POLICY NOTE

THE DISABILITY ASSISTANCE FOR OLDER PEOPLE (SCOTLAND) REGULATIONS 2024

SSI 2024/166

The above instrument will, if approved by the Scottish Parliament, be made in exercise of the powers conferred by sections 31(2), 36(2), 41(4)(a), 43(5), 51(1), 52 and 95 of the Social Security (Scotland) Act 2018 (the 2018 Act). Some of those powers are subject to negative procedure and others to affirmative procedure. The powers are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 and section 33(3) of that Act makes the instrument subject to the affirmative procedure.

This instrument sets out the rules and eligibility criteria for Pension Age Disability Payment, a form of assistance to provide financial support to individuals who are over State Pension age with additional costs related to their care needs, arising from a disability or health condition(s). This new form of disability assistance under section 31 of the 2018 Act will replace Attendance Allowance in Scotland.

The instrument includes provisions to include the Scottish definition of terminal illness as part of Pension Age Disability Payment, and provisions in relation to individuals who move from Scotland to reside in another part of the United Kingdom, or who move to Scotland. It further includes provisions for when Short-term assistance is to be given to those who have been in receipt of Pension Age Disability Payment.

This instrument also includes provision to transfer awards of Attendance Allowance for people in Scotland over pension age from the Department for Work and Pensions (DWP) to Social Security Scotland on behalf of Scottish Ministers; changing these awards from Attendance Allowance to Pension Age Disability Payment.

Policy Objectives

Pension Age Disability Payment is intended to improve outcomes for disabled people over State Pension age, by providing financial assistance to help meet additional costs of care relating to an individual's disability or health condition(s). This includes physical and mental disabilities and health conditions which are severe enough that an individual needs someone to help look after them.

This form of assistance will replace Attendance Allowance in Scotland for individuals over State Pension age who are making a new application for disability assistance. This new Scottish Government benefit will be delivered by Social Security Scotland on behalf of the Scottish Ministers. The regulations include provisions detailing the eligibility criteria, the rates of assistance and the making of applications and payments.

Pension Age Disability Payment consists of two rates of assistance, the higher rate and the lower rate. To be eligible for the lower rate, an individual must require frequent attention throughout the day in connection with their bodily functions or continual supervision throughout the day in order to avoid substantial danger to themselves or others, or, at night, prolonged or repeated attention in connection with their bodily functions or they require

another person to be awake for a prolonged period or at frequent intervals for the purpose of watching over them in order to avoid substantial danger to themselves or others. To be eligible for the higher rate, an individual must meet the respective conditions throughout both the day and the night. Individuals who are terminally ill will be automatically entitled to the higher rate. Reflecting the Scottish Government's approach to social security, Pension Age Disability Payment is intended to be person-centred, taking into account the specific needs of each individual.

The eligibility criteria for Pension Age Disability Payment broadly aligns with the eligibility criteria for Attendance Allowance. However, the Scottish Government is making improvements to the application process and streamlining routes to set up a third party representative, to better meet the needs of individuals entitled to Pension Age Disability Payment.

Pension Age Disability Payment will be delivered by Social Security Scotland from 21 October 2024, with an initial application period comprising of two phases for new applications in specified local authority areas. Phase 1, from 21 October 2024, new applications will be able to be made in Argyll & Bute, Highland, Orkney, Aberdeen City and Shetland. In phase 2, from 24 March 2025, applications will also be able to be made in Moray, Aberdeenshire, East Ayrshire, North Ayrshire, South Ayrshire, Na h-Eileanan Siar, Stirling, Clackmannanshire, Falkirk, Fife, Angus, Dundee City, Perth & Kinross. Social Security Scotland will then accept new applications from individuals across all other Scottish local authority areas from 22 April 2025.

Short-term Assistance
The regulations make provision for the introduction of short-term assistance. Short-term assistance is given by the Scottish Ministers to an individual on a short-term basis under section 24 (duty to give assistance) of the 2018 Act. An individual may be eligible for short-term assistance if they have been previously entitled to Pension Age Disability Payment and, as a result of a subsequent determination, their longstanding Pension Age Disability Payment award has been reduced or stopped. In the event of a re-determination or appeal, individuals can apply for short-term assistance in order to continue to receive their longstanding payment amount until the conclusion of their re-determination or appeal.

The regulations also include regularising amendments for Child Disability Payment and Adult Disability Payment in order to clarify the value calculation for Short-term Assistance across disability benefits Regulations and the Social Security (Scotland) Act 2018.

Suspension of Assistance
Provisions relating to the suspension of assistance are included in the draft regulations. Regulation 31 sets out the specific circumstances in which payment of assistance can be suspended. The regulations also set out the considerations that Scottish Ministers must make before suspending payment of assistance, the individual's right to request a review of the suspension, the information that should be provided to the individual when a suspension occurs and the circumstances in which a suspension should end.

Case Transfer from Attendance Allowance to Pension Age Disability Payment

In 2025, Social Security Scotland, acting on behalf of Scottish Ministers, will take over delivery of disability assistance for people living in Scotland who are over state pension age.

The disability assistance these individuals are entitled to will change from Attendance Allowance to Pension Age Disability Payment.

Scottish Ministers will gradually take responsibility for the benefit awards for all existing Attendance Allowance recipients through a managed case transfer process from the DWP. Scottish Ministers will also prioritise transferring the awards of individuals who have been diagnosed with a terminal illness but who do not fit the current DWP definition.

Scottish Ministers have developed a safe and secure process, which will require no action on behalf of the individual wherever possible and has been designed in line with the following case transfer principles:

• no person will be required to re-apply for their benefit
• people will continue to receive the right payment, at the right time
• no individuals will be subject to a DWP face-to-face assessment after the date of launch for Adult Disability Payment in 2022;
• we will complete the case transfer process as soon as possible while ensuring it is safe and secure; and
• we will clearly communicate with people throughout the transfer process.

When an individual's disability benefit has been selected for transfer, Scottish Ministers will receive from DWP data and information relevant to the individual's most recent Attendance Allowance award. Once Scottish Ministers have received this information, they will issue the individual with a notice of intention to transfer, which will set out the process and timescales for that transfer. Scottish Ministers will use the information from DWP to make a determination without application of the individual's entitlement to Pension Age Disability Payment on a like-for-like basis over a period prescribed in the notice.

This period can be extended if both Scottish Ministers and the Secretary of State for Work and Pensions agree there is good reason to do so. The determination of the individual's entitlement to Pension Age Disability Payment will have the effect of ending the corresponding award of Attendance Allowance. A determination of entitlement in respect of Pension Age Disability Payment made as a result of the case transfer process comes with the same rights to re-determination and appeal as any other determination made under section 52 of the Social Security (Scotland) Act 2018.

In circumstances where an individual's entitlement to Pension Age Disability Payment should be higher than their Attendance Allowance award, and where Social Security Scotland have identified such a case, either from the information provided by DWP or additional information from the individual, provision has been made to pay Pension Age Disability Payment at the relevant higher rate from the point of transfer.

Scottish Ministers will identify individuals whose awards will transfer from Attendance Allowance to Pension Age Disability Payment using the residential address held by DWP in the individual's Attendance Allowance record. An individual will be assumed to meet the residence and presence conditions for Pension Age Disability Payment at the point of transfer if they have a Scottish postcode. If Scottish Ministers determine after transfer that an individual should not have transferred because they fail to meet the residence and presence conditions, a further determination without application will be made that will end their

Pension Age Disability Payment entitlement. This will also reverse the effect of ending the individual's Attendance Allowance award.

All individuals appointed by DWP in respect of an Attendance Allowance award will be temporarily deemed to act as an appointee for the purposes of Pension Age Disability Payment until it is reasonably practicable for Scottish Ministers to consider whether to make an appointment under the Social Security (Scotland) Act 2018.

EU Alignment Consideration
This legislation is not relevant to the Scottish Government's policy to maintain alignment with the EU, because each EU member state has its own social security laws. EU rules co-ordinate these separate social security systems between member states to support freedom of movement, but this legislation is not relevant to social security co-ordination specifically.

Consultation
Between 5 March and 28 May 2019, the Scottish Government undertook a public consultation on its proposals for the delivery of disability assistance. The consultation received 263 responses from individuals and stakeholder organisations. A summary of these responses can be found in the analysis of consultation responses.[1] The views expressed within the consultation responses helped shape the proposals for Pension Age Disability Payment. The Scottish Government published its response to the consultation findings in October 2019.[2]

Respondents were broadly supportive of the policy proposals, although several changes were made to our approach to disability assistance in response to the consultation. Such changes include setting the time limit for requesting a re-determination to 42 calendar days, an increase on the Department for Work and Pension's time limit of one month. If Social Security Scotland is unable to complete a re-determination within 56 calendar days, an individual has a right to appeal to the First-tier Tribunal for Scotland.

Following the 2019 consultation, the Scottish Government published a Pension Age Disability Payment policy position paper in February 2020 which included a detailed analysis of the relevant considerations regarding a mobility component.[3] As part of the development of Pension Age Disability Payment, careful consideration had been given to whether to introduce a mobility component, which is not included in Attendance Allowance. It was concluded that it is not feasible to include a mobility component within the foreseeable future. The impact of this position has been assessed as part of the draft impact assessments.

In November 2020, officials presented the Scottish Government's policy position on Pension Age Disability Payment to the Disability and Carers Benefits Expert Advisory Group (DACBEAG). This was revisited in discussions with DACBEAG in November 2021. DACBEAG provided advice on Pension Age Disability Payment in August 2022, with the Scottish Government responding in March 2023.[4]

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[1] Disability assistance in Scotland: analysis of consultation responses - gov.scot (www.gov.scot)
[2] Disability assistance in Scotland: response to consultation - gov.scot (www.gov.scot)
[3] Disability Assistance for Older People: position paper - gov.scot (www.gov.scot)
[4] Disability and Carer Benefits Expert Advisory Group - Pension Age Disability Payment: Response from Ministers - gov.scot (www.gov.scot)

Officials have also engaged with a variety of stakeholders on the Scottish Government's policy position on Pension Age Disability Payment. In November 2022, a meeting of the Ill Health and Disability Benefits Stakeholder Reference Group was held, giving Group members an opportunity to consider the Scottish Government's policy position, while also allowing officials to assess the impact of the Scottish Government's policy position on third sector organisations. A similar session was held for wider stakeholders in January 2023.

In April 2023, the Scottish Government held a stakeholder engagement session to assist in the development of our Equality Impact Assessment for Pension Age Disability Payment. This session allowed the Scottish Government to discuss impacts that have been identified across all protected characteristics, and ensured stakeholders had an opportunity to raise any further potential impacts for further consideration.

A first draft of the regulations for Pension Age Disability Payment was circulated informally in June 2023 among the stakeholders that had already been engaged with the process, so that their expertise and feedback could be taken into account ahead of the draft of the regulations being submitted to the Scottish Commission on Social Security for scrutiny.

Case Transfer Consultation

Two surveys regarding the case transfer process was sent out to Experience Panel members in January and February 2019. 404 and 559 responses were received respectively. A series of individual and group interviews were also conducted. Results from both surveys and the interviews were published in 2019.

These surveys confirmed that of most importance to panel members was that they continue to receive the correct payment at the correct time. Additionally, the Scottish Government has been working with relevant stakeholders to specifically target disabled people from seldom heard groups as part of its ongoing wider case transfer engagement. This user research and engagement with stakeholders has been key to developing a set of case transfer principles to guide the development of the approach to case transfer.

A policy position paper on case transfer was published in February 2019.

Officials met with the Disability and Carers Benefits Expert Advisory Group (DACBEAG) to discuss case transfer more generally in June 2020. The Group provided their full advice in July 2020. Officials again met with DACBEAG to discuss Attendance Allowance to Pension Age Disability Payment transfer more specifically on 3 November 2022. The Group provided further advice in December 2022.

Scottish Commission on Social Security – Scrutiny of the Draft Regulations

Under section 97 of the 2018 Act, the Scottish Ministers have consulted the Scottish Commission on Social Security (SCoSS). SCoSS published their scrutiny report on 30 October 2023. The Scottish Government's response was sent to SCoSS on 08 March 2024. Additional scrutiny relating to the Short-term Assistance regulations for PADP as well as a technical amendment of the equivalent provisions in Child Disability Payment and Adult Disability Payment, was published on 22 March 2024. The Scottish Government's response to this will accompany these regulations.

The case transfer provisions have been made under section 95 of the Social Security (Scotland) Act 2018, and therefore do not need to be referred to SCoSS for formal scrutiny. However, SCoSS were provided sight of the draft regulations and invited to provide feedback in their scrutiny report of PADP.

Impact Assessments
An Equality Impact Assessment, Islands Community Impact Assessment, Fairer Scotland Duty Assessment and a Data Protection Impact Assessment are all provided with this instrument. The impact assessments indicate that the commencement of Pension Age Disability Payment will have a broadly positive impact on a range of groups with protected characteristics, island communities and in relation to the reduction of the impact of inequalities of outcome and socio-economic disadvantage.

Financial Effects
A Business and Regulatory Impact Assessment has been completed and is provided with this instrument. The Scottish Government does not believe that Pension Age Disability Payment will have an adverse impact on the competitiveness of Scottish companies or the third sector within Scotland, the United Kingdom or internationally including Europe and the rest of the world. The Scottish Government expects that there may be a limited impact on the operational business of local authorities or health boards, principally because Social Security Scotland may seek to obtain, with the individual's consent, information held by public sector bodies about the individual's disability to make a determination of entitlement.

The right to appeal to the Social Security Chamber of the First-tier Tribunal for Scotland is provided for in the 2018 Act. Legal Assistance will continue to be available to individuals to appeal a determination of entitlement to the Upper Tribunal, Court of Appeal or Supreme Court. The Scottish Government does not expect any adverse impact to the Legal Aid budget as a result of the introduction of Pension Age Disability Payment. Current recipients of Attendance Allowance are already able to access legal aid to appeal entitlement decisions.

The Scottish Fiscal Commission (SFC) has a statutory duty to provide independent and official forecasts of Scottish GDP, devolved tax revenues and devolved social security expenditure. Under the Scottish Fiscal Commission Act 2016, the SFC may also produce forecasts on other "fiscal factors", defined as "anything which the Scottish Ministers use to ascertain the amount of resources likely to be available for the purposes of sections 1 to 3 of the Public Finance and Accountability (Scotland) Act 2000.

The Protocol for engagement between the Scottish Fiscal Commission and the Scottish Government notes that the SFC may produce forecasts where it considers the policy, or policies, to have a "non-negligible impact on receipts or expenditure".
Having considered the measures in these regulations, the SFC have decided not to produce forecasts for them on the basis that they are not expected to materially change the SFC's forecast for Pension Age Disability Payment (PADP) from that published on 19 December 2023[5].

That publication included a forecast of Pension Age Disability Payment expenditure in 2024-25 of £755 million, rising to £918 million in 2028-29. This includes spending on Attendance

[5] Scotland's Economic and Fiscal Forecasts – December 2023 – Scottish Fiscal Commission (fiscalcommission.scot)

Allowance until all existing clients are receiving PADP, with additional policy costs estimated to be £6 million in 2024-25, rising to £87 million in 2028-29.

If applicable, the Commission will reflect any changes in spending due to these regulations in their next forecast.

Scottish Government
Social Security Directorate

April 2024