

Social Justice and Social Security Committee
Thursday 16 May 2024
15th Meeting, 2024 (Session 6)

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An t-Ionad Fiosrachaidh

Disability Assistance for Older People (Scotland) Regulations 2024

Introduction

The [draft Disability Assistance for Older People \(Scotland\) Regulations 2024](#) were laid on 17 April 2024.

The Committee will hear from:

- Shirley-Anne Somerville, Cabinet Secretary for Social Justice
- Peter Bell, Policy Manager, Pension Age Disability Payment;
- Helen Speirs, Senior Policy Officer, Case Transfer;
- Daniel Blaikie, Solicitor, Scottish Government

Previous Consideration

Last week, the Committee heard from the Scottish Commission on Social Security (SCoSS), Age Scotland and Independent Age on these draft regulations. Witnesses were hopeful that the experience of applying for Pension Age Disability Payment (PADP) would be an improvement on applying for Attendance Allowance.

Issues discussed included:

- The need to review PADP two years after case transfer for its alignment with the social security principles and possibilities for change
- The potential for a mobility component to act as ‘preventative spend.’ Witnesses hoped that something could be done to support mobility – even if it wasn’t at the same level as provided in working age benefits.
- The importance of encouraging take-up, suggesting that working with other public agencies, such as local authorities, would help.

The [background paper for the evidence session on 9 May](#) includes a summary of the regulations and recommendations from SCoSS and the Disability and Carer Benefits Expert Advisory Group (DACBEAG).

Differences from Attendance Allowance

All the Social Security Scotland disability benefits, including PADP, have the following provisions which are different from DWP disability benefits. These are:

- Using the 'Scottish' definition of terminal illness which does not refer to a time period
- Shorter 'past presence' requirement' i.e. the time a person needs to be present in the common travel area before they can claim benefits
- Longer deadline to request a re-determination (42 calendar days compared to one month for Attendance Allowance)
- Providing for 'Short Term Assistance' (topping up benefit while a decision to reduce or remove it is being redetermined or appealed)
- On-going awards which means that there is no need to re-apply when the benefit is reviewed. (Although the Scottish Fiscal Commission notes that most awards for Attendance Allowance are indefinite awards rather than fixed term ([SFC forecasts December 2023, para A.56](#))).

In addition, the following operational differences are highlighted in the [Equality Impact Assessment](#) and [news release](#):

- A choice to make applications online, by phone or in writing
- A local delivery service to assist filling in applications
- Independent advocacy provided by VoiceAbility
- Helping clients to collect supporting information
- "a streamlined process for people to nominate a third-party representative" ([Scottish Government news release 19th April](#)).

Phased introduction and transfer

PADP will launch on 21 October 2024 in Argyll and Bute, Highland, Orkney, Aberdeen and Shetland. A further 13 local authorities will be added on 24 March 2025 with the remaining local authorities starting from 22 April 2025. People in Scotland currently in receipt of Attendance Allowance will be moved over to PADP. They do not have to do anything.

Costing

The Scottish Fiscal Commission has estimated that, by 2027-28, PADP will cost £87 million more per year than continuing with Attendance Allowance. This is mainly due to the cumulative effect of increased take-up. The Scottish Fiscal Commission describes its costing as 'highly uncertain.' The table below sets out the costing from December 2023.

Table 1: Policy costing for PADP

£ million	2024-25	2025-26	2026-27	2027-28	2028-29
Baseline	749	791	805	819	831
Additional spend	6	34	56	79	87
<i>Of which:</i>					
<i>Increase in approved applications</i>	2	26	35	45	52
<i>Average award increase</i>	4	8	12	16	17
<i>Terminal illness different</i>	0	0	8	18	19
Total PADP spend	755	824	861	897	918

Source: Scottish Fiscal Commission, Economic and Fiscal Forecasts December 2023.

Themes for discussion

Theme 1: Changes after case transfer

The Scottish Government's response to SCoSS states that:

“what we deliver on day one will not be the limit of our aspirations and we will review the benefit over time to make such improvements as are practicable and affordable in line with the Principles.”

As with other benefits, significant change to eligibility is ruled out until case transfer is complete. The [Policy Note to the regulations](#) states that: “We will complete case transfer as soon as possible.”

In September 2023, the [Fairer Scotland assessment for Carer Support Payment](#) stated that: “we remain on track to complete case transfer for all disability and carer benefits by the end of 2025.” The [Scottish Fiscal Commission's costings](#) in December 2023 assume case transfer will be completed by the end of 2025.

DACBEAG agreed that, until transfer is complete, PADP and Attendance Allowance should remain similar but:

“that should not inhibit consideration of improvements to Pension Age Disability Payment soon after.” ([Pension age disability payment: advice, August 2022](#))

However, even after transfer is completed, constraints remain, in particular:

- **Cost.**
- **Passporting:** Risk that the DWP would not recognise Scottish benefits for ‘passporting’ to additional entitlements in reserved benefits.

Cost

Current policy commitments mean that the Scottish Government is forecast to spend £1.5 billion above BGA by 2028-29 ([SFC December forecasts figure 5.8](#)). In other words, this is the additional money that the Scottish Government would need to find above the amount transferred for social security through the Block Grant Adjustment.

This figure would change if either UK or Scottish policy on disability benefits changed.

Passporting

On [10 March 2022](#), Andrew Latto (DWP) gave evidence to this Committee, saying that DWP would find a solution if Scottish benefits ‘veered away’ from their DWP equivalents. He described how the DWP would need to find a way to ensure people received the right amount of DWP benefit irrespective of Scottish Government social security policy:

“The whole point of devolving the disability benefits, however, is precisely that the Scottish Government can take a different path from the UK Government. From a DWP point of view, we provide reserved benefits to everybody in Great Britain, and we will need to find the people who get the premiums. If we cannot use a Scottish Government benefit to do that because it has veered away from the English and Welsh benefit, we will need to find another way of doing so. Whatever we provide to people in England and Wales, we have to provide to people in Scotland. We have to find a way of achieving that.”
([Committee Official Report 10 March, 2022 col 15-16](#))

Suggestions for change

Last week, witnesses suggested that PADP should be reviewed two years after case transfer, to explore possibilities for further change. They suggested that the following changes should be explored as part of that review.

- **Support with mobility** – even if it doesn’t exactly mirror the mobility component in working age benefits.
- **Higher rate for renal dialysis** during night and day – witnesses accepted that guidance was sufficient in the short term, but longer term the statutory position should be re-considered.
- **Six month qualifying period** – Debbie Horne (Independent Age) did not think that shortening the qualifying period would be problematic, as payment would stop if there was a change of circumstances. She described that her organisation had heard from older people who were ‘really struggling’ in the six month waiting period and that for some, it was clear on diagnosis that their condition would be long-term. ([In 2019, the Scottish Government estimated](#) that shortening the qualifying period to 3 months would cost £21m, although they emphasised the ‘significant degree of uncertainty with these costs’).

Members may wish to discuss:

1. **Does the Scottish Government still expect to complete case transfer to PADP by December 2025? If so, what preparatory work is the Scottish Government doing on changes that might be possible after case transfer?**
2. **Can the Cabinet Secretary explain further why the six-month qualifying period cannot be shortened? How does it meet the needs of older people diagnosed with long-term conditions?**

3. This Committee has been told that the DWP would ‘find a way’ to ensure people received their correct entitlements in reserved benefits. Does that alter the Cabinet Secretary’s view of the level of risk that diverging from Attendance Allowances rules might pose?
4. To what extent is cost the single biggest factor limiting potential changes to disability benefits?

Theme 2: Mitigations for Mobility Component

The [Equality Impact Assessment](#) sets out three policies in mitigation of not having a mobility component in PADP (pages 24 to 26). These are:

- **Bus pass** for over 60s and disabled people
- **Blue Badge Scheme** – criteria is being unable or virtually unable to walk
- **Free personal care** – can include support with immobility needs both at home and within a care home.

Age Scotland, together with 15 other organisations, [published a paper](#) in November 2023 arguing for a mobility component. The paper argues that free bus passes are not a mitigation as “local bus services are simply not available in many areas.” It set out alternatives to a mobility component:

- Access to the Motability scheme
- Automatic passport to the Blue Badge scheme
- Encourage Motability to scope whether they could have a wider range of price points for those unable to access the scheme
- Allow people on PADP to opt-in to Motability using their own money.

Last week, Adam Stachura (Age Scotland), described how discussions with the Scottish Government about the mobility component had taken place over several years. He acknowledged the cost, but both he and Debbie Horne, (Independent Age) emphasised its potential as preventative spend. Adam suggested that, rather than the full mobility component, perhaps ‘a little bit of support’ could be provided.

Members may wish to discuss:

5. **The Scottish Government has been clear that a mobility component is not possible in the foreseeable future. What is the scope to provide some kind of additional support for mobility needs, even if that falls short of a full ‘mobility component’?**
6. **What is the Scottish Government’s view of making receipt of PADP and Attendance Allowance ‘passports’ to a Blue Badge?**

Theme 3: Differences from Attendance Allowance

In some areas, the rules for PADP depart from Attendance Allowance and mirror changes introduced for other Social Security Scotland disability benefits – Child Disability Payment (CDP) and Adult Disability Payment (ADP). These are set out in table 2 below.

Table 2: Differences between PADP and Attendance Allowance

Pension Age Disability Payment	Attendance Allowance
Terminal illness	
Clinical judgement that someone has a progressive disease likely to cause their death	Clinical judgement that life expectancy is not more than 12 months
On-going award	
On-going award, with fixed point for 'light touch' review	Fixed term or indefinite awards.
Short Term Assistance	
Benefit 'topped-up' during redetermination and appeal, to the amount before the decision to reduce or remove it	Not available
Past presence	
26 weeks out of the previous 52 (six months out of the previous year)	104 weeks out of the previous 156 (2 out of the last 3 years)
Deadline to challenge a decision	
42 days to request a re-determination, up to a year with good reason.	One month to request revision/reconsideration or later with good reason

Short term assistance

One aspect that is different in Scottish disability benefits is the availability of Short Term Assistance (STA). In their report, SCoSS raise concerns about its interaction with reserved benefits:

“SCoSS is concerned about the potential for financial detriment that could be experienced by people who have received STA during a redetermination or appeal period, won their award back and, because of the STA, lose out on passported benefits for that period. The Scottish Government has told us that people should tell the DWP if they win an appeal so that passported benefits can be reinstated, and that they are not aware of any cases where STA has blocked access to passported benefits. However, the law is clear that STA is not a qualifying benefit, so the problem is likely to arise.

It is unfortunate to leave people in the position of choosing between some money now or later. It should be possible to design a system that offers financial support while challenging a decision without this trade off. In the meantime it is important that people are told this so they can make an informed decision before claiming STA.” (SCoSS report, p.13).

The Committee has heard similar concerns from Richard Gass (Welfare Rights Scotland) ([Committee Official Report 7 March 2024](#)) and Jon Shaw (CPAG) who [wrote to the Committee on 21 March](#) describing how this issue can also affect entitlement to carer benefits, as these require a qualifying disability benefit to be in payment. A [blog by CPAG \(December 2023\)](#) explains the 'pros and cons' of STA.

In reply to SCoSS the Scottish Government challenged their interpretation, saying:

“If an individual is successful in challenging a decision that lowers or stops their devolved disability benefit, passported benefits that are due may be backdated by the DWP, regardless of whether the individual accessed short-term assistance (STA) during the challenge. The amount of backdated assistance received would not be affected by receipt of STA.” ([Scottish Government response to SCoSS’s Recommendation 4](#)).

Last week, SCoSS said that they were in conversation with Scottish Government officials on this issue. They said that the Scottish Government’s view was that the issue raised by SCoSS would not often occur in practice.

Administrative changes

The Scottish Government intends that the experience of applying to Social Security Scotland will be one of dignity and respect.

Last week, this aspiration was welcomed, although Adam Stachura (Age Scotland) hoped that the issues with processing times and capacity to deal with the initial spike in applications that had been experienced with other benefits do not occur with PADP.

Debbie Horne, (Independent Age) explained how the “very complicated, 30 page form” for Attendance Allowance was a barrier for some people. She highlighted that the choice of application route and possibility of getting a home visit from local delivery teams “should hopefully improve that experience of applying for Pension Age Disability Payment.” (9.33am)

Members may wish to discuss:

- 7. How will the experience of applying for and getting PADP be different to applying for and getting Attendance Allowance?**
- 8. Last week the Committee heard that the ‘30 page form’ for Attendance Allowance was daunting for some people. How long is the form for PADP? What work has Social Security Scotland done to test its draft forms and processes with older disabled people?**
- 9. What lessons have been learned from the launch of other benefits? How is Social Security Scotland ensuring that they have capacity to process applications and respond to clients within a reasonable time?**
- 10. What is the Scottish Government’s view of making STA a passport to the same entitlements as disability benefits?**

Theme 4: Improving take-up

Most of the additional cost of PADP is due to assumptions that take-up will be higher. The Scottish Fiscal Commission assume:

- **A short term ‘spike’** in applications due to the pilot and promotional campaigns at launch – together assumed to add £20 million in 2025-26.
- **A 10 percent long-term increase** in inflows. This is based on Attendance Allowance take-up campaigns in the 2000s. This is forecast to add £6 million to benefit spend in 2025-26 rising to £40 million in 2028-29.

The Scottish Fiscal Commission note that their costing is ‘highly uncertain’:

“Our assumptions were informed by the introduction of Child Disability Payment and Adult Disability Payment, evidence from the launching of other policies, and our assumption on the effect of media campaigns on take up.”

The [Business and Regulatory Impact Assessment](#) sets out measures relevant to take-up including:

- Stakeholder resources in accessible formats
- Communication materials in ten languages as standard, and other on request
- Engagement through Stakeholder Engagement and Local Delivery teams
- Benefit Take-up Stakeholder Reference Group established under the [Benefit take-up strategy](#) (2021).

A Parliamentary Question (PQ), answered 19 January 2023, stated that: “Social Security Scotland’s Local Delivery teams are undertaking extensive engagement across the country – including providing drop in advice in venues where older people may meet.” ([S6W-13411](#))

Last week, witnesses suggested additional action that the Scottish Government and Social Security Scotland could take to maximise take-up:

- Working with local authorities to target potential claimants – for example could information be included in council tax letters to pension age residents?
- Targeting communications at health and social care professionals
- Ensuring that the benefit is not just promoted on-line.

Members may wish to discuss:

11. What are Social Security Scotland and Scottish Government doing to encourage take-up of PADP? Are they working with local government and health boards to target potential applicants?

12. In what ways are Social Security Scotland processes being adapted to take into account the needs of a much older client group?