

## **POLICY NOTE**

### **DRAFT DISABILITY ASSISTANCE FOR WORKING AGE PEOPLE (TRANSITIONAL PROVISIONS) (SCOTLAND) REGULATIONS 2022**

**SSI 2022/XXX**

The above instrument will, if approved by the Scottish Parliament, be made in exercise of the powers conferred by sections 31, 43(5), 52 and 95 of the Social Security (Scotland) Act 2018. Some of those powers are subject to negative procedure and others to affirmative procedure. The powers are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 and section 33(3) of that Act makes the instrument subject to the affirmative procedure.

This instrument sets out provisions for transferring the awards of Scottish clients currently in receipt of Disability Living Allowance, who were over 16 and under 65 and in receipt of Disability Living Allowance at the introduction of Personal Independence Payment on 08 April 2013, to Social Security Scotland and onto Adult Disability Payment.

#### **Policy Objectives**

Adult Disability Payment will be introduced through the Disability Assistance for Working Age People (Scotland) Regulations 2022. Adult Disability Payment is intended to improve outcomes for disabled adults, by providing financial assistance to help meet the additional costs of living with a disability or health condition. This includes physical and mental disabilities and health conditions which have a significant adverse effect on an individual's daily activities.

This form of assistance will replace Personal Independence Payment in Scotland for individuals aged between 16 and (subject to some exceptions) state pension age who are making an application for disability assistance. This new form of devolved social security assistance will be delivered by Social Security Scotland on behalf of the Scottish Ministers.

The eligibility criteria for Adult Disability Payment broadly aligns with the eligibility criteria for Personal Independence Payment. However, the Scottish Government is making improvements to the application process, the way awards are made, and the collection of supporting information about an individual's disability or health condition, to make the process of applying for Adult Disability Payment less onerous and to improve decision-making. The Scottish Government is introducing a new client consultation service to aid the decision making process. This will be substantially different from the assessments used to determine entitlement to Personal Independence Payment by the Department for Work and Pensions.

These regulations make provisions for the transfer of awards, in certain circumstances, of individuals who live in Scotland and who are currently, and were while aged between 16 and 65 on 08 April 2013, receiving Disability Living Allowance (currently administered by the Department for Work and Pensions on behalf of Scottish Ministers) to Adult Disability Payment (to be administered by Social Security Scotland on behalf of the Scottish Ministers). These clients' awards are referred to as 'Working Age Disability Living Allowance' awards,

due to the clients' age at the time Personal Independence Payment was introduced even though some of these clients may now be over the state pension age.

The Scottish Ministers have developed a safe and secure process for these clients' awards, which will require no action on behalf of the individual wherever possible, and has been designed in line with the following case transfer principles:

- no individual will be required to re-apply for their benefit;
- no individuals will be subject to a DWP face-to-face assessment after ADP is launched nationally;
- individuals will continue to receive the right payment, at the right time; and
- we will complete the case transfer process as soon as possible while ensuring it is safe and secure.

### **Circumstances in which clients awards will transfer**

At the transfer of executive competence for disability benefits from the Secretary of State for Work and Pensions to Scottish Ministers on 01 April 2020, the Department for Work and Pensions agreed to continue to deliver Working Age Disability Living Allowance in Scotland on behalf of Scottish Ministers under an agency agreement. It was also agreed that the Department for Work and Pensions would halt the programme of managed migration onto Personal Independence Payment for Scottish clients in receipt of Working Age Disability Living Allowance so long as any Scottish client reporting a relevant change of circumstances, due an award renewal, otherwise requiring an award review or requesting to move would still be invited to apply for Personal Independence Payment until such times as Adult Disability Payment was launched in Scotland.

It is, therefore, Scottish Ministers intention that the provision in these regulations should facilitate the transfer of the award of any Scottish client in receipt Working Age Disability Living Allowance to Adult Disability Payment, where a client wishes to move to Adult Disability Payment or would otherwise be required to claim Personal Independence Payment.

### **The notice of intention to transfer**

When an individual's disability benefit has been selected for transfer, Scottish Ministers will receive from the Department for Work and Pensions data relevant to the individual's current Disability Living Allowance award. Once Scottish Ministers have received this data, the regulations make provision for the Scottish Ministers to notify the individual of the intention to transfer them to Adult Disability Payment. This notice will set out the process for that transfer. This period can be extended if both Scottish Ministers and the Secretary of State for Work and Pensions agree there is good reason to do so. The individual will be notified of any extension of the period and the reasons for it.

### **The transfer determination**

Scottish Ministers will use the data from the Department for Work and Pensions to make a determination without application of the individual's entitlement to Adult Disability Payment within a fixed period set out in the notice of intention to transfer. This determination is referred to as the 'transfer determination' within the regulations. To facilitate a safe and secure transfer, the regulations provide that the transfer determination must set the client's award level for

Adult Disability Payment at the equivalent rate as they are currently receiving for Disability Living Allowance. This applies regardless of whether the client would otherwise meet the eligibility rules for those components of the Adult Disability Payment mobility and daily living components. To enable this to happen, the regulations also make provision for the introduction of a low rate daily living component within Adult Disability Payment for the purposes of these transfer determinations only. The determination of the individual's entitlement to Adult Disability Payment will also end the corresponding award of Personal Independence Payment.

### **The review determination**

Because clients awards will have been selected for transfer because the individual has reported a relevant change of circumstance, was due an award renewal, their award was to be reviewed or because the client has requested to transfer (most likely on the basis they consider they would be better off on Adult Disability Payment), a further review determination will be made of their entitlement after the individual has been transferred onto Adult Disability Payment. This review will consider the client's entitlement against the usual criteria for the mobility and daily living components of Adult Disability Payment and take into consideration any relevant change of circumstance that triggered the transfer or was reported to the Department of Work and Pensions during the transfer window. This review determination will occur as soon as reasonably practicable after the transfer process is completed, and within 12 months of the issue of the notice of intention to transfer.

### **Terminal illness**

Where Social Security Scotland have identified a terminally ill client, either from the information provided by the Department for Work and Pensions or additional information from the individual, provision has been made to ensure that they will be entitled to both components of ADP at the enhanced rate from the date of transfer and no review determination will be required.

### **Relevant age**

To ensure all clients are able to be paid the full range of daily living and mobility components for Adult Disability Payment on transfer, the relevant age rule in regulation 22(1)(b) of the Disability Assistance for Working Age People (Scotland) Regulations 2022 is dis-applied for both the transfer determination and the review determination.

### **Residency**

Scottish Ministers will identify individuals who will have their awards transferred from Working Age Disability Living Allowance to Adult Disability Payment using the residential address held by the Department for Work and Pensions in the individual's Disability Living Allowance record. An individual will be assumed to meet the residence and presence conditions for Adult Disability Payment at the point of transfer if they have a Scottish postcode.

If Scottish Ministers determine after transfer that an individual should not have transferred because they fail to meet the residence and presence conditions, a further determination without application will be made that will nullify the case transfer Adult Disability Payment determination and the resulting entitlement. This will also nullify the termination of the Disability Living Allowance award.



[tbc]

### **Impact Assessments**

A Business and Regulatory Impact Assessment (BRIA) Equalities Impact Assessment, Island Communities Impact Assessment, Fairer Scotland Duty Impact Assessment, Data Protection Impact Assessment and a Children’s Rights and Wellbeing Impact Assessment were all produced for the Disability Assistance for Working Age People (Scotland) Regulations 2022.

It is anticipated from the analysis in these impact assessments that the commencement of ADP will have a broadly positive impact on a range of equalities groups, island communities and in relation to the realisation of children’s rights and improving their wellbeing. There were no significant equalities or rights impacts that required further consideration in relation to the commencement of those regulations. We have reviewed the impact assessments from the perspective of this specific cohort of clients transferring onto Adult Disability Payment and consider there is potential for similar positive impacts, and that there are no significant equalities or rights impacts that require further consideration in relation to the commencement of these regulations

### **Financial Effects**

A Business and Regulatory Impact Assessment (BRIA) was completed for the Disability Assistance for Working Age People (Scotland) Regulations 2022. The Scottish Government does not believe that Adult Disability Payment will have an adverse impact on the competitiveness of Scottish companies or the third sector within Scotland, the UK, or elsewhere in Europe or the rest of the world. On reviewing the Business and Regulatory Impact Assessment, we noted the potential for these regulations to increase the potential limited impact on the operational business of local authorities or health boards, principally because Social Security Scotland may seek to obtain (with the individual’s consent) information held by public sector bodies about the individual’s disability to make the review determinations provided for in these regulations. However, given the small volumes of clients transferring under these regulations this potential increase to a potential impact is not considered material.

The right to appeal to a First-tier Tribunal is provided for in the Social Security (Scotland) Act 2018. Legal Assistance will continue to be available to individuals to appeal an entitlement decision to the Upper Tribunal, Court of Appeal or Supreme Court. As with the Disability Assistance for Working Age People (Scotland) Regulations 2022, the Scottish Government does not expect any adverse impact to the Legal Aid budget as a result of the introduction of Adult Disability Payment. Current recipients of Disability Living Allowance are already able to access legal aid to appeal entitlement decisions.

The Scottish Fiscal Commission (SFC) has a statutory duty to provide independent and official forecasts of Scottish GDP, devolved tax revenues and devolved social security expenditure. Under the Scottish Fiscal Commission Act 2016, the SFC may also produce forecasts on other “fiscal factors”, defined as “anything which the Scottish Ministers use to ascertain the amount of resources likely to be available for the purposes of sections 1 to 3 of the Public Finance and Accountability (Scotland) Act 2000”. The Protocol for engagement between the Scottish Fiscal Commission and the Scottish Government notes that the SFC may produce forecasts where it considers the policy, or policies, to have a “non-negligible impact on receipts or expenditure”.

[SFC position on costing of these regulations tbc]

Scottish Government  
Social Security Directorate  
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