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The Information Centre
An t-Ionad Fiosrachaidh

Social Justice and Social Security Committee

**14th Meeting, 2021 (Session 6), Thursday,
16 December**

Adult Disability Payment

Introduction

Next year Adult Disability Payment (ADP) will start to replace Personal Independence Payment (PIP) in Scotland. Regulations are expected shortly. An independent review of ADP is expected in 2023. This session will allow members to consider both issues about the regulations and issues for the review.

The latest [draft of the regulations was published in October](#).

The Committee will hear from two panels:

Panel 1:

- Ed Pybus, Policy and Parliamentary Officer, CPAG
- Richard Gass, Welfare Rights and Money Advice Manager, Rights Advice Scotland
- Judith Paterson, representing SCoSS

Panel 2:

- Craig Smith, Senior Policy and Research Officer, SAMH
- Frank McKillop, Head of Policy and Research, ENABLE Scotland,
- Keith Park, Policy, Public Affairs and Campaigns Manager, MS Society
- Trisha Hatt, Strategic Partnership Manager, Macmillan Cancer Support
- Bill Scott, Senior Policy Advisor, Inclusion Scotland

The draft regulations are complex and lengthy but for the most part are intended to mirror the PIP regulations. This paper summarises key policy differences between ADP and PIP before giving an overview of the ADP regulations and the SCoSS report. It then suggests themes for discussion. For panel 1 the focus is on the regulations and the SCoSS report. For panel 2 the themes take a broader view of policy issues and issues for the independent review.

Panel 1: Draft regulations and SCoSS Report

Six themes are suggested for panel 1:

- Theme 1: Mirroring PIP
- Theme 2: Short Term Assistance
- Theme 3: Terminal illness
- Theme 4: Suspending payments
- Theme 5: Moving between DLA/PIP and ADP
- Theme 6: Future proofing

Panel 2: Policy issues and independent review

The following four themes are suggested for discussion with panel 2.

- Theme 1: Consultation and policy development
- Theme 2: Eligibility criteria
- Theme 3: Independent review
- Theme 4: Process of applying for ADP

Background

This section provides some background about how ADP compares to PIP, the public consultation exercise and the SCoSS report.

Brief outline of ADP and PIP

Both ADP and [PIP](#) are non-means tested benefits intended to meet the extra costs of disability. They are working age benefits, but many people of pension age also get PIP because their award has continued from when they were younger. People can get PIP/ADP whether they are working or not.

ADP/PIP has two parts: mobility and daily living, which can be paid at a lower or higher rate. The rate paid depends on scoring against various activities - ten activities for daily living and two activities for mobility. Within each activity a set number of points is awarded against various 'descriptors'. Scoring 8 points results in a lower rate award, scoring 12 points means a higher rate award. For example:

- Needing social support to engage with other people scores 4 points under 'engaging with other people face to face', which is one of the ten activities under the 'daily living' component.
- Standing and moving no more than 20 metres scores 12 points under 'moving around', which is one of the two 'activities' under the 'mobility' component.

There has been a significant amount of caselaw on the interpretation of the descriptors which has added to their meaning.

The [rates for 2022-23](#) PIP are set out in table 1 below. The higher rate mobility payment can be used to lease a '[motability](#)' vehicle. Motability supply both PIP and ADP.

Table 1: PIP and ADP weekly rates 2022-23

Component	Standard	Enhanced
Mobility	£24.45	£64.50
Daily Living	£61.85	£92.40

Source: [UK Government benefit rates 2022-23](#). Scottish Government [Effects of inflation report](#).

In July 2021 around 300,000 people in Scotland got PIP. Of these:

- 127,000 got the enhanced rate of mobility payment
- 140,000 got the enhanced rate of daily living
- 43,000 were over state pension age

There is a very large range of conditions amongst people claiming PIP. The most common category by a long way is psychiatric disorders (111,495 or 38% of all those receiving PIP). This broad category includes: anxiety and depressive disorders, learning disability, mood disorders and autistic spectrum among others. Other major categories of conditions are: musculoskeletal disease (20% of PIP recipients) and neurological disease (13%). Neurological disease includes: epilepsy, MS, cerebral palsy, spina bifida and muscular dystrophy among other conditions.

Differences from PIP

Under the principle of 'safe and secure transfer' the rules for ADP and PIP will be very similar. Most of the differences will be in the approach to administration rather than in the regulations.

In terms of regulations the main policy differences are:

- **Terminal illness:** both PIP and ADP fast-track claims in cases of terminal illness. Unlike PIP the definition of terminal illness for ADP does not include a time limit.

- **Short term assistance (STA)** is available when someone asks for a redetermination or appeal after their benefit is reduced or stopped. This doesn't exist in reserved benefits.
- **Residence:** To qualify for PIP someone has to have been in the Common Travel Area¹ for at least 104 weeks out of the last 156. For ADP, the requirement will be 26 weeks out of the last 52.
- **Awards don't end automatically:** most PIP awards end after fixed term and a new application is needed. In contrast, ADP awards will continue until they are ended by, for example, a review or change of circumstance.

The differences in administration include:

- **Online applications.** DWP are starting to introduce online forms for PIP, but ADP will be available via online, paper or phone application from the start.
- **Application support.** Local delivery pre-claims support service and an independent advocacy service are available for ADP.
- **Use of supporting information.** ADP will make much greater use of pre-existing supporting information, including informal evidence from carers, friends and families.
- **Reduction in face to face assessments.** In PIP a face to face assessment is the norm. In ADP it will be the exception. In ADP suitably qualified 'practitioners' will be employed by Social Security Scotland to advise decision-makers and carry out 'consultations'. Practitioners will include those with expertise in mental health issues and learning disabilities.

Further details on differences are set out in the [Scottish Government's consultation paper](#).

While the rules are very similar the regulations are not 'cut and paste' from PIP. In particular some definitions have been expanded to include key decisions from the case law.

The annex to this paper gives a brief overview of the main rules in the [draft published on 1 October 2021](#).

Consultation

A public [consultation on draft regulations](#) ran from December 2020 to March 2021. SCoSS also engaged with stakeholders in its scrutiny of the regulations. An [analysis of consultation responses](#) and the [Scottish Government response were published in June](#). Changes made following consultation include:

- reducing the 'past presence' from 104 weeks out of the previous 156 weeks to 26 weeks out of the previous 52 weeks test was to the past presence test.

¹ UK, Ireland, Isle of Man and Channel Islands.

(This is the period that someone has to be in the country before they can claim ADP).

- the qualification and experience requirements for practitioners were strengthened so that the two years' work experience must be post-qualification.
- extending the time limit for requesting a re-determination of a decision made by Social Security Scotland from 31 to 42 calendar days.
- 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.
- ensuring that children and young people in receipt of the mobility component can continue to be paid the mobility component when in legal detention.

Petitions

There are two relevant current petitions. These are:

- PE1913: [Fast track future Adult Disability Payment applications for people undergoing cancer treatment](#). Wendy Swain. Published November 2021. [Submission from the Scottish Government](#) received 1 December.
- PE1854: [Review the adult disability payment eligibility criteria for people with mobility needs](#). Keith Park on behalf of MS Society. Published February 2021. Submissions have been received, including from DWP and Scottish Government. The Petitions Committee agreed on 27 November to keep the petition open and seek further views. The [petitioner's view](#) is that the '20m rule' should be changed: "at the earliest opportunity rather than put it off until a later date."

SCoSS Report

SCoSS [published their report on 15 October](#). The Scottish Government will respond when the regulations are laid. This is expected shortly. SCoSS made 24 recommendations and two observations. The report divides the recommendations into four categories:

Policy change from PIP – covering terminal illness rules, residence conditions and short term assistance. Issues raised include;

- Possible confusion due to different terminal illness rules for DWP benefits (ESA, Universal Credit) compared to Social Security Scotland benefits (CDP, ADP).
- The impact of STA on the appeals system and recommending that young people who get CDP should be able to get short terms assistance if they want to get a redetermination or appeal their application for ADP

Operational and administrative processes – including the approach to gathering evidence and consultations. Issues raised included:

- The importance of supporting people to make applications
- Creating a learning system of continuous improvement – through administrative data and lived experience
- Practitioners’ qualifications and experience should be clearly communicated to clients.
- Suspending someone’s benefit should be ‘very much the exception.’ If someone doesn’t supply information their benefits can be suspended. (This issue is also covered in SCoSS report on the draft [SCP and CDP Miscellaneous Regulations](#) laid on 29 November and due to be considered by the Committee in January).

Eligibility rules – including definitions of key terms, and issues for the independent review. SCoSS accepts that most eligibility rules can’t change immediately:

“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.”

However, they discuss the proposed independent review and recommend that the Scottish Government should start now in considering the options for change after 2023. They note that interaction with the reserved system and local authority payments may limit these options if changes would result in ADP and PIP not being considered to be equivalent benefits. SCoSS also briefly discuss the UK Government’s health and disability green paper noting that it has ‘significant implications’ for the devolved system.

Areas for clarification – covering more technical points. These include:

- the difficulty of incorporating case law into the regulations
- some changes to definitions of key terms are needed in order to better reflect PIP and improve consistency across the regulations.
- the drafting of some provisions could be simplified.
- residence conditions need to be checked to ensure they fully reflect the policy intent.
- some aspects around ADP for those of pension age need to be clarified – eg. how reviews after pension age will affect entitlement to the mobility component
- how to ensure a smooth process for young people getting CDP when they apply for ADP.

Independent review

The consultation paper on ADP included a commitment to an independent review of ADP in 2023 – a year after launch. In their report SCoSS comment that:

“the planned review of disability assistance in 2023 will be an important opportunity to consider what further improvements might be desirable or feasible once the initial transition has been completed.”

Safe and secure transition means that ADP will not, at least initially, include changes to eligibility that many stakeholders have requested. Major issues raised by stakeholders over a number of years include:

- The ‘20m rule’: PIP has a higher threshold for the higher rate mobility payment compared to DLA
- The ‘50% rule’: the requirement that a descriptor is met on 50% of the days of the month.

As discussed by SCoSS in their report, interaction between different benefits may limit the scope for change. They recommend that work starts now on options for change.

In a [letter](#) to Pam Duncan-Glancy, MsSP, the Cabinet Secretary is clear that the Scottish Government will not pre-empt any of the review’s recommendations.

“To ensure the review is genuinely independent, I do not believe it is right for the Scottish Government to pre-empt what the recommendations should be by committing to reforms before it has begun.”

Suggested Themes for Discussion

The following suggests six themes for discussion with Panel 1 and four themes with Panel 2.

Panel 1: Draft regulations and SCoSS Report

Theme 1: Mirroring PIP

The regulations are intended to mirror PIP in most respects. However, witnesses have highlighted some areas where the drafting doesn’t meet this policy intention. Examples in the SCoSS report and CPAG submission include:

- Some aspects of residence and presence conditions (See CPAG submission and SCoSS report recommendation 18). CPAG note that the ADP regulations are in some aspects more generous than PIP and in others less generous, but it is not clear whether this is intended.

- CPAG suggest that the definition of “to an acceptable standard” (regulation 7(4)(b)) should be brought into line with current caselaw by adding the level of pain that an individual experiences as a consideration.
- Various phrases in the descriptors differ from PIP (See SCoSS recommendation 11 on “any journey at all” and recommendation 12 on “managing therapy”. See CPAG submission p. 4 referring to definitions of ‘assistance’, ‘follow the route of a journey’, ‘prompting’ and the length of time therapy takes)
- In some cases, if an award is increased, the starting date for the increase is less generous than PIP (See CPAG submission on Determination following change of circumstances re: regulations 49(a)).

Members may wish to discuss:

1. Where the detail of the regulations differs from PIP – is this always to the benefit of the claimant?
2. In which areas do the draft regulations need to be amended in order to meet the Scottish Government’s stated policy intentions?
3. Are there areas where the policy intention itself is unclear?

Theme 2: Short Term Assistance

Short term assistance (STA) doesn’t exist in the reserved system. It will be available when someone challenges a reduction or cessation of their ADP. The Scottish Fiscal Commission estimate (albeit heavily caveated) that as many as 9 in 10 clients may ask for a redetermination.

SCoSS raises two issues on STA:

- The need to monitor STA and to ensure that, if there is a large number of redeterminations and appeals, this does impact on the quality and timeliness of decision making.
- Availability of STA to young people on CDP claiming ADP

The submission from CPAG raises a more technical point; suggesting that STA is not available after every type of tribunal decision. STA is not available if a decision “is quashed and readmitted after an appeal to the Upper Tribunal”.

Behavioural impact of STA

As SCoSS note, a 90% redetermination rate could have a significant impact. If people with no realistic chance of success are encouraged to request a

redetermination in order to access STA it is possible that this could slow down the system for those with substantive issues.

Moving from CDP to ADP

Young people who get Child Disability Payment (CDP) will need to apply for ADP – they will not be transferred (except in cases of terminal illness). SCoSS recommended that the Scottish Government set out how it will ensure a smooth change from CDP to ADP (Recommendation 24).

Young people will be able to apply for ADP from their 16th birthday but they can also continue to get CDP after their 18th birthday until the initial decision is made on their ADP application. However, at that point, their CDP will stop and if they want to challenge the ADP decision, they will not get STA. SCoSS recommend

“Recommendation 3: In order to avoid gaps in entitlement, regulations should ensure that Short-term Assistance is available to young people aged 18 or over who were on Child Disability Payment but whose initial determination in respect of ADP is that they have no or a reduced entitlement.”

In [response to a similar recommendation in relation to regulations on CDP the Scottish Government](#) argued that:

“If Short Term Assistance were extended to CDP clients who apply for ADP the Scottish Government would potentially be treating those clients more favourably than all other clients who apply for ADP.”

The Committee considered this issue on [28 October](#) in relation to the CDP rules, the Minister said:

“If we were to extend the scope of such assistance to cover those transitioning between CDP and ADP, that would represent a fundamental departure from the policy intent of short-term assistance. As I have said, the transition from CDP to ADP has been designed to be as easy as possible for clients and their families, and we do not envisage short-term assistance being a significant consideration in that process. However, we will monitor the process on an on-going basis to understand whether and how further support can be provided to clients.”

On theme 2: STA - members may wish to discuss:

1. Do witnesses think that STA will result in very high number of redeterminations and appeals?
2. If so, is there capacity in the system to ensure decisions remain timely and of high quality? What kind of data needs to be collected to ensure this is monitored?
3. Should STA be available to young people moving from CDP to ADP?

4. **If so, should the regulations be amended now, before ADP starts, or is it sufficient to monitor and review clients' experiences before making a decision about whether to amend the rules?**
5. **Do witnesses agree with the Minister's comments to Committee that "we do not envisage short-term assistance being a significant consideration in that process" (i.e the move from CDP to ADP)**

Theme 3: Terminal Illness

A major difference between Scottish disability assistance and DWP benefits is the approach to fast tracking claims in cases of terminal illness. This was discussed at length during the passage of the Social Security (Scotland) Act 2018 and the Scottish rules are already in place for Child Disability Payment (CDP). [Guidance for clinicians](#) has been published.

The DWP rules on terminal illness claims will still apply in Scotland for people claiming Universal Credit, ESA and PIP. SCoSS point out that this has potential for confusion for clinicians, claimants, DWP and Social Security Scotland staff.

SCoSS recommend that the Scottish Government set out how it will create and sustain a seamless system for terminally ill people. (Recommendation 1).

On theme 3, terminal illness - members may wish to discuss:

1. **What is the scope for confusion between DWP and Social Security Scotland rules on terminal illness and what impact could it have?**
2. **What is the best way to avoid that confusion?**

Theme 4: Suspending payments

Payment of ADP can be suspended under regulation 38:

- where ADP is being paid to a third party and they are unable to continue to receive it or there is suspected financial abuse
- when someone fails to provide information that is needed to make a decision about their benefit. They are given 'at least 14 days' to provide that information (regulation 43)
- when someone requests that their ADP is temporarily stopped

Safeguards include that:

- Ministers must have regard to the individual's financial circumstances (regulation 38)

- There is a right to review which must be completed within 31 days (regulation 39)
- A person must be told why their benefit is suspended, and that they have a right to ask for a review (regulation 40)

SCoSS comment that:

“The aim must be to make sure that suspensions are very much the exception.” (SCoSS report p.26)

CPAG comment that:

“Under no circumstances should benefit be ended following suspension, without robust safeguarding procedures being carried out to ensure the ongoing safety and wellbeing of the individual.”

CPAG also state that 14 days is too short a time limit to provide information and recommend it should be eight weeks and longer if there is good reason for being late.

Similar [rules allowing suspension of Scottish Child Payment and Child Disability Payment](#) have been laid and are due to be considered by the Committee in the new year. As the principles underpinning the policy are similar, today’s discussion might be relevant to members’ consideration of both sets of regulations.

On theme 4, suspending payments, members may wish to discuss:

- 1. How should clients be supported if they fail to provide information?**
- 2. What should the minimum time limit be to provide information?**
- 3. Do the regulations provide adequate means to challenge the decision to suspend someone’s benefit?**
- 4. Are there different considerations that apply if the benefit being suspended is CDP or Scottish Child Payment – or are the basic principles about when it is acceptable to suspend payment the same across all benefits?**

Theme 5: Moving between PIP/DLA and ADP

People in Scotland will move from PIP or DLA to ADP as part of the transfer process. The regulations for this will be included in the next draft.

People also move between benefits if they move between Scotland and the rest of the UK. Rules for this are included in Part 15 of the current draft. The regulations allow:

- For transfer from PIP to ADP without needing a new application (regulation 58)
- To continue to get ADP for 13 weeks after moving to another UK country (regulation 59).

SCoSS point out that:

Observation 2 the ADP age rules as drafted may not permit transfer to ADP over pension age from PIP or DLA without requiring an application.

CPAG point out that:

“We would like to see clarity around what would happen if an individual claims PIP but moves to Scotland prior to a decision on the PIP claim being made.”

On theme 5, moving between PIP/DLA and ADP, members may wish to discuss:

- 1. Have witnesses had any engagement with the Scottish Government about transfer from PIP and DLA to ADP? What is their understanding of the policy – particularly for those over pension age?**
- 2. Given how common it is for people to move around the UK, are the rules for moving between PIP/DLA and ADP adequate?**

Theme 6: Future proofing

In their report SCoSS briefly discuss the [UK Government's green paper on disability and health](#). Whereas the Scottish Government is focusing on maintaining parity with PIP in order to achieve ‘safe and secure transfer’, the green paper raises the possibility of longer term changes to disability and health benefits which, if implemented, could result in divergence between Scottish and rUK benefits. A ‘white paper’ is expected in early 2022.²

SCoSS note that: “proposals may have indirect consequences that would apply in Scotland.” These include:

- Changing PIP descriptors in the short term could impact safe and secure transfer, and would “speed the divergence of case law”
- Challenges longer term if working-age health and disability benefits (UC, ESA and PIP) were combined into one benefit
- Would PIP and ADP be considered ‘like for like’ for passporting arrangements
- Delivery challenges on data sharing and IT if UK benefits were restructured

² [Work and Pensions Committee 15 September 2021](#)

- If spending on disability benefits in rUK reduced, this would affect the money transferred to Scotland

The outcome of the green paper could therefore impact on the Independent Review of ADP in 2023.

On theme 6, future proofing, members may wish to discuss:

- 1. Are there particular areas of developing case law which may lead to early amendment of these regulations?**
- 2. How might the UK Green Paper on health and disability affect ADP?**
- 3. How should the Scottish Government prepare for the independent review of ADP in 2023?**
- 4. What should be the scope and priorities for that review?**
- 5. To what extent might options for the independent review be constrained because of the way devolved and reserved benefits interact? How should this problem be addressed?**

Panel 2: Broader policy issues and independent review

Theme 1: Consultation and policy development

The Scottish Government has undertaken extensive consultation on its policy for disability assistance, through public consultation, experience panels, stakeholder and expert groups.

Members may wish to discuss:

- 1. How have witnesses been involved in consultation and policy development for ADP?**
- 2. Are witnesses content with the level of consultation ADP? Are there areas for improvement in its approach to consultation?**
- 3. Does the Scottish Government's approach to policy development of ADP reflect a human rights-based approach?**
- 4. What are their expectations for continuing involvement after ADP is launched?**

Theme 2: Eligibility Criteria

Many stakeholders would like to see substantial changes to the design of ADP. This includes eligibility criteria – particularly the ‘20m rule’ (minimum walking distance to qualify for the higher mobility rate) and ‘50% rule’ (descriptors must be met on at least 50% of days). In a [letter to Pam Duncan-Glancy, \(5 November 2021\)](#), on the ‘20m rule’ the Cabinet Secretary stated that;

“I am firm in my view that changing the eligibility criteria now would risk the safe and secure transition of clients moving from Personal Independence Payment (PIP) to ADP, something no responsible Government would do.”

The main arguments made in the letter against immediate change are:

- It would require clients to be re-assessed rather than transferred which would “simply not be feasible” [...] “in the initial stages of delivery”.
- ADP needs to be treated as the equivalent of PIP in “passporting” to other benefits.

The MS Society’s submission (which focuses on the ‘20m rule’) argues that:

“we have no reason to believe there will be any issues with passported benefits [...] Even if passported benefits were to be impacted by the rule, it should not be out with the gift of two governments to come together and resolve any issues.”

SAMH and Inclusion Scotland also discuss the difficulties created by the 50% rule for people with fluctuating conditions.

Witnesses also suggest other changes to eligibility criteria. SAMH suggest that:

“interim measure to address the physical bias of the descriptors should include amending the Daily Living Activities descriptors to include direct reference to psychological distress. For example, an ‘inability to take nutrition due to psychological distress’ descriptor should be added to the taking nutrition daily activity”

ENABLE suggest that the following: “relatively minor amendments to the current regulations could see significant improvements for the people that we support”

- To amend the social engagement activity to include the ability to establish and maintain relationships. This would: “recognise the wider struggles that people who have a learning disability experience socialising”
- Amending the reading activity to read and act on “A narrow interpretation of the regulation as currently drafted could unfairly disadvantage people who have a learning disability by conflating the capacity to read with an assumed capacity to understand and appropriately act upon that information.”

Inclusion Scotland suggest that:

“the "Planning and Following a Journey" descriptors and scoring as set out in Schedule 1 are unfair to people with mental health issues and/or autism. At present someone who "Cannot undertake any journeys at all because it would cause overwhelming psychological distress." might only score 10 points meaning that they would not qualify for the Enhanced Mobility rate.”

Under theme 2, eligibility criteria, members may wish to discuss:

- 1. Do witnesses accept the Scottish Government’s argument that ‘safe and secure’ transfer means that major changes to eligibility should be left to the independent review?**
- 2. Do witnesses think that any of the above suggested changes could be implemented without risk to ‘safe and secure transfer’**

Theme 3: Independent review

While SAMH agree with maintaining PIP rules in the short term they would like more fundamental change in the longer term. They would like the review to consider:

“the retention of a points based system; the broad retention of PIP descriptors (albeit with minor amendment); and the 50% rule.”

The Scottish Campaign for the Right to Social Security (a coalition include several of today’s witnesses³) published [‘Beyond a safe and secure transfer: a long term vision for disability assistance in Scotland’](#) (2020) outlining their vision of disability assistance. Recommendations included:

- a fully independent and resourced review of disability assistance accountable to and co-produced with those currently entitled and those not entitled to disability assistance
- a human rights-based approach
- social security for disabled people that supports their right to independent living (including revising eligibility criteria and assessment processes)
- support that reflects the extra costs associated with an impairment

The Scottish Government has said that changes to eligibility (discussed under theme 1) can be considered as part of the Independent Review. However Inclusion Scotland notes that:

³ Members includes the ALLIANCE, Citizens Advice Scotland, Inclusion Scotland, the Child Poverty Action Group in Scotland, National Association of Welfare Rights Advisers (NAWRA), Scottish Council for Voluntary Organisations (SCVO), One Parent Families Scotland (OPFS), MS Society Scotland and the Scottish Independent Advocacy Alliance (SIAA).

“some of the reasons provided for retaining the status quo would apply equally at the time of any independent review thus constraining the opportunity for a radical change in approach.”

The Scottish Fiscal Commission have forecast that the current design of ADP will cost £527m more in 2026-27 than if PIP had continued, although they stress that their forecast is highly uncertain. Widening eligibility will likely increase costs, as would better reflecting the extra costs of disability.

Under theme 3, independent review, members may wish to discuss:

- 1. What are witnesses expectations of the Independent Review in terms of scope, remit and working practices?**
- 2. In what ways might options be limited – by for example, interaction with the reserved system or the potential cost of changes?**
- 3. What preparatory work should start now for the review?**
- 4. How long do witnesses expect the review will take and over what period do they expect recommendations to be implemented?**

Theme 4: Process of applying for ADP

Although the eligibility criteria are not changing, the Scottish Government argue that:

“We are confident that experience of this criteria will be improved with many of the adjustments we have made, along with improved processes and guidance for case managers.” (Scottish Government response to consultation).

One of the major changes is the move away from assessments. Practitioners will carry out consultations and provide advice to decision-makers. Practitioners are required to have ‘at least two years post qualification work experience in health or social care.’

Inclusion Scotland is concerned that this is not enough, saying:

“Many social care workers have minimal qualifications and work in social care settings where professional development training is minimal.”

This theme was raised in the public consultation on ADP and led to an increase in requirements from ‘two years experience’ to ‘two years post-qualification experience.’ The [Scottish Government response to the consultation](#) stated:

“The respondents concerns regarding the experience required to undertake consultations appear to relate to the negative impacts of how DWP assessments are carried out. In particular, they relate to not being heard, listened to, or believed by an assessor. We are making a number of

changes to how decisions are made on an application which are aimed at directly addressing these concerns.”

The response then referred to:

- Consultations will not be a standard length
- Practitioners will be employed by Social Security Scotland, and their role is different to that of a DWP assessor
- Clients with mental health or learning disabilities will be assessed by a practitioner with relevant experience
- Training will be provided on the terminal illness rules to practitioners and case managers

Under theme 4, process for applying for ADP, members may wish to discuss:

- 1. Do witnesses think that, despite many rules remaining the same, the experience of ADP will be an improvement on PIP?**
- 2. Are there any particular ‘weak spots’ in the proposed arrangements for ADP that will need careful monitoring to ensure client’s experiences are positive?**
- 3. What are witnesses’ views on the level of experience and training required by the practitioners who will conduct consultations [assessments]?**
- 4. What are witnesses’ view on the scope for recruitment of suitably qualified people?**

Camilla Kidner, Senior Researcher, SPICe Research

11 December 2021

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Annex: Overview of the regulations

The following gives a brief overview of the main rules in the [draft published on 1 October 2021](#). This is not a comprehensive description of the rules. The Disability Assistance for Working Age People (Scotland) Regulations run to 49 pages containing 65 regulations and two schedules.

Gaps

Regulations to be included in later drafts are:

- location of pilot areas (Schedule 2, Part 2)
- transfer from DLA/PIP to ADP (Schedule 2, Part 3)
- consequential amendments (Schedule 2, Part 4)

Part 1 interpretation: defines key terms including: “aid or appliance,” “care home”, “medical treatment”.

Part 2 basic eligibility: including that someone cannot get DLA, PIP, AA, CDP or armed forces independent payment at the same time as ADP.

Parts 3, 4, 5 and Schedule 1 scoring for mobility and daily living: Sets out entitlement to mobility and daily living components based on the descriptors, points and interpretation that are set out in in Schedule 1. Part 3 includes some key rules from PIP:

- activities must be done safely, to an acceptable standard, repeatedly and within a reasonable time period (regulation 7).
- someone’s condition must have existed for 13 weeks and be expected to last a further 39 weeks (the ‘required period’ regulation 10(3)).
- descriptors must be satisfied for 50% of days in the required period (regulation 10(1))

Part 5 residence and presence:

In order to qualify for ADP a person must:

- be ordinarily resident in Scotland and habitually resident in the common travel area⁴ (regulation 15)
- have been in the common travel area for at least 52 weeks out of the previous 104 weeks (regulation 15) (the ‘past presence test’)
- not be subject to immigration control – for example, those with no recourse to public funds are excluded from claiming (regulation 15)

There are some exceptions. For example the ‘past presence test’ doesn’t apply to refugees (regulation 21), people who are terminally ill (regulation 15) and EEA citizens in Scotland who are protected by the EU [Withdrawal Agreement](#)⁵ (regulation 19).

⁴ UK, Ireland, Channel Islands, Isle of Man

⁵ In very broad terms – people who moved between UK and EU state before end December 2020.

In some limited cases it is possible to get ADP while abroad. For example;

- Temporary absence up to 13 weeks (or up to 26 weeks for medical treatment) (regulation 16)
- People protected by the withdrawal agreement who live abroad can get ADP daily living if they have a strong link to Scotland (regulation 20)
- People in the armed forces, civil servants and their families and certain people working abroad can get ADP even though they are not in Scotland (regulations 17 and 18)

Part 6 Age rules

ADP is for people aged between 16 and pension age (regulation 22). If someone has ADP before they reach pension age, they can continue to get it after pension age (regulation 23).

If someone has the mobility component before pension age that can continue, but its not possible to increase it, or add it in after pension age. (regulation 25)

Part 7 Terminal illness (regulation 27)

Someone who is terminally ill is entitled to the enhanced rate of daily living and mobility components.

Someone is terminally ill if it is the clinical judgement of a medical practitioner or registered nurse involved in the diagnosis or care of the individual, that the person has a progressive disease that can reasonably be expected to cause their death.

The health professional must have regard to the [Chief Medical Officer's guidance](#).

Part 8: Time in care homes, hospital and legal detention

ADP daily living payments reduce to £0 after 28 days in:

- a care home, if publicly funded (regulation 27).
- legal detention, if the person is aged 16 or 17 (regulation 30)

If someone is over 18, then both components of ADP stop being paid after 28 days in hospital (regulation 28) or legal detention (regulation 30).

These rules don't apply if someone is in a hospice and terminally ill (regulation 29).

Part 9: Applications and payment - including suspension of benefit

Amount and frequency: ADP is paid 4 weekly in arrears unless someone is terminally ill, when it is paid weekly in advance (regulation 36).

The rates paid are set out in regulation 34. This draft has the 2021-22 rates which will be updated in the final draft.

Making applications and power to suspend or change payments

Applications are treated as made on the day they are received, or within 13 weeks of that date, if that would help someone meet the eligibility criteria (regulation 35).

Entitlement begins from when basic information (name and date of birth) is provided, so long as a full application is completed within 8 weeks (regulation 35).

ADP is reviewed after a period or can be awarded for an indefinite period (regulation 37).

ADP can be suspended if:

- information is requested by Ministers in order to decide an award but that information is not provided within at least 14 days (see [s.54\(1\)A 2018 Act](#)) (regulation 38 read with regulation 43)
- someone else is getting the payments on the client's behalf and the client is at risk of financial abuse
- the client has asked for payments to stop

When deciding whether to suspend payment, Ministers must have regard to a person's financial circumstances (regulation 38) and claimant has a right to ask for a review (regulation 39).

Deductions from ADP can be made to repay overpayments (regulation 44).

In general, if there is a change of circumstances that affects the level of payment, then;

- increases take effect from when the change happens (so long as notified within a month or within 13 months if there's good reason for being late). (regulation 45)
- decreases take effect from when the determination (decision) about the change happens (regulations 46).

So in general, decreases are applied later than increases.

Part 10: Qualifications and experience to carry out an assessment

To carry out an assessment (consultation), a practitioner must have at least two years post-qualification experience in health or social care, including learning disabilities and mental health conditions where relevant. (regulation 47)

Part 11, 14, 15: Determinations without application

There are several circumstances when the amount of ADP can be altered without requiring an application. One example is where there is a change of circumstances.

Part 12: Period for redetermination

If someone is unhappy with the decision on their ADP award they have 42 days to ask for it to be looked at again (redetermination). Ministers then have 56 days to complete that redetermination. (Regulation 53).

Part 13: Vehicles (i.e motability)

The enhanced rate of the mobility component can be used to lease motability vehicles (regulation 54).

Part 14: Transfer from CDP to ADP In cases of terminal illness, a young person in receipt of CDP will get an award of ADP at age 18 without having to make an application (regulation 57).

Part 15: Movement around United Kingdom

If a person who gets PIP moves to Scotland then they will be transferred to ADP without having to make an application (regulation 58)

If someone moves from Scotland to elsewhere in the UK they can continue to get ADP for 13 weeks (regulation 59)

Parts 16 and 17- not included in this draft. Covers location of the pilot and transfer arrangements from PIP/DLA to ADP.

Part 18 and Schedule 2: Short term assistance

If someone wants to challenge a change to their ADP then they can get short term assistance (STA) while a redetermination or appeal takes place. Entitlement begins when the request for redetermination is made or notice of appeal given. (Sch 2, para 1)

STA 'tops up' ADP to what it was before it was reduced or ended. (Sch 2, para 2). If a payment for motability or a deduction for an overpayment was being made under the ADP award, then these continue under STA (Sch 2 para 2).

Entitlement to STA ends when the redetermination decision is made, when the appeal is decided, when permission for onward appeal is refused or the individual withdraws their appeal.

STA doesn't have to be repaid. However, to avoid double payments, it's not possible to get STA and a backdated award for the same period.