

## SCOTTISH GOVERNMENT POSITION PAPER

### DURATION OF AWARDS AND AUTOMATIC ENTITLEMENT FOR DISABILITY ASSISTANCE

#### Introduction

This paper is one of a series providing an update on our position on various matters relating to the development of the devolved social security benefits in Scotland.

The purpose of this paper is to set out the principles which we are adopting to determine the duration of awards. These are informed by the recommendations and advice of the Disability and Carer Benefits Expert Advisory Group (Expert Advisory Group) in relation to the duration of awards and automatic entitlement.

#### Duration of Award Principles

In December 2018, the Expert Advisory Group provided a list of recommendations by request to steer the policy development in relation to Award Duration and Auto-Entitlement. These recommendations were themselves informed by advice from the Ill Health Reference Group that was chaired by Citizens Advice Scotland. The Scottish Government has accepted the majority of these recommendations, set out in the Award Duration principles below:

- All awards should be made on a rolling basis, with no set date for an award ending.
- Disability Assistance should not stop whilst an award review is being undertaken.
- There will be no auto-entitlement and all decisions will be person-centred.
- Review dates will be set at a date that takes account of the likelihood of that person's needs changing.
- Reviews will be light-touch and, as far as possible, minimise stress.
- Moving into work will not be regarded as a change of circumstance.
- The requirement to set an Award Review date for each individual's award will be set out in each set of Disability Assistance regulations.
- The framework providing for awards to be made on a rolling basis will be set out in each set of Disability Assistance regulations.
- Social Security Scotland will give a reason to individuals where their award is reviewed earlier than the date set.
- Social Security Scotland will publish the numbers of cases where awards are reviewed earlier than the date set at initial decision.
- In cases where there is no likelihood of improvement there will be at least five years between Light-Touch reviews.
- Awards will have a maximum period of 10 years between Light-Touch Reviews.

## **All awards should be made on a rolling basis, with no set date for an award ending**

Under the current DWP system, at the end of a client's award duration, they are required to resubmit lengthy review paperwork as part of the re-assessment process. Through stakeholder engagement and user research the Scottish Government has determined that the current process creates significant anxiety for individuals.

To address this, the Scottish Government is proposing that there will be no formal award durations and that all awards for Disability Assistance will be indefinite. Clients will be given an award review date as part of their initial award. This approach will ensure that clients don't perceive their award to be subject to a cliff-edge at the end of their award duration, which will lessen anxiety about the award being reviewed. The process still enables Social Security Scotland to undertake reviews as appropriate to determine continuing entitlement to the component levels of each form of Disability Assistance.

This proposed approach for Disability Assistance would utilise a system of decision making with new Case Manager's Guidance (CMG) reflecting the person centred nature of the decision making process across Disability Assistance benefits and providing Case Managers with a framework for setting an appropriate date for a subsequent award review.

## **Disability Assistance should not stop whilst an award review is being undertaken**

It is preferable to ensure that disability benefits continue to be paid whilst the Social Security Scotland undertakes a Light-Touch Review. Whilst this review is underway, the client's assistance will continue to be paid.

In certain circumstances Social Security Scotland may make a decision to stop a client's Disability Assistance as part of the review process. This may include occasions where a client does not engage with a Light-Touch Review.

Operational guidance will make clear that any decision to stop Disability Assistance due to disengagement with a review process will be undertaken with consideration of the person's needs, personal circumstances and whether their condition contributed to their ability to engage. Where this is doubt if this is the case, the assistance would continue to be paid until further information can be gathered.

## **There will be no auto-entitlement and all decisions will be person-centred**

The Scottish Government has developed Disability Assistance in accordance with person-centred values to ensure that processes, decision making and services to clients take account of their individual needs and preferences.

We have concluded that a system with automatic entitlement conflicts with making person-centred decisions and, as such, the Scottish Government will not be introducing auto-entitlement for Disability Assistance. By ensuring that the system we are building is based on dignity and respect and takes account of individual needs, we believe that there is no need to consider auto-entitlement because the processes, decision making/assessment and award reviews will be designed to take account of individual needs and, as such, will reflect the needs of the client accessing assistance.

Analysis suggests that there are very few conditions for clients in receipt of PIP, that have a high percentage of maintaining awards at the same rate as part of the PIP review process. Based on data published by DWP, for all conditions, except Down's Syndrome (93%), less than 70% of awards are maintained at the same rate after review and are either increased, decreased or ended on conclusion of the review process.

Furthermore, analysis of PIP award reviews across more than 500 different conditions shows that there are only 14 conditions where less than 20% of award reviews led to a decrease or termination of award. These conditions account for only 3% of the total PIP caseload.

This analysis suggests that, to provide clients with appropriate decisions, award review dates and benefit components, their individual circumstances and needs must be considered and that a condition specific approach will not provide correct decisions because of the wide range of needs that people with any single condition might have.

### **Review dates will be set at a date that takes account of the likelihood of that person's needs changing**

As part of the Decision Making process at initial award, an award review date will be set which will take account of the individual's needs and condition, with the intention that the review will occur at a time that is reasonable to consider whether the client's needs may have changed.

For clients with fluctuating conditions, it is intended that the Case Manager will consider the impact of the condition over an agreed timeframe and make an award decision taking this into account. To ensure that clients are not made to undergo unnecessary re-assessment and review, it is the intention that award review dates are set at a future date that takes account of fluctuating needs. Clients with conditions where the impact on that person regularly varies will not have their award reviewed because of the expected change in needs they experience and will be informed that they should notify Social Security Scotland of a change of circumstances should their needs change beyond the expected variation.

### **Reviews will be light-touch and, as far as possible, minimise stress**

The principle of Light-Touch Reviews relates to criticism about the current administration of PIP and other disability benefits that clients are subject to a full re-assessment at the end of each award term, when for many clients in receipt of disability benefits, a lighter review process would have provided the updated information required to confirm the client's award for the next award duration period.

The Scottish Government believes that Light-Touch Reviews will minimise stress and inconvenience for clients by considering, in a person-centred manner, what level of review is required in each case. We will work with stakeholders to establish exactly what a light touch review will include.

**Moving into work will not be regarded as a change of circumstance**

The purpose of Disability Assistance in Scotland is to provide mitigation for the increased costs a client incurs as a result of their disability, to enable them to engage in activities, education, employment or other activities of their choosing. For this reason, moving into work will not be regarded as a change of circumstances.

We propose that there is a caveat to this, where the activities within the employment an client undertakes would call into question whether their condition had changed sufficiently as to require a further review of their award.

**The requirement to set an Award Review date for each individual's award will be set out in each set of Disability Assistance regulations**

and

**The framework providing for awards to be made on a rolling basis will be set out in each set of Disability Assistance regulations**

We intend to provide a framework for awards to be made on a rolling basis. The requirement for a date of review for each client's award will be provided in the regulations for each form of Disability Assistance. We intend to include within the regulations that this does not displace the option for clients to request a review sooner, nor Social Security Scotland to instigate a review earlier than the set award review date. It will also not displace the ability of Social Security Scotland to undertake a re-assessment process for an client where, as part of the Light-Touch Review process, it is clear that the client's needs have changed so significantly as to warrant further assessment.

The key to delivering this approach effectively will be the quality of the process of undertaking light reviews with clients to consider whether their needs or their condition have changed since their previous consideration. Light-Touch Reviews, occurring at the date set as part of the initial award, are intended to be a less intrusive and anxiety provoking process for each client regarding any change in their condition. As part of this Light-Touch Review process, a new award review date will be set, taking into account the anticipated length of time that the condition will remain the same.

**Social Security Scotland will give a reason to individuals where their award is reviewed earlier than the date set**

Stakeholders have been critical of the current DWP process where, as part of making an award, an award duration is set, but DWP set a 'review' date which is often mid-term of the award duration period. These reviews require clients to return paperwork providing an update on their circumstances and condition and, if required, DWP can request the client undertake another face to face assessment if they feel it is required to gather evidence needed to review the award.

By setting person-centred award review dates it follows that, subject to the guidance delivering more appropriate lengths between award reviews, there will not be a need to undertake a further mid-award term review in the vast majority of cases.

There may be occasions where Social Security Scotland needs to instigate a review before the indicated award review date. Although these occasions are anticipated to be rare they would include where information is provided to Social Security Scotland that suggests the client's circumstances have changed.

To deliver a transparent social security system it is important that clients have trust in the system and this will be ensured by providing information to clients relating to decisions made about their assistance awards. In the case of Social Security Scotland instigating an award review, we will provide written notification of the reasons as to why we will be reviewing the award in advance of the end of the notified review date.

### **Social Security Scotland will publish the numbers of cases where awards are reviewed earlier than the date set at initial decision**

To ensure public trust in the Social Security Scotland will publish key data on areas of operational decision making that impact on clients and, in this case, we are proposing to publish the number of cases where Social Security Scotland has instigated mid-term award reviews. By doing this it will ensure that clients and the wider public can scrutinise Social Security Scotland and that there is a transparent approach to early award review.

### **In cases where there is no likelihood of improvement there will be at least five years between Light-Touch reviews**

For a client with a condition not likely to change it is proposed that Case Manager's Guidance will recommend that an award review date is set that is between five and 10 years from the initial date of award. The variation will depend on each client's circumstances and the Case Manager's assessment of their condition, their environment, support and other factors.

### **Awards will have a maximum period of 10 years between Light-Touch Reviews**

The Expert Advisory Group recommended that the maximum length of time between award reviews should be 10 years. The Scottish Government accepts this maximum period between award reviews to ensure both that individuals who may have increased needs have their award reviewed and to ensure sufficient scrutiny within the system.

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