



Scottish
Commission
on Social
Security

Scottish Commission on Social Security

Scrutiny report on draft Regulations:

The Disability Assistance for Older People (Scotland) Regulations 2024

Submitted to the Scottish Government and the Scottish Parliament's Social Security Committee on 30 October 2023.

SCoSS/2023/04

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Summary of recommendations and observations

Recommendation 1: We accept that during case transfer there is a rationale for aligning the aims of Pension Age Disability Payment with Attendance Allowance, but in the longer term the Scottish Government should review Pension Age Disability Payment's aims for consistency with the social security principles.

Recommendation 2: The Scottish Government should consider bringing forward the 2026 take-up strategy to integrate the most recent benefits into the strategy as a whole.

Recommendation 3: The Scottish Government should ensure that information on Short-term Assistance while challenging a decision includes the possibility of not regaining passported benefits in full at the end of the process so that people can make an informed decision about whether to apply.

Recommendation 4: Given concerns about the mobility component and other passported support not being payable to individuals who claim disability assistance over state pension age, the Scottish Government should work with stakeholder organisations to consider other forms of transport assistance which could be available to older disabled people with mobility needs, within or outside the Scottish social security system.

Observation 1: Older people needing help with renal dialysis day and night have access to a lower automatic rate of benefit than young people. The introduction of Pension Age Disability Payment is an opportunity for the Scottish Government to consider whether this is the best policy.

Observation 2: When updated, the draft Pension Age Disability Payment Equality Impact Assessment could address data gaps and engage stakeholders to explore further justifications and mitigations related to a mobility component.

Recommendation 5: The Scottish Government should revise the definition of 'supervision' in line with established case law principles.

Recommendation 6: Provisions relating to the 'required period' and 'required period condition' should be revised to ensure they meet the policy intention.

Executive summary

This report details our views on Pension Age Disability Payment (PADP) as per the draft Disability Assistance for Older People (Scotland) Regulations 2024.

The draft regulations (The Disability Assistance for Older People (Scotland) Regulations 2024) provide for the introduction of PADP which replaces Attendance Allowance (AA) in Scotland. AA aims to provide assistance to contribute towards additional costs incurred by people over State Pension age who have a long-term disability or health condition.

Many of the provisions in the draft regulations are broadly the same as the existing regulations for AA – and this reflects the Scottish Government’s policy of ensuring that AA awards are transferred to PADP in a safe and secure fashion. However, AA was designed at a very different time and context. Although some changes from AA are to be introduced from its launch, SCoSS has recommended that, following case transfer, the Scottish Government should review PADP’s aims for consistency with the social security principles.

Discussions with stakeholder organisations highlighted that benefits designed for older people are often have low take-up and SCoSS recommends that the Scottish Government revisit its take-up strategy to ensure that it takes into account the needs of older people.

SCoSS is concerned about the potential for financial detriment that could be experienced by people who have received Short-term Assistance (STA) during a redetermination or appeal period, won their award back and, because of the STA, lose out on passported benefits for that period. As such, we have recommended that information on STA while challenging a decision includes the possibility of not regaining passported benefits at the end of the process so that people can make an informed decision about whether to apply.

The draft regulations follow the AA position in excluding mobility needs. Whilst SCoSS understands the rationale for not including a mobility component the introduction of PADP presents an opportunity to re-consider the justifications inherited from AA in the context of the social security principles. Noting these concerns, SCoSS believes that the Government should work closely with stakeholders to consider other forms of transport assistance which could be available to older disabled people with mobility needs.

1. Introduction

1.1 Overview

The Scottish Commission on Social Security (SCoSS) is pleased to present its report on the draft Disability Assistance for Older People (Scotland) Regulations 2024 (henceforth referred to as the 'draft Regulations').

The 2022 census highlights an ageing population in Scotland. More than one million people in Scotland are now aged 65 and over – a rise of almost a quarter since 2011¹. As that population rises, the number of disabled people over pension age can reasonably be expected to rise too.

In February 2023, 146,730 people in Scotland were entitled to Attendance Allowance (AA).² AA aims to help people with extra costs if they have a disability severe enough to need someone to look after them.

In 2020 the Scottish Government and the Department for Work and Pensions (DWP) entered into an agency agreement through which the DWP has continued to deliver AA to people in Scotland.³ After the necessary regulations have been approved by the Scottish Parliament, Pension Age Disability Payment (PADP) will replace AA in Scotland and will be delivered by Social Security Scotland initially through a pilot in Autumn 2024 followed by a national launch in early 2025.⁴ The agency agreement with the DWP is expected to remain in place until all older people entitled to AA in Scotland are transferred to PADP.

Many of the provisions in the draft regulations are broadly the same as the existing regulations for AA – and this reflects the Scottish Government's policy of ensuring that AA awards are transferred to PADP in a safe and secure fashion.

“By maintaining the current eligibility criteria, individuals in Scotland who are eligible for passported benefits and premiums from the UK Government will have seamless access to this vital support. This will provide security to people in Scotland when Pension Age Disability Payment is rolled out.”⁵

There are, however, some changes from AA which are intended to be introduced from its launch which replicate some of the changes made to other new benefits in Scotland, including a new definition of terminal illness, the introduction of Short-term Assistance and a shorter “past presence test” to determine the required length of residency. We reflect further on these changes in Chapter 4 of this report.

1.2 Human rights and principles

As required by the Act, our scrutiny was undertaken with regard to the Scottish social security principles⁶ and relevant provisions of human rights law.

¹ [Scotland's Census 2022 – Rounded population estimates | Scotland's Census \(scotlandscensus.gov.uk\)](https://scotlandscensus.gov.uk)

² This includes 17,089 people entitled to AA but not being paid e.g. because they are in a care home; [Stat-Xplore \(stat-xplore.dwp.gov.uk\)](https://stat-xplore.dwp.gov.uk).

³ [Attendance Allowance in Scotland: Agency Agreement \(www.gov.uk\)](https://www.gov.uk)

⁴ Dates to be confirmed.

⁵ [Draft Disability Assistance for Older People \(Scotland\) Regulations 2024: Draft Equality Impact Assessment \(www.gov.scot\)](https://www.gov.scot)

⁶ [Social Security \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://legislation.gov.uk) section 1

The role of PADP cuts across dedicated international instruments covering the human rights of both disabled and older people. The human rights of disabled people are promoted and protected by the UN Convention on the Rights of Persons with Disabilities (UNCRPD) adopted by the UN in 2006, whilst the United Nations Principles for Older Persons (UNPOP) was adopted in 1991.⁷

1.2.1 Human Rights Treaty principles

The UNPOP includes five principles aiming to promote the wellbeing of older persons and ensure that they are treated with dignity and respect. These are independence, participation, care, self-fulfilment and dignity. Each are worthy of particular consideration in SCoSS's scrutiny of the draft regulations.

Independence: Older persons should have access to adequate food, water, shelter, clothing, and health care through the provision of income, family and community support, and self-help. The UNCRPD also includes the right to "living independently and being included in the community". By providing an income to support the additional costs of personal care for disabled people of pension age, PADP can to some extent support independence and the right to respect for family life.

Participation: Older persons should remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their wellbeing, and share their knowledge and skills with younger generations. People over pension age may need the income from PADP to enable them to take part in social activities in order to fulfil this requirement. The lack of a mobility component in the PADP, as is the case with AA, could impact the extent to which this human rights principle is met.

Care: Older persons should be able to live in dignity and security and be free of exploitation and physical or mental abuse. PADP is intended to make a contribution towards some of the additional costs of needing support from another person, rather than meeting such costs in full. Health and social care services also have a role to play, so the relationship between services and disability assistance should be working towards this aim in tandem.⁸

Self-fulfilment: Older persons should be able to pursue opportunities for the full development of their potential. In contributing towards the additional costs of support from another person PADP can help claimants to pursue their potential.

Dignity: Older persons should be treated fairly regardless of age, gender, racial or ethnic background, disability or other status, and be valued independently of their economic contribution. As a non-means-tested benefit, PADP is a welcome support for older people with additional needs irrespective of their income. However, there are age differences in DWP disability benefits, especially between people over state pension age and those below that age (e.g. as between Personal Independence Payment (PIP) and AA). This distinction will be retained in Scotland as ADP and PADP are broadly similar benefits to PIP and AA respectively.

⁷ This statement of principles is not a legally binding set of rights (as would be the case for a human rights convention or covenant), but many of the principles broadly reflect rights protected by various conventions.

⁸ See also Scotland's National Performance Framework Outcomes – [Communities \(nationalperformance.gov.scot\)](https://nationalperformance.gov.scot).

1.2.2 Social Security principles

The Scottish social security principles are listed in Annexe C. The principles are embedded in *Our Charter* which sets out what people can expect from the social security system.⁹

When viewed through the lens of the social security principles, the introduction of PADP as a replacement for AA can represent an investment in the people of Scotland (principle (a)), though with the risk that retaining some of the AA criteria could be regarded as investing less in older people who are over pension age when they claim than is the case for disabled people below pension age.

PADP can contribute to the principle of social security as a human right (principle (b)), and extending Short-term Assistance should reduce any disincentive to challenging a decision, thus supporting the right to appeal.

Proposals to improve the application process and introduce light touch reviews should contribute to the *Our Charter* commitment to 'Processes that work' and related charter expectations to support people with their claims, as should improving the process for terminally ill people. These changes also have the potential to improve take-up and thus contribute to reducing poverty (principle (e)).

The retention of some distinctions by age (discussed above) risks not meeting the principle of continuous improvement, putting those needing assistance first and advancing equality and non-discrimination (principle (g) (i) and (ii)). Given the Scottish Government's concerns about the feasibility of abolishing age differences due to cost, there may be a trade-off between principle (g) on the one hand and, principle (h), efficiency and value for money on the other. However, the balance between these principles may change over time. Whilst the need to ensure a safe and secure transfer from AA to PADP understandably limits the changes which can be made in the short term, retaining such age-based provisions in the longer term requires greater justification in the context of the social security principles.

Furthermore, age is a protected characteristic under the Equality Act 2010, and provision which ostensibly places a particular age group at a disadvantage because of their age could constitute discrimination, unless it can be objectively justified, and negative impacts mitigated against.

This report discusses some of these issues in more detail in later sections of this report, the mobility component (section 5), equality (section 7) and qualifying periods (section 8.1).

2. Aims of Pension Age Disability Payment

Attendance Allowance (AA) was originally introduced in 1971 as a benefit for severely disabled people who required attention or supervision from another person.¹⁰ AA was intended as a *contribution* to such costs rather than meeting them in full.¹¹ In 1992 AA for people of working age was replaced by Disability Living Allowance, which also amalgamated both AA and the previously separate Mobility

⁹ [Social Security Scotland - Our Charter](#)

¹⁰ The National Insurance (Old Persons' and Widows' Pension and Attendance Allowance) Act 1970, section 4

¹¹ House of Commons debate, 10 July 1970 [National Insurance \(Old Persons' And Widows' Pensions \(hansard.parliament.uk\)\)](#)

Allowance into one benefit.¹² Benefits for people below pension age tend to be seen as a contribution towards the additional costs experienced by disabled people, whereas AA has been focussed on needs for 'personal care', raising questions about the balance between cash payments and care services.¹³

Following questions from SCoSS, officials noted that "the aim and underlying policy intent of Pension Age Disability Payment (PADP) is to provide assistance to help mitigate additional costs incurred by an individual that is over the State Pension age as a result of having a long-term disability or health condition. PADP is awarded to help with extra costs if a person has a disability severe enough that they need someone to help look after them." This aligns with the stated aim of AA.

Given its history and the different time and context in which it was designed, AA and its aims and language sit uneasily alongside the Scottish social security principles and Charter expectations of a system based on dignity, fairness and respect.¹⁴ SCoSS considers that, in reflecting AA, the aims of PADP appear to be descriptive rather than linking to the outcomes that PADP could be expected to achieve for older disabled people. Having a greater outcomes focus could facilitate improved monitoring and evaluation.

Recommendation 1: We accept that during case transfer there is a rationale for aligning the aims of Pension Age Disability Payment with Attendance Allowance, but in the longer term the Scottish Government should review Pension Age Disability Payment's aims for consistency with the social security principles.

2.1 Name of the benefit

Initial consultation and position papers on the benefit had suggested the benefit would be called Disability Assistance for Older People.¹⁵

In evidence to the SCoSS Board in August 2023, officials noted that the name, along with Social Security Scotland's other disability benefits, had been the subject of significant research with stakeholders. Subsequently, the name has changed to ensure consistency, through the use of "Disability Payment", and to include reference to the age criteria i.e. "pension age".

The name Attendance Allowance has caused some confusion as it implies that the payment might be for the carer of the individual (who may 'attend' to them) and this change of approach is, therefore, welcome.

Age Scotland suggested that while Pension Age Disability Payment was some improvement, many older people do not identify themselves as disabled (for example

¹² Mobility Allowance was introduced in 1975 but was not payable to people over pension age (([Social Security Pensions Act 1975 \(legislation.gov.uk\)](#) section 22, Social Security Pension Act 1975). Disability Living Allowance consisted of a care and a mobility component (([Social Security Contributions and Benefits Act 1992 \(legislation.gov.uk\)](#) sections 71-76 Social Security Contributions and Benefits Act 1992); Attendance Allowance was also revised in 1992.

¹³ Reference to support with care needs has also generated debate in previous years about the balance between cash benefits and social care services, e.g. whether local authorities should take responsibility for Attendance Allowance (see Kennedy, S. et al (2016) *The future of Attendance Allowance*, House of Commons Library briefing paper [7729 \(parliament.uk\)](#))

¹⁴ [Social Security Scotland - Our Charter](#)

¹⁵ [Scottish Government Position Paper - Mobility Component for Disability Assistance for Older People \(DAOP\) \(www.gov.scot\)](#)

someone who is experiencing cancer, even though this falls within the definition of disability under the Equality Act 2010)¹⁶ – and as such this may mean that they may be put off applying. One participant in SCoSS’s stakeholder engagement events noted that “Pension Age Independence Payment” may be a better name.

SCoSS believes, however, that the name Pension Age Disability Payment is more likely to improve take-up amongst older disabled people whilst remaining consistent with Social Security Scotland’s other benefits.

3. Take-up

Stakeholder organisations consulted by SCoSS, including Age Scotland and Alzheimer Scotland, noted the traditionally low take-up of social security payments by older people and referred to barriers to take-up by older people generally, noting the importance of targeted promotion that considered minority groups and people with cognitive impairments. Streamlining and simplifying the application process as much as possible would be welcomed by these organisations, paying regard to the potential for digital exclusion and signposting to advice and assistance services wherever practical.

Stakeholder organisations also referred to various concerns as potentially limiting Attendance Allowance (AA) take-up, noting principally that older people, working age people and younger people can face different challenges and therefore care must be taken when applying existing processes from one claimant group onto another.

Barriers to claiming AA can include:

- Complexity of the claim form¹⁷
- Not understanding what supporting information is required¹⁸
- Difficulty in accessing supporting information¹⁹
- Some may not have access to a support network to assist them²⁰
- Some claimants may need more support than working age claimants in order to make a claim and complete the form, which may generate increased demand on Social Security Scotland²¹
- Not knowing that the benefit exists, or that they might be eligible for it²²
- Not knowing where to find advice and/or support²³

The Scottish Government is required under the Social Security (Scotland) Act 2018 to promote the take-up of Scottish social security payments, and to lay before Parliament and publish regular strategies for doing so. The last strategy was published in October 2021²⁴ and the next is required by 2026.²⁵ The timeline for the third strategy was established pre-pandemic, and delays to the introduction of

¹⁶ [Disability discrimination \(www.equalityhumanrights.com\)](http://www.equalityhumanrights.com)

¹⁷ The possibility of finding claim forms overwhelming is noted in EQIA p. 11 & Fairer Scotland IA p. 3.

¹⁸ Noted by participants at Age Scotland events, 4 and 5 October 2023.

¹⁹ Including specialist medical information from GPs and other registered medical professionals – Citizens Advice Scotland.

²⁰ EQIA p. 11 & Fairer Scotland IA p. 3

²¹ Noted by participants at Age Scotland events, 4 and 5 October 2023.

²² Age Scotland, [Benefit take-up and older people \(ageuk.org.uk\)](http://ageuk.org.uk)

²³ Age Scotland, [Benefit take-up and older people \(ageuk.org.uk\)](http://ageuk.org.uk) See also EQIA p. 12 referring to older people being disproportionately affected by social isolation, limiting their access to information.

²⁴ [Social Security \(Scotland\) Act 2018: benefit take-up strategy - October 2021 \(www.gov.scot\)](http://www.gov.scot)

²⁵ [Social Security \(Scotland\) Act 2018 \(legislation.gov.uk\)](http://legislation.gov.uk) section 9 (1)(c)

various Scottish social security payments²⁶ were not envisaged or anticipated when it was set.

In February 2020 the introduction of the Scottish replacement for AA was expected to be delivered in 2021²⁷ but this was delayed until now. There might be considerable benefit, therefore, to re-examining the take-up strategy earlier than previously planned, to take into account social security payments such as PADP that have been introduced since October 2021.

Recommendation 2: The Scottish Government should consider bringing forward the 2026 take-up strategy to integrate the most recent benefits into the strategy as a whole.

4. Policy changes from Attendance Allowance

From its launch, the rules for Pension Age Disability Payment (PADP) are mostly intended to mirror Attendance Allowance (AA). This is intended to allow the Scottish Government to transfer AA awards of people in Scotland safely and securely from the DWP to Social Security Scotland. Having the same rules also seeks to avoid creating a two-tier system where people still getting AA are treated differently from disabled people over pension age who have already transferred or have newly applied for PADP.

As noted in previous SCoSS reports, the Commission is clear that good operational delivery that gives people confidence in the continuity of their payments and can effectively administer new claims is critical. Changing the rules too much before the transfer is completed could risk undermining delivery with detrimental consequences for older disabled people.

Despite the focus on safe and secure transfer, there will be some changes from AA when PADP is introduced:

- An increased choice of application route with further assistance available through Social Security Scotland's Local Delivery Service and the national independent advocacy service.
- Terminal illness eligibility will be on the basis of the judgement of registered medical practitioners and registered nurses as to whether a person should be considered terminally ill, removing the 12-month life expectancy rule in AA
- Ongoing awards will be subject to "light-touch reviews" by Social Security Scotland
- Eligibility for Short-term Assistance (STA) extended to individuals where an entitlement to PADP has reduced or stopped due to a subsequent determination. STA, paid at the rate of the difference between the level of award paid prior to the reduction and the new level of award, will be available to individuals until the First-tier Tribunal for Scotland has made a determination

We consider these immediate changes below.

²⁶ The Scottish replacements for Cold Weather Payment, Carer's Allowance, Disability Living Assistance for Children, for example.

²⁷ [Social Security Programme- PMO - Business Cases - SSPBC Version 4 \(www.gov.scot\)](https://www.gov.scot/publications/social-security-programme-pmo-business-cases-sspbc-version-4/pages/10)

4.1 Choice of application route

When compared with AA an extended choice of application route will be offered for PADP which includes online, telephone, paper-based and face-to-face applications. It is particularly important, in the case of PADP, that a range of routes are available as 19% of over 60s (273,000 people) in Scotland do not use the internet and this rises to 29% for over 75s (139,000 people).²⁸

Both Age Scotland and Alzheimer Scotland noted in evidence to SCoSS that AA forms are very long and can “put off eligible applicants from making a claim”.²⁹

“While we understand that applications need to cover a range of information about someone's disabilities and conditions, it would be more beneficial for applicants if this was a simpler and less arduous process. In our experience, older people often play down the difficulties they experience in their application form or feel they have already covered the issue sufficiently in one of the seemingly 'repeated questions', which can result in awards being refused.”³⁰

Supporting people through the application is one of the expectations in *Our Charter*, as is aiming to get decisions right first time. The provision of additional advice and advocacy in the completion of the application process, as for other Social Security Scotland disability benefits, is welcome but Social Security Scotland should ensure that PADP applicants are not similarly inhibited and a more accessible form, designed with the user in mind, is available.

4.2 Terminal illness

The 12-month terminal illness life expectancy timescale currently used by the Department for Work and Pensions (DWP) in determining AA eligibility will be replaced by a judgement made by registered medical practitioners and registered nurses as to whether a person should be considered terminally ill for the purpose of determining eligibility for PADP. This replicates the approach which has been taken by Social Security Scotland to both Child Disability Payment and Adult Disability Payment.

Stakeholders, including Citizens Advice Scotland and CPAG Scotland, highlighted that the approach taken to determining eligibility for AA for people who are terminally ill had led to delays in receiving entitlement when those with limited life expectancy should be fast-tracked to higher rate payments. This has generated complaints from applicants, at a particularly distressing period in their lives.

Anyone with a terminal illness will be entitled to the higher rate of PADP (as they are for AA). Entitlement will depend on the clinical judgement of an appropriate healthcare professional that the person has a progressive disease that can reasonably be expected to cause their death. Clinical judgement is based on Chief

²⁸ [Scottish Household Survey, 2021 \(www.gov.uk\)](https://www.gov.uk) Calculations of percentages of population of over 60s and over 75s in Scotland are based on NRS mid-year estimates for 2021.

²⁹ Alzheimer Scotland response to SCoSS call for evidence, September 2023

³⁰ Age Scotland response to SCoSS call for evidence, September 2023

Medical Officer Guidance³¹ and notified to Social Security Scotland on a Benefits Assessment under Special Rules in Scotland (BASRiS) form.

The median processing times for applications for ADP under the special rules provisions is currently 2 working days.³² These processing times were published for the first time on 19 September 2023, which is welcome, and positive. It appears that a higher proportion of AA claimants receive benefit under special rules than working age claimants.³³ If older people are more likely to become eligible for PADP due to having limited life expectancy it will be important to maintain the speed of processing times for claims under the special rules for terminal illness. The Scottish Government should closely monitor these processing times to ensure that they are maintained during the introduction of PADP.

4.3 “Light touch” reviews

When a Case Manager makes a determination to award PADP, they will set a review date based on when they expect a person’s needs are likely to change.³⁴ This is a change from AA, where the individual could have an indefinite award or a fixed term award (which means an individual needs to reclaim). Although there will be a review date for PADP an award does not automatically end at that point. This is a welcome change as it avoids time pressures on claimants to renew a claim by a set date or risk their payment stopping. By continuing entitlement while a review is taking place, disabled people will continue to receive the assistance they are entitled to until a Case Manager has made a new determination.³⁵

In addition to the information on the change provided by the client, each review will consider any existing information held by Social Security Scotland that is still relevant in making a new determination in order to ensure it is as “light touch” as possible.

“Should more supporting information be required to make a determination, case managers take a collaborative approach and can gather the information on the client’s behalf, if that’s the client’s preference.”³⁶

We welcome that this approach is in keeping with the approach taken to reviews of Child Disability Payment and Adult Disability Payment.³⁷

4.4 Short-term assistance

Short-term assistance (STA) is a form of social security assistance in its own right. It is a payment for people who are challenging a decision to reduce or stop their Adult Disability Payment or Child Disability Payment, and will also be available in PADP.

³¹ [Guidance for Doctors and Nurses Completing Benefits Assessment Under Special Rules in Scotland \(BASRiS\) Form for Terminal Illness v1.0 \(socialsecurity.gov.scot\)](https://socialsecurity.gov.scot/guidance-for-doctors-and-nurses-completing-benefits-assessment-under-special-rules-in-scotland-basris-form-for-terminal-illness-v1.0)

³² [Adult Disability Payment: high level statistics to 31 July 2023 \(www.gov.scot\)](https://www.gov.scot/adult-disability-payment-high-level-statistics-to-31-july-2023)

³³ [Stat-Xplore \(stat-xplore.dwp.gov.uk\)](https://stat-xplore.dwp.gov.uk) shows, of the cases with entitlement, of 1,584,660 AA claims, 41,005 were made under special rules; and for PIP, of 3,330,160 claims, 29,535 were made under special rules.

³⁴ [Draft Disability Assistance for Older People \(Scotland\) Regulations 2024: Draft Equality Impact Assessment \(www.gov.scot\)](https://www.gov.scot/draft-disability-assistance-for-older-people-scotland-regulations-2024-draft-equality-impact-assessment)

³⁵ EQIA p. 5

³⁶ Scottish Government response to SCoSS question (response received 9 October 2023)

³⁷ Scottish Government response to SCoSS question (response received 9 October 2023)

With STA, people continue to get the same level of payment as before until the redetermination or appeal is decided (Schedule, Part 1 of the draft regulations).

The intention is that people are not discouraged from challenging a decision by having to manage on a reduced income. As a payment to help avoid a sudden drop in income when a disabled person may well still have extra costs, it is reasonable to say that STA helps realise the right of disabled people to have decent living conditions, as well as contributing to realising the right to equal access to justice.³⁸

Whatever the outcome of the challenge STA is not repayable. To avoid double payment following a successful challenge, the amount of STA paid is offset against the award of PADP made for the same period. The result can be that no PADP is paid for the period of the redetermination or appeal. This could have consequences for passported benefits (e.g. DWP benefits), which can depend on actual payment of a qualifying disability benefit.³⁹ STA itself is not a qualifying benefit for passported benefits. Passported benefits include premiums and additions to DWP benefits such as Pension Credit, and carer's benefits such as Carer's Allowance and Carer Support Payment.

For example, a disabled older person gets PADP and also Pension Credit. Pension Credit includes severe disability addition of £76.40 a week because PADP is a qualifying benefit for the addition. To be a qualifying benefit, PADP must actually be paid, so any period of entitlement without actual payment will not count. On 1 June, their PADP award is reviewed and terminated. They ask for a redetermination and then appeal. They apply for STA and it is paid at the same rate as the PADP. Pension Credit severe disability addition stops because STA is not a qualifying benefit. Six months later, on 1 December, they win their appeal. The PADP award is reinstated from 1 June. STA paid between 1 June and 1 December is offset against the PADP award meaning no PADP payment is due for that period. Payment of PADP begins from 1 December. Although PADP entitlement has been backdated, it is only when it is actually paid that it becomes a qualifying benefit again for the severed disability addition. Pension Credit severe disability addition starts again from 1 December. The addition is not paid for the six months from June to December because there is no qualifying benefit in payment for that period. Had they not claimed STA, payment of PADP would restart from 1 June as would the severe disability addition. The person gained in the short term by being paid STA during their appeal, but overall is nearly £2000 worse off because of the loss of the severe disability addition.

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.

³⁸ Articles [13](#) and [28](#) of the [Convention on the Rights of Persons with Disabilities \(www.ohchr.org\)](http://www.ohchr.org)

³⁹ For example, the severe disability addition of Pension Credit depends on being 'in receipt of' Attendance Allowance. Case law, CPC/2021/2008, has confirmed that this means actual receipt not simply being entitled to benefit.

It is unfortunate to leave people in the position of choosing between some money now or more money 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.

Recommendation 3: The Scottish Government should ensure that information on Short-term Assistance while challenging a decision includes the possibility of not regaining passported benefits in full at the end of the process so that people can make an informed decision about whether to apply.

5. Mobility

The draft regulations follow the Attendance Allowance (AA) rules in excluding mobility needs. There has been an upper age limit on benefits for mobility since Mobility Allowance was introduced in 1976. This has been justified by successive governments on grounds of cost and prioritising people of working age who are considered to have lower incomes due to having less opportunity to earn and save compared to those who claim in later life.⁴⁰ However, some research has cast doubt on the assumption that Disability Living Allowance claimants have lower incomes than those on AA.⁴¹

Claimants below state pension age who receive the mobility component can also be eligible for ‘passported’ help such as a car on lease, powered wheelchairs and mobility scooters through the Motability scheme; they may also be eligible for a discount on vehicle excise duty, and automatic entitlement to a Blue Badge.⁴² Stakeholders responding to SCoSS’s call for evidence noted the impact of older disabled people being ineligible for the mobility component because of these additional ‘passports’.

Some responses to the Scottish Government’s 2019 consultation on disability assistance suggested a mobility component would bring disability assistance for older people in line with other forms of disability assistance in Scotland and should be considered.⁴³

Age Scotland have argued that its inclusion would help to reduce the pressure on other services (as a “preventative spend”) as well as address social challenges experienced by disabled people over pension age.

“If the Scottish Government is serious about promoting healthy ageing, then providing support with mobility needs which would allow older people to continue to get out and about would be extremely effective.... Allowing people an easier way of getting out to see family and friends and participate in social activities and clubs will help to tackle social isolation and loneliness.”⁴⁴

⁴⁰ See Kennedy, S. (2021) *Social security benefits for older people with mobility needs*. House of Commons Library paper [SN07160 \(parliament.uk\)](https://parliament.uk).

⁴¹ Hancock, R. et al (2012) ‘Attendance Allowance and Disability Living Allowance claimants in the older population: is there a difference in their economic circumstances?’ *Journal of Poverty and Social Justice*, 20(2) 193-209

⁴² A Blue Badge can also be accessed via a local authority assessment of a person’s ability to walk.

⁴³ [Disability assistance in Scotland: analysis of consultation responses - \(www.gov.scot\)](https://www.gov.scot)

⁴⁴ Age Scotland: “Pension Age Disability Payment – the case for including a mobility component”, p. 4

DACBEAG's advice to the Scottish Government on PADP agreed that "the introduction of a mobility component should be carefully considered by the Scottish Government. Mobility issues are just as relevant to people over pension age as to those below it."⁴⁵

Officials have noted, in their responses to questions by SCoSS, that the potential introduction of a mobility component to PADP has been carefully considered as part of the process of policy development. In line with the existing AA rules, however, the Scottish Government does not plan to include a mobility component within PADP, citing financial challenges:

"Scottish Ministers have concluded that it is not feasible to include a mobility component within the foreseeable future. In February 2020, the Scottish Government estimated that the introduction of a mobility component could cost an additional £580 million annually.... Therefore, given the highly challenging fiscal environment, Scottish Ministers are not currently in a position to consider the introduction of a mobility component."⁴⁶

The Scottish Government's response to the 2019 consultation on disability assistance also stated that it would be unfair to introduce a mobility component as "it would mean that some disabled people in Scotland already in receipt of AA would not be eligible for the mobility component until their case transfers from DWP to Social Security Scotland, whilst other people in Scotland claiming (PADP) may be eligible." The Scottish Government said that if they did introduce a mobility component for older disabled people, the DWP may not pay reserved premiums or benefits associated with this.⁴⁷

On the face of it, the differential treatment of older disabled people under AA, which is being carried over into PADP, has been considered by some commentators as potential age discrimination.⁴⁸ Whether discrimination has taken place is a matter for the courts; cases taken under DLA and AA legislation have found that such differential treatment by the Department for Work and Pensions was justified⁴⁹. However, the Scottish Government and Social Security Scotland have a different framework and vision for social security, and operate social security under a different set of principles and human rights, which is a different context for considering justifications.

Whilst SCoSS understands the rationale for not including a mobility component during the case transfer process, the approach to social security in Scotland, and the introduction of PADP, presents an opportunity to re-consider the justifications

⁴⁵ [Disability and Carer Benefits Expert Advisory Group - pension age disability payment: advice \(www.gov.scot\)](https://www.gov.scot)

⁴⁶ [Draft Disability Assistance for Older People \(Scotland\) Regulations 2024: Draft Equality Impact Assessment \(www.gov.scot\)](https://www.gov.scot)

⁴⁷ [Disability assistance in Scotland: response to consultation - \(www.gov.scot\)](https://www.gov.scot)

⁴⁸ See Kennedy, S. (2021) *Social security benefits for older people with mobility needs*. House of Commons Library paper [SN07160 \(parliament.uk\)](https://www.parliament.uk).

⁴⁹ For example to prioritise those of working age and to those disabled earlier in life for whom disability is more financially disruptive in terms of lost opportunities to work and save: see CDLA/1450/2008; R(DLA) 1/09; [2009] UKUT 37 (AAC); CA/905/2009; [2009] UKUT 257 (AAC), though also note some evidence querying this assumption: Hancock, R. et al (2012) 'Attendance Allowance and Disability Living Allowance claimants in the older population: is there a difference in their economic circumstances?' *Journal of Poverty and Social Justice*, 20(2) 193-209.

inherited from AA. In the context of social security and human rights principles (e.g. principle (b)), and the social security principle of continuous improvement in ways in which put the needs of claimants first and to advance equality and non-discrimination (principle (g)), further consideration of mobility needs of older people could take place following case transfer. There is also a trade-off with principle (h) (value for money).

5.1 Alternative options

The Scottish Government has highlighted that people reaching State Pension age are eligible for a variety of different benefits and PADP will become part of that overall system. Alongside this, the Scottish Government has stated that a companion bus pass will be made available for those receiving PADP, free personal care is available for all individuals that have been determined to need it by an assessment from their local authority and for individuals that have been seen by a physiotherapist or occupational therapist, walking aids and other equipment can be supplied to aid with their mobility needs.⁵⁰

Stakeholders indicated that further options should be considered to mitigate the decision not to extend the mobility component to PADP, for example:

- Extending eligibility to Motability for a smaller group of older disabled people (e.g. such as those with a terminal illness) or pay a lower amount than the higher rate mobility component⁵¹
- Enabling a loan for a Motability car to be accessed using a wider range of income than the mobility component
- Enabling a broader range of transport options to be accessed e.g. taxi schemes⁵²

Recommendation 4: Given concerns about the mobility component and other passported support not being payable to individuals who claim disability assistance over state pension age, the Scottish Government should work with stakeholder organisations to consider other forms of transport assistance which could be available to older disabled people with mobility needs, within or outside the Scottish social security system.

6. Renal dialysis

Someone over pension age who has help with regular renal dialysis can qualify automatically for the lower rate of Pension Age Disability Payment (draft regulation 7). The rule is the same as for Attendance Allowance. This is a helpful provision. Without this automatic qualification, people undergoing haemodialysis, who normally have four days a week free of treatment, may not qualify for benefit.

Depending on the type of dialysis, it is generally carried out three times a week during the day, or throughout each night. Normally, someone who has care needs during the day and at night could get the higher rate of PADP. However, someone who has help with dialysis at a time that starts before the household would normally

⁵⁰ Scottish Government response to SCoSS question (response received 7 September 2023)

⁵¹ Mobility and Access Committee for Scotland response to SCoSS call for evidence, September 2023

⁵² Echoing issues raised in the Social Security Advisory Committee report on the mobility needs of disabled people: [The use of public funds in supporting the mobility needs of disabled people](https://www.gov.uk) (www.gov.uk).

go to bed and continues into the night, could still only qualify automatically for the lower rate of PADP.

Although there is a similar provision for children claiming Child Disability Payment, there is a significant difference from PADP. Children who have help with dialysis both day and night automatically qualify for the highest rate of the care component whereas those of pension age would get the lower rate of PADP. With the eligibility conditions for Child Disability Payment and PADP care component being mostly the same, this difference is noteworthy. It means that in this respect PADP is aligned with Attendance Allowance but not with Child Disability Payment.⁵³

There is good reason to keep PADP eligibility conditions the same as Attendance Allowance until everyone on Attendance Allowance has transferred to PADP. However, we note that the Scottish Government did take the opportunity to make it easier to access the highest rate of Child Disability Payment for families of children dialysing both day and night when it replaced Disability Living Allowance for children. It would be timely to consider whether older people would also benefit from easier access.

Observation 1: Older people needing help with renal dialysis day and night have access to a lower automatic rate of benefit than young people. The introduction of Pension Age Disability Payment is an opportunity for the Scottish Government to consider whether this is the best policy.

7. Equality issues

SCoSS received copies of draft impact assessments along with the draft regulations which are a welcome and helpful aspect of our scrutiny. During the scrutiny period the draft Equality Impact Assessment of Pension Age Disability Payment (PADP) was published on the Scottish Government website.⁵⁴ SCoSS welcomed this move in allowing for wider feedback on this draft assessment.

As the draft had been made public, SCoSS met with the Equality and Human Rights Commission Scotland to consider effective approaches to equality impact assessments using the draft assessment of the PADP regulations as an example. When reviewing equality impact assessments, SCoSS considered that potential issues for further consideration included:

- Plugging data gaps, including consideration of 'intersectionality' (ie the interaction of one or more protected characteristics, such as age and disability in this instance), and what assumptions can be made about potential impacts when data is limited and so impacts cannot be evidenced
- Further stakeholder engagement to assist in meeting data gaps, especially concerning intersectionality and therefore any new potential impacts

⁵³ [The Disability Assistance for Children and Young People \(Scotland\) Regulations 2021 \(legislation.gov.uk\)](#), section 16; for Adult Disability Payment there is no automatic qualification, but over 14 hours a week of dialysis at home with support would qualify someone for the standard rate of the daily living component ([The Disability Assistance for Working Age People \(Scotland\) Regulations 2022 \(legislation.gov.uk\)](#), schedule 1 part 2 – Daily Living Activities, Activity (3)).

⁵⁴ [Draft Disability Assistance for Older People \(Scotland\) Regulations 2024: Draft Equality Impact Assessment \(www.gov.scot\)](#) Similarly the [Draft Disability Assistance for Older People \(Scotland\) Regulations 2024: Draft Fairer Scotland Duty Assessment - \(www.gov.scot\)](#) was also published.

- As we note in section 5 on mobility, in the context of the different social security and human rights principles being applied in Scotland, the introduction of PADP presents an opportunity to re-consider the justifications inherited from AA. As such, further consideration of the justifications for not including a mobility component, and mitigations against any negative impacts is required

Concerns about the lack of a mobility component, as discussed above, relates to the potential for differential treatment by age⁵⁵ unless it can be objectively justified (eg as a proportionate means of achieving a legitimate aim).

As noted earlier, although some cases considering DLA/AA legislation have held that such differences by age could be justified,⁵⁶ there remain concerns. For example the 2004 ‘Mobilise’ campaign, and a 2009 House of Commons Work and Pensions Select Committee questioned such differences in treatment on the grounds of age.⁵⁷

As noted in Section 5 of this report on mobility, retaining age distinctions sits uneasily in the context of the Scottish Government’s human-rights based approach to devolved social security. Furthermore, aspects of the Equality Act concerning disability also includes the potential to treat disabled people more favourably⁵⁸, which could be considered in future iterations of equality impacts.

Observation 2: When updated, the draft Pension Age Disability Payment Equality Impact Assessment could address data gaps and engage stakeholders to explore further justifications and mitigations related to a mobility component.

8. Future changes

In response to DACBEAG’s report on PADP, the then Minister for Social Security said that: “Although I do not plan to review the eligibility criteria for Pension Age Disability Payment (PADP), I will be introducing a number of practical administrative improvements that will provide disabled people with a different experience when accessing the support they are entitled to.” SCoSS does not, therefore, envisage any significant changes to the eligibility criteria to be set out in the near future. There is, however, an issue to which we wish to draw the Scottish Government’s attention at the point at which future changes are considered.

8.1 Qualifying period

The AA rules set out that an individual must have been disabled or had their condition for six months before becoming eligible. Draft regulation 5 (6) essentially replicates this qualifying period for Attendance Allowance in having a qualifying period of 26 weeks for PADP (though not for people with a terminal illness where there will continue to be no qualifying period). The Scottish Government notes that the qualifying period “ensures that this form of assistance is targeted at those with

⁵⁵ Where an apparently neutral provision puts people sharing an age group at a particular disadvantage; see [Age discrimination \(www.equalityhumanrights.com\)](http://www.equalityhumanrights.com).

⁵⁶ Kennedy, S. (2021) *Social security benefits for older people with mobility needs*. House of Commons Library paper [SN07160 \(parliament.uk\)](https://www.parliament.uk/publications/2021/07/21); Work and Pensions Committee, Tackling Pensioner Poverty, 30 July 2009, [HC 4111 \(parliament.uk\)](https://www.parliament.uk/publications/2009/07/30)

⁵⁷ Now the Equality Act 2010. Discussed in Kennedy, S. (2021) *Social security benefits for older people with mobility needs*. House of Commons Library paper [SN07160 \(parliament.uk\)](https://www.parliament.uk/publications/2021/07/21).

⁵⁸ [Disability discrimination \(www.equalityhumanrights.com\)](http://www.equalityhumanrights.com)

longer-term conditions and disabilities”. This rule does not, however, correspond with the qualifying period for Adult Disability Payment which is a 13-week period.

The Scottish Government notes that the longer qualifying period is appropriate and in keeping with the policy intent for PADP, and “ensures that this form of assistance is targeted at those with longer-term conditions and disabilities”. In its 2019 position paper on qualifying periods the Scottish Government also stated that changing the qualifying period for older disabled people could have financial implications, at that time estimated to cost £21million.⁵⁹

Alzheimer Scotland have commented, however, that the retention of this rule reinforces a long standing inequity and that there will be a small number of people who “make a claim because of needs due to disability which arises from an acute or sudden onset of illness, or injury.” Anyone in this position would need to wait six months from the development of any impairment to receive PADP.

9. Regulations: areas for clarification

9.1 Case law

Decisions made in appeals to tribunals and courts are referred to as ‘case law’. Case law makes it clearer what regulations mean when applied to individual situations and specific disabilities. Because the principles established in these cases are binding on decision makers deciding other cases, case law makes decision making more consistent. It also enables individuals to exercise their rights more effectively.

Attendance Allowance case law will not form part of Pension Age Disability Payment law despite the very similar regulations. Therefore, legal principles established in AA cases do not directly apply to PADP. In our view, reflecting case law in guidance which informs decision making is generally a reasonable approach. It allows for guidance on matters that would be too detailed to include in the regulations themselves. Some cases, however, establish principles which can be incorporated in the PADP regulations. For example, the draft regulations usefully define ‘attention’ as including ‘prompting or motivation’ and ‘assistance with communication needs.

However, the definition of ‘supervision’ in the draft regulations should be changed. It is presented in identical terms to the Adult Disability Payment definition. While there is merit in defining supervision, this should be based on case law principles relevant to PADP, and not with reference to the different tests in Adult Disability Payment. As drafted, eligibility would be narrowed further than has been established in case law.

For example, someone is eligible for PADP if they need ‘continual supervision ... to avoid substantial danger to themselves or others’ (draft regulation 5(2)(b)). ‘Supervision’ in this qualifying condition is then further defined in draft regulation 5((5)(c). This definition adds that ‘continual supervision requires’ the ‘continuous presence’ of another person. Case law has established that ‘continual’ and ‘continuous’ are not the same, and that supervision can be continual even when there are short breaks.⁶⁰ The definition also adds that the purpose of supervision is ‘ensuring the individual’s safety’, thus ignoring that danger to others also counts, and

⁵⁹ [Scottish Government Position Paper: Disability Assistance Qualifying Periods \(www.gov.scot\)](http://www.gov.scot)

⁶⁰ R(A) 1/73

that case law establishes that to ‘avoid substantial danger’, means reducing the risk not removing it completely.⁶¹

Recommendation 5: The Scottish Government should revise the definition of ‘supervision’ in line with established case law principles.

9.2 Required period and required period condition

‘Required period’ and ‘required period condition’ are concepts from Adult Disability Payment (and Personal Independence Payment) which are not used in Attendance Allowance. Introducing these terms in PADP seems to have meant departing from the policy intention of following Attendance Allowance and some lack of clarity in important provisions.

- The term ‘required period’ is used in regulations 3, 5, 8, 27 and 38. It refers to the 26-week qualifying period in regulation 5(6) although the term ‘required period’ is not used in regulation 5(6). For clarity, if ‘required period’ is the preferred term for the 26-week qualifying period, it would be preferable to specify it in regulation 5(6)
- The lower and higher rate conditions in regulation 6 are not clearly tied into both the period of the award and the 26-week qualifying period. As drafted, it could be argued that it is possible to qualify for the higher rate as soon as help is needed both day and night (the condition for the higher rate) while only needing help in the day or at night in the previous 26 weeks (the condition for the lower rate)
- Part 4 is headed ‘required period condition’. This is a concept from Adult Disability Payment which is not used in Attendance Allowance. In PADP draft regulations it refers to applying for PADP after an interval since the end of a previous award. To avoid confusion, renaming this part to refer to PADP after an interval would be preferable
- In Attendance Allowance, someone can reclaim the same rate within two years without serving the 26-week qualifying period again. Draft regulation 8 seems to be providing a similar rule for PADP, however, it introduces an extra test of having the same condition as before or stemming from the same condition. This is a test that exists in Adult Disability Payment (and Personal Independence Payment) but not in Attendance Allowance. While it could be reasonable to ask someone with a different condition to re-serve the qualifying period, if the policy intention is to follow Attendance Allowance, then this regulation does not meet that intention
- Draft regulation 8(3) seems to assume that the 26-week qualifying period is a rolling test that must be satisfied not just before the start of the award but also on an ongoing basis. However, while a version of that is the case for Adult Disability Payment, which seems to be the model for this provision, it is not the case for Attendance Allowance or PADP.

Recommendation 6: Provisions relating to the ‘required period’ and ‘required period condition’ should be revised to ensure they meet the policy intention.

⁶¹ R(A) 3/92

9.3 Miscellaneous drafting issues

The draft regulations contain some misnumbering e.g.

- Regulation 5(7) refers to paragraph (7) but this should be paragraph (6)
- Regulation 8(2) refers to regulation 5(4) but this should be regulation 5(6)
- Regulation 18 has incorrect paragraph references
- Regulation 42(1)(b) has an unintentional line break separating subparagraph (ii)
- Schedule numbering begins at paragraph 50 instead of paragraph 1.

10. Approach to scrutiny

This report has been completed in accordance with the Commission's pre-legislative scrutiny function, set out in sections 22 and 97 of the Social Security (Scotland) Act 2018 (henceforth referred to as 'the Act'). Section 97 states that the Commission must report on draft Regulations proposed to be made under any section in Chapter 2 of Part 2 or Section 79 of the Act. The draft Regulations are made under powers conferred by sections within this part and chapter.

In keeping with our role to scrutinise social security regulations, this report provides commentary in connection with human rights and the social security principles set out in Section 1 of the Social Security (Scotland) Act 2018,⁶² as operationalised via *Our Charter*.⁶³

The Cabinet Secretary for Social Justice referred the draft regulations to SCoSS, along with the Policy Note, on 7 August 2023.⁶⁴ We were given a deadline for reporting of 30 October 2023.

Drafts of the Equality Impact Assessment, the Child Rights and Wellbeing Impact Assessment, the Fairer Scotland Duty Assessment, the Island Communities Impact Assessment and the Business and Regulatory Impact Assessment were received from the Scottish Government on 7 August 2023. As these were also published online by the Scottish Government, the SCoSS Board took the opportunity to use them as a case study for discussion of the Equality Impact Assessment with the Equality and Human Rights Commission in Scotland (EHRC Scotland). The SCoSS would like to thank EHRC Scotland for their advice.

To understand, and represent, the views of stakeholders in relation to the draft regulations, SCoSS also held two events with Age Scotland during the scrutiny period. SCoSS would like to express its thanks to Age Scotland for their work in supporting us.

We would also like to thank all the organisations and individuals who responded to our call for evidence and stakeholders who joined our roundtable discussions on case law. The insights gained were invaluable and have informed this report.

We are also grateful for the efforts made by officials to keep us apprised of developments throughout the scrutiny process and for their timely response to written questions.

⁶² [Social Security \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://legislation.gov.uk)

⁶³ [Social Security Scotland - Our Charter](#)

⁶⁴ [Referral – Disability Assistance for Older People \(Scotland\) Regulations 2024 – \(socialsecuritycommission.scot\)](#)

Annexe A: Stakeholder engagement

Written call for evidence respondents

- Age Scotland
- Alzheimer Scotland
- Blesma
- Citizen's Advice Scotland
- CPAG in Scotland
- ENABLE Scotland
- The Health and Social Care Alliance Scotland (the ALLIANCE)
- The Mobility and Access Committee for Scotland (MACS)

External events held during scrutiny period

- Discussion with Equality and Human Rights Commission held on 6 September 2023
- Stakeholder events with Age Scotland held on 4 and 5 October 2023
- Roundtable event on PADP case law held on 9 October 2023

Annexe B: Scrutiny timeline

7 August 2023	Draft Regulations formally referred to SCoSS by the Cabinet Secretary for Social Justice
10 August 2023	SCoSS Board attended by Social Security officials for Pension Age Disability Payment discussion
24 August 2023	External stakeholders written call for evidence began
6 September 2023	SCoSS roundtable with Equalities and Human Rights Commission
12 September 2023	SCoSS board meeting discusses report
29 September 2023	External stakeholders written call for evidence closed
4 October 2023	Stakeholder event held with Age Scotland
5 October 2023	Stakeholder event held with Age Scotland
6 October 2023	Equality Impact Assessment discussion with Scottish Government officials
9 October 2023	External roundtable on Attendance Allowance/Pension Age Disability Payment case law
18 October 2023	SCoSS board meeting discusses report
24 October 2023	Ad hoc Board meeting to discuss report
30 October 2023	SCoSS report signed off and laid

Annexe C: About the Scottish Commission on Social Security

The Scottish Commission on Social Security (SCoSS) plays an essential role in the development and delivery of a Scottish Social Security system based on fairness, dignity and respect.

We provide independent scrutiny of the Scottish social security system and our full functions are set out in section 22 of the Social Security (Scotland) Act 2018.⁶⁵

We provide detailed analysis of proposed social security regulations which are referred to us by Ministers, making recommendations for improvement where necessary.

Our role is also to scrutinise the Scottish Government's delivery of the commitments set out in the Social Security Charter.⁶⁶

We are separate from the Scottish Government, and we carry out our work independently of both Scottish Ministers and the Scottish Parliament.

The Scottish social security principles

SCoSS takes the Scottish social security principles, as laid out in the Social Security (Scotland) Act 2018, into consideration when scrutinising proposed social security legislation and regulations. The Scottish social security principles are:

- (a) social security is an investment in the people of Scotland,
- (b) social security is itself a human right and essential to the realisation of other human rights,
- (c) the delivery of social security is a public service,
- (d) respect for the dignity of individuals is to be at the heart of the Scottish social security system,
- (e) the Scottish social security system is to contribute to reducing poverty in Scotland,
- (f) the Scottish social security system is to be designed with the people of Scotland on the basis of evidence,
- (g) opportunities are to be sought to continuously improve the Scottish social security system in ways which—
 - (i) put the needs of those who require assistance first, and
 - (ii) advance equality and non-discrimination,
- (h) the Scottish social security system is to be efficient and deliver value for money.

⁶⁵ [Social Security \(Scotland\) \(legislation.gov.uk\)](https://www.legislation.gov.uk)

⁶⁶ [Social Security Scotland - Our Charter](#)