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Social Justice and Social Security Committee

**25th Meeting, 2023 (Session 6), Thursday,
26 October**

Disability Assistance Amendment Regulations

Introduction

The [draft Disability Assistance \(Miscellaneous Amendment\) \(Scotland\) Regulations 2023](#) were laid on 11 September 2023.

This paper summarises the main changes made by these regulations, recommendations from the Scottish Commission on Social Security and Scottish Government's response before suggesting possible themes for discussion with the Cabinet Secretary.

The Committee will hear from:

- Shirley-Anne Somerville, Cabinet Secretary for Social Justice
- Oliver Wain, Policy Manager, Disability Benefits Policy, Social Security Directorate and
- Madeleine Macphail, Solicitor.

What the regulations do

These regulations make a number of technical changes aimed principally at:

- Smoothing the process for young people moving from Child Disability Payment (CDP) to Adult Disability Payment (ADP)
- Smoothing the process for people transferring from PIP and DLA to ADP

It also clarifies some issues around eligibility for Carer's Allowance and application of EU social security co-ordination rules (which can apply if someone moves between the UK and EU countries).

Moving from Child Disability Payment (CDP) to Adult Disability Payment (ADP)

Between the age of 16 and 18, young people getting CDP can apply for ADP.

Maximum age limit. The regulations narrow the circumstances in which young people can continue to get CDP after their 18th birthday.

Young people can stay on CDP until they turn 18. In very limited circumstances some young people can get CDP after their 18th birthday. This applies to those who

- are terminally ill
- are transferring from Disability Living Allowance (DLA)

At the moment, anyone who transfers across from DLA can continue to get CDP until their 19th birthday or until their application for ADP is decided – whichever comes earlier. These regulations narrow this so that it only applies to the early cohort of people moving from DLA to CDP i.e those who turn 18 before the end of 2023.

The regulations also allow some of these young people to continue to get CDP for a short period after their 19th birthday. Where someone's application for ADP is decided within four weeks of their 19th birthday they will get one more payment of CDP to prevent any gap between CDP ending and ADP starting.

SCoSS "welcome this measure which will prevent any gaps in entitlement" (SCoSS report p.10).

Same payment cycle for CDP and ADP The regulations align payment cycles so that when a young person moves from CDP to ADP they stay on the same payment cycle – for most people that is four weekly in arrears. The SCoSS report states that:

"the intent behind these regulations is welcome as changes to payment dates could be confusing and might create budgeting problems." (SCoSS report p.11)

SCoSS points out potential ambiguity in the provisions but has:

"received assurances from Scottish Government officials that these provisions will not create any gap in entitlement." (SCoSS report p.12).

Moving from DLA or PIP to ADP

Working-age people in Scotland who are getting PIP or DLA from the Department of Work and Pensions are being moved to ADP, administered by Social Security Scotland.

The transfer process takes around three months.

Some people may have a change of circumstances that either occurs during the transfer process or that they have told DWP about but hasn't been taken into account in their DLA or PIP award. The DWP should not take any action but pass the information to Social Security Scotland who then take it into account when they review ADP after the transfer has happened.

Some stakeholders told SCoSS that this process has not always worked as intended. ENABLE said that they have "a small number of cases that had been passed between DWP and Social Security Scotland with the claimant being unclear who should take responsibility for the review." (SCoSS report p.14).

Scottish Government officials told SCoSS that, in the period between an individual being selected for transfer and the making of a transfer determination, changes of circumstances should be reported to DWP.

In their report, SCoSS emphasised the importance of clear communication to DWP and Social Security Scotland staff on this issue.

The regulations also clarify the rules about when increases and decreases take effect following a review. This doesn't change policy but aims to make the regulations clearer. SCoSS "welcomes the additional clarity provided" (Observation 3).

Other clarifications

The regulations also clarify other matters without any changes of policy. This includes:

- Clarifying the application of EU social security co-ordination rules - to be entitled to CDP or ADP the UK must be the 'competent state' for payment of sickness benefits. This is a re-statement of the existing position.
- Clarifying that someone getting Carer's Allowance can continue to receive it abroad for more than four weeks if they are caring for someone getting certain rates of CDP or ADP.

Themes for discussion

Theme 1: Smoothing the move from CDP to ADP

The regulations are intended to ensure that when a young person who gets CDP applies for ADP:

- There are no gaps in payment
- They keep the same payment date

If a young person leaves it until quite close to their 18th birthday before they make an application for ADP, there is a risk that the CDP award could finish before the ADP application is decided.

In June, there were 3,935 young people aged 17 and 2,590 young people aged 18 getting CDP.

The Scottish Government told SCoSS that it is:

“monitoring and prioritising the small number of ADP applications that concern individuals in the final months of a CDP award in order to minimise the risk of a CDP award ending before entitlement to ADP is determined.” (SCoSS report p. 10)

In [July](#), it was taking Social Security Scotland around 88 working days on average to make decisions on ADP applications (around 4 to 4 ½ months).

General support during the move from CDP to ADP.

The Royal National Institute of Blind People in Scotland emphasised to SCoSS the need for “accessible, well informed and independent support and advice” [...] This is particularly important as the young person may be managing transitions in other areas of their life.”(SCoSS report p. 12).

On 16th November Social Security Scotland is holding a [stakeholder event](#) on the move from CDP to ADP.

Interaction of devolved and reserved systems.

SCoSS recommended that:

“Social Security Scotland should advise individuals transferring from CDP to ADP of the potential for additions to UK benefits payable to the individual, their parent or a carer to be affected. The Scottish Government should work closely with the DWP to explore the take-up of increased entitlements into the UK system can be maximised and how the risk of overpayment can be minimised where the move to ADP results in reduced entitlement in the UK system.”

The Scottish Government response included that:

“Social Security Scotland is also able to signpost to appropriate reserved benefits

[....]

To minimise risk of overpayments, letters to clients also include information applicable to clients receiving passported premia. This will ensure they are aware of the potential impacts of a Scottish award on their UK government awards and report such a change to the DWP accordingly if appropriate.

However, it is beyond the scope and capacity of Social Security Scotland to become a holistic provider of advice on reserved benefits.”

[...]

“Scottish Ministers have previously explored take-up of increased entitlement to the UK system in writing to the DWP on a number of occasions.”

Members may wish to discuss:

- 1. How are young people who get CDP being supported with their application for ADP?**
- 2. Is Social Security Scotland monitoring individual claims and offering tailored support as young people approach their 18th birthday?**
- 3. Will management information be able to link cases of CDP to applications for ADP in order to monitor how many young people on CDP move to ADP with no gap in payment? Will Social Security Scotland also monitor the number of individuals who get a different level of award on ADP than they had received under CDP?**
- 4. How can Social Security Scotland help young people and their families understand how other benefits and payments might change as they move from CDP to ADP?**

Theme 2: Transferring from DLA or PIP to ADP

DWP and Social Security Scotland are in the process of transferring clients from DLA and PIP to ADP.

The SCoSS report describes how the regulations clarify that:

“where an individual has been selected for transfer to ADP but then reports a relevant change of circumstances to the DWP before their transfer determination has been made, the DWP should not take any action on the basis of this information, but should pass it on to Social Security Scotland. Social Security Scotland then takes the information into account when making its subsequent review determination.”

The SCoSS report highlighted stakeholder comments that there could be some confusion about who to report a change of circumstances to, and by whom a review would be undertaken.

SCoSS recommended that clear guidance is provided to staff. In reply the Scottish Government said that information on where to report a change of circumstances was made clear at roadshow events, in FAQs and through online guidance at Social Security Scotland and mygov.scot. They said:

“we continue to work closely with the DWP to improve guidance where appropriate and ensure correct procedures are being followed when a change of circumstance is reported. We have also reviewed our internal guidance to improve the advice client advisers at Social Security Scotland are providing to people and reinforce the correct procedures.”

Social Security Scotland recently published [client insights report on case transfer](#). This highlights some confusion about how changes of circumstances were dealt with. One client, quoted in the report had said:

“I had a change of circumstances in Oct 22 with my PIP and sent everything down south, they did nothing about it because of the up-coming move to ADS therefore I had to do the change of circumstances again.”

[Social Security Scotland's guidance](#) states that, if a client reports a change in their condition to DWP during the transfer process:

DWP will not gather any information about the change in the client's condition. DWP will only tell us that the client has reported that their condition has changed.

Once the transfer is finished we'll:

- gather information about the client's change in condition
- review their Adult Disability Payment to make sure they are paid the right amount

Members may wish to discuss:

- 5. What is Social Security Scotland doing to ensure that clients and staff are clear about how 'changes of circumstance' are reported during the transfer process?**

Camilla Kidner
SPICe,
10 October 2023