

Social Security

A Consultation on Disability Assistance in Scotland

Scottish Government response

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Ministerial Forward



Cabinet Secretary
Shirley-Anne Somerville

I am delighted by the response to the Consultation on Disability Assistance, both from individuals and from a wide variety of organisations. It reflects the level of interest in our ambition to build a new social security system that reflects the needs of disabled people in Scotland, and one that builds a culture of trust based on principles of dignity, fairness and respect.

The devolution of social security will reach 10% of the Scottish population and the creation of Social Security Scotland is the most significant creation of a new public service since devolution. We are clear that this process is complex and challenging and that, to ensure its success, we must embed the views and experience of disabled people in its development so that, once the system delivers at scale, it does so in a way that meets the needs of the people it is designed to support.

When we asked the people of Scotland what they thought of the current UK administered social security system they said it was stressful, complicated and often inhumane. That message has been reflected in many of the responses to the consultation, and I am clear that we will not repeat the same mistakes.

We have a real opportunity to do things differently with disability benefits – some disabled people feel that they have been failed by the current system, and it is clear from the responses to the consultation that there is a real desire to see change. I want to make sure that we can deliver that change in a way that is safe, sustainable and most importantly protects the interests of disabled people without risking existing entitlements.

I am pleased that most of our proposals were supported by respondents, but I recognise that there are some areas where we need to consider our proposals further in light of stakeholder feedback. We have set out how we intend to use this feedback to further develop our proposals for Disability Assistance in this document and how we will continue to consider the views of disabled people in building a system with them - not for them.

We can be bold and confident in our aspirations and plans for disability benefits, because we have a solid evidence base about what works and what doesn't. We

know that the continued cycle of impersonal assessments, complicated forms, and short awards do not meet the needs of disabled people. We know that disabled people may be put off challenging a decision that they feel isn't right, that a culture of mistrust has been created, and that the provisions on terminal illness are unduly restrictive.

Our approach to disability benefits is informed not only by this consultation, but by continued and detailed engagement via our Experience Panels, the Disability and Carers Benefits Expert Advisory Group, and the Ill Health and Disability Benefits Stakeholder Reference Group. This consultation is not the end product of a process, but rather the next step in a much wider programme that allows us to build a system that has been informed by evidence and the views of people with lived experience of the current system.

Finally, I would like to thank everyone who participated in the consultation, and for taking the time to give such detailed and considered feedback. We are listening and will continue to listen, so that we can develop a system that is open, humane, and easy to use.

Shirley Anne Somerville MSP

Cabinet Secretary for Social Security and Older People

1. Introduction

We are talking to and – importantly – listening to many individuals, organisations and groups with direct and personal experience of the social security system. We are designing our new service using evidence. We are testing everything that we do with the people who will use or interact with it to make sure we get it right. What we deliver on day one is not the limit of our aspirations – we are setting up this system in a way that it can continue to evolve and improve.

The Scottish Government has set out a number of policy position papers in relation to Disability Assistance, including assessments, award duration and entitlement, and qualifying periods. We have also made a number of commitments in relation to how we will deliver a social security system that is different:

- We will ensure that the application process for Disability Assistance is inclusive, accessible, provided in a range of formats, can be completed in a range of routes.
- Significantly decreasing the number of face to face assessments.
- Not using private sector contractors to deliver disability assessments.
- Ensuring people with disabilities can access a flexible, person centred assessment service across the length and breadth of the country.
- Only asking someone to undertake a face-to-face assessment where we haven't been able to gather enough evidence to make a decision.
- Offering a choice of an appointment date and time that suits clients, home visits will be available when they are required.
- Giving people the right to be accompanied to an assessment, and to have that person participate in the assessment.
- Providing audio recording of assessments will be provided as standard.
- People who are eligible under terminal illness rules will be fast tracked to the maximum rate of assistance, and medical professionals will be able to use their clinical judgement in advising whether someone meets the criteria.
- Introducing rolling awards of up to 10 years for those clients with conditions unlikely to change.
- Having independent advocacy workers to help disabled people applying for Scotland's new social security benefits.

About the Consultation Process

The Scottish Government sought views between 5 March and 28 May 2019 on whether its approach to Disability Assistance will meet the needs of the children and adults it is intended to support. The objective of the consultation was to gather views from individuals and organisations to ensure that we have identified the best possible approach to delivering Disability Assistance before commencing the drafting of secondary legislation.

The consultation built on our work to date with Experience Panels and stakeholder groups such as the Disability and Carers Benefits Expert Advisory Group, The responses to the consultation will shape the way we continue to develop our approach to Disability Assistance in Scotland and inform our final decisions on policy and furthers the user involvement in the development of a social security system based on dignity, fairness and respect.

The Scottish Government has published an analysis of responses to the consultation and the report is available here:

<http://www.gov.scot/ISBN/9781839602689>

When discussing the prevalence of certain views, we have used the following terms to indicate the proportion of consultation responses that raised a particular point:

- “Few”: 5-9%
- “Some”: 10-19%
- “Many”: 20-49%
- “Most” or “majority”: 50-74%
- “Large majority” or “broad agreement”: 75 -89%
- “Consensus”: 90% or more

This document sets out what action we now intend to take to respond to the views expressed.

2. Section 1 - Disability Assistance in Scotland

The broad purpose of Disability Assistance is to provide financial assistance to mitigate some of the increased costs that people incur as a result of having a disability or long term condition. Disability Assistance helps ensure that disabled children and adults are more able to secure the care and mobility support they need, reducing barriers to their full participation in our communities and improving life opportunities.

Section 1 of the Consultation paper sought views on aspects of delivering Disability Assistance in Scotland relevant to all forms of Disability Assistance. We know that there is an interaction between take-up levels, and a broader understanding of what benefits are for, and the simplicity of the names of the benefits. We set out our intention to rename the devolved replacement benefits to clearly set out to disabled people their different to DWP equivalents.

We are intending to undertake further user research and engagement to ensure that the names of the benefits are simple and inclusive and clearly set out the client group that each form of assistance is for.

2.1 Policy Proposal – Disability Assistance Names

The consultation document asked for views on the Scottish Government’s proposed names for each form of Disability Assistance:

Current Name	Proposed Name
Child Disability Living Allowance	Disability Assistance for Children and Young People
Personal Independence Payment	Disability Assistance for Working Age People
Attendance Allowance	Disability Assistance for Older People

Respondent Feedback

The majority of respondents agreed with our proposed names for each type of Disability Assistance. Some respondents were concerned that words such as ‘disability’ and ‘assistance’ may not be inclusive, and a small number of respondents suggested that the proposed names may discourage greater uptake if an individual does not identify themselves as having a disability.

Scottish Government Response

We will undertake further engagement with stakeholders and Experience Panel members around our proposals for benefit names to ensure that they are simple, straightforward and inclusive.

2.2 Policy Proposal – Application Channels

We know that many disabled people and their families have found the current system complicated to navigate, particularly when applying for benefits. To try to reduce this complexity and to meet a broad range of needs and preferences, our proposals committed to a range of application channels, all accessible to clients based on their preference and not just on need.

We also committed to ensuring that each of the channels was designed to be inclusive and accessible, simpler to complete and tested with people with lived experience of disability benefits. We know that the process of applying for disability benefits can be incredibly complex and we are seeking to consider the views of disabled people in how we might make this much simpler.

We set out our intention to redesign the application process from beginning to end to make it more inclusive and person-centred, whilst removing repetition and unnecessary complexity. The consultation paper set out our intention to make available a choice of application channels including by phone, by paper form or online.

Respondent Feedback

A large majority of respondents who answered (87%) agreed with the approach to ensure a choice of application channels with a theme emerging that inclusivity and accommodating people with varied needs was key.

Scottish Government Response

We will continue to co-design application channels with people who have experience of applying to the current benefits system and will consult relevant expert groups and stakeholders on our approach to the various application channels.

Our Social Security Charter sets out our commitment to adapt our processes and ways of communicating as much as we reasonably can to meet client's needs and preferences, for example by providing interpreters.

The Social Security (Scotland) Act 2018 also places a duty on Scottish Ministers to have regard to the importance of communicating in a way that ensures individuals who require communication support (in relation to speech, language or otherwise) can receive information and express themselves in ways that best meet each individual's needs.

2.3 Policy Proposal – Conditions Relating to Residence and Presence

The consultation document set out our initial policy intention that the Scottish system will broadly replicate the residency rules used by DWP, meaning an individual must meet all of the following residence and presence conditions:

- Be habitually resident in the Common Travel Area;
- Not be a person subject to immigration control;
- Be present in Great Britain on the date the claim is made, and;
- Must have been present in Great Britain for 104 weeks out of the last 156 weeks on the date the claim is made (the “past presence” test).

We also set out the intention to broadly replicate existing provisions in relation to temporary absence from Great Britain, which prevents people from losing eligibility if they are away from home temporarily.

Existing rules allow individuals to be outside of Great Britain for up to 13 weeks for any reason and for up to 26 weeks to receive medical treatment.

For the purposes of temporary absence, where a person is absent from Great Britain, they shall be treated as though they were present in Great Britain if the absence is because they are abroad in their capacity as a serving member of the armed forces, or a continental shelf worker, or are a member of that persons family.

Respondent Feedback

A majority of respondents (59% who answered) agreed with the proposed approach. However, we also received suggestions about how we could change the rules, including:

- Removing or shortening the ‘past presence’ test;
- Whether the periods of temporary absence allowed under the current rules were long enough, and;
- The rules on temporary absence should continue to apply to absences from Great Britain rather than Scotland to protect the entitlements of individuals who move around Great Britain for a variety of reasons.

Scottish Government Response

The Scottish Government is considering the implications of removing or adjusting the existing DWP residence and presence conditions. This is the type of policy change which could potentially have implications for individuals moving around the UK whilst in receipt of Scottish Disability Assistance. There may also be issues around eligibility for a range of payments, exemptions and entitlements associated with reserved UK benefits which remain within the control of DWP, eligibility for which currently depends on receipt of a UK disability benefit.

Major changes to eligibility rules create a risk that individuals in receipt of Scottish Disability Assistance moving to another UK jurisdiction from Scotland could face gaps in eligibility for the equivalent disability benefit in the other jurisdiction. If the Scottish form of assistance does not have a past presence test, for example, then individuals moving to another UK jurisdiction from Scotland

before they have been in Great Britain for two years could fail to qualify for the equivalent DWP disability benefit when they apply in the new jurisdiction.

In addition, the disability benefits which are being devolved to Scotland currently act as 'qualifying benefits' for a number of premiums and entitlements associated with benefits which are still administered by DWP, such as Universal Credit. Access to these premiums and entitlements on reserved benefits could be affected if the Scottish Government introduced different residency requirements for Scottish Disability Assistance. A major policy change in the residence and presence conditions for Scottish Disability Assistance carries the risk that Scottish Disability Assistance could no longer guarantee the same access to the premiums and entitlements associated with reserved UK benefits.

We acknowledge concerns expressed by respondents to the consultation about the past presence test. Discussions are ongoing with DWP officials to establish whether changes to the past presence test can be delivered without jeopardising existing entitlements of Scottish clients or creating eligibility gaps.

The Scottish Government will ensure the rules on temporary absence are replicated. This will allow individuals to move freely around Great Britain for temporary reasons, such as to provide care to a family member in another jurisdiction, without losing entitlement to devolved disability assistance.

Key stakeholders were unable to provide any examples of individuals who had lost their benefit entitlement as a result of being outside GB for a period of medical treatment which exceeded the 26 weeks permitted under the existing rules. We have therefore been unable to find any evidence that the existing periods of permitted temporary absence are inadequate.

2.4 Policy Proposal – Making Decisions about Entitlement

We know that there are a broad range of views from disabled people about how decisions on entitlement to Disability Assistance should be made. We set out that the overarching principle should be taking a person-centred approach that looks at the individual impact of a condition on a person and not just whether they have a diagnosis of a specific condition.

We know that this approach will ensure that disabled people applying for Disability Assistance will have their application considered in broader terms, ensuring that those people with fluctuating conditions or mental health conditions have more trust and confidence that decisions will be made in a way that better considers the impact of their condition on them.

The consultation paper asked a number of questions in relation to how Social Security Scotland should make decisions about entitlement to Disability Benefits. The questions sought views on:

- The overarching principal of taking a person-centred approach when considering if someone is entitled to receive Disability Assistance;

- Involving Specialist Advisors in the decision making process;
- The kind of factors which should be taken into account when involving a Specialist Advisor in the decision making process and;
- Making decisions about eligibility and awards for children, young people and older people using existing information to support applications.

Respondent Feedback

There was consensus amongst respondents, with 92% of respondents agreeing with the proposed approach of taking a person-centred view when assessing if someone was entitled to receive Disability Assistance. A key issue many respondents highlighted was that there must be appropriate guidance and training provided to ensure consistency across the forms of assistance.

A large majority of respondents (77%) were in favour of our proposals about whether a Specialist Advisor should be consulted as part of the decision making process. Respondents provided various examples of situations where Case Managers might need an opinion from Specialist Advisors:

- Cases where the Case Manager does not have the required knowledge or skills;
- Complex or rare conditions. Some respondents cited specific conditions including epilepsy, lymphoedema, fibromyalgia, multiple sclerosis, cancer, head injuries;
- Multiple illnesses or comorbidities;
- Fluctuating conditions;
- Where a client has a mental health condition, learning difficulties, or in instances where there are concerns about a client's ability to take part in the assessment process;
- In instances where there is contradictory supporting information or inconsistencies in the supporting information, or any doubt over the information provided and the Case Manager needs a second opinion;
- Where existing information is deficient and / or there is a lack of supporting information.
- Where there are hidden or invisible disabilities;
- Where there are medical reports or advice from medical practitioners / health professionals;
- Where the Case Manager is going to make a negative determination;
- Where a client is taking complex medications and;
- If requested by a client.

Most respondents (75% who answered) agreed with using existing sources of information to make decisions about Disability Assistance for children, young people and older people rather than through face-to-face assessment.

Scottish Government Response

In putting our commitment to an improved decision making process into practice we will be transparent about the decision making criteria for each form of Disability Assistance and provide clear and accessible guidance to clients so they understand what information Case Managers need in order to make entitlement decisions. There will be no hierarchy of supporting information so that all information will be considered on its own merits, ensuring that information from family members and carers is given due weight.

Case Managers will seek one source of supporting information from a formal source, such as confirmation of a diagnosis or letter from a support worker. It need only be sufficient to determine, on the balance of probabilities, that the individual's condition is consistent with the general care and mobility needs detailed on their application. In the minority of cases, a Case Manager may make a decision without a formal source of information, for example, where none is available.

This holistic approach will assist individuals to communicate their needs to the Case Manager, even in cases where they face challenges in accessing a diagnosis or other formal source of supporting information. This marks a significant departure from the present system, where clients have told us that they feel they need to 'prove' they have a condition, or where the majority of clients are required to attend a face-to-face assessment and further embeds the principles of a system based on trust and respect.

We are developing training and guidance for staff who will make decisions about entitlement to benefits and award rates. This will support a person-centred approach, as well as promoting fairness and consistency in all decision-making. All training is grounded in our core principles of dignity, fairness and respect, and we want to ensure that we build the trust that is lacking in the present system both in the rules and processes of Disability Assistance, as well as in the staff employed to administer it.

We are also developing guidance to ensure that Case Managers can request advice from Specialist Advisors, for example to find out the side effects and/or interactions of difference medications, the impact of complex and fluctuating conditions, or to assist in interpreting complex supporting information from medical professionals. We want to ensure the guidance covers a diverse range of circumstances that will require specialist advice.

While it is possible that Social Security Scotland can employ advisors and assessors with a professional background in common conditions, this will not be feasible in every case, particularly for rare conditions. The role of advisors and assessors is not to diagnose or assess a client's condition but nonetheless they

may require access to specialist advice to understand the symptoms or expected impacts of particular conditions.

However, because we will utilise a wider range of support information as part of the application process, including information from formal sources (such as doctors, specialists or support workers), we will ensure that we are taking into account information from those who understand the impact of the client's condition and its impacts best. We will also ensure that all staff will have access to Agency Medical Guidance as well as the Decision Making Guidance.

2.5 Policy Proposal – Redetermination and Appeal

We want to build a system that makes the correct decisions but recognise that where clients don't agree with decision, they should be supported and encouraged to challenge the decision. Our proposals on redeterminations and appeals ensure a framework that will allow disabled people to challenge decisions made about their entitlement.

We believe that a cornerstone of building a transparent system based on trust is enabling and encouraging clients to challenge decisions and, where the initial decisions is overturned, understanding how processes can be improved in future.

The consultation set out the rights already provided to individuals through the Social Security Act (Scotland) 2018 about their decision by Social Security Scotland where they disagree with the decision made. The consultation set out proposed timescales for both individuals to challenge the decision (31 calendar days) and Social Security Scotland to carry out a redetermination of the decision originally made (40-60 working days).

Respondent Feedback

A majority (58% of respondents who answered) agreed with the proposal that clients should have 31 calendar days to request a redetermination from the date of Social Security Scotland's decision. However, some organisations held differing views. Some of the feedback provided suggested that accessing support or advice on challenging a decision can be time consuming and individuals may need longer than 31 days to do get help. Respondents emphasised a need to consider all individual circumstances. We also noted concerns raised by a small number of respondents that a short timescale may deter individuals from challenging the decision.

On the timescale proposed to allow Social Security Scotland 40-60 days to re-determine the original decision, a majority (60% of respondents who answered) agreed with the proposed approach. Again, the views of some organisations differed on this issue. Many respondents felt that the timescale proposed was too long and should be quicker.

Scottish Government Response

We want to ensure that no one is disadvantaged by time limits for challenging a decision. The Scottish Government understands and acknowledges that clients may require additional time to request a redetermination, for example, because they may require specialist advice.

In response to the feedback in the consultation, our Experience Panels, and from the Disability and Carers Benefits Expert Advisory Group, we will extend the time limit for requesting a redetermination to 42 calendar days. Key stakeholders have also supported this time limit.

We proposed to give Social Security Scotland 40-60 days to reconsider a decision, as it may be necessary to collect supporting information on a client's behalf, and this information may take some time to obtain. However, some stakeholders felt that this was an excessive period for someone to be left without clarity over their award level or eligibility. Given concerns raised in the consultation, and subsequent stakeholder engagement, we will be setting the timescale for Social Security Scotland to undertake a redetermination to a maximum of 56 calendar days (8 weeks).

We will consider the responses to the consultation carefully and use these to finalise our policy proposals about how a redetermination is undertaken. We can then consider how we can ensure that the redeterminations process is fair, and in developing guidance for Social Security Scotland staff, we will look at how our guidance will set out the key principles.

If an individual is not able to request a redetermination within the usual time limits, Social Security Scotland will consider whether individuals have a good reason as to why the request is late when deciding whether to extend the time limit. The Social Security (Scotland) Act 2018 provides an extension of up to a year for late redetermination requests. Guidance will be developed to ensure that, where a client requests a late redetermination, their request is considered in a holistic manner, taking account both their circumstances and their disability.

2.6 Policy Proposal – Duration of Awards

We know that under the current system, there are concerns about how the lengths of awards are calculated when decisions about entitlement are made. We are clear that awards for Disability Assistance should continue with, as far as possible, minimal disruption to clients. Our proposals set out how we intend to achieve this aim in ensuring that award lengths are person-centred and reflect the individual circumstances and condition of each client.

We know that there are many people who believe that, for those people with the most complex, lifelong disabilities, it is an unnecessary process to review their awards. We have set out in response to the consultation feedback that we will further consider how such a proposal might be delivered in a way that is person-centred and not based on a list of conditions, meeting the values and principles of the social security system in Scotland.

The consultation paper set out our commitment to introducing longer-term awards of disability benefit awards for conditions that are unlikely to change in order to avoid unnecessary re-assessments which are often distressing and frustrating for people and for their families.

In the consultation paper, we proposed that:

- rolling awards would be introduced and all awards would be indefinite, subject to light touch reviews;
- for people with a condition unlikely to change, there would be no less than 5 years between reviews and no more than 10 years;
- an appropriate award review date would be set and the client notified at the point of the initial award decision being issued and;
- award review dates would be provided based on an appropriate length of time to consider whether the client's needs might have changed.

We also set out that some exceptions might apply, for example, where a client reports that their condition has changed, or for children, at certain significant developmental milestones.

Respondent Feedback

The majority of respondents who answered (66%) agreed with our proposal not to have set award durations, with 22% of respondents disagreeing with this approach. Only 12% of respondents replied to the question stating that they 'did not know' whether they agreed or disagreed.

From respondents who disagreed, a key theme was that clients who have a condition that is unlikely to change should be given lifetime or indefinite awards.

In relation to the question, "Do you agree or disagree with the proposal to set an award review date 5-10 years in the future for a person with a condition unlikely to change?" slightly more than half of respondents agreed (58%), whilst 37% disagreed and a few respondents answered that they were unsure (4%). Organisational respondent views were relatively polarised just over half agreeing with the proposal. Some respondents were frustrated about being reassessed despite having a condition that would never change.

Key themes emerging across these two questions were agreement that if initial assessment advises there will be no improvement in the applicant's health or if their condition is unlikely to change, this should prevent further reassessment in the future.

A few respondents made suggestions as to the appropriate timescale for reviews but there was no consistency in these suggestions; suggestions included for more than two years, a minimum of three years, a minimum of seven years or

five to ten years. There were also a few comments that review periods should be as long as possible rather than as short as possible. Some respondents made suggestions for specific review periods, and these ranged from five to fifteen years, with the most opting for a minimum of ten years.

Scottish Government Response

We wish to strike the correct balance between lengthy awards and implementing a flexible system that recognises the role of medical advances and that conditions can fluctuate leading to both lower and higher awards. We are clear that we can be bold with awards and move towards longer award durations, in order to move away from the present system of repeated reassessments that cause unnecessary stress and anxiety.

The Scottish Government has previously consulted with the Chief Medical Officer's office to establish a list of health conditions or disabilities that may be appropriate for indefinite awards on the basis that they are unlikely to ever change.

These discussions had indicated that there are only a few such conditions, and as this approach would only apply to a small number of clients. As a result, the Disability and Carers Benefits Expert Advisory Group indicated that they did not believe that indefinite awards would be necessary in light of our position on assessments more generally.

However, it is clear from stakeholder feedback and from individuals responses to the consultation that there is interest in ensuring that people with the most complex lifelong disabilities are not reviewed unnecessarily.

The Scottish Government will therefore undertake further work with stakeholders to consider the feasibility of making indefinite awards without the need for review for clients with the most severe and enduring health conditions and disabilities, and how that might be developed within a system where decisions are made in a person-centred way rather than being based specifically on individual conditions.

In all other cases, we will move forward with the proposals for award duration as set out in the Consultation paper.

2.7 Policy Proposal – Short Term Assistance

As set out above, we believe that a key feature of the social security system delivering trust, transparency and respect is ensuring that clients, where they do not agree with a decision, are supported to challenge that decision. To enable this we are proposing to implement a unique, new form of assistance that will ensure that, for disabled people who have an award reduced or stopped that they wish to challenge, they will continue to receive their previous award of benefit. These continuing payments will not be recoverable, regardless of the outcome of their challenge, which will ensure that no disabled people in Scotland are financially disadvantaged by incorrect or erroneous decision making, whilst they challenge that decision.

The consultation paper set out the Scottish Government's intention to provide Short Term Assistance (STA) where Social Security Scotland has made a decision to reduce or stop an ongoing benefit, and that decision is subject to a request for redetermination or appeal.

The consultation paper sought views on the proposals that:

- STA should only be available to those living or present in Scotland;
- STA should not be available where it is established the benefit has been claimed fraudulently;
- In the event of overpayment, STA should not be recoverable unless it is established that the benefit had been claimed fraudulently;
- Deductions to ongoing payments in respect of an overpayment agreement should be deducted from STA payments and;
- Where a client makes a request for a redetermination that is either:
 - not validly made, or
 - where the deadline for requesting a redetermination has passed, and the client has not provided a good reason for this,

STA will only be payable from the date a Tribunal overturns Social Security Scotland's decision that a request for a redetermination has either not been validly made, or has been made late without valid reasons (these are called 'process decisions').

Respondent Feedback

A majority of respondents who answered (73%) agreed that STA should not be paid to people who are not resident in Scotland. Some respondents ask if personal circumstances could be taken into account in reaching a decision whether to pay STA, for example where an individual is receiving care temporarily outside of Scotland.

A similar majority (72%) agreed that STA should not be paid where Social Security Scotland has established that the client has made a fraudulent claim for the original type of assistance.

A large majority of respondents (87%) also told us that if a client does get STA, but it is later established that they have made a fraudulent claim for the original type of assistance, Social Security Scotland should be able to ask the client to pay back their STA. Several respondents emphasised the need to demonstrate that the client has knowingly committed fraud.

Just under half of respondents who answered (49%) agreed that STA should be subject to deductions in respect of an overpayment agreement. A key theme was that Disability Assistance is essential to meeting the extra costs associated with ongoing health needs and reducing the level of assistance could cause hardship.

Some respondents suggested using a case-by-case approach to decision-making.

A majority of respondents did not agree that with our proposal about STA and process decisions (58%). It was felt that STA should be payable from the when a client's eligibility changes and that individuals should not be stopped from receiving payments due to an error made by Social Security Scotland.

Scottish Government Response

Short Term Assistance is a unique, new part of the Scottish social security system. We want to ensure that people feel they have the right to challenge decisions to reduce or stop an award of Disability Assistance, without facing a financial cliff-edge as they move between different rates of benefit, or when their award stops.

Whilst a majority of respondents supported our initial proposal not to pay STA to someone living outside of Scotland, the Scottish Government recognises that Disability Assistance can be paid to individuals living outside of Scotland. We have therefore decided that an individual should be eligible to apply for STA if they are resident outside of the UK, and have been receiving the principal assistance while resident outside Scotland. We recognise the complexities involved and will need to carry out further work to understand the impacts.

We proposed that if an individual's appeal is unsuccessful, STA should not be recoverable, except where it is later established that the principal benefit was being claimed fraudulently at the time the STA was awarded. Our proposals were supported by almost all of the organisations who participated and we do not propose to make any changes to the policy set out in the consultation

We are satisfied that, in general, there was majority support around the principle that, where someone had knowingly claimed Disability Assistance fraudulently, STA should not be made available during the dispute period.

Where a deduction is being made, a client will already have had dispute rights against the determination that put that deduction in place. Financial and other circumstances will have been considered as part of that process. We therefore do not agree that the extension of deductions to STA conflicts with the underlying policy objective and do not propose to make any changes to the policy set out in the consultation.

In relation to process decisions and the availability of STA, we anticipate that there will be a very small number of process decision appeals for Disability Assistance.

2.8 Policy Proposal – Breaks in Disability Assistance

We know that there are a range of situations under the current system where disabled people's care needs are met through a separate form of public funding, for instance by a residential care service, and the care component of their disability benefit stops. We proposed to broadly replicate these current rules

because divergence too far from the current rules may lead to both duplication of public care funding.

The consultation paper set out proposals across all three forms of Disability Assistance about when an individual's payments may stop temporarily. The consultation paper set out circumstances when we propose that a client's Disability Assistance would stop:

- Payment of the care component of DACYP for individuals who are required to stay away from home in a residential setting (care or education) will be stopped after a 28 day period;
- Payment of the daily living component of DAWAP for individuals who are required to stay away from home in a residential setting (care or education) will be stopped after a 28 day period;
- Payment of DAWAP and DAOP for individuals who are in-patients in hospital will stop after a period of 28 days;
- Payment of DACYP for individuals who are in-patients in hospital will continue;
- Payment of DAWAP for individuals who have been sentenced or are on remand will be stopped after 28 days;
- Payment of DAOP for individuals who have been sentenced or are on remand will be suspended immediately (further payment may be made in the future depending on the outcome of the case) and;
- Payment of DACYP for individuals who have been sentenced or are on remand will continue.

Respondent Feedback

Views on this question were mixed with a slightly higher number of people disagreeing (44% of respondents who answered) than agreeing (39% of respondents who answered) with Scottish Government's proposed approach. Some respondents indicated that they 'did not know' (15% of respondents).

Respondents to this question believed it is important to ensure that financial support for those with a disability should always continue due to the extra costs associated with a disability or long-term health condition. One organisation noted that some people see a disability benefit is part of a household's overall income and loss of this income would have an impact upon the individual and their household. Another point made by an individual related to the need to be able to pause payments and ensure a quick reinstatement once an individual becomes eligible again.

Some respondents suggested that taking a case-by-case approach, assessing each case on its merits, with a view to ensuring consistency across the different forms of assistance.

Scottish Government Response

We do not propose to make significant changes to the current rules.

Whilst slightly more respondents disagreed, we feel that the original question may have given respondents the impression that an award is terminated upon entering prison, hospital, or residential care. We want to make clear that only payments stop – if and when a client leaves these settings, payments will resume, subject to continuing to meet the criteria for each form of Disability Assistance.

The intention of Disability Assistance is to provide financial assistance to mitigate the costs that individuals and their families incur as a result of a health condition or disability. Continuing to pay the benefit where an individual's care needs are met in full from public funds, for instance in a care home or secure accommodation, would lead to a funding duplication in meeting the individual's care needs. Under the current rules, the UK Government do not continue to pay the care component to individuals because it is viewed that their care needs are met by their place of residence.

Disability Assistance is not intended to be an income-replacement benefit. Income replacement benefits are provided in the form of UK Government administered reserved benefits such as Employment and Support Allowance (ESA) and Universal Credit (UC). If we were to deliver Disability Assistance as an income-replacement benefit, there is a risk that DWP would not recognise this Disability Assistance for the purpose of assessing a client's eligibility for reserved benefits, including access to passported premiums or benefits.

The purpose of the "28 day rule" is to ensure that longer term residential care placements are not subject to funding duplication. The 28 day window ensures that people cared for in temporary respite do not lose access to their benefits as well as recognising that where care placements break down at an early stage, the client does not suffer the additional disruption of losing access to their disability benefits.

We recognise that young people and children can spend longer periods than adults outwith detention in legal custody as part of the rehabilitation process and their sentences are generally far shorter on average than for adult prisoners. To support the young person's transition back into a community setting, it is important that their family are able to meet their mobility needs.

In order to improve the consistency of rules for DACYP, we will ensure that where a young person is detained in legal custody, the mobility element of this benefit continues to be paid. This aligns rules on residential care, residential educational placements and legal custody, ensuring consistency for young people and their families, regardless of which environment a young person becomes resident in.

2.9 Policy Proposal – Overpayment Recovery

We know that disabled people have raised concerns about how overpayments are recovered in the current system and how, where these are set too high, it has a severe impact and puts some people into financial hardship. We are proposing to recover overpayments in a manner consistent with the principles of dignity, fairness and respect and therefore ensuring that overpayments are recovered in a way that better considers their individual financial circumstances, ensuring that, as far as possible, the social security system in Scotland does not push disabled people into financial difficulty.

The consultation paper set out our intention to follow wider policy for Social Security Scotland on overpayments. Where an overpayment is made because of an error by Social Security Scotland, it will not be pursued unless under exceptional circumstances such as a large and obvious overpayment. Where it is made as a result of client error, Social Security Scotland may seek to recover the overpaid assistance, but in doing so will have regard to the individual's financial and other circumstances they consider relevant.

Respondent Feedback

There were three main strands to the responses to this question:

- Deductions are currently set too high and expected to be repaid too quickly;
- The current system causes severe financial hardship, increased levels of debt and can lead to reliance on food banks and;
- Recovery of overpayments should be agreed and set at an affordable level with the individual.

Further comments provided included:

- Recovery of the overpayment should be means-tested to prevent financial hardship;
- A maximum weekly repayment amount could be recoverable, potentially in line with Housing Benefit;
- Clients who have difficulties in financial management should not be expected to notice overpayments - the example of someone with learning disabilities was given;
- There is a need for greater clarity within the existing system around the rules of entitlement and some complaints that the DWP do not automatically provide explanatory information, or provide this upon request;
- Requests for advice agencies or local authorities to be able to gather access to the Agency's overpayment division to enable them to agree a recovery rate on behalf of their clients and;

- There is a need to strike a balance between the interests of clients and the impact on their family and the interests of the state.

Scottish Government Response

Respondents views were broadly consistent with the Scottish Government's existing policy intent in relation to overpayments. A number of specific points have been raised about the hardship caused by the current system, and we will give consideration to this detailed feedback in ongoing development of policy and processes for assessing hardship, and making deductions.

Our overriding objective is that no-one should be placed into hardship as result of repaying a debt to Social Security Scotland. Any repayments or deductions should be made on a sustainable basis. We want to ensure that our policy aligns with our core principles of dignity, fairness and respect.

3. Section 2 - Disability Assistance for Children and Young People in Scotland (DACYP)

Section 2 of the consultation focused on Disability payments for children and young people. Currently DWP deliver Disability Living Allowance for children from age 3 months to age 16.

3.1 Policy Proposal – Entitlement to DACYP

We know that under the current administration of Disability Living Allowance for Children, many people are broadly content with the rules of the benefit but find accessing and applying for the benefit challenging. Our proposals ensure that the application process is simpler, with appropriate support and guidance for the disabled people and their families to embed accessibility within the application and awards process for DACYP.

The Scottish Government intends that the eligibility criteria for DACYP will be broadly similar to Disability Living Allowance for children. The consultation paper set out examples of when the rates of care and mobility payments would be payable.

Respondent Feedback

The majority of respondents (73% who answered) were content with the proposed eligibility rules for the care and mobility components and rates. Key themes that emerged from respondent feedback about the current rules indicated that there are problems where:

- The child or young person has mental health issues;
- The impact of some conditions (e.g. sickle cell anaemia) being poorly understood by assessors; and
- Assuming that conditions only fluctuate by day or by night (rather than looking at a condition more broadly).

Scottish Government Response

We are mindful of what we have been told about the proposed eligibility criteria for DACYP. When developing regulations and decision-making guidance for Disability Assistance we will work closely with the Disability and Carers Benefits Expert Advisory Group, key stakeholders and continue to involve those with experience of the current system. This approach to co-design is ambitious and bold, because we want to ensure that we take account of the types of difficulties children and young people face that respondents to the consultation felt might be missed, and this is an important priority for us.

The Scottish Government will not require children and young people to undergo a face-to-face assessment, and will instead make decisions based on existing

support information. We realise that this may not fully capture all needs, so Case Managers will have access to Specialist Advisors.

The Specialist Advisor can provide the Case Manager with information and advice based on their experience of working in health or social care on a number of issues: the side effects of a particular medication; how a specific disability generally impacts children; or the way in which two different conditions may interact.

Where a Case Manager still needs information to make a decision, the Case Manager will engage with a child or young person's parent or guardian, and the discussion will help Case Managers reach a fully informed decision. We believe that this offers a significant improvement over the current system, where gaps in the information available may not be fully explored or handled as well as they could be.

3.2 Policy Proposal – Young People Aged 16-18

We know that many disabled young people transition between child and adult services at around the time they turn 16 and our proposals to extend the age of entitlement to age 18, will ensure that they will continue to receive DACYP, reducing the anxiety and challenges at this difficult time for families. This is a departure from the current system where, at age 16, young people and their families must apply for Personal Independence Payments or payment of their disability benefit will cease.

The consultation set out the Scottish Government's intention to provide Disability Assistance to children and young people from 3 months to age 18. This change from age 16 to age 18 will be introduced to mitigate the numerous transitional difficulties experienced by young people and their families at age 16.

Another new aspect to providing this Disability payment will be the introduction of a Winter Heating Payment for children and young people in receipt of the highest rate of care. The Scottish Government asked for views on the proposed payment of £200 to eligible families.

Respondent Feedback

There was consensus amongst respondents who agreed (92% of those who answered) with the proposal to change the current age eligibility to include young people already receiving DACYP before their sixteenth birthday, up to age 18. However, a small number of respondents felt that the Scottish Government should extend eligibility beyond age 18.

A few respondents (5% of those who answered) disagreed with our proposals that clients applying for Disability Assistance for the first time aged 16 or over will apply for working age benefit (PIP) initially with DWP, until Social Security Scotland commences delivery of Disability Assistance for Working Age People (DAWAP).

Scottish Government Response

We understand that the transition from Disability Living Allowance for children and Personal Independence Payment can be a difficult time for families, with approximately one third of clients who move from DLA to PIP receiving no award of benefit. This can be a source of considerable anxiety and uncertainty, and we feel that our policy will help to remove the ‘cliff-edge’ of losing entitlement to Disability Assistance at a difficult time for families.

Although we understand that having a single upper age limit for all DACYP cases offers simplicity, there are certain drawbacks. Allowing new claims for DACYP from 16 or 17 year olds introduces the possibility that a family of a young person would require to navigate the application and desk-based assessment process for DACYP and then, within a matter of months, require to navigate separate processes for DAWAP once the young person approaches 18. Rather than mitigating difficult transitional issues experienced by the family, this policy change would potentially introduce further confusion.

Whilst the Scottish Government will not extend the age limit for new DACYP claims beyond 18, a majority of respondents to the consultation agreed with our approach.

3.3 Policy Proposal – Winter Heating Assistance

We know that for children and young people with the most complex disabilities, it is vital that throughout the Winter months, they are able to keep warm and to ensure that their household remains at a consistent temperature. We will introduce Winter Heating Assistance, an annual payment of £200, to ensure that families of disabled people, and young people themselves, can heat their home as they require.

The Scottish Government proposed in the consultation a proposal to provide Winter Heating Assistance (WHA) payments from April 2020, for any family living in Scotland with a child who is in receipt of the higher rate component of Disability Assistance for Children and Young People or, where they live independently, young people themselves.

Respondent Feedback

A large majority of respondents (79% who answered) agreed with the proposal to provide a Winter Heating Assistance to families of children and young people in receipt of the highest rate of care. Some respondents felt it would be appropriate to provide a Winter Heating Payment to all people in receipt of disability payments. Further views provided on the Winter Heating Payment included:

- Children and young people on the middle rate care component of DACYP (and upwards) should be eligible (middle rate has a significant impact on the need for heat including for example asthma or bronchitis sufferers);

- Eligibility should be means tested i.e. based on income or family finances. Those on the highest rate care component are not necessarily at the greatest risk of poverty;
- There is no need for a blanket payment as it may not be needed by all;
- Those on the higher rate mobility component should be eligible (more prone to feeling the cold as they are immobile);
- Eligibility should be extended to those of working or pension age and;
- Eligibility should be extended for families receiving the DLA highest rate care component during any transition period.

Scottish Government Feedback

We intend to introduce the Winter Heating Payment to children in receipt of the highest rate of care once we commence delivering Disability Assistance for Children and Young People in summer 2020. Our position is that we will not introduce means-testing for the Winter Heating Payment, as we are committed to no means-testing for disability assistance more generally.

Children and Young People in receipt of the highest rate of care of DACYP will usually require frequent help and supervision during both the day and at night. We want to make both their and their families' day-to-day life easier by ensuring they receive help towards their winter heating costs. We forecast that the number of families that will benefit from the change will be approximately 16,000 in 2020-21. The cost of the proposed change in 2020-2021 is anticipated to be £3.5m and will be fully funded by the Scottish Government.

4. Section 3 - Disability Assistance for Working Age People (DAWAP)

Section 3 of the consultation focused on Disability payments for people of working age. Currently DWP provide Personal Independence Payment to people age 16 to age 65. The consultation set out Scottish Government's intention to link the entitlement age for Disability payments for older people to the state pension age, it was therefore proposed the eligibility age for DAWAP would be from age 16 up to state pension age (age 66 by 2020).

4.1 Policy Proposal – Benefit rules: Points Based System

We know that there are mixed views on the use of a points based system for the devolved replacement for Personal Independence Payments. We will ensure that this system is administered in a much fairer, transparent and person-centered way that will better consider the needs of clients including those with fluctuating conditions and with mental health conditions.

The consultation proposed the criteria for awarding DAWAP would be determined on a “points-based” test against a list of daily living and mobility activities.

Respondent Feedback

A majority of respondents agreed (57% of respondents who answered) with our approach to use a points-based system to assess eligibility for DAWAP. However, we received some feedback that a points-based system is unfair because it lacks the flexibility to determine levels of fluctuating or variable conditions. Respondents also suggested that a points-based system is incompatible with a person-centred approach.

Respondents made a significant number of alternative suggestions for determining eligibility:

- The system should be based on the input of professionals taking part in care (e.g. GPs, consultants, social workers) and not just one assessor or decision-maker;
- The system should include a qualified or trained assessor's input;
- The system needs a more person-centred approach, and not just a medicalised understanding of disability, and;
- An alternative system based on medical supporting information rather than points.

Scottish Government Response

Our key priority is ensuring a safe and secure transition to devolved disability assistance, ensuring that individuals continue to receive their payments in the correct amount at the right time. That has driven our approach to introducing DAWAP largely using the existing point based system.

Under current DWP administration, clients in receipt of disability benefits may be entitled to additional 'passport' benefits and DWP premiums where the disability benefit acts as a 'passport' to automatic entitlement of additional benefits or premiums. There is a risk that, should eligibility rules diverge significantly from current DWP rules, Disability Assistance may not continue to be recognised as 'like for like' for passporting purposes. This would cause unfairness, confusion and disruption for clients by creating a two-tier benefits system, with two different sets of eligibility criteria and rules, whilst undertaking a significantly complicated transfer process.

That being said, the Scottish Government agrees that the way the current points based system is applied is not consistent in adequately assessing fluctuating, variable or mental health conditions. We are exploring how the rules surrounding the points based system can be developed so Case Managers and assessors can better use it to capture the needs of individuals with such conditions. In addition, we are developing guidance and training to assist Case Managers to use the current points system to take a person-centred approach to decision making.

This will include comprehensive information on how the descriptors should be applied when considering fluctuating, variable and mental health conditions. Case Managers will also have access to Specialist Advisors when required. Like assessors, Specialist Advisors will have professional experience in health and social care provision and will provide a comprehensive insight into assessing the impact of a condition.

Training for all staff will include an understanding of the social model of disability how to interpret legislation and supporting information, whilst Social Security Scotland staff will receive training to develop an understanding of the impact of common conditions.

4.2 Policy Proposal – Benefit rules: Mobility descriptor

We know that there are specific concerns regarding the way that the current assessment of mobility is undertaken in relation to Personal Independence Payments. We requested in the consultation views from respondents on the best way of assessment entitlement to the mobility component and will undertake further work with stakeholders to consider how these concerns might be addressed.

The consultation recognised that there are specific significant concerns about the way in which the ability to move around is currently assessed and measured, particularly the use of the 20, 50 and 200 metre rules and the '50% rule' applied to all descriptors. We therefore sought views on the best way of assessing entitlement to the mobility component.

Respondent Feedback

Alternative methods of assessing mobility produced a high volume of responses with most respondents focusing on the sources of supporting information they thought should be used to assess mobility eligibility. Suggestions included seeking supporting information from:

- Medical consultants;
- Medical experts;
- Allied healthcare professionals including occupational therapists and physiotherapists;
- Mobility assessments conducted by a GP;
- Family members, carers or other personal contacts, and;
- Social work assessments.

Respondents highlighted that the mobility descriptor should be more effective in assessing the ways in which mental health can affect mobility, for example, how mental health issues may restrict an individual's ability to travel.

Suggestions made to address this included:

- Widening the descriptors to include more than just 'psychological distress';
- Providing extra support or counselling for those with mental health conditions, and;
- Producing paper-based reports to reduce face to face assessments.

Another issue highlighted by respondents was the need to improve application of the current rules to better accommodate fluctuating or hidden conditions like multiple sclerosis, lupus, Ehler's Danlos syndrome, dyspraxia, fibromyalgia or myalgic encephalomyelitis. Respondents suggested assessing an individual on an 'average' day or considering symptoms on a 'worst' day rather than a 'best' day.

Many respondents felt that the system used to assess mobility, in particular, whether a person can stand and move more than 20 metres, was overly simplistic and lacks consideration of scenarios individuals will encounter in their everyday life. Respondents suggested that an alternative to this rule could be a focus on whether an individual can undertake everyday activities incorporating an element of mobility.

Scottish Government Response

We are working with stakeholders to consider how we can amend the 20, 50 and 200 metre descriptors to better assess the impact an individual's condition has on their mobility. The responses to the consultation will be key to informing that work. In addition to developing quality guidance and training to enable Case Managers to assess mobility in a person centred way will contribute to an improved decision making process. We are similarly exploring what changes could be made to the 50% rule so that the needs of individuals with fluctuating conditions can be better captured.

4.3 Policy Proposal – Full list of Descriptors

We know that there are concerns about the current application of the system of points based descriptors and the proposal in the consultation set out how a points based system might be delivered for Disability Assistance for Working Age People. We will further consider how to best take account of client needs, within the points based system, in a way that better ensures fairness and transparency.

The consultation proposed that Case Managers will determine DAWAP claims by applying a points-based test that largely includes the existing daily living and mobility activities, except where commitments to review specific descriptors were made. Each activity has a number of descriptors with a number of points associated with each descriptor.

Respondent Feedback

Many organisations provided comments and recommendations on the individual descriptors, these included:

- A requirement to take more account of extra support needed in terms of people needing prompting, continuous supervision or motivation;
- To apply points in a person centred way, for example to take account of the quality and range of food consumed or time required for self-monitoring;
- Providing clarity about what the descriptors mean and what is being assessed, and;
- Improving how the activities and points are applied to clients with a sensory health condition.

Scottish Government Response

We are committed to taking a person-centred approach to determining entitlement to DAWAP. Our Case Managers will look holistically at each client's case, taking account of how each person's conditions affect them on a daily basis. We will publish clear and transparent guidance that clearly communicates what Case Managers are assessing and what information we need.

We will work with stakeholders to consider how application of the descriptors can better accommodate individual circumstances. The Scottish Government recognises that there are limitations to the existing descriptors, particularly as they apply to individuals with particular conditions and disabilities. Once the transfer of individuals to devolved disability assistance is complete we are committed to considering more aspirational changes to the DAWAP framework.

4.4 Policy Proposal – Face-to-Face Assessments

We know that one of the key areas of concern within the current system is the delivery of face to face assessments for Personal Independence Payments and we understand that this is a key priority for disabled people, and their families, that the devolution of social security must address. Our proposals are designed to ensure that face to face assessments will only be used where it is the only practicable way to assess entitlement, significantly reducing the anxiety of attending assessments for many disabled people.

We know that many people have said that they have had to travel to far to attend an assessment and we sought views on acceptable distances to travel to start to understand how we can better meet the needs of disabled people in delivery of the assessments service.

We also know that some clients felt that what they reported to their assessor was not reflected in their award and to address this and to further embed the principles of trust and transparency, we sought views on the use of audio recordings at face to face assessments.

In the circumstances where someone is required to attend a face-to-face assessment we want to make sure the process is right for people and will treat people with dignity and respect. The consultation therefore sought views on the types of observations that may be appropriate when conducting a face-to-face assessment.

To ensure that the system we build is fair and meets the needs of the people using it, we sought further views on:

- Acceptable distances to travel to attend a face-to-face assessments;
- The rescheduling of failure to attend a face-to-face assessment, and;
- The use of audio recordings at face-to-face assessments.

Respondent Feedback

Respondents provided us with examples of the types of observation that they felt should not be taken into account, including:

- Movement, strength and sight tests (if unsafe or painful);
- Behavioural observations;
- Judgemental observations or assumptions made by the assessor (i.e. observations unsupported by any other supporting information);
- Informal observations are inappropriate for certain conditions or disabilities (e.g. autism, Asperger's syndrome, cognitive recall issues, mental health, brain injuries, depression, neurological issues, hearing loss);
- Observations about how the individual travelled to or arrived at the assessment appointment (e.g. with or without an aid);
- Observations where supporting information already exists to back up the effects of the condition (or only have observations supported by supporting information);
- Observations relating to protected characteristics (i.e. age, race, gender or sexuality), and;
- Observations taken out with the face-to-face assessment.

Respondents also cited provisos or problems with travelling to face-to-face assessments, however some cited potential appropriate distances to travel from less than 5 miles up to 30 miles. A consistent viewpoint was that the assessment should be local to where the client lives. Respondents suggested we should consider:

- The nature of the individual's disability or health condition;
- Transport availability;
- Financial implications of travel;
- Levels of care or support required to travel, and;
- The potential health implications of travelling.

The majority of respondents provided suggestions to the number of times a client should be able to reschedule or fail to attend an appointment for a face-to-face assessment. The most popular answer was three times. However, some organisations felt there should be no limit to rescheduling appointments.

Respondents felt that the following reasons justify missing an assessment due to exceptional circumstances:

- Hospital admissions;
- Illness;

- Bereavement;
- Care responsibilities;
- Lack of carer availability;
- Lack of childcare availability;
- Transport issues on the day, and;
- Adverse weather.

Many respondents to the consultation were positive about the proposals to use audio recording for face-to-face assessments. Respondents caveated this with the view that any recording requires the client's consent. It was felt that introducing this into the assessment process would promote honesty and integrity and introduce a method of clarifying contentious issues.

Scottish Government Response

We know that the current approach to the use of informal observations is not well received, often leading to inaccurate conclusions in assessment reports. Significant numbers of respondents made comments about how they perceived and how assessments should be conducted; a key concern being that informal observations need to be discussed openly during the assessment in order to be transparent.

In response to this feedback and advice received from the Disability and Carers Benefit Expert Advisory Group, we will therefore ensure that:

- Specific guidance, training and resources are developed for assessors regarding informal observations;
- Clients must be made aware of what informal observations are, why they are being made and what impact they will have on the decision;
- All clients must be informed of what observations have been made in the assessment and any inferences the assessor draws from them;
- The client, or person accompanying them, must be given the opportunity to respond to the assessor's observations;
- All observations made and any response provided by the client, or their advocate, must be recorded; and
- Informal observations must be restricted to the assessment itself – observations cannot be made in the assessment centre (e.g. from the waiting room/car park etc. to assessment room) or on the person's journey to and from the assessment centre.

Individuals will be able to cancel and re-arrange their assessments. Work is underway to model the impact this will have on the efficiency of the assessment service to ensure, for example, that this policy does not have a detrimental impact on the length of time clients have to wait for an assessment. This will help us refine how many times and on what basis appointments can be cancelled including any exceptions that can be applied.

We remain committed to ensuring that individuals who require an assessment are able to undergo the assessment in a way that meets their needs, this includes the provision of home assessments for those who require them. As we continue working to put the various arrangements required to deliver assessments in place we will work with stakeholder organisations and carry out user testing to ensure the procedures developed in this area are person centred, and deliver dignity, fairness and respect.

Audio recording of assessments will be standard practice but a client will be able to opt out if they choose.

5. Section 4 - Disability Assistance for Older People (DAOP)

Section 4 of the consultation focused on Disability payments for older people. Currently DWP deliver Attendance Allowance for people age 65 and over. As is discussed above in section 3, the consultation set out the Scottish Government's intention to align the entitlement age for Disability Assistance for Older People with the qualifying age for state pension.

5.1 Policy Proposal – Disability Assistance for Older People (DAOP)

We know that for older people, accessing Attendance Allowance can be challenging and that often it is the children of older adults, or their partners, supporting completion of the form on their behalf. We have undertaken significant user research through a discovery process to understand concerns about the current process and to ensure that, when Disability Assistance for Older People commences, the application process is much simpler, transparent and more accessible.

The consultation document sought views on aligning the age entitlement for this benefit with the state pension age. We sought views on the intention to deliver broadly similar eligibility criteria for DAOP to Attendance Allowance currently delivered by DWP. The consultation paper set out examples of when the different rates would be payable.

Respondent Feedback

A majority of respondents were content with our proposals to align payments for older people with state pension age and broadly follow the eligibility criteria for Attendance Allowance.

A sentiment provided in various areas across the consultation responses was that some respondents felt that there should only be one form of Disability payment for adults and that older people do not necessarily have different needs from people of working age. Feedback about the lack of a mobility component for older people was an example given by some respondents.

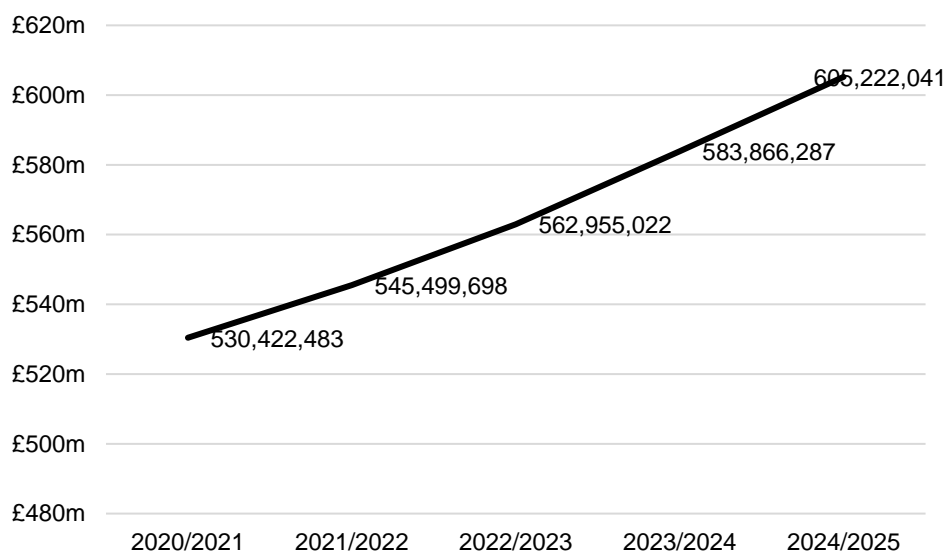
Scottish Government Response

The main purpose of DAOP (and Attendance Allowance) is to provide financial assistance to mitigate some of the increased costs associated with care needs that disabled people may have because of a disability or long-term condition. However, whilst a small minority of responses suggested that a mobility component should be included, like that included with DACYP or DAWAP, we believe that there are several important reasons why this would be unachievable to deliver.

Our analysis suggests that the impact of introducing a mobility component for DAOP that is similar to the mobility components currently provided for DLA and for PIP could be around an additional £580 million annually. This cost would increase annually and, with an increasing population, is likely to grow substantially in coming years, making the cost substantially greater.

The projected caseload and annual expenditure on AA (and its replacement benefit DAOP) is forecast to grow over the next five years.

Figure 1: **Projected expenditure (millions) for Disability Assistance for Older People (2020/21 – 2024/25)¹**



Against this background, our estimate of the impact on caseload and the associated costs are set out in the tables below.

Table 1: **Estimated caseload – new and existing DAOP clients eligible for mobility component (2020/21)**

Total number of existing clients who would receive a mobility award	120,000
Total number of new clients who would receive a mobility award	70,000
Total number of all clients who would receive a mobility award	190,000

¹ As above.

Table 2: **Estimated annual expenditure – new and existing DAOP clients eligible for mobility component (2020/21)**

Cost of mobility payments to existing clients per year	£370m
Cost of mobility payments to new clients per year	£210m
Total cost of mobility payments per year	£580m

These forecasts are based on the forecasted DAOP client group in 2020/21. The DAOP caseload is expected to rise after this date (primarily due to demographic changes – with an ageing population, it is likely that the caseload will rise accordingly), so future costs could be higher.

Introducing a mobility component would mean that some disabled people in Scotland already in receipt of AA would not be eligible for the mobility component until their case transfers from DWP to Social Security Scotland, whilst other people in Scotland claiming DAOP may be eligible. This would cause unfairness, confusion and disruption for clients by creating a two-tier benefits system, with two different sets of eligibility criteria and rules, whilst undertaking a significantly complicated transfer process. It would also make delivering the benefit more complex, and would likely delay delivery of DAOP.

Under current DWP administration, clients in receipt of disability benefits may be entitled to additional 'passported' benefits and DWP premiums where the disability benefit acts as a 'passport' to automatic entitlement of additional benefits or premiums. If we were to introduce a mobility component to Disability Assistance for Older People, or a “whole life” benefit, DWP may not pay these reserved premiums or benefits.

There is also a risk that, should eligibility rules diverge significantly from current DWP rules, Disability Assistance may not continue to be recognised as 'like for like' for passporting purposes. This would put all reserved passported benefits at risk for clients eligible for Disability Assistance. We know that these passported benefits are very important to disabled people entitled to Disability Assistance.

6. Section 5 – Further Comments

6.1 Policy Proposal – Further Comments

Question 64 of the consultation document asked respondents to provide any further comments relating to Disability Assistance not covered by the consultation document.

Respondent Feedback

The majority of respondents welcomed our overall approach to Disability Assistance as this will help to achieve a service that offers dignity, fairness and respect to all individuals receiving Disability Assistance.

One common theme raised was criticisms of the current system and how our approach can help to address these criticisms. Overall, there was perceived to be a lack of transparency in the current system, which is also perceived to be punitive and respondents commented on a lack of trust with Department for Work and Pensions.

Some respondents sought further detail about the arrangements for the transition from DWP to Social Security Scotland.

Scottish Government Response

We want to embed a culture of trust throughout the process that provides disabled people with the reassurance that devolved social security is taking a different approach, and works for them. Our ambition is to ensure that we reduce stigma around disability benefits in line with our core values of dignity, fairness and respect.

We have been very clear that we intend to take a safe and secure approach to delivering Disability Assistance in Scotland. Whilst we want to take a careful approach, which ensures that people continue to receive payments with minimal disruption, we will make realistic changes to the current system that reflects the needs of the people accessing it. We will therefore take account of all issues, concerns and views expressed responding to this consultation and test where we can realistically make changes to the current system without affecting an individual's entitlement to existing, reserved benefits.

For example, we do not wish to see clients lose additional premiums and passported entitlements that they would normally be able to access through existing disability benefits. However, there is a risk that if we make significant changes to devolved disability benefits that the DWP will not recognise those benefits on a like-for-like basis. This would pose an unacceptable level of risk, when we are confident that we can make the application and assessment process more accessible, and avoid causing unnecessary stress.

In particular, we do not wish to create a two-tier system for clients, with one set of rules applying to clients claiming Disability Assistance for the first time, and

another set of rules applying to clients transferring from reserved benefits such as PIP, DLA or AA. This would only introduce unnecessary complexity for clients and potentially make devolved social security benefits difficult to deliver on time, and in a fair way.

The Scottish Government is clear that the requirement for Scottish Ministers to report to Parliament on the progress made towards achieving the objectives of the Scottish Social Security Charter provides an enhanced level of oversight on the performance of Social Security Scotland. The Charter is not the end of a process, but rather the initial blueprint for how Scotland's social security system should function.

The Charter defines our approach to a rights based system identifying the specific actions the system will take to protect and realise rights. Stakeholders, academics and people with lived experience have universally praised it. With the support of stakeholders and the Scottish Government, people who have lived experience of the UK system – those who know best how things must change, led the development of the Charter.

This process was innovative, rights-based policymaking at its best. There are few, if any, examples of Governments empowering citizens in this way. The Charter is an ambitious statement of intent; making commitments on the content and design of policy, the recruitment and training of staff, right through to delivery of services and the culture of Social Security Scotland.

Social Security Scotland is expected to live up to the commitments in the Charter and Ministers will be held accountable by the Scottish Parliament and the Scottish Commission on Social Security for ensuring that it does so. For Ministers to report on progress effectively and to ensure the vision articulated by the principles is being realised in practice it is necessary to monitor and evaluate the performance of the system from the point of view of those who are using it, including clients and staff in the new system.

This work will involve detailed data collection, on-going stakeholder engagement, and continuing work with our Experience Panels to ensure that we can continue to make improvements to Disability Assistance. We will engage with stakeholders about the draft Regulations required for each form of Disability Assistance, with the Scottish Commission on Social Security providing an additional level of oversight, to ensure that we are making the right decisions.

However, as is clear from the implementation of PIP and Universal Credit, these systems are complex, and though we are working at a major pace to get them in place, we will need to take the time to do so in a safe and secure way.

Having an agency agreement in place will allow the Scottish Government to take the time needed for consultation, to refine policy, to develop systems and processes based on user research and experience panel input, and put in place the infrastructure and recruiting and training staff in the Agency to deliver the service.

The Joint Ministerial Working Group on Welfare has agreed to use agency agreements as a key vehicle to support the safe and secure transition transfer of caseloads without unintended breaks in claims and payments. DWP's starting point is that where they administer a benefit on behalf of Scottish Ministers, they will do so on the same basis as elsewhere in GB. This is for operational reasons, so that DWP can avoid the costs and complexity of adding in a separate Scottish process and training their staff to administer it.

We are therefore choosing to invest our time and resources into developing our own distinctive Scottish approach to social security, and implementing it ourselves through our own agency as soon as it is safe and achievable to do so, rather than negotiating and paying DWP to implement these changes under a temporary arrangement.

7. Next Steps

We will use this consultation to inform and refine our thinking on our policy proposals in developing:

- the rules for each form of Disability Assistance;
- the application processes required for delivery Disability Assistance by Social Security Scotland;
- guidance for making decisions Case Managers, Specialist Advisors and Assessors; and
- training for Social Security Scotland staff involved in delivery Disability Assistance.

This consultation is not the end of our engagement around these issues. We will continue to engage on social security using the Experience Panels, as well as key groups, including:

- Disability and Carers Benefits Expert Advisory Group;
- Joint Ministerial Working Group on Welfare;
- Agency Operations Reference Group;
- Short-Life Working Group on Terminal Illness for Disability Assistance; and
- Terminal Illness Stakeholder Reference Group (SHRG).

In addition, the Scottish Commission on Social Security will have a role to play in scrutinising the rules set out in Regulations.

We are talking to and – importantly - listening to many individuals, organisations and groups with direct and personal experience of the welfare system. We are designing our new service using evidence. We are testing everything that we do with the people who will use or interact with it to make sure we get it right.

Annex: Existing Commitments

As part of the Consultation paper, we set out a number of existing commitments:

You said:	We listened:
<p><i>Assessments</i></p> <p>The private sector should not be paid to undertake assessments to assess entitlement to Disability benefits.</p> <p>People are given little choice about how and when their assessment takes place. They have had to travel for hours to get to assessments, those who are too ill to leave the house have been refused home assessments</p> <p>There are too many unnecessary assessments - even when it is clear that a condition or disability will not improve.</p> <p>There is no clear guidance on the role of companions.</p>	<p>The private sector will not undertake assessments. Social Security Scotland will deliver assessments to determine eligibility for Disability Assistance, fully supported by public sector health and social care professionals.</p> <p>We want to ensure that people with disabilities can access a flexible, person centred assessment service across the length and breadth of the country.</p> <p>People will be offered a choice of an appointment date and time that suits them, home visits will be available when they are required.</p> <p>We are committed to significantly reducing face-to-face assessments. This will only happen when it is the only practicable way to gather additional information to make a decision about entitlement.</p> <p>People will have the right to be accompanied to an assessment, and to have that person participate in the assessment. This right is included in the Social Security (Scotland) Act.</p> <p>The Agency will be pro-active in collecting evidence and provide clear guidance on what evidence will support a claim, being open and</p>

<p>People are expected to gather their own supporting evidence, often at a cost to them. It is not clear what evidence people should provide to support their claim.</p> <p>Assessors are not given enough time to consider evidence before an assessment begins.</p> <p>Assessment reports are often inaccurate and do not reflect what happens at assessment.</p> <p>Recordings should be available for audit purposes</p>	<p>transparent about what information is necessary.</p> <p>By reducing the number of face-to-face assessments being undertaken, we will reduce time constraints on assessors, allowing them more time to fully consider the evidence provided.</p> <p>As part of our commitment to trust and transparency, audio recording of assessments will be provided as standard.</p> <p>The appeal tribunal will be given the recording and they may choose to use it to inform their determination.</p>
<p><i>After an assessment</i></p> <p>A copy of the assessor's report is not sent alongside the initial decision.</p> <p>People are not informed about whether/how each piece of evidence has been used</p>	<p>Social Security Scotland will send a copy of the assessment report alongside the decision letter.</p> <p>The decision letter will explain how the decision has been reached, and what evidence has been used in doing so.</p>
<p><i>Application</i></p> <p>The application process is not accessible.</p>	<p>We will ensure that the application process for Disability Assistance is inclusive, accessible, provided in a range of formats, can be completed in a range of routes (online, phone, post) and is simple, transparent and works for those making claims to Social Security Scotland.</p>

<p>Guidance on filling in application forms and preparing for assessments is not available in accessible formats</p> <p>It is not made clear that information from previous assessments will not be re-used</p> <p>Employment should not disadvantage a person's entitlement.</p>	<p>A review is on-going of current content and communication products, and we will ensure that all information is accessible.</p> <p>We are exploring the range of health and social care evidence which could be used to support decision making. We will use information held by the Agency when undertaking a review.</p> <p>Disability Assistance will not be means-tested and in line with this a person's employment status will have no influence in relation to their entitlement.</p>
<p><i>Young People 16-18</i></p> <p>Young people are expected to transfer to PIP when they are approaching 16. This is at an age where young people may undergo a number of transitions into adult services, which can cause anxiety.</p>	<p>We will automatically extend awards of Disability Living Allowance and Disability Assistance for Children and Young People to age 18, to ensure that they don't have to apply for a new working age benefit at a time when they are transitioning between children and adult services in other areas of their lives.</p>
<p><i>Terminal Illness</i></p> <p>The current definition for accessing disability benefits is too restrictive, resulting in some people not getting access to the right support, when they need it most.</p>	<p>We will provide a new definition of terminal illness so that medical practitioners can use their clinical judgement to decide when an individual is regarded as terminally ill and eligible for Disability Assistance under special rules. Under special rules, an individual's application will be fast-tracked, and they will be entitled to the highest level of the award component(s) to which they are entitled.</p>

<p><i>Advocacy Services</i></p> <p>Concern that Advocacy support is not sufficient to assist people with disabilities to engage sufficiently when applying or being assessed for disability benefit eligibility.</p>	<p>People will have a right to independent advocacy, if owing to a disability they require the help of an advocate to engage effectively with the Scottish social security system.</p> <p>We are developing 'advocacy service standards'. We are working closely with advocacy organisations to ensure that those organisations delivering advocacy services are delivering their services in line with these standards.</p>
<p><i>Accessible Communication</i></p> <p>The current system is inaccessible for some people with a disability.</p>	<p>Inclusive communication will be considered in all that we do.</p> <p>To ensure that this happens, the requirement in the Act has also been <u>reflected in the Social Security Charter</u>.</p> <p>We are developing communication channels which will allow for a more inclusive, personalised and efficient process that meets the expectations of applicants.</p>



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