADP will have a broadly positive impact on a range of equalities groups, island communities and in relation to the realisation of children's rights and improving their wellbeing. There are no significant equalities or rights impacts that require further consideration in relation to the commencement of these regulations.

### **Financial Effects**

A Business and Regulatory Impact Assessment (BRIA) has been completed and is provided with this instrument. The Scottish Government does not believe that ADP will have an adverse impact on the competitiveness of Scottish companies or the third sector within Scotland, the UK, or elsewhere in Europe or the rest of the world. The Scottish Government expects that there may be limited impact on the operational business of local authorities or health boards as a result of introducing these regulations, principally because Social Security Scotland will seek to obtain (with the individual's consent) information held by public sector bodies about the individual's disability to make determinations of entitlement.

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<sup>2</sup> [Social security case transfer: policy position paper - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/policy-position-papers/pages/2019-02-14-social-security-case-transfer.aspx)

The right to appeal to a First-tier Tribunal is provided for in the Social Security (Scotland) Act 2018. Legal Assistance will continue to be available to individuals to appeal an entitlement decision to the Upper Tribunal, Court of Appeal or Supreme Court. The Scottish Government does not expect any adverse impact to the Legal Aid budget as a result of the introduction of ADP. Current recipients of PIP are already able to access legal aid to appeal entitlement decisions.

The Scottish Fiscal Commission (SFC) has a statutory duty to provide independent and official forecasts of Scottish GDP, devolved tax revenues and devolved social security expenditure. Under the Scottish Fiscal Commission Act 2016, the SFC may also produce forecasts on other “fiscal factors”, defined as “anything which the Scottish Ministers use to ascertain the amount of resources likely to be available for the purposes of sections 1 to 3 of the Public Finance and Accountability (Scotland) Act 2000”. The Protocol for engagement between the Scottish Fiscal Commission and the Scottish Government notes that the SFC may produce forecasts where it considers the policy, or policies, to have a “non-negligible impact on receipts or expenditure”.

Having considered the measures in these regulations, the SFC chose not to produce forecasts for them on the basis that they are not expected to change the SFC’s forecast for Adult Disability Payment from that published on 9 December 2021. That publication<sup>3</sup> included a forecast of Adult Disability Payment expenditure in 2022-23 of £1,948 million, rising to £3,034 million in 2026-27. This includes spending on Personal Independence Payment until all existing clients are receiving ADP, with additional policy costs estimated to be £38 million in 2022-23, rising to £567 million in 2026-27. Included in those figures are an additional cost to Carer’s Allowance and Carer’s Allowance Supplement, of £1 million in 2022-23, rising to £40 million in 2026-27.

Scottish Government  
Social Security Directorate

December 2021

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<sup>3</sup> [Scotland’s Economic and Fiscal Forecasts – December 2021](#)