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An t-Ionad Fiosrachaidh

Scottish Adult Disability Living Allowance

Introduction

The [draft Disability Assistance \(Scottish Adult Disability Living Allowance\) Regulations 2025](#) were laid in the parliament on 1 November, accompanied by several impact assessments. This paper summarises the policy, the recommendations by Scottish Commission on Social Security and Scottish Government response, before suggesting 6 themes for discussion with the Cabinet Secretary.

The Committee will hear from:

- Shirley-Anne Somerville, Cabinet Secretary for Social Justice
- Beth Stanners, Carer benefits and case transfer policy unit, Scottish Government
- David Hilber, Team Leader case transfer policy, Scottish Government
- Thomas Nicol, Lawyer, Scottish Government

Background

Disability benefits

The devolved disability benefits are:

- **Disability Living Allowance** run by the Department for Work and Pensions under an agency agreement with the Scottish Government. It is for working age people although they can remain on it after pension age. No new claims by adults have been possible since 2013. In rUK it is also available to children.
- **Child Disability Payment** run by Social Security Scotland. The rUK equivalent is child DLA.

- **Personal Independence Payment (PIP)** run by the Department for Work and Pensions under an agency agreement with the Scottish Government. This has been gradually replacing Disability Living Allowance across the UK since 2013. In Scotland there are no new claims for PIP and existing claimants are being transferred to Adult Disability Payment.
- **Adult Disability Payment (ADP)** run by Social Security Scotland. This is the Scottish equivalent to PIP and it is expected that everyone in Scotland on PIP will be moved to ADP by the end of 2025. Currently, people on DLA are also being transferred, but the regulations being considered today change that.
- **Attendance Allowance** run by Department for Work and Pensions under an agency agreement with the Scottish Government. This is main benefit for people who become disabled after pension age. In 2025 everyone in Scotland on this benefit will move to Pension Age Disability Payment.
- **Pension Age Disability Payment** run by Social Security Scotland, launched in some local authority areas in October. This is the equivalent benefit to Attendance Allowance.
- **Scottish Adult Disability Living Allowance** created by these regulations to be the Scottish equivalent of Disability Living Allowance for adults.

Scottish Adult Disability Living Allowance

Scottish Adult DLA is virtually the same as DLA run by the DWP. It will be closed to new claims and administered by Social Security Scotland.

Scottish Adult DLA is needed because in 2013, when Personal Independence Payment (PIP) was introduced, people of pension age who were on DLA at that time, were given a commitment by the UK Government that they would not have to move across to PIP. In Scotland, Adult Disability Payment (ADP) has much the same rules as PIP, so honouring that commitment means not moving them onto ADP.

Everyone who is getting DLA when these regulations come into force on 21 March 2025 will be transferred to Scottish Adult DLA by the end of that year.

Scottish Adult DLA will be a 'closed' benefit. It will not be open for new claims. It only exists so that people on DLA can transfer from DWP to Social Security Scotland.

Two cohorts: those born before and after 1948

There are two cohorts of people who will be moved to Scottish Adult DLA:

- Those born on or before 8 April 1948 will be moved to Scottish Adult DLA and stay on that benefit for as long as they are eligible.
- Those born after 8 April 1948, who would otherwise have moved to ADP will be moved to Scottish Adult DLA and then given the option to apply for ADP. This is a policy change. Since the introduction of ADP in 2022, people in this

group have been moved to ADP when they report a change of circumstances or their DLA award ends. They have also been able to choose to apply for ADP.

Caseload

The [Scottish Fiscal Commission forecast](#) that around 65,000 people in Scotland will be in receipt of DLA when Scottish Adult DLA starts in March 2025.

These are people who were either of pension age in 2013 or, if they were under pension age, have had no significant change in circumstances that would have triggered a move to PIP or ADP. The Equality Impact Assessment notes of this younger group that:

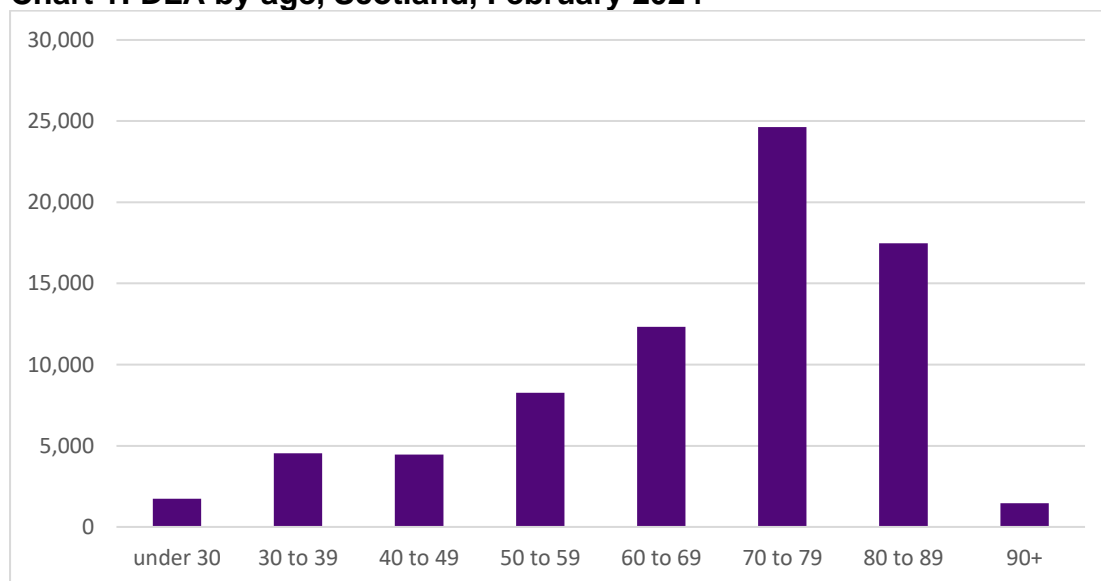
“This cohort are understood to have long-standing, persistent needs – the fact that they remain on Disability Living Allowance suggests that they have not reported a significant change in their circumstances since 2013.”

As there can be no new claims for Scottish Adult DLA, the caseload for this benefit will gradually reduce.

The chart below shows how most people on DLA are over pension age.

Around half the caseload are in the ‘pre-1948’ age group ([SCoSS report](#)).

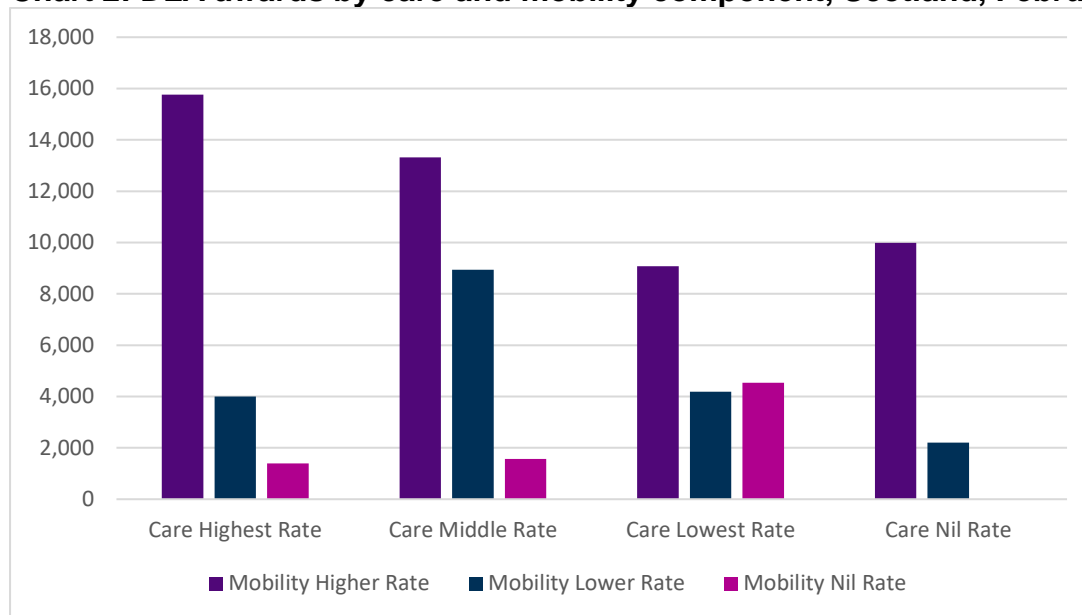
Chart 1: DLA by age, Scotland, February 2024



Source: StatXplore

Most (64%) of the people on DLA receive the higher rate mobility element and a fifth receive both the highest care and higher mobility rates. The chart below shows the combination of care and mobility rates received.

Chart 2: DLA awards by care and mobility component, Scotland, February 2024



Source: StatXplore

The main disabling condition by a long way is arthritis (25%, 18,664). This is followed by:

- Learning difficulties 9% (7,067)
- Psychosis 6% (4,497)
- Diseases of the muscles, bones and joints (6% (4,494)
- Back pain (6%, 3,739)

The EQIA highlights that:

- Learning difficulties is the main disabling condition amongst half of the younger cohort compared to arthritis for the older cohort.
- Almost all people (99%) on DLA are on indefinite awards.

Cost

Spending on Scottish Adult DLA is forecast to be £394 million in 2025-26 falling to £282 million by 2029-30. The policy of transferring across everyone on DLA rather than only those born before 1948 increases costs. However, the net impact is minimal because the additional spend on Scottish Adult DLA would previously have been spent on Adult Disability Payment. The Scottish Fiscal Commission (SFC) have forecast net impact of £1 million additional spend this year, and a net saving in future (table 1 below).

Table 1: Effect on spending from the end of the DLA to ADP journey, £million

	2024-25	2025-26	2026-27	2027-28	2028-29	2029-30
Scottish Adult DLA	1	12	21	29	37	42
ADP	-1	-14	-23	-31	-38	-44
Net effect	1	-2	-2	-1	-1	-1

Source: SFC costing, figure 3.

Block Grant Adjustments

There isn't a block grant adjustment (BGA) that relates only to Scottish Adult DLA. There is a BGA for Disability Living Allowance which relates to both Child Disability Payment as well as Scottish Adult DLA. In December 2023 the SFC forecast a DLA BGA of £909 million for 2025-26 compared to spend on the equivalent Scottish benefits of £889 million – made up of:

- Child Disability Payment £505 million
- DLA/Scottish Adult DLA £384 million

This [December 2023](#) costing for Scottish Adult DLA is £10 million lower than the [November 2024](#) supplementary costing. However, this may reflect the change in policy to allow the 'working age' cohort to remain on Scottish Adult DLA.

These forecasts will be updated in December and considered by the Committee on 19 December.

What the regulations do

The regulations create Scottish Adult Disability Payment as a new Social Security Scotland disability benefit under the Social Security (Scotland) Act 2018.

The **main rules are the same as Disability Living Allowance**. For example:

- A care component awarded at lower, middle or higher rate based on the extent of someone's needs during the day, during the night or both day and night.
- A mobility component awarded at lower or higher rate,
- No new claims are possible for adults. In rUK new claims would be for PIP and in Scotland new claims would be for ADP. (In rUK DLA is still the main disability benefit for children, whereas in Scotland it is Child Disability Payment).
- Benefit is reduced to £0 after 28 days in a care home or hospital. There is an exception for hospices.
- If someone has the lowest rate care component, this cannot be increased after pension age. Nor can the mobility component be awarded for the first time or increased after pension age.

The main differences from DLA reflect changes made in all Social Security Scotland disability benefits:

- Terminal illness. Scottish Adult DLA has a different definition of terminal illness, that doesn't specify life-expectancy. This is consistent across all Social Security Scotland disability benefits. Those who become terminally ill before state pension age will get the highest awards of care and mobility. (Those who become terminally ill after state pension age will get the same as in DLA – i.e highest rate care component, but their mobility component will not be increased. This is to maintain parity with Pension Age Disability Payment).
- Ongoing awards. People will not have to re-apply for Scottish Adult DLA when the award is reviewed.

- Short term assistance is available to those challenging a reduction or removal of Scottish Adult DLA. This tops up the award to what it was prior to the decision being challenged. This is also available for the other Social Security Scotland disability benefits.
- Legal detention. Benefit is reduced to £0 after 28 days instead of the day after legal detention. This is consistent with other Social Security Scotland disability benefits, and with PIP in the UK system.
- Redetermination. If a claimant wants to challenge a benefit decision a client has 42 days to do so, or up to a year late with good reason. Again, this is consistent across Social Security Scotland disability benefits. In DLA the deadline is one month, or up to a year late with good reason or at any time in certain circumstances.

Moving to Adult Disability Payment

The younger cohort (born after 1948) on DLA will have the option to apply for ADP (Schedule 2, inserting new Part 16A to the ADP regulations). If they do so, the regulations specify that:

- If they are of pension age and apply before 31 December 2027 they can take advantage of more generous rules for the mobility component, by being treated as though they were under pension age.
- When they first apply, they will get an ‘interim award’, at exactly the same amount as their Scottish Adult DLA award. Anyone with the lowest rate care component of Scottish Adult DLA will get a transitional element in ADP at the same rate. This is because the two levels of care award in ADP match the middle and higher care awards in DLA. There is no equivalent to DLA’s lowest care award in ADP.
- The interim award will then be reviewed under ADP rules “as soon as reasonably practicable”, at which point it could increase, decrease or stay the same.
- Once someone moves to ADP they cannot move back to Scottish Adult DLA.
- The older cohort (born before 1948) do not have the option to apply for ADP.

Consultation

Although there was no specific public consultation on Scottish Adult DLA, the Scottish Government has previously consulted on disability benefits generally and principles for case transfer. On the specific policy for Scottish Adult DLA the Scottish Government engaged with stakeholder groups. The DPIA notes that “early proposals” were discussed with the then Disability and Carer Benefits Expert Advisory Group (DACBEAG) who were “broadly supportive.” (That group has since been disbanded). Proposals were also put to the [Ill Health and Disability Benefits Stakeholder Reference Group](#) in August 2023. [Minutes for that meeting](#) noted that the group was supportive of the proposals.

Draft regulations and draft impact assessments were provided to the Scottish Commission on Social Security in March 2024 who reported in June 2024.

Scottish Commission on Social Security (SCoSS) and Scottish Government response

[SCoSS reported on draft regulations on 14 June 2024](#) making 18 recommendations and 1 observation. The Scottish Government responded on 1st November, rejecting three of them (recommendations 4, 9 and 15) and partially accepting two (recommendations 11 and 16).

The table below provides a brief summary.

Table 2: SCoSS report and Scottish Government response

SCoSS report	Scottish Government
Terminal illness	
Monitor transfers to SDLA for terminally ill clients (rec 2) and publish guidance on the process (rec 3).	Accept.
Moving to ADP	
Ensure access to timely advice and support for those with the option to apply for ADP (rec 1)	Accept. Social Security Scotland will discuss applications, provide clear, easy to understand information and signpost to advice services and advocacy.
If people over pension age move from Scottish Adult DLA to ADP before end of 2027 they will be treated as being under pension age. The ‘hard cut-off’ date for this is ‘not fully justified’ and could put pressure on people. There should be provision to extend this grace period if someone makes a late application with good reason (rec 4)	Reject. This gives two years for people to get advice on moving to ADP. “A bright line rule is the best approach to ending this transitional provision.” This provides certainty and can be clearly communicated.
It is crucial that people make a fully informed choice whether to move to ADP, noting there is no way back to Scottish Adult DLA. SG should place particular attention on communicating the risk to individuals when they apply for ADP (rec 5)	Agree. We are committed to providing clear, easy to understand information and signposting to independent advice
Further equalities analysis is needed on providing a choice whether to move to ADP from Scottish Adult DLA (rec 7)	Accept. EQIA has been revised with further analysis.
Case Transfer	
Reporting a change of circumstances during case transfer is a source of confusion. SG should develop inclusive	Accept. Plans were presented to the Ill Health and Disability Benefit Stakeholder Reference Group on 28

SCoSS report	Scottish Government
communications to both cohorts on DLA (rec 6)	August 2024 who were supportive of our planned approach.
Equalities	
Notes the lack of equalities data for those transferring to Scottish Adult DLA. Where possible, EQIA should be revised to breakdown data by protected characteristics (obvs 1)	Set out more clearly in the revised EQIA.
Technical issues	
Include the upper tribunal and courts as routes to entitlement to Scottish Adult DLA (rec 8)	Accept
Remove the 'extra test' which requires terminally ill people over pension age to have 'substantially the same condition' in order to get the same rate of mobility component as they received on DLA (rec 9)	Reject. Do not agree that the drafting creates this 'extra test'.
Align the definition of 'supervision' with Pension Age Disability Payment (rec 10)	Accept
Align the qualifying period over pension age with the pension age provisions in DLA and Pension Age Disability Payment (rec 11)	Partially accept. Qualifying period for care component is amended.
Discusses case law on definition of 'severe visual impairment', which qualifies for higher mobility component. Review the test to ensure compatibility with ECHR (rec 12)	Accept. Received assurance from DWP that the current test does, in practice' meet the policy intention. We have also modified the drafting, to avoid any potential doubt.
Drafting points to ensure policy intention is met (recs 13, 14)	Accept.
Consider providing flexibility in the 12 month deadline to reinstate an award where there is good reason for a late request. (rec 15)	Reject 12 months is appropriate, a bright line rule provides clarity and consistency.
Monitor and consult on the impact of having this 12 month cut off (rec 16)	Partially accept. "We will continue to monitor the impact of these provisions."
Clarify how changes of circumstances are taken into account if a person on Scottish Adult DLA goes on to apply for ADP (rec 17)	Accept.
Cross references in regulations should be checked for accuracy (rec 18)	Accept

Impact Assessments

The regulations were published along with:

- [Data protection impact assessment](#)
- [Business and regulatory impact assessment](#)
- [Equalities Impact Assessment](#)
- [Fairer Scotland Duty assessment](#)
- [Children's rights and wellbeing impact assessment](#)
- [Island communities impact assessment](#)

The **Data Protection Impact Assessment** detailed how peoples' information would be handled. Key points include:

- Data will be transferred from DWP to Social Security Scotland including, for example, whether someone is terminally ill or in legal detention and details of any appointee/third party representative. Only the data needed to process and award the benefit will be collected.
- The Information Commissioners Office was consulted in June 2024. They highlighted "the importance of ensuring the operational DPIA sets out an analysis of the risks for transferring paper files and puts in place appropriated mitigations and measures.
- Automated decision making will be used to process the volume of cases within the timeframe required, allowing time for staff members to deal with the more complex cases.
- After they transfer, individuals will be asked to complete a voluntary equalities monitoring and feedback from. ([Social Security Scotland publish equalities analysis of](#) those applying to them).

The **Business and Regulatory Impact Assessment** set out four policy options:

1. Take no action. This was rejected as it would require extending the current agency agreement and was not considered viable.
2. Transfer case management to Social Security Scotland but people remain on DLA. This was rejected as it would require Social Security Scotland staff to be trained in different rules and procedures.
3. Transfer all clients to Adult Disability Payment. This was rejected as it would break the commitment made to those of pension age in 2013.
4. Introduction Scottish Adult DLA. This was the chosen option because it:
 - a. provides like for like transfer
 - b. keeps the commitment made to those of pension age in 2013

- c. enables people to benefit from the wider improvements such as different rules for terminal illness and short-term assistance
- d. allows for the most effective use of resources within Social Security Scotland.

The **Equalities Impact Assessment** finds positive impacts of the introduction of Scottish Adult DLA compared with DLA. These include:

- improved decision making processes
- accessible communication materials
- ongoing awards with 'light-touch' reviews
- Scottish definition of terminal illness
- access to Short Term Assistance

The regulations include some rules which differ by age. One example is that people on DLA who were under pension age in 2013 are given the choice to move to Adult Disability Payment but older people are not. The EQIA states that they “have not heard of any particular appetite” for this choice and changing it may be confusing for clients.

Overall, the EQIA states that the policy approach for Scottish Adult DLA will “guarantee consistency and security for this group of vulnerable people”, [...] “ensuring people in Scotland are not unfairly discriminated against compared to counterparts in the same age cohort elsewhere in the UK.”

On disability, the EQIA finds a positive impact in providing at least the same as for people in a similar position in the rest of the UK. It highlights the more generous approach to terminal illness and receipt of benefit while in legal detention.

The EQIA notes there is no information on DLA receipt by ethnicity, gender reassignment, pregnancy or whether they have dependent children.

The **Fairer Scotland Duty Assessment** described the policy and concluded that introducing Scottish DLA “is likely to have a positive impact on reducing inequality and tackling poverty for disabled people in Scotland.”

The **Island Communities Impact Assessment** found no evidence that Scottish Adult DLA discriminates against remote or island communities.

The **Child Rights and Wellbeing Impact Assessment** notes that Scottish Adult DLA will not impact directly on children as they cannot receive it.

Suggested Themes for Discussion

Theme 1: Moving from DLA to Scottish Adult DLA

The move from DLA to Scottish Adult DLA is expected to take place between March 2025 and the end of that year. Around 66,000 people will be moved across.

The SCoSS report describes how cases will be selected randomly for transfer. They note some confusion that this approach has caused in the PIP to ADP transfer:

“The Scottish Government noted, in response to SCoSS questions, that: “DLA awards will be selected for transfer to Scottish Adult DLA where there is a Scottish postcode as part of the DLA record, and awards will be selected randomly but in agreed volumes, so this process can be monitored.”

We have received feedback in the course of our wider charter research that in some circumstances, particularly for couples who are both in receipt of disability benefits, these differences in timelines can be confusing. Particular care should be taken to communicate the reasons why this is the preferred approach and that people should expect changes to happen at different times.”

This is perhaps even more important for Scottish Adult DLA as the SCoSS report and the Equalities Impact Assessment note that those on Disability Living Allowance are those whose condition hasn't changed since 2013, many of whom are now over 70, and a substantial number of those under 70 have learning difficulties.

The Scottish Government set out their approach to communications in their [response to SCoSS](#), saying:

“we are working with colleagues to ensure that guidance for clients in the different ‘groups’ for Scottish Adult DLA is tailored and accessible. We are considering how we can direct individuals to the appropriate information on gov.scot, in guidance and other communications, and scoping opportunities to design and test online guidance so that individuals are shown only content relevant to them.

[...]

We presented these plans to the Ill Health and Disability Benefit Stakeholder Reference Group at our meeting with them on 28 August 2024. Following a presentation and discussion, members confirmed they were supportive of our planned approach for communicating tailored information that is specific to individuals' circumstances.”

The [Policy Note](#) sets out the principles and process for case transfer. In summary:

- No-one will have to re-apply for benefit and “we will clearly communicate with people through the transfer process”

- Individuals will be identified for transfer using the residential address in DWP records.
- Social Security Scotland will issue a notice of intention to transfer setting out timescales.
- Social Security Scotland will use information from DWP to decide the level of award.

Members may wish to discuss:

- 1. What is the Scottish Government doing to ensure that all those transferring from DLA to Scottish Adult DLA are properly supported during that transition?**
- 2. The transfer will involve moving around 66,000 people from DWP to Social Security Scotland over the course of around nine months next year. What additional resources are Social Security Scotland putting in place to ensure this runs smoothly?**

Theme 2: Inclusion of “working age” cohort.

The creation of Scottish Adult DLA enables the Scottish Government to honour the commitment to those born before 1948 that they could stay on DLA.

The Scottish Government has also decided to move those born after 1948 from DLA to Scottish Adult DLA. This ‘working age’ cohort are people who;

- Before August 2022 would have been moved to PIP as their circumstances changed, their DLA awards came up for review or if they volunteered to move.
- From 29 August 2022 to 21 March 2025 are [being moved to ADP as their circumstances change, as their DLA awards come up for review](#) or if they volunteer to move. (By the [end July 2024](#), 3,025 people on DLA had transferred to ADP).

From 21 March 2025, anyone in this group still left on DLA will be transferred to Scottish Adult DLA and then given the option to move to ADP.

The SCoSS report refers to some stakeholder concern about this creating a two-tiered system. For example, the National Association of Welfare Rights Advisors told SCoSS:

“Prior to devolution, reporting a change to DWP triggered a transfer from DLA to PIP and necessarily involved a new assessment under the latter statutory scheme... If we are not mistaken, the draft version of Regulation 10 would potentially remove this dynamic for a cohort of claimants. This would be welcomed, but we note that this would potentially create a lottery of winners and losers based merely on quirks of circumstance: i.e. the date a medical

change has happened, and the date that an administrative transfer takes place.”

The MS Society told SCoSS that:

“Scottish Ministers have repeatedly stated the main reason that they have not changed the eligibility criteria for ADP is that they didn’t want to create a two-tier system of disability assistance benefit in Scotland. With the introduction of Scottish Disability Living Allowance this is exactly what they are creating”

The Equalities Impact Assessment explains that:

“clients told us about the stress and anxiety transitioning to a new benefit with new eligibility criteria entails. Allowing individuals to make informed decisions based on their own personal circumstance and professional advice is our preferred approach as we feel it better reflects our user centred approach and our values of dignity and respect.”

Members may wish to discuss:

- 3. Why did the Scottish Government include the working age cohort in Scottish Adult DLA rather than continuing the existing policy of moving them to ADP? How does the Cabinet Secretary respond to concerns that this creates a “lottery of winners and losers based merely on quirks of circumstance”?**

Theme 3: Working age cohort’s choice to move to ADP

Theme 1 considered the communications and support needed for the initial move from DLA to SDLA. Once on Scottish Adult DLA, the “working age” cohort will have the option to move to ADP.

The criteria for Scottish Adult DLA and ADP are different. It can be difficult to tell whether someone would be better off on one rather than the other. The SCoSS report stresses the significance of the decision, referring to:

“the significance and potential unintended consequences for people in the ‘working age group’ to decide whether to remain on Scottish Adult DLA or claim ADP, and the difficulty of predicting whether someone would be better off or otherwise on ADP as these benefits have different criteria. Whilst the move is not mandatory (as is the case for DLA-PIP transfers), assumptions of a strength of knowledge and capacity in the independent advice sector to be able to support people to make informed choices should be avoided. These risks could, potentially, be significant given that this cohort appears to include many people with learning disabilities and complex needs.”

When someone on Scottish Adult DLA applies for ADP they are first awarded an interim award at exactly the same rate. Their benefit is then reviewed under ADP

rules. At that point, the amount of benefit could change. Once someone has moved to ADP they will not be able to return to Scottish Adult DLA if they get a lower award.

The Scottish Government response to SCoSS set out the communications and support for those moving from Scottish Adult DLA to ADP.

“We recognise that the decision to remain on Scottish Adult DLA or apply for ADP is a complex and important decision for individuals. We are committed to providing clear, easy to understand information, as well as signposting to independent advice to support an informed choice.

[...]

All of our communications will clearly highlight that if individuals do make an application for ADP, they will not be able to reapply for Scottish Adult DLA once their ADP entitlement has begun. This will also be explained clearly by Social Security Scotland staff to individuals who apply by phone. Where individuals apply by post or online, a member of Social Security Scotland staff will attempt to make contact with them to ensure this is understood, and that they are content to continue with their application. Our strategy of signposting individuals to independent advice if they are considering applying for ADP, and the engagement work we will conduct with stakeholder organisations, will further ensure people can make a decision that is right for them.”

Members may wish to discuss:

- 4. How will the Scottish Government ensure that people on Scottish Adult DLA have access to adequate advice and information to help them make an informed choice about whether to apply for ADP?**

Theme 4: Moving to ADP – “grace period”

There is an additional complication and time pressure for those of pension age. The regulations allow pension age people moving from Scottish Adult DLA to ADP to take advantage of more generous rules in relation to the mobility component – but only until 31 December 2027.

This could affect around 3,700 people. At February 2024, there were 11,669 people in Scotland getting DLA who were aged between 66 and 74 (i.e of pension age but with the option to move to ADP). Of those, 7,942 already had the higher mobility rate, leaving 3,727 who could, potentially, benefit from an ability to increase their mobility award.

Background

Normally, a person of pension age cannot apply for ADP or PIP. They would apply for Attendance Allowance or for Pension Age Disability Payment instead. If they already receive ADP/PIP before they reach pension age they can continue to receive it. However, if their mobility deteriorates, they cannot have their mobility component increased or awarded for the first time. i.e their mobility award is ‘capped’ at whatever it was set at before pension age.

When people of pension age moved from DLA to PIP there is a transitional provision which means this cap doesn't apply. Similarly, until 31 December 2027, someone moving from Scottish Adult DLA will be exempt from this cap. After that date, anyone moving across will be treated in the same way as anyone else of pension age on ADP – i.e. their mobility award will be capped.

The reason mobility awards are capped at pension age is to provide consistency with the main pension age disability benefit – the DWP's Attendance Allowance and Social Security Scotland's equivalent, Pension Age Disability Payment.

SCoSS recommendation

SCoSS argued that a 'hard deadline' could put people under pressure and recommended flexibility:

“In effect the existence of a grace period prevents, after two years, people who are over pension age and likely to have complex needs from, potentially, having the mobility component of their award increased or awarded for the first time through a move to Adult Disability Payment. We believe that this could put pressure on people whilst they are weighing up a decision.

It may, also, be valuable and justifiable in some circumstances to include a clause allowing them to apply after the cut off date if there is a valid reason for delay to their application. It is possible that there will be circumstances during which an individual may be unable to make that decision, or unable to access support to make that decision, e.g. following a period in hospital or care.

Recommendation 4: There should be provision to extend the two-year grace period when an individual makes a late application with good reason.

The Scottish Government rejected this recommendation stating that the clear cut-off date:

“will provide individuals sufficient time to make an informed choice on whether to apply for ADP, and we consider introducing a bright line rule is the best approach to ending this transitional provision and aligning rules with other groups over state pension age. This will provide certainty to individuals and can be clearly communicated to all clients, ensuring they understand when they must make an ADP application by if they wish to access the whole ADP mobility component.”

Members may wish to discuss:

- 5. Until December 2027, people on Scottish Adult DLA who apply for Adult Disability Payment will be treated as though they are under pension age. How does the Scottish Government respond to the view of SCoSS that having a specific cut-off date could put people under pressure to make a difficult decision, particularly as many of them have long-standing complex needs?**

Theme 5: Severe visual impairment

The SCoSS report discussed human rights case law on the definition of severe visual impairment in DLA which is linked to the “Snellen test”. It explained:

“A DLA case in the Upper Tribunal has held that relying solely on the Snellen test, a test only conducted indoors, is discriminatory for the purposes of Article 14 of the ECHR. [...] Draft regulation 14(5) uses the same definition for Scottish Adult DLA relying on the Snellen test alone, albeit without explicitly referring to Snellen, and so may also be incompatible with Convention rights.”

The Scottish Government’s response to SCoSS stated that they have received assurances from DWP that the current test of severe visual impairment is lawful and:

“given there has been some dubiety expressed over whether the test fully meets the policy objective of capturing all those that are unable to be independently mobile outdoors in familiar places, and in order to remove any doubt, we have modified the Scottish Adult DLA drafting to make this clear while keeping the references to the measures of visual acuity in the current regulations to support safe and secure transfer.”

Members may wish to discuss:

- 6. Can the Cabinet Secretary clarify to the Committee how the definition of severe visual impairment is compatible with the European Convention on Human Rights?**

Theme 6: Late requests

If entitlement to Scottish Adult DLA stops, it can be re-instated within a year. SCoSS recommended some flexibility in this. Their recommendation 15 was:

“the Scottish Government should consider flexibility in the 12 months deadline to reinstate an award where there is good reason for a late request.”

SCoSS argued that:

“This provision is not likely to be much used – there are no fixed term awards ending entitlement as there are in DLA – nonetheless it seems more in keeping with principles (d) (dignity at the heart of social security) and (g)(i) putting the needs of people needing assistance first) to allow some flexibility to accept a late application.”

The Scottish Government rejected this recommendation arguing that:

“Provisions require that entitlement must result from substantially the same condition or conditions as the award that previously ended. We feel 12

months is an appropriate period to link to a previous award, and the conditions that underpinned this award. This is also consistent with DWP's approach to applications after an interval in DLA. We believe having this bright line rule will provide clarity and consistency for individuals."

Members may wish to discuss:

- 7. Why has the Scottish Government decided against providing any flexibility in the 12 month deadline for a Scottish Adult DLA award to be re-instated? How do they respond to the point made by SCoSS that flexibility would be more in keeping with the social security principles?**

Camilla Kidner
SPICe
13 November 2024