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The Information Centre
An t-Ionad Fiosrachaidh

Social Justice and Social Security Committee

3rd Meeting, 2022 (Session 6), Thursday, 27 January

Adult Disability Payment Regulations

Introduction

[The Disability Assistance for Working Age People \(Scotland\) Regulations 2022](#) were laid on 17 December, along with various [impact assessments](#).

[The Scottish Commission on Social Security \(SCoSS\) reported on 15 October](#) and the [Scottish Government responded](#) on 17 December accepting in full 19 of SCoSS's 24 recommendations.

The Committee took evidence from the Scottish Fiscal Commission on [7 October 2021](#) and from stakeholders on [16 December 2021](#).

Following the stakeholder session, the Committee [wrote to the Minister](#) asking for further information on: the independent review, terminal illness rules and changes to eligibility criteria. A [reply was received on 21 January](#) and circulated to members. A letter from the Cabinet Secretary following the session on the budget on 13 January was also received on [21 January](#) and includes information on ADP.

The Committee will hear from:

- Ben Macpherson, Minister for local government and social security
- Janet Richardson, Deputy Director, Social Security Scotland
- Kayleigh Blair, Solicitor, Scottish Government
- David Hilber, Team Leader, Case Transfer Policy, Scottish Government
- Nathan Gale, Team Leader, Disability Benefits Policy, Scottish Government

Background

This section sets out the main differences between ADP and PIP. It provides a timeline of policy development and the main changes made following consultation, including the Scottish Government response to SCoSS. It also looks at the main changes made between the October 2021 draft and the regulations as laid on 17 December.

Differences between ADP and PIP

The regulations create Adult Disability Payment (ADP) which will replace Personal Independent Payment (PIP). Most of the rules follow PIP. The main rules that are different are:

- **Terminal illness:** both PIP and ADP fast-track claims in cases of terminal illness. Unlike PIP the definition of terminal illness for ADP does not include a time limit.
- **Short term assistance (STA)** is available when someone asks for a redetermination or appeal after their benefit is reduced or stopped. This doesn't exist in reserved benefits.
- **Residence:** To qualify for PIP someone has to have been in the Common Travel Area for at least 104 weeks out of the last 156. For ADP, the requirement will be 26 weeks out of the last 52.
- **Qualifications and experience** of practitioners carrying out consultations is set out in the regulations in ADP. Consultations with people with mental health conditions or learning disabilities must be carried out by practitioners with experience working in those areas.
- **Young people in legal detention** are entitled to receive the mobility component in ADP but not in PIP.
- **Awards don't end automatically:** most PIP awards end after a fixed term and a new application is needed. In contrast, ADP awards will continue until they are ended by, for example, a review or change of circumstance.

Various operational matters are also different, but these are not specified in the regulations. The Cabinet Secretary told the Committee on 13 January that:

“The experience that people will have of the adult disability payment will be very different from their experience of previous benefits.” ([Committee Official Report, 13 January 2022, col 11](#)).

For example:

- **Application support.** The [local delivery service](#) will assist people filling in their applications and [Independent Advocacy](#) is available.
- **Supporting information.** Social Security Scotland will collect supporting evidence on a client's behalf and make more use of informal evidence from carers, friends and families.
- **Assessments (consultations)** will only happen if requested by the client or if it is the only way to get the required information. It will not include a functional examination. Consultations will last as long as needed, rather than having a standard time and will be recorded as standard.

Consultation and policy development

There were public consultations in 2016 on social security generally, in 2019 on disability assistance and in 2020 on ADP specifically. Throughout, the focus has been on delivering improvements whilst ensuring 'safe and secure transfer.' The table below gives an outline of developments since 2016.

Table 1: Timeline 2016 - 2022

Date	Disability benefits consultation
2016	Scotland Act 2016 provides for devolution of disability benefits Ill health and disability benefit stakeholder reference group established (March) Public consultation on Scottish social security (July)
2017	Experience panels established
2018	Legal competence for disability benefits commenced (September) Social Security Scotland established (September)
2019	Consultation on disability assistance (March to May). 263 responses received. Scottish Government response published (October)
2020	Executive competence for disability benefits commenced (April). Agency Agreement with DWP for disability benefits (April) Advice from expert groups (eg. DACBEAG) Consultation on ADP (December to March). 174 responses received.
2021	Scottish Government response and draft regulations sent to SCoSS (June) SCoSS report (September) Regulations laid and response to SCoSS (17 December)
2022	ADP phased in: <ul style="list-style-type: none"> • 21 March: Perth and Kinross, Dundee, Western Isles • 20 June: North Lanarkshire, South Lanarkshire • 25 July: Fife, Aberdeen, Aberdeenshire, Moray, North Ayrshire, East Ayrshire, South Ayrshire • 30 August national roll out

- September: transfer from PIP starts
- Evaluation work starts
- Independent review of mobility criteria starts

2023 Independent review of ADP
2025 Transfer from DWP complete

A public [consultation on draft regulations](#) ran from December 2020 to March 2021. An [analysis of consultation responses](#) and the [Scottish Government response were published in June 2021](#). SCoSS also engaged with stakeholders in its scrutiny of the regulations. SCoSS published their report in October 2021 and the Scottish Government [responded on 17 December](#).

Changes made following public consultation include:

- reducing the 'past presence' from 104 weeks out of the previous 156 weeks to 26 weeks out of the previous 52 weeks. (This is the period that someone has to be in the country before they can claim ADP).
- the qualification and experience requirements for practitioners were strengthened so that the two years' work experience must be post-qualification. (n.b this has since changed – see Theme 4 below)
- 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.
- ensuring that young people in receipt of the mobility component can continue to be paid it when in legal detention.
- Short Term Assistance will be available to individuals outside Scotland who are entitled to ADP.

[SCoSS made 24 recommendations](#) and two observations. 19 recommendations were accepted in full, three were accepted in part and two were rejected. The rejected recommendations were:

- Recommendation 3: proposing that STA should be available to young people moving from CDP to ADP. The Scottish Government argued that moving from CDP to ADP is not the same as a client already getting ADP whose benefit is reduced or stopped. They will monitor the impact of STA "and give further consideration to the full range of implications of extending Short Term Assistance in this way." This issue was discussed in Committee on [28 October 2021](#), when considering regulations amending CDP.
- Recommendation 19: proposing reducing the jargon in the rules on pension age. The Scottish Government consider that, to keep wording consistent with

other legislation, this is not possible. Guidance will explain the rules for getting ADP at pension age.

Changes made to the regulations following the SCoSS report include:

- In the mobility descriptors, the criteria for 1(e) 'planning and following journeys' now refers to 'any journey' rather than the narrower requirement of not being able to undertake 'any journey at all'. This brings it into line with PIP.
- If a change of circumstance is reported late and results in an increase in entitlement that increase will start from the date the change is reported rather than the later date of when the decision is made. i.e the client will get more money in backdated payments.

Various other technical changes were made to clarify the drafting. SCoSS also made a number of recommendations on operational practice, particularly on monitoring the way the rules operate in practice.

Independent review

Many stakeholders would have liked to have seen changes to eligibility criteria – particularly on mobility. The Government has consistently argued that 'safe and secure transfer' prevents these changes being made.

[SCoSS accepts this argument](#), saying:

"We are persuaded that changing eligibility criteria at this time would risk undermining the delivery of ADP, with extremely detrimental consequences for people who depend on it." ([SCoSS report p.28](#))

Others, including Rights Advice Scotland and the MS Society have a different view. For example, Keith Park the MS Society told the Committee on 16 December that:

"we believe that some minor tweaks to the eligibility criteria could be made now." ([Committee Official Report, 16 December 2021, col 35](#))

The MS Society have a current petition ([PE1845](#)) asking for review of the mobility component.

An independent review in summer 2023 will look again at these issues.

SCoSS recommended that the Scottish Government lay the groundwork for the independent review (recommendation 10). In reply the Scottish Government said they have:

"commenced planning and consideration of the scope of the review and will provide further details in due course."

In evidence to the [Committee on 13 January](#), the Cabinet Secretary for Social Justice, Housing and Local Government said that the review of mobility criteria will start earlier than the main review.

“the mobility element review will start earlier than the wider review of the ADP. We have flagged up with the DWP that it is important that we get agreement that changes that it makes will not impact on passported benefits.”
(Committee Official Report 13 January col 14).

Writing to the Committee on 21 January, the Minister, Ben Macpherson was clear that:

“no further changes are possible at this stage for Adult Disability Payment to proceed and access for reserved premiums to continue.”

(The review is discussed further under Theme 1).

Committee consideration

On [16 December 2021](#), the Committee heard from: SCoSS, CPAG, Inclusion Scotland, MS-Society, SAMH, Rights Advice Scotland, Macmillan Cancer Support and Enable Scotland. There was support for procedural changes, in particular the different approach to assessment, but concern about when changes to eligibility could be made. Issues raised included:

- **Changes at UK level.** The UK is widening eligibility for people who are terminally ill and looking at residence rules. More fundamental changes may result from the expected White Paper on disability and health.
- The scope for making **changes to eligibility criteria**, particularly the mobility criteria, when those changes could be made and the impact on passported benefits.
- The approach to transfer from **DLA to ADP**, given the differences in eligibility criteria
- **Collecting the right information** so that implementation can be evaluated and changes made quickly.
- **The importance of ‘no wrong door’** if someone applies for the wrong benefit or to the wrong agency particularly if they are transferring between different benefits.

In discussion on [13 January with the Cabinet Secretary](#) issues raised included:

- **Transfer from DLA to ADP.** In her follow up letter the Cabinet Secretary wrote: “No one transferring from Disability Living Allowance (DLA) to Adult Disability Payment (ADP) will lose money.”
- **Changes to PIP and DLA** have implications for the block grant adjustment and for passporting (13 January, col 13, 14, 17)
- The **independent review** in 2023 will consider the scope for further change but consideration of the mobility element will start this year (col 17).
- **Role of the DWP** – and the need for an agreement that any changes made to ADP will not impact on passported benefits (col 19)

Issues about transfer from DWP were also raised last week when discussing regulations on suspending benefits.

Changes made to regulations since October 2021

When the Committee considered ADP on 16 December, it was with reference to the [draft published in October 2021](#). The main differences between that October draft and the regulations as laid are:

- The **pilot areas** are named ([Part 2 of Schedule 2](#)). These are:
 - From 21 March: Perth and Kinross, Dundee, Western Isles
 - From 20 June: Angus, North and South Lanarkshire
 - From 25 July: Fife, Aberdeen, Aberdeenshire, Moray, North Ayrshire, East Ayrshire South Ayrshire
 - From 29 August: all remaining local authorities.
- Provision for **transferring people from PIP** is added ([Part 3 of Schedule 2](#)) (Discussed further under Theme 2). Provision for transfer from DLA is not included and will be in regulations to be laid later.
- **Consistency with CDP regulations:** Changes have been made to bring ADP into line with the CDP regulations considered by the Committee on 20 January. These cover suspending benefits ([regulations 38 to 43](#)), preventing pre-emptive applications (regulation 35(2)(a)(i) is deleted) and adjustments to short term assistance ([Part 1 of Schedule 2](#))
- **Qualifications and experience for assessors** has been changed ([Part 17](#)). Rather than require two years' post qualification experience, practitioners must be registered with the appropriate regulatory or professional body (See Theme 4).
- **Mobility descriptor** for 'planning and following journeys' amended in response to SCoSS report. ([Part 3 of Schedule 1](#)) In 1(b) "needs the prompting of another person to be able to undertake any journey at all", 'at all' is deleted.

In addition, some parts have been re-ordered and there are various technical changes and clarifications are made to the drafting.

The regulations as laid include the 2021-22 benefits rates presumably because they will come into force on 21 March - just before the end of the financial year. Regulations to uprate all devolved benefits, including ADP, will be laid shortly.

Suggested themes for discussion.

The following suggests six themes for discussion,

- Theme 1: Changes to eligibility criteria and independent review
- Theme 2: Transfer from PIP and DLA to ADP
- Theme 3: Moving from CDP to ADP
- Theme 4: Gathering evidence and consultations
- Theme 5: Financial impact
- Theme 6: Monitoring and evaluation

Theme 1: Changes to eligibility criteria and independent review

The Scottish Government has consistently focused on ‘safe and secure transfer’. The Equalities Impact Assessment ([EQIA](#)) states:

“We are mindful that making even relatively minor changes to entitlement to Adult Disability Payment may have a considerable impact on safe and secure transfer.”

Some stakeholders, including the MS Society and Rights Advice Scotland, would like changes made – particularly to the ‘20m rule¹’ and ‘50% rule’.²

Richard Gass (Rights Advice Scotland) told the Committee on 16 December that “safe and secure transfer” had been used as a justification for not being sufficiently ambitious, particularly in relation to the mobility component. He said:

“many claimants who were on disability living allowance moved over to PIP and lost their mobility component or their higher-rate mobility component at that stage, and we had hoped that the new system would rectify that, but it has not done so. There is an opportunity here for the mobility element to be reviewed. That would require some reassessment, but it would be reassessment for the good.” (Committee Official Report, 16 December 2021, Col 4)

In a letter to the Committee on 21 January the Minister said:

“I must be clear with Members; no further changes are possible at this stage for Adult Disability Payment to proceed and access for reserved premiums to continue. Any changes would require both significant further design and development, and agreement to be reached again with DWP. Given the

¹ In ADP/PIP one of the ways to get a higher rate mobility component is if a client cannot stand and then move more than 20m. In DLA the equivalent was, in practice, 50m.

² In ADP/PIP a client must satisfy the eligibility criteria on at least half the days in a specified period. This affects people with fluctuating conditions. Both these rules have been criticised in relation to PIP.

magnitude and complexity of the work, this is simply not possible when delivering Adult Disability Payment to the timescales set out.”

Independent Review

An independent review, to start in 2023, will consider changes to eligibility criteria. In its [reply to SCoSS on 17 December the Scottish Government said](#) that:

“The group’s members and chair will be drawn from outside the Scottish Government. The group will also secure input from people with lived experience. The review will be wide ranging to allow consideration of the suitability all of the activities, descriptors and supporting criteria.”

And that the Scottish Government has:

“commenced planning and consideration of the scope of the review and will provide further details in due course.”

The Cabinet Secretary told the Committee on 13 January that consideration of mobility criteria will start this year.

Passported Benefits

If a person gets a disability benefit then they are entitled to extra amounts in some other benefits. If ADP had different rules compared to PIP, there is a risk that ADP will not be recognised as the equivalent of PIP for passporting.

The MS Society has argued that as there are no reserved passported benefits that distinguish between higher and lower mobility components, there should be less risk to making changes to the mobility criteria. However, the Scottish Government argue, in their [reply to SCoSS](#), that:

“it is not possible to change the criteria for the higher rate of the mobility component for Adult Disability Payment in isolation. For example, a change to the higher rate mobility descriptor would then mean remaining descriptors, including the criteria for the standard rate of Adult Disability Payment, would need to be adjusted as well. This would likely result in an overall widening of eligibility to Adult Disability Payment and therefore result in the passporting agreement with DWP needing to be re-negotiated.”

The [EQIA](#) states that:

“The Scottish Government is working with DWP to secure future agreement on passported entitlements that allow for divergence between PIP and Adult Disability Payment. Whilst the passporting of benefit entitlement is not the sole reason for our approach to safe and secure transfer, we recognise that these entitlements are crucial to disabled people in Scotland.”

The [minutes from the November 2021 meeting of the Joint Ministerial Group on Welfare](#) note an agreed action for the two governments:

“Both governments to share potential policy changes which may lead to divergence of approaches on social security benefits.”

On theme 1, eligibility criteria, Members may wish to discuss:

- 1. The arguments for changing the mobility criteria have been made for a number of years in relation to PIP. What will the independent review add?**
- 2. Can the Minister provide any further detail on discussions with DWP about the consequences of DWP and Scottish benefits starting to diverge?**
- 3. Can the Minister provide an update on the preparation for the independent review, particularly on the early start to looking at the mobility criteria and the likely scale of the review?**
- 4. Once transfer is complete, are any significant changes to eligibility criteria possible without DWP agreement on passported benefits?**

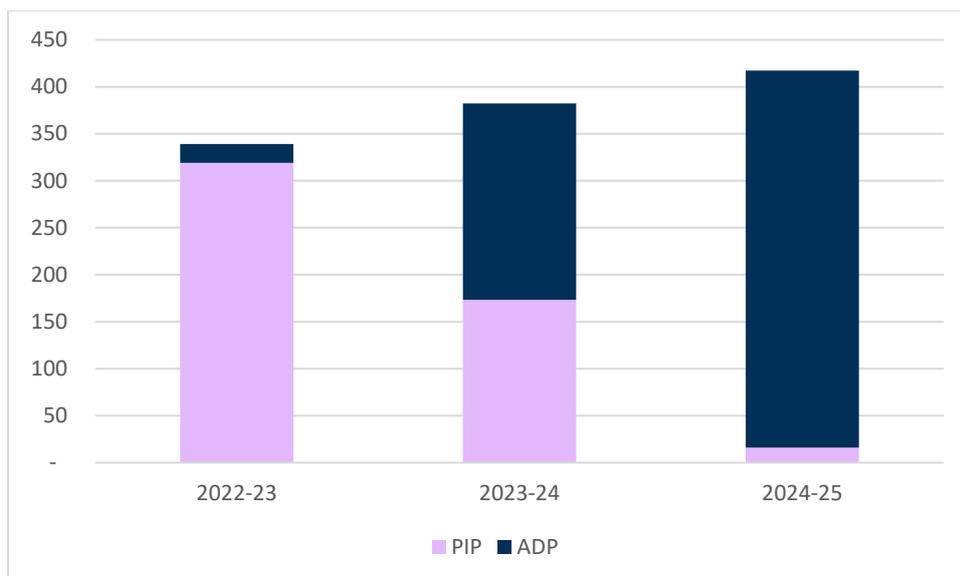
Theme 2: Transfer from PIP and DLA to ADP

The regulations include provision for transfer from PIP to ADP ([Schedule 2, Part 3](#)). These were not included in previous drafts. Further regulations will be laid covering the transfer of working age people from DLA to ADP.

Information for the public about transfer [from DLA](#) and [from PIP](#) is summarised on mygov.scot

Chart 1 below shows the Scottish Fiscal Commission’s forecast for how PIP caseload will reduce and ADP will increase over the next three years, with most transfers happening in 2023-24 and 2024-25.

Chart 1: Forecast PIP and ADP caseloads (000’s)



Source: Scottish Fiscal Commission, December 2021 forecasts table S5.1

Transfers from PIP: prioritisation

Transfer is due to start this summer and be completed in 2025.

Last week the Committee discussed how cases should be prioritised. The [Children's Rights and Wellbeing Impact Assessment](#) (CRWIA) states that:

“Where possible, PIP awards will be selected for transfer before their award is subject to review.”

However there will not be a prioritisation based on condition or need. Last week the Minister told the Committee that there is:

“a detailed process of engagement between DWP and Social Security Scotland on which batches of cases are being done. [...] in terms of prioritisation based on need...that's not a relevant factor. The position is its being done in a practical way, a systematic way” ([Committee video 9.39am](#))

Between January and October 2021 there were 873 DLA to PIP assessments in Scotland and 45,941 PIP reviews (StatXplore) - an average of 4,594 per month.

As part of the process, case records will transfer from DWP to Social Security Scotland. The [data protection impact assessment](#) noted mixed views in consultation about how much of a client's DWP information should be transferred:

“Some participants wanted case management information to be transferred so that there was a fully comprehensive record of a client's circumstances. However, many participants saw this information as irrelevant and questioned whether it would be needed. Similarly to assessment information, some participants also spoke of wanting a fresh start with Social Security Scotland and therefore didn't want this information transferred.”

[...]

Our approach to gather all relevant information is intended to reduce the burden on clients.”

The transfer process

The regulations set out that people who receive PIP – including where this is paid to people abroad under EU Co-ordination Rules – will be selected for transfer to ADP. They will be sent a notice with the date of transfer. Ministers will make a decision based on information from the DWP and other relevant information. With a couple of exceptions (see below) clients will be transferred to the same components and rates of ADP as they received in PIP. PIP will stop immediately before ADP starts. The decision must be taken by the date given in transfer notice, but this date can be extended if there is good reason to do so and the client is informed of the delay. ([Schedule 2, Part 3 para 7 to 10](#))

Circumstances where ADP could be different from PIP award

In most cases, when a client transfers from PIP to ADP the amount they are paid immediately after transfer will not change. There are two exceptions:

- Terminal illness notified at time of transfer: a client will automatically be transferred to the highest levels of ADP
- 16 and 17 year olds in legal detention who are entitled to a mobility component will get a backdated award, reflecting the difference between ADP and PIP rules

Changes of circumstance

If there is a change of circumstances that wasn't taken into account in the PIP award then a review will happen as soon as reasonably practicable after transfer ([Schedule 2, para 12](#)). As a result, the ADP award could increase or decrease soon after transfer.

Backdated awards following transfer

A change of circumstance could lead to backdated entitlement to additional payment. ([Schedule 2 para 12\(6\)](#)). It's possible that it could be backdated to before the client transferred to ADP. This is because, awards are backdated either to when the change occurred or to when it was reported (if it was reported late). Those dates could be before the client transferred.

For example: A client transfers in September 2023 and, with good reason, notifies a change of circumstance that happened in January 2023. The decision is to increase their award. That increase is backdated to January 2023.

However, awards can't be backdated before 21 March 2022, which is when the regulations come into force. ([Schedule 2, para 12\(4\)\(b\)](#)).

This means that its possible some people may lose out, although the Scottish Government expects the risk of this situation occurring to be low.³

For example: A client transfers in September 2022 and, with good reason, notifies a change of circumstance that happened in January 2022. The decision is to increase their award. That increase can only be backdated to 21 March, not to January.

Transfers from DLA

The regulations do not include provision for transfer from DLA to ADP. In their reply to SCoSS the Scottish Government notes that:

“The regulations setting out the process for transferring from DLA for working age people are forthcoming”

In Scotland, in May 2021, there were 37,515 people of working age claiming DLA (StatXplore). Latest [PIP statistics published 14 December](#) stated that new invitations to claim PIP for working age DLA are not currently being sent out.

There are also 61,364 people in Scotland over pension age who get DLA (StatXplore).

One of the issues discussed in Committee on 13 January was how DLA to ADP transfers would work. In particular, given the experience of DLA to PIP transfers, there was concern that clients might lose their higher rate mobility component. The Cabinet Secretary wrote with further information, saying:

“No one transferring from Disability Living Allowance (DLA) to Adult Disability Payment (ADP) will lose money. The same rate will be paid at the same time when the benefit is transferred from the Department for Work and Pensions (DWP) to Social Security Scotland. We will begin moving DLA cases from the DWP to Social Security Scotland in August once Adult Disability Payment is introduced. There will be no need to reapply for benefits and there will be no gaps in payment.” (Letter from Cabinet Secretary, dated 21 January 2022)

On theme 2, transfers from PIP and DLA to ADP, members may wish to discuss:

- 1. Will people of pension age who get DLA move to ADP?**
- 2. Other than selecting cases due for review, will there be any other factors affecting the order in which PIP cases are transferred to ADP?**
- 3. How many cases each month will be transferred?**
- 4. What information will be transferred from DWP when someone is moved onto ADP?**

³ SPICe personal communication, 21 January 2022

5. **What estimates have been made of the number of transfer cases where additional information will be required? (and which therefore will take more resource and more time to process)**
6. **What estimates have been made of the number of cases which will require a change of circumstances review soon after transfer?**
7. **Is it possible to manage the transfer process so that no-one loses out because increases can't be backdated to before 21 March 2022?**

Theme 3: Moving from CDP to ADP

[Part 15 of the regulations](#) provides for application to ADP for those entitled to CDP. Young people on CDP will need to apply for ADP – they will not be transferred automatically.

Between the ages of 16 and 18, a young person will be able to apply for ADP or stay on CDP. The regulations for CDP allow a young person to remain on CDP until their 18th birthday, or up to their 19th birthday if they are in the process of getting a redetermination of the decision on their ADP application.

The SCoSS report notes that:

“CDP and ADP have different eligibility conditions. There is no guarantee of qualifying for ADP or of getting the same rate. Because of this, it is expected that most young people will delay claiming until they reach 18.”

SCoSS made a recommendation that ShortTerm Assistance (STA) should be available to young people moving from CDP to ADP.

STA is available while someone challenges a decision to reduce or stop their benefit. It's not available for someone applying for a different benefit.

The Scottish Government rejected the SCoSS recommendation. The [EQIA](#) states that:

“STA is not designed to be a ‘bridge payment’ between two forms of assistance. Extending the scope of STA in this way would represent a significant departure from the current policy intent of STA in requiring it to be paid on the basis of an award a client is potentially no longer eligible for.”

This has been discussed by the Committee before, on [28 October](#). The Minister for Local Government and Social Security, Ben Macpherson told the Committee that:

“treating this process simply as a transfer would mean that the information that is held by Social Security Scotland in relation to a CDP award would, for many clients, likely not be sufficient for a decision on entitlement to ADP to be made, and we would need to ask clients to provide further supporting information if they were making an application for ADP. That is why a new claim will have to be made

[...]

extensive and on-going support and advice being made available to young people and their families as they undertake the process.” (Committee Official Report, col 7)

SCoSS also recommended (recommendation 24) that the movement between CDP and ADP should be monitored:

“The number of people who fail to apply for ADP and the reasons why they fail should be monitored with a view to learning and improving the processes to eliminate any drop outs other than through positive choice.”

The Scottish Government accepted this recommendation (24) saying:

“Support will be available through a choice of channels. It will be made clear to clients that they may be better off waiting to apply to Adult Disability Payment when they reach their 16th birthday. The Scottish Government is committed to monitoring this process and to implement improvements where appropriate.”

On theme 3, CDP to ADP, Members may wish to discuss:

- 1. If it is possible to transfer adults from DLA to ADP, why is it not possible to transfer young people on CDP to ADP?**
- 2. What support will be available to young people claiming ADP?**
- 3. In what ways will applying for ADP be different for young people on CDP compared to young people not on CDP?**
- 4. Will statistics be available showing the outcome of ADP applications for young people previously receiving CDP?**
- 5. What is the Scottish Government’s view on the merits of a single disability benefit that applies to children, working age and older people?**

Theme 4: Gathering evidence and consultations

Arguably the major change in ADP compared to PIP is the approach to gathering evidence – both written evidence and, where necessary, through a consultation. In a recent letter (21 January 2022), the Minister explained how, even though the eligibility criteria for mobility are not changing, changes to the assessment process will mean that, nevertheless, clients’ mobility needs will be more fully recognised than at present. He said:

“Improving the application of the reliability criteria, only requiring one item of supporting information from a formal source, giving equal weight to information from the client’s informal network, and limiting informal

observations, will bring about decisions which appropriately reflect how clients experience moving around.”

Providing information

Last week Jeremy Balfour asked whether medical practitioners would be required to provide evidence to Social Security Scotland. The Minister undertook to provide further information for this meeting.

Under the [Social Security Information-sharing \(Scotland\) Regulations 2021](#) ([debated in Committee on 4 March 2021](#)), GPs and others can be required to supply information to Social Security Scotland.

Training and qualifications of practitioners

There is no longer a requirement for practitioners have two years experience. This is a change from the [October draft](#) regulations. It is also a change to the [policy set out in June 2021 following public consultation](#) on disability assistance which was that practitioners must have two years post qualification experience.

Instead regulation 61 requires registration with various regulatory bodies, such as the Scottish Social Services Council, and previous employment in relation to that registration.

[Regulation 61](#) requires that practitioners employed to carry out a consultation are registered with the appropriate body⁴ and have been employed as either:

- an [allied health professional](#),
- adult nurse, learning disability nurse, or mental health nurse
- social worker, or
- social care worker qualified to SCQF level 9

In addition, practitioners must have experience of provision of health or social care to individuals

- with mental conditions in order to undertake consultations for those individuals,
- with learning disabilities in order to under consultations for those individuals.

The re-drafted regulation also specifies that a social care worker must be qualified to [SCQF level 9](#). This is a high level of qualification, equivalent to an ordinary degree.

⁴ Social Care workers only need to have SSSC registration immediately before they are employed with Social Security Scotland, as they would be unable to remain registered with SSSC once employed by Social Security Scotland.

On 16 December Bill Scott (Inclusion Scotland) discussed qualification requirements in relation to the earlier draft of the regulations and raised concerns about the level of qualification and experience that practitioners would have. He said:

“it is an on-going concern that a care assistant with two years’ experience of working with older people with dementia will be able to make an assessment of somebody with a mental health issue, even though their level of qualification is Scottish Qualifications Authority level 2. The complaints about the PIP system have been that consultants have been overruled in their assessment of somebody’s mental health by a midwife and so on. There is still the contradiction at the heart of things that somebody with relatively limited experience and quite a low qualification level could overrule somebody who has spent their life in and has risen in the profession.” ([Committee Official Report, 16 December 2021, col 38](#))

Given the way that regulations have been re-drafted, it appears that a social care worker with an SVQ level 2 qualification (SCQF level 5) would not be able to work as a practitioner.

Social Security Scotland is in the process of recruiting 2,000 additional staff – including the health and social care staff who will advise decision makers and carry out consultations.

On theme 4, gathering evidence and consultations, members may wish to discuss:

- 1. What procedures will be in place to ensure information from health professionals is provided within a reasonable time?**
- 2. Why has the requirement for practitioners to have two years post qualification experience has been removed?**
- 3. Can the Minister confirm the minimum qualification level that is required in order to be employed by Social Security Scotland to do consultations?**
- 4. Can the Minister update the Committee on progress with recruiting practitioners?**

Theme 5: Financial impact

The additional cost of ADP compared to continuing PIP is estimated to be £38 million in 2022-23, rising to £567 million in 2026-27. In Committee on 13 January, the Cabinet Secretary for Social Justice, Housing and Local Government had a positive view of these increased costs, saying:

“The Scottish Fiscal Commission’s projection of an increase in expenditure on the adult disability payment, based on its assessment that more people will apply and more people will get the benefit, suggests that that will be a major

improvement and more people will get the support that they require than do at the moment.” (Committee Official Report, 13 January 2022, col 17).

The Scottish Fiscal Commission produced a [costing in August 2021](#), updating it slightly in [December 2021](#). The SFC stress that:

“We attach a high degree of uncertainty to our estimate of additional spending on ADP.”

The chart below shows the different elements that contribute to the additional cost.

Chart 2: Adult Disability Payment: additional costs by policy

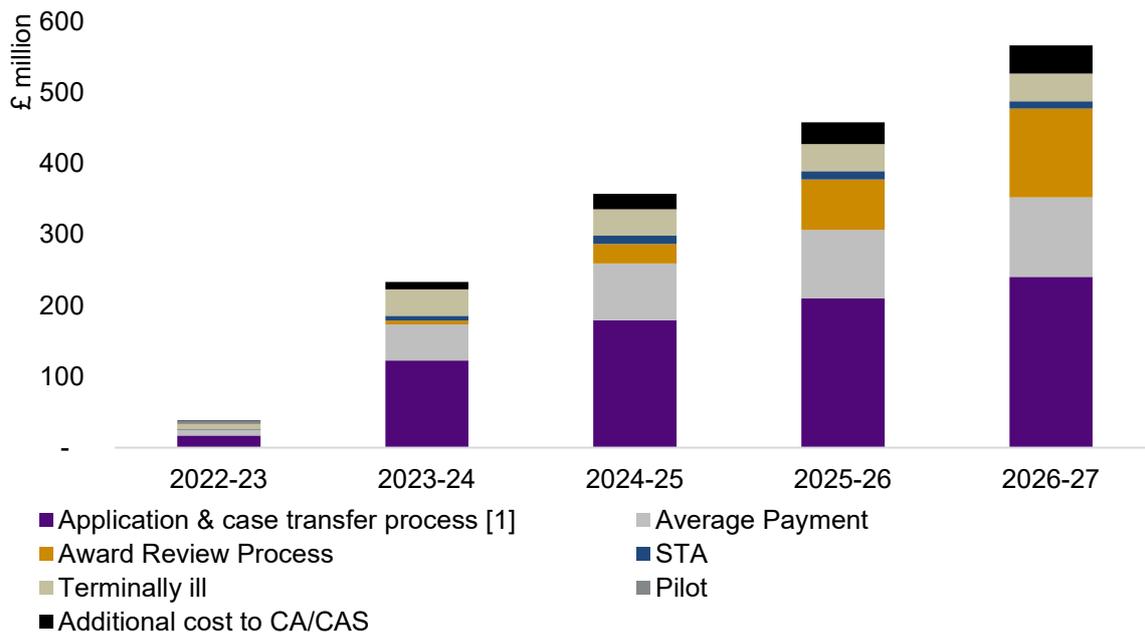


Table 2: ADP policy breakdown of additional costs compared to PIP

£ million	2022-23	2023-24	2024-25	2025-26	2026-27
Application & case transfer process	17	123	179	210	241
Average Payment	7	51	80	97	112
Award Review Process	0	5	28	71	125
STA	1	7	12	12	10
Terminally ill	8	37	37	38	39
Pilot	4	0	0	0	0
Additional cost to CA/CAS	1	10	22	31	40
Total ADP policy cost	38	233	358	458	567

Source: Scottish Fiscal Commission, December 2021. Assumes case transfer complete by end of 2024-25.

Chart 2 above, shows that the largest element of additional cost is due to differences in the application and case transfer process. The SFC have assumed:

- 21% increase in the number of successful applications in the long term due to various policies designed to remove barriers to take-up and different working practices in decision making.
- An initial spike in applications due to publicity around the new benefit. SFC assume an additional 20,000 successful applications for this reason.
- SFC assume that 15% of people who would have got a standard rate award in PIP will get an enhanced rate award in ADP. This is due to differences in the way evidence is gathered and considered.
- SFC assume that people may request a change of circumstances review after transfer, as this may result in an increased award. They assume that the proportion of the caseload requesting a change of circumstance review will increase from 0.3% per month (under PIP) to 0.5% once people transfer to ADP. As ADP decisions are likely to result in higher awards, this will also lead to higher spending.

Whether or not these assumptions prove to be the case will only be seen after ADP starts. The Scottish Fiscal Commission publish [forecast evaluation reports](#) each September which look at how accurate their forecasts are.

Detailed information about what is causing any cost differences between ADP and PIP could inform future policy decisions about what further changes may be possible.

At Committee on 7 October, Professor Alasdair Smith (SFC) pointed out that, once ADP starts and data becomes available, the forecasts should become more accurate. He said:

“The comfort in it all is that the changes will accumulate over time, and it is towards the end of the five-year period that we see the big changes coming. Over that five-year period, we and the Scottish Government will get information about how ADP and the child disability payment are working, so we will be able to make more reliable forecasts.” ([Committee Official Report, 7 October, col 31](#))

Claire Murdoch (SFC) described the kind of detailed information that the SFC would need from Social Security Scotland. For example, gender, age, level of award and even the number of points scored under different descriptors.

On theme 5, financial impact, members may wish to discuss:

- 1. Given uncertainty in costings, what contingency is in place for addressing potentially large variations in actual spend compared to forecasts?**
- 2. What research will the Scottish Government undertake and what data will it collect in order to assess what is driving any cost differences between PIP and ADP?**

3. **What discussions has the Scottish Government had with the SFC about the detailed data requirements for ADP forecasting?**
4. **Will the Scottish Government continue to promote take-up regardless of the amount being spent on ADP?**

Theme 6: Monitoring and evaluation

A theme in the SCoSS report is the need to monitor the implementation of ADP. In [response](#), the Scottish Government made a number of commitments to monitor various aspects of ADP, saying:

“The consistent monitoring of all aspects of Adult Disability Payment delivery will enable learning and inform future changes.”

Specific areas referred to included:

- The impact of STA
- The transition from CDP to ADP
- Active referral to advice agencies and take-up of independent advocacy
- Impact of suspending benefits
- Application of the reliability criteria
- Using tribunal decisions to make improvements

The previous theme discussed the importance of management information for accurate spending forecasts.

In October 2021 the Scottish Government published its approach to [Evaluating the Devolution of Disability Benefits](#). A recent PQ answer noted that:

“we will begin a thematic evaluation of the policy changes that are being implemented with the roll-out of the disability benefits, including use of supporting information, client consultations and supporting information.”
([S6W-04597, answered 6 December 2021](#))

The evaluation work is starting this year:

“Work on the evaluation is underway, with the size, scope and research questions commencing development in 2022.” (Ben Macpherson, Letter to Committee dated 21 January 2022)

On theme 6, monitoring and evaluation, members may wish to discuss:

- 1. How are the Scottish Government and Social Security Scotland ensuring that there is a 'learning culture' in implementing ADP – i.e. collecting the right information and building systems which can be easily adjusted where necessary.**
- 2. How does the Independent Review relate to planned thematic evaluation of disability assistance?**
- 3. Can the Minister update the Committee on plans for evaluating ADP, since the evaluation framework was published in October 2021?**
- 4. What discussions have been had with stakeholders on the detail of management information that will be collected?**

Camilla Kidner,
SPICe Research,
21 January 2021

Annex: Summary of the regulations

(This reproduces the annex provided to members for the meeting of 16th January, updated to reflect the regulations as laid).

Part 1 interpretation: defines key terms including: “aid or appliance,” “care home”, “medical treatment”.

Part 2 basic eligibility: including that someone cannot get DLA, PIP, AA, CDP or armed forces independent payment at the same time as ADP.

Parts 3, 4, 5 and Schedule 1 scoring for mobility and daily living: Sets out entitlement to mobility and daily living components based on the descriptors, points and interpretation that are set out in in Schedule 1. Part 3 includes some key rules from PIP:

- activities must be done safely, to an acceptable standard, repeatedly and within a reasonable time period (regulation 7).
- someone’s condition must have existed for 13 weeks and be expected to last a further 39 weeks (the ‘required period’ regulation 10(3)).
- descriptors must be satisfied for 50% of days in the required period (regulation 10(1))

Part 5 residence and presence:

In order to qualify for ADP a person must:

- be ordinarily resident in Scotland and habitually resident in the common travel area⁵ (regulation 15)
- have been in the common travel area for at least 52 weeks out of the previous 104 weeks (regulation 15) (the ‘past presence test’)
- not be subject to immigration control – for example, those with no recourse to public funds are excluded from claiming (regulation 15)

There are some exceptions. For example the ‘past presence test’ doesn’t apply to refugees (regulation 21), people who are terminally ill (regulation 15) and EEA citizens in Scotland who are protected by the EU [Withdrawal Agreement](#)⁶ (regulation 19).

In some limited cases it is possible to get ADP while abroad. For example;

⁵ UK, Ireland, Channel Islands, Isle of Man

⁶ In very broad terms – people who moved between UK and EU state before end December 2020.

- Temporary absence up to 13 weeks (or up to 26 weeks for medical treatment) (regulation 16)
- People protected by the withdrawal agreement who live abroad can get ADP daily living if they have a strong link to Scotland (regulation 20)
- People in the armed forces, civil servants and their families and certain people working abroad can get ADP even though they are not in Scotland (regulations 17 and 18)

Part 6 Age rules

ADP is for people aged between 16 and pension age (regulation 22). If someone has ADP before they reach pension age, they can continue to get it after pension age (regulation 23).

If someone has the mobility component before pension age that can continue, but its not possible to increase it, or add it in after pension age. (regulation 25)

Part 7 Terminal illness (regulation 26)

Someone who is terminally ill is entitled to the enhanced rate of daily living and mobility components.

Someone is terminally ill if it is the clinical judgement of a medical practitioner or registered nurse involved in the diagnosis or care of the individual, that the person has a progressive disease that can reasonably be expected to cause their death.

The health professional must have regard to the [Chief Medical Officer's guidance](#).

Part 8: Time in care homes, hospital and legal detention

ADP daily living payments reduce to £0 after 28 days in:

- a care home, if publicly funded (regulation 27).
- legal detention, if the person is aged 16 or 17 (regulation 30)

If someone is over 18, then both components of ADP stop being paid after 28 days in hospital (regulation 28) or legal detention (regulation 30).

These rules don't apply if someone is in a hospice and terminally ill (regulation 29).

Part 9: Applications and payment

Amount and frequency: ADP is paid 4 weekly in arrears unless someone is terminally ill, when it is paid weekly in advance (regulation 36).

The rates paid are set out in regulation 34. These are the 2021-22 rates.

Making applications and power to suspend or change payments

Applications are treated as made on the day they are received, or within 13 weeks of that date, if that would help someone meet the eligibility criteria (regulation 35).

Entitlement begins from when basic information (name and date of birth) is provided, so long as a full application is completed within 8 weeks (regulation 35).

ADP is reviewed after a period or can be awarded for an indefinite period (regulation 37).

ADP can be suspended if:

- information is requested by Ministers in order to decide an award but that information is not provided within a specified time (see [s.54\(1\)A 2018 Act](#)) (regulation 38 read with regulation 43)
- someone else is getting the payments on the client's behalf and the client is at risk of financial abuse
- the client has asked for payments to stop

When deciding whether to suspend payment, Ministers must have regard to a person's financial circumstances (regulation 38) and claimant has a right to ask for a review (regulation 39).

A client has the right to ask for a review of the decision to suspend (regulation 41), but no right of appeal.

Deductions from ADP can be made to repay overpayments (regulation 44).

When a change of circumstance takes effect

If there is a change of circumstances that affects the level of payment, then;

- the date that increases take effect from:
 - when the change happens (if notified within a month or within 13 months if there's good reason for being late). (regulation 45), or
 - when the change is reported (if reported late without good reason or reported after 13 months)
- decreases take effect from when the determination (decision) about the change happens (regulations 46).

So in general, decreases are applied later than increases.

Part 10: Determinations without application

There are several circumstances when the amount of ADP can be altered without requiring an application. One example is where there is a change of circumstances.

Part 11: Movement around United Kingdom

If a person who gets PIP moves to Scotland then they will be transferred to ADP without having to make an application (regulation 52)

If someone moves from Scotland to elsewhere in the UK they can continue to get ADP for 13 weeks (regulation 53)

Part 12: Period for redetermination

If someone is unhappy with the decision on their ADP award they have 42 days to ask for it to be looked at again (redetermination). Ministers then have 56 days to complete that redetermination. (Regulation 54).

Part 13: Vehicles (i.e motability)

The enhanced rate of the mobility component can be used to lease motability vehicles (regulation 55).

Part 14, Part 2, Schedule 2 and Part 20: The pilot – lists the local authorities and dates for the pilot.

Part 15: Applications to ADP for those getting CDP to ADP

In cases of terminal illness, a young person in receipt of CDP will get an award of ADP at age 18 without having to make an application (regulation 59).

Part 16 and Schedule 2: Transfer arrangements from PIP to ADP.

Part 17: Qualifications and experience to carry out an assessment

To carry out an assessment (consultation), a practitioner must be in one of the listed registered professions. They must have experience working with people with including learning disabilities and mental conditions where relevant. (regulation 61)

Part 18 and Schedule 2: Short term assistance

If someone wants to challenge a change to their ADP then they can get short term assistance (STA) while a redetermination or appeal takes place. Entitlement begins when the request for redetermination is made or notice of appeal given. (Sch 2, para 1)

STA 'tops up' ADP to what it was before it was reduced or ended. (Sch 2, para 2). If a payment for motability or a deduction for an overpayment was being made under the ADP award, then these continue under STA (Sch 2 para 2).

Entitlement to STA ends when the redetermination decision is made, when the appeal is decided, when permission for onward appeal is refused or the individual withdraws their appeal.

STA doesn't have to be repaid. However, to avoid double payments, it's not possible to get STA and a backdated award for the same period.

Part 19, Schedule 2 Consequential amendment to ensure CDP and ADP are qualifying benefits for Carer's Allowance.