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Social Justice and Social Security Committee

18th Meeting, 2022 (Session 6), Thursday, 9 June

Case transfer regulations: DLA to ADP

Introduction

This paper updates the briefing provided for the last meeting to take account of the discussion with SCoSS on [26 May 2022](#).

The draft [Disability Assistance for Working Age People \(Transitional Provisions and Miscellaneous Amendment\) \(Scotland\) Regulations 2022](#) were laid in the Parliament on 6 May along with [impact assessments, a policy note](#) and the [Scottish Government's response to the SCoSS report](#).

These regulations deal with the transfer from DLA to ADP for adults of working age and those who have reached pension age since April 2013 (when PIP was introduced).

In Part 4, the regulations also make miscellaneous amendments to the regulations for ADP and CDP. When SCoSS appeared before the Committee on 26 May they had yet to consider these in detail.

Background

Adult Disability Payment (ADP) started in March in three local authority areas. Other local authorities are being added in phases before national roll-out at the end of August. People currently getting Personal Independence Payment (PIP) and adult Disability Living Allowance (DLA) will be transferred to Social Security Scotland starting from the end of August. This process is expected to take several years to complete.

There are four different transfer groups. These regulations deal with the second group:

1. **PIP to ADP.** Provision for this was included in the [main ADP regulations](#) and considered by the Committee on [27 January 2022](#).
2. **'Working age' DLA to ADP 'natural migration'** is covered by these regulations i.e., people who choose to move to ADP or who would otherwise be invited to claim PIP because they have a review or change of circumstances or their award ends.
3. **'Working age' DLA 'managed migration'**. Further regulations may be needed for people still on DLA after natural migration has completed. i.e people whose condition hasn't changed and who don't choose to move. The Scottish Government response to SCoSS stated: "We are still considering whether the managed case transfer for remaining Working Age Disability Living Allowance awards should be to Adult Disability Payment or whether these should move to Social Security Scotland but also remain on Disability Living Allowance." The SCoSS report noted that this managed migration won't start until at least 2024.
4. **'Pension age' DLA.** (i.e those who were of pension age in April 2013). The [Policy Note](#) stated that this group will stay on DLA but management of their case will transfer to Social Security Scotland.

Two stage process

People will be moved from DLA to ADP in a two-stage process. A temporary award of ADP is made at the same level as the DLA award. This is followed by a review within 12 months at which point the amount of award could change. SCoSS note that:

"The two-stage process is intended to lessen the Social Security Scotland delivery challenge that would result if each case were reviewed at the point of migration."

SCoSS also observe that a two-stage process is the best solution of the policy options available.

"This seems to us to be the better of the options available, albeit that the process will remain complex and potentially confusing."

Previous Committee consideration

The Committee held a session with the Minister on case transfer on [31 March](#). Issues discussed included:

- The support available – including signposting, 'local delivery services' and advocacy
- Awards being reduced after review – the Scottish Government expects this will be less frequent than in DLA to PIP transfers (The SFC estimated that the disallowance rate at award review will decrease from 19.5 per cent to 5.4 per cent.)

- The different approach in ADP reviews compared to PIP

On 26 May the Committee heard from SCoSS, who summarised key issues from their report.

What the regulations do

The following summarises key provisions in the regulations. It is not a comprehensive description. The regulations are explained more fully in the Policy Note.

Transfer to ADP (Part 2. Regulations 3 to 11)

Notification (regulation 3 and 4) Scottish Ministers will notify individuals that they will be transferred to ADP, setting out the period during which the transfer will happen (regulation 3) although that can be extended (regulation 4).

Once the transfer is complete, the client will be sent another notice, giving the start date for their ADP award (regulation 3).

Transfer determination (regulation 4) At the point of transfer, the ADP award is made based on information provided by DWP case records and any other relevant information.

Same level of award (regulations 4 to 6) At the point of transfer the client will get the same amount of benefit in ADP that they got in DLA. To this end, clients who get the lowest rate of the DLA care component will get a transitional lower rate of ADP daily living (regulation 5). This transitional rate is needed because there are two 'daily living' components in ADP but there are three 'care components' in DLA.

Terminal illness (regulation 9). In cases of terminal illness the client will be moved to the maximum levels of ADP regardless of what rate of DLA they were getting (regulation 9). Unlike other clients they will not have their award reviewed within 12 months (regulation 3).

Redetermination (regulation 8). If clients think the transfer decision is in-correct they can ask for a redetermination. A client has 42 days to ask for this and Social Security Scotland have up to 182 days to complete that redetermination.

Appointees (regulation 11). Appointees made under the DWP system can continue but Social Security Scotland must consider making an appointment under ADP rules "as soon as reasonably practicable" after transfer.

Post-transfer Review (Part 3. Regulations 12 to 16)

Within 12 months of transferring, a client's ADP claim is reviewed under the ADP rules (regulation 12). This will include considering any 'change of circumstance' that hasn't already been taken into account in the DLA award (regulation 14).

For these transfer reviews there are no restrictions on awarding the mobility component to people over pension age.

There is no review required in cases of terminal illness or where clients have requested a redetermination or appeal of the transfer decision (regulation 12).

Following review:

- any increase in award takes effect from the date the client transferred from DLA to ADP (regulation 15)
- any decrease in award takes effect from the date review decision is made (regulation 16)

Miscellaneous Amendments (Part 4. Regulations 17 to 19)

The regulations in Part 4 include:

- ensuring that people over pension age can transfer to ADP (regulation 19)
- taking account of DWP payments sometimes being on a different payment schedule to ADP/CDP (regulation 18 for CDP, regulation 19 for ADP)
- In some cases, such as where there is an outstanding appeal, the amount of DLA could change after an individual has transferred to ADP. These regulations provide for Social Security Scotland to make a 'determination without application' in these cases to change the amount of ADP. (regulation 19) (There is already similar provision for people moving from PIP)
- When an individual moves from CDP to ADP and is awarded a higher amount of ADP they get that higher amount backdated. These amendments provide that this backdated payment is reduced by the amount of CDP already paid for the same period. (regulation 19) i.e it avoids double payments.
- Similarly, any backdated payment of disability assistance is 'offset' by the amount of any short term assistance received for the same period. If the CDP is the same or less than the STA then the disability assistance will be set at £0 for that period so that no overpayments are created. (regulation 18 for CDP, regulation 19 for ADP)

SCoSS report and Scottish Government Response

[SCoSS reported on 23 March](#) making eight recommendations all of which were accepted by the [Scottish Government in its response](#) (laid in the Parliament on 6 May). There were two types of recommendation – those recommending specific changes to the regulations and those asking for further explanation.

Managed migration plans – recommendation 1

SCoSS asked the Scottish Government to set out their plans for managed migration. In reply the Scottish Government said these were still being finalised. It may involve

moving to ADP or else staying on DLA but managed by Social Security Scotland. Further regulations would be introduced 'in due course'.

Transitional rate – recommendation 2, 3.

A 'transitional rate' of ADP is introduced to ensure that people who get the lower care component of DLA can get the same amount when they transfer to ADP. SCoSS were concerned to make it clear that this was transitional, noting that: "no one will ever be awarded it outside this transitional context". The report is also concerned to ensure that it will be treated as ADP in other legislation – particularly for the purposes of passporting entitlements.

In reply, the Scottish Government re-drafted the relevant provisions for clarity.

Backdating – recommendation 4

SCoSS asked for an explanation why "an increase in award flowing from a change of circumstances is only backdated to the start of the ADP claim and not to the date when the change of circumstances was reported to the DWP."

In reply the Scottish Government noted there is no way for them to review a DLA award. They are transferred on a 'like for like' basis and then reviewed. Increases are backdated to the date of transfer, decreases to the date of review decision.

Reduced or no award following review – recommendation 5, 6,7

SCoSS were concerned about people whose awards get reduced in the post-transfer review. They noted that:

"individuals' inevitable disappointment could be all the greater because of the emphasis that has been placed on developing a 'better' approach to social security under devolution."

The report discusses options for transitional protection and the need for support and tailored communication and advice.

They ask the Scottish Government about how they will support people and whether they would consider a 'no-one worse off' principle.

In reply the Scottish Government noted the availability of Short Term Assistance during redetermination and appeal. They are also considering:

"ways in which we can support clients who lose the enhanced mobility component and are part of the Accessible Vehicle Equipment Scheme."

The SCoSS report also notes complex interactions with reserved benefits. In particular people over pension age who lose entitlement to ADP may be entitled to Attendance Allowance – even while receiving Short Term Assistance because they are appealing the ADP decision. If they are then awarded ADP on appeal, they wouldn't be able to receive it if they had since been awarded Attendance Allowance.

In reply, the Scottish Government said: “we are considering ways we could work with the DWP to make this process (applying for Attendance Allowance) more straightforward.”

Support and communication – recommendation 8

The report discusses the complexities involved in transferring from DLA to ADP, saying: “There is a general need for anyone affected by the DLA-ADP transfer process to understand what is happening and why.” For example, people will need to have enough information to:

- Know what information to provide to Social Security Scotland
- Realise their initial award is temporary and could change at the post-transfer review
- Decide whether to volunteer to move to ADP or wait to be moved
- New claimants will need to know that the lowest rate daily living component is only for people moving from DLA

The report states:

“Multiple stakeholders who provided views to SCoSS on the draft Regulations stressed the importance of clear (including easy-read) communication and, if necessary, advocacy to ensure that transferring individuals know what to expect and what is required of them at every stage of the process”

In reply, the Scottish Government says they are:

“in the process of finalising a clear communications plan.” [...] “While Social Security Scotland cannot advise clients on their individual circumstances, we will clearly explain the differences between Disability Living Allowance and Adult Disability Payment. We will also signpost people to third sector organisations for independent advice and support and we will refer people to the advocacy service.”

Suggested themes for discussion

Theme 1: Support and communication

SCoSS note the complexity of the transfer process and stress the need for clear communications and support.

There are around 44,000 ‘working age’ people on DLA. Their case records are paper based and, SCoSS notes, at least nine years old. They have not had a change of circumstances since 2013 that would have triggered a move to PIP. All are on indefinite awards and many will not have engaged with DWP for some time.

(See: [Data Protection Impact Assessment and Business and Regulatory Impact Assessment](#)).

The most common ‘main disabling conditions’ for this client group are learning difficulties, mental health issues and arthritis (StatXplore).

Social Security Scotland’s local delivery service will be able to provide information and help people fill in forms. People will also have access to independent advocacy and will be signposted to advice agencies.

At the meeting on 26 May SCoSS emphasised again the importance of communication and support to help people through the case transfer process. Dr Mark Simpson said:

“there’s no getting away from the fact that this is going to be complex. People are going to be confused about what’s going on. There’s a challenge of trying to make people aware that they might be better off on ADP, [and]. of ensuring people understand that their initial award is temporary. [...] For the first time in its existence [Social Security Scotland] is facing the prospect of having to reduce or terminating significant numbers of existing awards.” (Committee 26 May, Col 21).

In reply to the SCoSS report the Scottish Government said they are: “in the process of finalising a clear communications plan.”

Members may wish to discuss:

- 1. Can the Minister expand on the plans for tailored communication and support for those transferring from DLA to ADP?**
- 2. How will people be helped to decide whether they would be better off volunteering to move to ADP?**
- 3. How are Social Security Scotland and DWP working together to ensure that clients get consistent communications from both agencies?**

Theme 2: Transitional Protection

The SCoSS report discusses options for providing some form of transitional protection for people who get a lower award following the post-transfer review.

While noting that these are political decisions SCoSS set out some options:

- Stay on the award made at point of transfer until completion of the independent review of ADP
- Stay on Short Term Assistance until the independent review completes
- Mirror provisions in Northern Ireland where anyone getting a lower PIP award after moving from DLA gets a payment equivalent to 75% of the loss for one year.

- Continue to provide a payment equivalent to their DLA award, but ‘freeze’ it so annual uprating is not applied. (Similar to transitional protection under Universal Credit managed migration)

If someone’s award is reduced then Short Term Assistance will be available during any redetermination or appeal. In addition, the Equality Impact Assessment states that the Scottish Government is considering replicating DWP measures for people who lose their motability vehicle:

“At present, individuals receiving Disability Living Allowance with a vehicle from the Motability scheme have access to a transitional support payment in the event of losing their entitlement following reassessment from Disability Living Allowance to Personal Independence Payment. To maintain the same level of protection we are looking at ways in which we can offer an equivalent payment following a review under Adult Disability Payment rules” (EQIA)

At the meeting on 26 May, Mark Simpson told the Committee that any option for transitional protection immediately adds complexity and cost. Any transitional protection could end up just deferring reductions. He set out that although that may not be a bad thing, on the other hand it may also increase the shock when the loss finally occurs (Committee 26 May, Cols 24-25).

One option SCoSS set out is to freeze the award at point of transfer, so its value would erode over time. That allows for a more gradual adjustment to the reduction of income. (Committee 26 May, Col 25)

Dr Simpson said that SCoSS hadn’t done detailed feasibility work on these options and “it would be naive to suppose that there wouldn’t be challenges associated with them.” (Committee 26 May, Col 25).

Members may wish to discuss:

- 4. Can the Minister update the Committee on plans to protect people’s entitlement to motability following the post-transfer review?**
- 5. To what extent was further transitional protection explored? Why was it rejected?**
- 6. Some of the options presented by SCoSS are linked to the independent review of ADP. Can the Minister provide any update on plans for that review?**

Theme 3: Backdating increases in awards

SCoSS recommendation 4 was: “The Scottish Government should explain why an increase in award flowing from a change of circumstances is only backdated to the start of the ADP claim and not to the date when the change of circumstances was reported to the DWP”.

In reply the Scottish Government said: “If someone on Working Age Disability Living Allowance reports a relevant change of circumstances, there is currently no way to review the person’s award to consider what the effect would be on their Disability Living Allowance award.” [and that] “Social Security Scotland] do not have the processes in place to consider someone’s entitlement to Disability Living Allowance.”

At the meeting on 26 May, Mark Simpson told the Committee that: “it was an issue we felt was worth exploring but we don’t necessarily take a view on what the right decision is.”

He summarised arguments for and against further backdating:

“when it comes to backdating awards these are slightly unusual circumstances. First of all the individuals affected are moving from one agency to another [...] it’s also unusual in that for the past two years DWP has effectively suspended migration of DLA claimants in Scotland onto PIP at the request of the Scottish Government. It’s possible that some people may have missed out on higher awards as a result. For that reason there’s a potential case in favour of backdating awards as far as you can. The case against is that Social Security Scotland are only taking on responsibility at a certain point in time. [...] the individuals could have requested a transfer to PIP if they thought they were going to be better off. (Committee 26 May, Col 26).

The rules are different for people transferring from PIP. If people are transferring from PIP to ADP, then any increase flowing from a change of circumstances can be backdated further – potentially to before the transfer to ADP. (See [paragraph 12\(4\)a of Schedule 2 to the Disability Assistance for Working Age People \(Scotland\) Regulations 2022](#))

Members may wish to discuss:

- 7. In the case of DLA to ADP are there particular difficulties which prevent backdating to before the transfer took place?**
- 8. Has the Scottish Government estimated the likely financial impact of this reduced ability to backdate?**
- 9. Does the Scottish Government consider that there is a difference in treatment in the extent of backdating available to people transferring from DLA compared to those transferring from PIP? If so have they considered any mitigation measures?**

Theme 4: Monitoring and evaluation

The [EQIA](#) sets out plans for monitoring and evaluation. This includes on-going engagement with stakeholders as well as a case transfer evaluation project. This is one of four thematic evaluation projects on disability assistance implementation.

“Within the case transfer evaluation project, we will explore the journey and outcomes for individuals transferring from Working Age Disability Living Allowance to Adult Disability Payment, given the differing entitlement rules

and award components. Given the on-going nature of the case transfer process, we will ensure that projects are planned and timetabled carefully to allow for relevant learning to be incorporated into the transfer process in the shorter term, but also allow for interaction with parallel projects that may have longer timescales, in order to ensure we have an overall picture of the full case transfer process.” (EQIA).

Members may wish to discuss:

- 10. Can the Minister update the Committee on arrangements for monitoring and evaluating case transfer from DLA to ADP? When will the first results be published?**
- 11. In what ways will the Scottish Government evaluate the case transfer communications strategy?**
- 12. Will statistics be published breaking down which elements of clients’ awards change following the post-transfer review? (I.e will it be transparent how many people are losing or gaining from the move).**

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26 May 2022