

The Disability Assistance for Working Age People (Scotland) Regulations 2022

**Letter to Social Justice and Social Security
Committee**

December 2021

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Social Justice and Social Security Committee
The Scottish Parliament
Edinburgh
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By email to: sjss.committee@parliament.scot

17 December 2021

Dear Neil,

I am pleased to inform you that I have today laid the Disability Assistance for Working Age People (Scotland) Regulations 2022 and accompanying documents in Parliament.

Adult Disability Payment will be the twelfth Scottish benefit to be delivered by the Scottish Government and replaces the UK Government's Personal Independence Payment (PIP). Taking a human rights approach, the way we will deliver Adult Disability Payment will provide people with an improved experience. We are committed to delivering a social security system that treats people with dignity, fairness and respect.

We know people have found applying for DWP disability benefits stressful and have listened carefully to their experiences as we have designed our new system. We are committed to doing things differently. We are introducing a new, simplified, empathetic system that works for the people of Scotland.

For example, we have put the onus on Social Security Scotland to collect the information that we require to consider an application for ADP. Only one piece of information from a formal source will be required to support the general care and mobility needs in a client's application. This is a significant departure from the current system which requires formal supporting information to evidence each and every difficulty that the client reports experiencing.

Moreover, we have abolished assessments in the form currently undertaken by the DWP. Instead, and only where required, we will hold person-centred consultations between the client and a Social Security Scotland practitioner, which will start from a position of trust, and there will be no functional examinations. People will also be able to apply in the way that suits them best, be that online, by post, over the phone or face-to-face. In addition, anyone with a terminal illness will be fast tracked and access to this expediated support will not be tied to a time limited life expectancy - we will follow the judgement of clinicians.

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In accordance with section 97 of the Social Security (Scotland) Act 2018 (“the 2018 Act”) we have also issued a response to the Scottish Commission on Social Security (SCoSS) scrutiny report of 9 August 2021 on the draft amendment regulations. A copy of the response is included with this letter. I am grateful to SCoSS members for the helpful and constructive way in which they have engaged with officials, in helping to scrutinise the regulations for Adult Disability Payment and for the scrutiny report.

We have accepted the vast majority of recommendations made by SCoSS, taking on board the significant analysis carried out by the Commission. I believe the changes we have made as a result demonstrate that we are listening, and that our decisions are informed by evidence of what is right and will work best for people. Where we have not been able to accept a recommendation in full, an explanation has been set out in our response to SCoSS. I am confident that the changes we have made in response to the Commission’s recommendations, in respect of the scrutiny report, clarify our policy intentions.

We have made further changes to the regulations which do not refer to recommendations made by SCoSS. In accordance with section 97 of the 2018 Act, these changes are also set out in our response to SCoSS’ report.

If the Regulations are passed, Social Security Scotland will begin accepting new applications for Adult Disability Payment from March in three Scottish local authority areas initially – the same as the Child Disability Payment pilot – with further phases added throughout the summer and nationwide introduction at the end of August. The dates are contained in the regulations and set out in Annex A.

People in Scotland with ongoing awards of PIP or DLA from the DWP do not need to apply for Adult Disability Payment. Their awards will be transferred automatically to the new Scottish system from August 2022, with no break in entitlement or payment.

Safe and Secure Transfer | Eligibility Criteria and Payment Values | ‘Passporting’

As Members are aware, a great deal of consideration was given as to whether the Scottish Government could and should implement changes to the eligibility criteria - including payment values - when Adult Disability Payment is first delivered. It was firmly concluded that changing the eligibility criteria would risk the safe and secure transition of clients moving from PIP to Adult Disability Payment, something no responsible Government would do. As you will be aware, this approach is also supported by SCoSS, who in their report on the draft regulations for Adult Disability Payment stated:

“The Commission is in no doubt that a stable, well-run system that gives people confidence in the continuity of their payments is absolutely critical. We are persuaded that changing eligibility criteria at this time would risk undermining the delivery of ADP, with extremely detrimental consequences for people who depend on it.”

Central to successful delivery is our approach to case transfer, when case managers will undertake the most complex process Social Security Scotland will ever have delivered. To meet the planned timetable, substantial numbers of PIP clients will have their entitlement moved from DWP to Social Security Scotland every month. It will simply not be feasible for Social Security Scotland to undertake the full process of making a determination for these clients, at the same time as managing all the new applications for assistance, in the initial stages of delivery. This would present risks to the safe delivery of Adult Disability Payment within the timescales set out, which we will not countenance.

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Moreover, and importantly, the approach we have chosen safeguards against creating a system in which individuals paid by Social Security Scotland are subject to significantly different eligibility requirements – or payment values – from clients whose cases have not yet transferred to the Scottish system. Any such differentiation of treatment would create a two tier system and clearly be unfair.

Furthermore, as you know, PIP eligibility provides clients with automatic entitlement to various reserved benefits and premiums, usually referred to as ‘passporting’. Throughout the various consultation activity we have undertaken on disability assistance, we have consistently heard how people’s main concern is having to submit new applications to receive Scottish disability assistance and the maintenance of other financial support they are entitled to as a result of their current entitlement. Devolved disability assistance must therefore enable this ‘passporting’ to additional forms of assistance to continue.

DWP have made clear that ‘passporting’ for Adult Disability Payment is subject to delivery of a “like for like” system. Whilst there is not a detailed definition of “like for like”, DWP have, for example, registered concerns about aspects of changes which one might consider to be relatively minor, such as, alterations to the “interpretations” section of the regulations. We have been able to reach agreement with the DWP that Adult Disability Payment will be treated as a qualifying benefit for reserved premiums and additional payments in the same way as PIP. While welcome, it is important to note this is an interim agreement and is based on the regulations as currently drafted and laid. Continued engagement with DWP is required to reach a longer term approach to passporting, considering the potential for increasing divergence between devolved and reserved disability benefits.

Review of Adult Disability Payment

As you know, we have already committed to facilitating an independent review of Adult Disability Payment in 2023, one year after delivery has begun. We intend to engage with key stakeholders in developing the remit and process for the review.

Our intention is that the review should begin in 2022, once the Adult Disability Payment regulations are in place, and that we start with an initial review of the “moving around” descriptors and the potential for alternative criteria for considering an individual’s mobility, and to agree the scope of a more strategic review. That second stage of the review will commence once Adult Disability Payment has been successfully delivered and we are able to gather evidence of its operation in practice when clients have experience of the new system and the improvements that we have made to the application and decision making processes.

I am confident that this approach will mean that we are able to move forward quickly on an informed basis without risk to the safe and secure delivery of Adult Disability Payment ensuring that improvements that we are introducing can be properly assessed.

Investment

As you know, the Scottish Fiscal Commission has now published its forecasts for Scottish social security benefits. Based on the phased introduction from March the SFC forecast 339,000 people will benefit from Adult Disability Payment at an investment of £1.9 billion in 2022/23. This is an increase of £37 million, more than spending on PIP, and is part of the £361 million we will spend from our own fixed budget on social security next year to support disabled people and households on low incomes.

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I am confident that clients will benefit from the Scottish Government's significant improvements to disability benefits and the different approach that we are taking to the application and decision making processes, starting from a position of trust.

We will deliver Adult Disability Payment with dignity, fairness and respect.

I hope the Committee will find this useful as you start scrutiny of these important regulations.

Best regards,

BEN MACPHERSON

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Local authority area	Date which we will begin accepting new applications to Adult Disability Payment
Perthshire and Kinross City of Dundee Western Isles	21 March 2022
Angus North Lanarkshire South Lanarkshire	20 June 2022
Fife City of Aberdeen Aberdeenshire Moray North Ayrshire East Ayrshire South Ayrshire	25 July 2022
All remaining Scottish local authority areas	29 August 2022

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