

Disability and Carers Benefits Expert Advisory Group: Assessments Workstream

To: Shirley-Anne Somerville, Cabinet Secretary for Social Security and Older People
By e-mail

3 December 2018

Dear Shirley-Anne,

Duration of Awards - background

At the meeting of the Disability and Carers Benefit Expert Advisory Group on 30th August, you asked for advice on award duration of disability assistance. This workstream was pleased to be asked to consider this.

This advice has been informed by the assumption that assessments under the new system will be fair and the system's process will be developed in line with core principles of treating people with trust, dignity and respect. It assumes that entitlement for disability assistance will be based on need and impact, not diagnosis, and will take into consideration previous advice that has been given.

Ill Health and Disability Benefit Stakeholder Reference Group

The basis of our recommendations is the work of the Ill Health and Disability Benefit Stakeholder Reference Group (IHDBSRG) on award duration. We broadly agree with the six recommendations of this group. These are listed below, along with our thoughts on each recommendation. The full recommendations of the IHDBSRG are included in Annex A. We have additional recommendations looking at qualifying periods and support when an award ends.

We have worked with officials to ensure that our advice is informed and relevant to the current policy landscape.

Experience Panel

We were pleased to be updated by officials regarding the views of the Experience Panel towards the work of the IHDBSRG and encouraged that the majority agreed broadly with the following recommendations.

Recommendation 1: All awards should be made on a rolling basis. As part of the initial decision a review date should be set.

- All awards should have a review point rather than a set end point. In other words awards are not made for a fixed term but on a rolling basis, as these terms are defined in the IHDBSRG report (Annex A).

Recommendation 2a: Review dates should be set at a point where it is likely that there would be a significant change in the person's needs.

- The review period should be set dependent on the individual's condition and circumstances. Review periods should be as long as possible not as short as possible. Decision makers should have clear guidance on this. Careful consideration needs to be given to the frequency of reviews for fluctuating conditions. The onus should be on the Agency to set review dates in line with this principle. We agreed that clear and robust guidance should be produced to ensure the Agency does not carry out unnecessary reviews.
- There should not be a minimum review period for awards. We do not wish to create a disincentive to uptake by people who do not expect to meet the qualifying criteria for an extended period. However, as disability assistance is for those whose impairment, condition or illness has a significant and not short term effect on their life we would expect very few awards to have a review period of less than two years. We are aware that there has been concern that many current recipients of PIP have received inappropriately short awards. As part of their reporting we would ask that the agency have an obligation to publicly report on the number of review periods that are set at less than two years.

Recommendation 2b: Early reviews

- If the Agency reviews an award prior to the review date, there should be an obligation on the Agency to justify why an 'early review' is being done. Transparent guidance should be produced to explain when the Agency can review an award before the review date.
- There should also be an obligation on the Agency to publicly report on the number of 'early reviews' that are done. There may be reasons for the Agency to undertake an 'early review', for example if new evidence comes to light, but if review dates are being set appropriately we would not expect this to happen often.

Recommendation 3a: In cases where there is no likelihood of improvement, there should be at least five years between light touch reviews.

- We agree that a maximum review period of 10 years is reasonable. We acknowledge that there are some cases involving long term stable impairments or conditions which would not benefit from a review in the current system e.g. individuals with Downs Syndrome or those with severe impairments who are never going to improve and who are already receiving the maximum award. We also note that, more than 50% of Experience Panel participants expressed a preference for an indefinite award for unchanging conditions/disabilities. We therefore caveat this recommendation with the expectation that reviews in the new system will be light-touch, supportive, person-centred, and minimise stress and anxiety. We also expect that, where eligibility criteria had changed since the previous award, people would have transitional protection against loss of income. We recommend that the Agency

monitor the effect of such an approach on individuals and reviews the efficiency of such an approach through performance management and evaluation focus groups and surveys.

Note: This recommendation is relevant to disability assistance paid to individuals who are of working age (those who would currently be eligible to claim personal independence payment (PIP)). Different considerations may apply to disability assistance for children and disability assistance for older people.

Recommendation 3b: If an individual's award changes in a way not beneficial to the claimant, there should be a period before their payment amount changes, to give them time to prepare.

A reduction in an individual's disability assistance, even if their needs are no longer the same, will have a negative impact on their financial situation including passported benefits and their emotional wellbeing. This recommendation gives them time to prepare.

We recommend that the Minister considers, in light of evidence from the Experience Panels concerning the impact of loss of benefit and the associated practical implications a) the case for continuing payment for a fixed period beyond the date where entitlement ceases b) what the appropriate length for such a period should be.

This recommendation has implications for the deadline for re-determinations which would need to be considered.

We reflected on the need for the system to have greater interaction and integration with support networks and services including disability employment/employment retention, advocacy and financial health checks.

We propose that there should be a holistic pathway for claimants following notice of their award ending. This is a necessary process to support claimants in their transition from disability benefits and to help build positive foundations for the next stage in their lives.

- We would recommend that this period should include a package of support that can be offered to help the person adjust, in order to avoid deterioration in their condition due to a loss of financial support. This might include support and signposting with housing costs, employment, employability, health advice, local support services and social security advice. If so, a strategy to achieve this might be expected to feature cross-policy and cross-sector working, and it would clearly be important to ensure that adequate funding was in place to ensure all claimants receive the support they need. Such funding might be drawn from various sources

This provision is distinct from Short Term Assistance, which the Act provides for individuals who wish to challenge a decision about their entitlement, as it is addressing a need that anyone whose disability assistance has been reduced or stopped will have.

Recommendation 4: The framework providing for awards to be made on a rolling basis and providing for a date for review for each individual's award should be set out in legislation.

- It should be clear that the individual should have a right to challenge the review date of their assistance as well as the level of assistance they get.

Recommendation 5: Award reviews should not involve a disability benefit stopping. Reviews should be light-touch and minimise stress. Individuals should have the option to request a review of their award at any time. People would also be expected to report any relevant change of circumstances. Moving into work should not be regarded as a change of circumstance.

- People should have the right to instigate a review. They may wish to do this due to a material change or incremental change in evidence, or due to a definitive change e.g. transplant surgery. Crucially this right should always lead to the individual having a right of appeal, even if the agency does not decide to re-determine their entitlement.
- When an individual's award is reviewed the individual should be offered a financial health check reflecting Scottish Ministers' duty to promote take up. This should consider their entitlement to any further social security assistance. It should also reflect the legislative duty to provide independent information, advice and advocacy, which would include advising on income maximisation e.g. school clothing grant, council tax reduction.
- The Act contains provisions for Ministers to refuse, or terminate, an individual's disability assistance if they fail to provide information. This power should not be used when information is requested as part of a review of an award of disability assistance. This is to ensure that an individual's award is not stopped because of any difficulties they may have navigating the review process. A determination should be made using the information that the Agency holds.

Recommendation 6: The views of the Experience Panel and other organisations with lived experience should be sought on the terminology used, the length of review periods and their experience of the current process.

In addition to seeking the views of the Experience Panel on the areas outlined in the paper, we recommend that relevant organisations and others with lived experience should also be consulted. This will both plug gaps in the Experience Panels across protected characteristics and ensure that more deliberative dialogue is carried out with capacity building and support provided to achieve this.

Recommendation 7: Qualifying periods

In order to accommodate all conditions or impairments including sudden and severe onset, we recommend removing the past-period requirement for eligibility for disability assistance for working age claimants.

We looked at the past period test for PIP, where the condition had to be of at least three months duration before an award is made. We felt that this qualifying period should be abolished, as it discriminates against people who experience sudden onset debilitating conditions (e.g. stroke) who are unable to claim disability benefit for the first three months of their condition.

We do agree with the premise that the claimant should be expected to have the condition for at least nine months into the future (except in the case of terminal illness). This ties in with the main purpose of disability benefits being to mitigate the extra costs of disability arising from discriminatory barriers as a reaction to impairments and conditions. It is also reflected in our advice on minimum award period above.

Similar considerations may apply to disability assistance for children and disability assistance for older people.

Interaction with reserved benefits

When awards of disability assistance change or come to an end this may have consequences for an individual's entitlement to reserved benefits. It is important that an effective system exists to ensure this process happens smoothly.

There needs to be consideration of the financial consequences of no longer receiving a reserved or 'out of work' benefit. When the Agency is made aware that an individual's reserved benefits have changed it may be beneficial for it to use its capacity to provide a financial health check for such individuals. This should be similar to the financial health checks recommended above. There is scope here to think longer term about the next phase of devolved benefits, and how appropriate connections could be made.

How our advice relates to principles set out in the Social Security Act:

Social security is an investment in the people of Scotland: all people, including the most excluded and disadvantaged which often includes disabled people with protected characteristics. Investment is required to level the playing field and enable greater choices and self-determination, participation and ability to contribute which result in improved wellbeing. Thus Social Security is seen as part of the framework of prevention and early intervention for Scotland's people.

Respect for the dignity of individuals is to be at the heart of the Scottish social security system – this includes taking into account cultural issues, understanding of disability equality and appropriate interactions with people using the system. This includes having light touch reviews and avoiding unnecessary stress of frequent reassessments.

Social security is itself a human right and essential to the realization of other human rights: failure to reach groups or address barriers they face would breach those rights.

The Scottish social security system is to contribute to reducing poverty in Scotland: this includes providing pathways to relieve financial pressure following the end of an award and advise on broader income maximisation e.g. school clothing grant, council tax reduction.

The Scottish social security system is to be designed with the people of Scotland on the basis of evidence: we appreciate the inclusion of the Experience Panels on the work by the Ill Health and Disability Benefits Stakeholder Reference Group, and would encourage wider engagement with relevant organisations and other people with lived experience as part of an ongoing commitment to involvement, learning and continuous improvement.

I look forward to your response.

With best wishes,

Tressa Burke
Workstream Co-chair

DISABILITY BENEFITS: AUTOMATIC ENTITLEMENT AND AWARD DURATION

Purpose

1. To provide the Assessment Workstream of the Expert Advisory Group with an update on SG work to identify conditions that may be suitable for automatic awards of disability benefits and make awards for more appropriate periods of time.

Summary

2. Officials have worked with stakeholders to gather and test views on how SG might practically implement automatic entitlement to DLA, PIP and AA. This work has focused on identifying a list of conditions that would mean a person would be entitled to an award, without any further information required about, for example, functional ability. This would have the practical implication of allowing such applicants to qualify for an award on the grounds of medical confirmation of their condition, without any requirement for assessment or the provision of further information. Fuller detail on the conditions identified for potential auto-entitlement is at Annex A.

3. Officials have further been examining how SG could improve the duration of disability benefits awards to more accurately reflect a person's prognosis and potentially reduce the number of award reviews overall. The Ill Health and Disability Stakeholder Reference Group formed a workstream led by a Citizens Advice representative, to examine award duration reform in some detail and their full report is attached at Annex B. The contents of this report have previously been shared with the Expert Advisory Group. In summary, the workstream recommended that all awards are made on a rolling basis, based on a person-centred decision about when the person was likely to have a significant change in condition. Where it is unlikely a person's condition will significantly change, it was recommended that there should be a light touch review no more than every 5 years.

Understanding the Impact

4. SG analysts looked at these policy proposals and provided a steer on potential impact¹. Analysts modelled auto-entitlement to both higher rate care

¹ It should be noted that analysts have access to very limited datasets and modelling the policy proposals has been challenging and is therefore subject to large uncertainty. Analysts are still in discussions with DWP about relevant data requests but it is possible that the data we need to improve our modelling does not exist. An update may be provided in the future with more refined modelling when/if that data is shared with SG.

component awards and mobility component awards for people with one of the conditions identified by the stakeholder group. Stakeholders originally recommended that auto-entitlement should be made for the mobility component only. However, a more expansive approach was modelled because auto-entitlement to mobility only, would lead to people still requiring assessment for the care component. The modelling identified that even in this wider provision of auto-entitlement, the impact on the number of assessments required as a result of this change would be small. This is because the relatively serious conditions identified by the stakeholder group are expected to only account for around 5% of new cases that would otherwise require assessment. This 5% equates to around 550 people a year. Any modest administrative savings that could be made as a result of this reduction in assessments could be offset by the cost of making higher payments that may amount to around £23m a year. This is because people with the identified conditions did not all receive the highest level award under DLA and are unlikely to do so currently under PIP.

5. In relation to duration of awards, a separate list of conditions was considered for entitlement to longer awards of 5 years. Individuals with these identified conditions accounted for around 15% of the PIP caseload in Scotland in October 2017, but we do not know what the current award duration is for these conditions under PIP. If it is the same as the average for all conditions, the number of assessments undertaken every year *could* reduce by up to 7,000 a year (10%). However, it is possible that DWP already make longer term awards currently for these conditions, which means that it is likely that this is an overestimate of impact. Around 26% of PIP awards made are already either indefinite or are for 5 years or longer. It is therefore possible that this approach will have minimal impact on the overall assessment caseload. Fuller information on the modelling findings for both automatic entitlement and award duration can be found at Annex C.

Options for Future Policy Development

6. If it was deemed desirable for these policies to have a greater impact, there are several routes for further investigation. In relation to automatic entitlement, we could broaden the range of conditions that we model as qualifying for disability benefits automatically. A suggested list of additional conditions is included at Annex A. Ultimately however, the more we broaden this list, the greater the cost will be and the harder it will be to meet this policy within existing resources. If we wanted to use this policy as a more direct lever to bring down assessment numbers, we could also take a different approach and target more common conditions that lead to people claiming disability benefits. Although this would have an impact on larger numbers of people, it would require us to make automatic awards to individuals with more widely varying conditions such as arthritis and mental ill health. Including broad groups of conditions like this in automatic entitlement is likely to lead to an increase in caseload and the provision of awards to people who may not have been entitled to

payments under the functional assessment system. This would be a move towards a medical model rather than a functional model and could lead to a substantial increase in cost. It may also be perceived as unfair to base the policy on commonality of condition over severity of condition, and the impact on a person's day to day life.

7. In relation to duration of awards, a greater impact on a larger number of people would require SG to develop a policy that went beyond the recommendations of the stakeholder reference group, for example by lengthening the regular award period for stable conditions beyond 5 years. Alternatively SG could seek to introduce longer more standardised award periods for a broader range of conditions, moving beyond a list of relatively stable conditions. Although this would be possible, it could prove bureaucratically complex, especially for people with multiple conditions. It would need to be considered whether the cost and complexity of such an approach was desirable.

Conclusion

8. The Assessment Workstream of the Expert Advisory Group are invited to note this information, discuss and provide advice to SG on next steps with this work. We would be pleased to attend a meeting for discussion.

Nikola Plunkett
Social Security Directorate
February 2018

DISABILITY BENEFITS: AUTOMATIC ENTITLEMENT AND AWARD DURATION

Automatic Entitlement

1. SG has indicated that it is committed to considering the feasibility of introducing an automatic entitlement to benefits. Automatic entitlement would reduce the stress experienced by individuals undertaking assessment, and help the agency reduce the volume of assessments carried out for disability benefits, whether face-to-face or otherwise.

Stakeholder Reference Group Feedback

2. The general principle of automatic entitlement to disability benefits is welcomed by stakeholders, albeit with caveats. Stakeholders feel that implementation of this policy could potentially commence with a small number of conditions being automatically entitled using a 'group' of conditions to allow for the opportunity to analyse the impact of introducing this change and to build on it if considered appropriate.

3. Stakeholders advise that the conditions which automatically entitle applicants to a high rate mobility component of DLA (there is no automatic entitlement to a mobility component) may be a good starting point to commence the policy. These are where an applicant is:

- double amputee
- deaf/blind
- severely visually impaired
- severely mentally impaired
- has severe behaviour problems, and
- automatic entitlement to middle rate care for those on haemodialysis (those on haemodialysis aged over 65 are automatically entitled to the lower rate of AA).

4. Stakeholders felt that introducing auto-entitlement would result in a person-centred approach which reduces face-to-face assessment, ensuring benefits would be paid quicker with less anxiety for applicants. It has been further suggested that SG should consider fluctuating conditions, to consider that any 'list' of conditions which automatically entitle claimants to benefits would not be exhaustive and therefore claimants who should be entitled may be 'missed'.

5. The additional list of conditions suggested (but not part of current modelling work are:

- Anyone receiving palliative care
- Multiple Sclerosis
- Anyone assessed to have a health and social care requirement
- Motor Neurone Disease
- Certain cancers (at different stages)
- Spinal injuries

- Those with organ failure
- Cerebral Palsy

ANNEX B

DISABILITY BENEFITS: AUTOMATIC ENTITLEMENT AND AWARD DURATION

Report of the Duration of Awards Project – The Ill Health and Disability Stakeholder Reference Group

OVERVIEW

Purpose

To outline considerations undertaken and provide recommendations on award duration for the main disability benefits being devolved to the Scottish Government.

Background

The Scotland Act 2016 devolves power over a number of non-work related disability benefits to the Scottish Government, as well as other benefits to support those on low incomes. The main disability benefits being devolved to Scottish Government are: Disability Living Allowance, Personal Independence Payments, Attendance Allowance; they are all tax-free and non-means tested. Scottish Ministers are committed to exploring the feasibility of introducing an automatic entitlement in relation to the aforementioned disability benefits.

Devolved Disability Benefits

- *Personal Independence Payments (PIP)*: A benefit for disabled people who need help with mobility or care costs, which replaces DLA as the main disability benefit but only for working age claimants (aged 16 – 64 years). A gradual process to replace DLA with PIP started in April 2013, and is expected to be mostly concluded in 2019. PIP has two components, daily living and mobility, each has a standard or enhanced level of support.
- *Disability Living Allowance (DLA)*: Also benefit to assist with mobility and care costs. DLA is being phased out for those of working age, but continues for people under 16, and for people over 65 who are already on DLA and have not been migrated to PIP when reaching that age. DLA has two components, the care component has three tiers of support (low / middle / high), and the mobility component has two tiers (low / middle).
- *Attendance Allowance (AA)*: Benefit to assist with care costs for people who become disabled as pensioners. AA has two tiers of care support (low / high), but no mobility component.

DURATION OF DISABILITY AWARD

The Scottish Government has committed to introducing longer-term disability benefit awards for conditions that are unlikely to get better, recognising the need to strike the balance between lengthy awards and implementing a flexible system that recognises the role of medical advances and that conditions can fluctuate. This would remove the need for unnecessary re-assessments, which are often distressing and frustrating for people whose circumstances are unlikely ever to get better, and for their families.

DURATION OF AWARDS SHORT-LIFE PROJECT

The Scottish Government established a Duration of Awards short-life project to consider approaches to award duration and inform policy development around Scottish disability benefits. The group's role was to ensure that the expertise and knowledge of the short-life project informs and influences the development of duration of awards made across the three main disability-benefit benefits being devolved to the Scottish Government – Disability Living Allowance (DLA), Personal Independence Payment (PIP), and Attendance Allowance (AA). Members of the project were asked to advise on:

- The use and suitability of fixed-term and indefinite awards;
- Eligibility criteria for fixed term or indefinite awards.
- The evidence required to inform decision on award type (indefinite / fixed-term) and duration (number of years / months).
- The length of awards, including whether there should be minimum and / or maximum award durations for fixed-term awards.
- The implementation of approaches to award duration, including whether this should be set out in legislation, guidance or staff training.
- The type, timing and nature of award reviews, including self-directed reviews.
- How best to involve the views of people in receipt of a disability benefit, potentially through the Experience Panels later in the year.

Membership comprised of:

- Disability representatives
- Experts in welfare advice and social care
- Medical / clinical experts
- Scottish Government officials

Issues discussed by the project are detailed below.

Definitions

Initially the group discussed what was meant or understood by the different type of disability benefit awards, they noted that:

- Lifetime Awards are given for a whole life period without review/reassessment (within that benefit age span) suitable for conditions that will either never change or deterioration is likely.
- Indefinite Awards are given on an indefinite/rolling basis with planned review periods, suitable for variable conditions where improvement may be possible but not likely or not in the foreseeable future. Reviews would not necessarily mean the end of the benefit and there could be different periods of review.
- Fixed-Term Awards are given for a set period where benefits stop at the end of the award periods and requires a full reassessment.

These definitions were subsequently queried with DWP based on the current system. It was established that:

- Under Disability Living Allowance, indefinite awards which were also known as Lifetime Awards, had no end point and no trigger to reconsider the case.
- Under Personal Independence Payment, Fixed Term Awards last for a specific period and then finish (tend to be shorter awards e.g. up to 18 months)

anecdotally). These tend not to have an award review. Individuals are notified 14 weeks prior to a fixed award ending, that they need to make a new claim. They would have to go through the complete new claims process in this instance.

- The remaining awards under Personal Independence Payment are also for a specific period. The decision notice informs the individual that they have been awarded benefit for a set period and that on a set date – which is 12 months before the award is due to end - the review process begins with the issue of an Award Review Form (AR1). The review point is decided by the Case Manager using the evidence they have available and the recommendation of the assessor.

Approaches to Award Duration

The group noted the following:

- Attendance Allowance Awards tend to be lower in duration due to increased mortality rate in this age group and welfare workers try to support people onto DLA before 65.
- DLA statistics on indefinite awards pointed to a number of groups of people who seemed more likely /suitable for indefinite awards. Issues were raised with the fact that this was based on a system where eligibility was not based on functionality.
- Existing research demonstrated that continuity of financial support and longer-term awards had a preventative impact on particular issues such as homelessness, readmission to prison and hospital. The group agreed the Experience Panels could be used to identify and understand the wider impact of the loss of award on individuals.
- The general consensus of the group, following evidence of international practices, was that a 'rolling award' would be an appropriate type of award to adopt in a Scottish system. This type of award would allow for a review period to be set however until the review was carried out and a decision taken the claimant would continue to receive their benefit. This would include the completion of any appeals process, in line with previous Scottish Government announcements, and the creation of Short-Term Assistance for this purpose. This approach would remove any monetary-related stress and anxiety from the process for the claimant.
- The group have agreed that further discussion is required on lifetime awards. They identified that many of the wider benefits of longer term awards would have a positive impact on non-devolved issues such as employment and reserved benefits. However, the group find the terminology potentially confusing where a review is requested under the current system. For lifetime awards it was agreed that decision makers would require to reference medical guidance to make the decision that a lifetime award would be appropriate. The group considered the DWP approach of using MD Guidelines for the Fit for Work Scheme in England and Wales. Members felt they could not recommend the use of MD Guidelines as a basis of award level/duration, but did cite it as a good source of information. However, the current DWP Agile Discovery work on PIP may be helpful.

Reviews/Reassessment

Linked to the point made above on rolling awards, the group discussed reviews and reassessment of awards. The group agreed the following points:

- There is requirement for a clearer system as to when, how and why review/reassessments are undertaken. Also need for transparency on how the review/reassessment will be undertaken.
- Potential for different tiers of review/reassessments - a self-initiated review, a paper-based review, a full reassessment, a partial reassessment where multiple conditions/disabilities exist etc.
- There should be no automatic full reassessment for those in receipt of disability benefits in Scotland, instead a review period should be built into the duration of their award.
- To allow the group to make a clear recommendation on whether a review should be carried out following a change in circumstance, SG require to consider what should constitute a 'change in circumstance'.
- Must consider the most appropriate way of reporting a change of circumstances, promoting the 'tell us once' approach.
- A claimant can request a review of their award at any point
- It will be important to consider the legislative underpinnings of reviews/reassessments – currently under PIP, DWP can request to reassess at any time, this creates inherent uncertainty for claimants.
- The review/reassessment process must involve the recipient or the recipient's carer when requested by the recipient or when the recipient is subject to legal guardianship.
- Where there has been an improvement or deterioration in the claimant's condition, the review/reassessment will require to be supported by relevant evidence.

Links with other parts of the Social Security System

As part of making considerations around Award Duration, the group took into account the following SG commitments and information:

- **Fast Tracking of Benefits** - A commitment from Scottish Ministers to ensure a fast tracking system is available for people with a terminal illness. This meant working on the basis that where an individual is living with a terminal illness and their death can reasonably be expected within six months their claim for disability benefits could be fast-tracked and paid at the highest rate of DLA, PIP or AA.
- **Assessments** – commitment by Scottish Ministers to reduce the number of individuals being required to undertake face-to-face assessments and to implement a fairer process, as well as a commitment to assessments not being carried out for profit.
- **Disability Living Allowance for Children** – a commitment from Ministers to provide DLA for children up to the age of 18 (currently 16) during the period when disability benefits become devolved to Scotland.
- **Award Duration** – a public commitment to increasing the length of awards for people whose conditions are likely to stay the same or deteriorate
- **Appeals** – a commitment from Scottish Government to aim to set out a fundamentally different and an improved system for challenging decisions. That

being a two-stage appeals process. The first stage being a request for re-determination by the social security Agency, and the second stage an appeal to a tribunal.

- **Eligibility** – a commitment to a safe and secure transition of disability benefits and information on Scottish Government assumptions that the eligibility criteria for PIP, DLA and AA will largely transition across to the Scottish social security system largely as they are now, with some key improvements.
- **Backdating and overpayments** - The recommendations are contingent on the legislation allowing backdating of awards when the award is advantageous to the claimant - otherwise more regular reassessments/reviews of those not on the highest award and those with variable conditions would be required to ensure any changes in conditions/circumstances are taken into account. As the legislation allows recovery of all overpayments the system would be reliant on the legislation specifically excluding overpayments due to improvements in condition from recovery. Otherwise infrequent reviews of claimants with permanent or progressive conditions may be considered.

At the time of preparing this report, the Social Security (Scotland) Bill had recently been introduced in the Scottish Parliament, so does not take into account any changes made to the Bill during its Parliamentary passage.

International Research

Finally, the group have considered international research carried out by Scottish Government on how systems interact internationally in relation to award duration. On considering the research provided on the following 4 countries:

- **New Zealand**
- **Ireland**
- **Norway**
- **Sweden**

The group agreed that the model for disability benefits in New Zealand represents the greatest comparison to the disability benefit model in Scotland.

New Zealand's equivalent to DLA for children and PIP both do not require a planned review as the awards are indefinite unless there is a change in circumstance. A decision on any lifetime award is taken by medical professionals employed directly by the New Zealand Government. The group have also agreed it would be useful to consider any international research available on qualifying periods to inform any decision about qualifying periods for Scottish disability benefits.

A dedicated paper on international research identifying examples of international models of disability benefits is due to be provided to the Disability and Benefits Expert Advisory Group and Ill Health and Disability Benefits Stakeholder Reference Group in October.

Recommendations

Based on the areas the Duration of Awards Short-Life Project were asked to consider, the following recommendations are made:

- *The use and suitability of fixed-term and indefinite awards;*
- *Eligibility criteria for fixed term or indefinite awards.*

Recommendation 1: Awards should be made on a ‘rolling’ basis, continuing without a fixed end date. As part of the initial decision a date of review should be set, however the award would continue, rather than being stopped and requiring a reassessment, as is currently the case for PIP. Fixed-term awards should not be used in the new system.

For individuals in receipt of PIP at the point of transfer to Scottish Government administration, unnecessary reassessments should be avoided, and their award should therefore be continued in line for the new rules for duration of awards set out below.

- *The evidence required to inform a decision on award type (indefinite / fixed-term) and duration (number of years / months).*

Recommendation 2: All awards should be made on a rolling basis. As part of the initial decision a date of review would be set. This would be set at a point where it is likely that there would be a significant change in the person’s condition – either a deterioration necessitating additional support, or a significant improvement. This would be based on a prognosis derived from the evidence on which the initial award is made. Whilst decisions would be made on a person-centred basis, guidance should be developed for decision-makers, including information on the typical prognosis for particular conditions.

- *The length of awards, including whether there should be minimum and / or maximum award durations for fixed-term awards.*

Recommendation 3: Because Awards would be made on a rolling basis, rather than fixed-term there is no recommendation to be made on an award duration for fixed-term awards. It would be anticipated that the process outlined above would lead to longer periods before a review than is currently the case before a fixed-term award ends under PIP.

In some cases, where there is no likelihood of a person’s condition improving due to it being permanent (e.g. congenital learning difficulties, blindness, brain injury) or progressive (e.g. secondary progressive Multiple Sclerosis, Motor Neurone Disease, Parkinson’s, dementia), the minimum period before any light touch review should be at least five years². Additionally, in these cases there may be no review date set unless requested by the individual if the individual is already receiving the maximum award. This approach should be tested with the Experience Panels.

Additionally, it may be appropriate that no review date is set for individuals who receive an award under Special Rules for terminal illness, as opposed to the three year fixed-term award approach under PIP. A decision on this should be made based on official statistics to determine how many individuals this may affect. If an individual’s award changes in a way not beneficial to the claimant, there should be a period of eight weeks before their payment amount changes to give them time to prepare for a negative change in their financial situation. This approach should be set out in legislation.

² N.B. The conditions listed here are intended to be illustrative rather than exhaustive. In addition different forms of conditions can affect an individual’s functionality in different ways. Guidance for decision makers should set out the detailed approach for this, be person-centred and make use of the evidence gained in making the initial assessment.

- *The implementation of approaches to award duration, including whether this should be set out in legislation, guidance or staff training.*

Recommendation 4: The framework providing for awards to be made on a rolling basis, and providing for a date for review for each individual's award, should be set out in legislation. Regulations should also make clear that the period before review should be as long as it would be appropriate to do so, rather than as short as appropriate. Guidance should set out the approach taken to determining an appropriate date for review, including information on the typical prognosis for particular conditions. Full training should be given to staff on how a review date should be determined.

- *The type, timing and nature of award reviews, including self-directed reviews.*

Recommendation 5: Award reviews should not involve a disability benefit stopping, it would continue throughout the review and beyond unless superseded by a revised decision. This would include the completion of any appeals process, in line with previous Scottish Government announcements, and the creation of Short-Term Assistance for this purpose. The process of review should not involve a full re-assessment, and should be on a 'light-touch' basis, that aims to minimise stress. It would seek to establish whether there had been any significant changes to the impact of a person's condition (either deterioration or improvement), from how it was described in their original award.

Reviews should use the most appropriate form of assessment to obtain information about changes in condition. It is anticipated that in many cases this would consist of a paper-based questionnaire providing people with the information presented in the original decision and asking them whether the impact of their condition had got worse, got better or there had been no change. In some cases no further information might be required, and use could be made of existing medical evidence without needing to be supplied separately. Some of this will depend on the nature of assessment, evidence-gathering and decision-making for making original awards, which is yet to be decided by the Scottish Government.

Individuals should have the option to request a review of their award at any time, including a face to face assessment if they wish. For instance, this may be if their condition had deteriorated and they felt they may be entitled to a higher award. People would also be expected to report any changes of circumstances. Clear guidance on what would constitute a change of circumstance should be provided, and care should be taken not to penalise a person whose condition had gradually improved. The group felt that, given the nature of the benefit, moving into work should not be regarded as a change of circumstance.

- *How best to involve the views of people in receipt of a disability benefit, potentially through the Experience Panels later in the year.*

Recommendation 6: It would be helpful to seek views of the Experience Panels on these proposals generally, as well as on the following specific points:

- What terminology should be used for the types of awards? Would it be understood what is meant by a 'rolling' award?

- How long would be appropriate to set as a review date for their own circumstances, including no review and for which conditions?
- What would reassure them that their award is not going to be suddenly stopped, and that they will not be subjected to a stressful re-assessment?
- What is their experience of the current re-assessment process?
- What is their experience of the current initial assessment process?
- Should evidence already held from any source (GPs, Consultants, assessments etc.) be used in subsequent reviews?