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**Scottish Government Response to SCoSS Scrutiny Report on Disability Assistance for Older People (Scotland) Regulations (2024)**

**Responses to Recommendations and Observations**

<b>SCoSS Recommendation</b>	<b>Scottish Government Response</b>	<b>Accept/ Partially accept/ Reject</b>
<p>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.</p>	<p>The development of Pension Age Disability Payment (PADP) has been undertaken with consideration of the Social Security Principles. It provides assistance to mitigate additional costs incurred by an individual who is over the State Pension age as a result of being disabled or having a long-term health condition and is awarded to help with extra costs if a person has a disability severe enough that they need someone to help look after them.</p> <p>The Principles have informed the development of the benefit in a range of ways. For example, we are providing a choice of inclusive application channels and streamlining access to a third party representative. We have undertaken equality impact assessments with SCoSS and stakeholders to make sure we advance equality and non-discrimination.</p> <p>These examples demonstrate some of the ways in which the Principles have shaped PADP. Of course what we deliver on day one will not be the limit of our aspirations and we will review the benefit over time to make such improvements as are practicable and affordable in line with the Principles.</p>	<p>Accept</p>
<p>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.</p>	<p>Our second Benefit Take-Up Strategy, published in October 2021, sets out the Scottish Government's approach to maximising the take-up of devolved social security assistance. Due to the continuing relevance and broad application of the principles set out there, we do not currently plan to bring forward publication of the third Benefit Take-Up Strategy.</p> <p>However, since publication of the second Strategy, the Scottish Government have committed to a new annual publication providing updated estimates of take-up for relevant benefits, as well as setting out policy progress and future direction. The second iteration of this was published on 28 November 2023. Furthermore, we are committed to maximising the take-up of all Scottish benefits and would be happy to discuss the possibility of any further interim publications of value with Commissioners.</p>	<p>Partially Accept</p>

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<b>SCoSS Recommendation</b>	<b>Scottish Government Response</b>	<b>Accept/ Partially accept/ Reject</b>
<p>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.</p>	<p>We believe this recommendation is based on a misunderstanding and officials would be happy to meet SCoSS to offer assurance.</p> <p>If an individual is successful in challenging a decision that lowers or stops their devolved disability benefit, passported benefits that are due may be backdated by DWP, regardless of whether the individual accessed short-term assistance (STA) during the challenge. The amount of backdated assistance received would not be affected by receipt of STA. The individual should inform DWP of the date their disability benefit has been re-awarded from so that the relevant reserved benefit can be reassessed and any premia or additions that are due can be reinstated for the relevant period.</p>	<p>Reject – Explanation provided</p>
<p>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.</p>	<p>This recommendation does not relate to the content of the regulations. The Scottish Government is fully committed to working with stakeholder organisations on such matters and meets with them regularly.</p> <p>The Scottish Government has though carefully considered the report. The examples set out include extensions of the Motability scheme. Within Scotland, this is delivered through the Accessible Vehicles and Equipment (AVE) Scheme, with Motability as the only currently accredited supplier. The Scheme interacts with several taxes that remain reserved to the UK Government. Any changes to the scope of these taxes would have to be made by the UK Government with the agreement of the UK Parliament. The UK Government has been clear that it will only extend the same tax treatment for devolved benefits that provide a like-for-like replacement of a UK Government benefit.</p> <p>As with all of our disability payments, we are committed to a policy of continuous improvement, and we will always be open to working with stakeholders to explore feasible and financially viable options which would offer improvements for the people of Scotland.</p>	<p>Partially Accept</p>

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<p>5. The Scottish Government should revise the definition of 'supervision' in line with established case law principles.</p>	<p>After further consideration of the relevant case law and the definitions within the regulations, the definition of supervision is being revised to read:</p> <p>"supervision" means the continual presence of another person for the purpose of reducing the real risk of harm to the individual and to others.</p> <p>To note, as is the case for Child Disability Payment and Adult Disability Payment, although case law for Attendance Allowance (AA) will not be binding on the First-tier Tribunal for Scotland in any appeal against a determination and re-determination of Scottish Ministers, it will be persuasive. The intention is to reflect certain AA case law definitions in the regulations and within the guidance for decision makers.</p>	<p>Accept</p>
<p>6. Provisions relating to the 'required period' and 'required period condition' should be revised to ensure they meet the policy intention.</p>	<p>Within the draft regulations we are changing the terminology so that "required period" always refers to the 26-week qualifying period and the linking condition is referred to as "applying after an interval".</p> <p>The regulations have also been clarified in a couple of places: For the "required period", the 26-week period applies separately to the lower and higher rate, so if someone was on the lower rate and their needs change, they need to have the additional needs for 26 weeks before receiving the higher rate. For "applying after an interval", the criteria have been changed so that it aligns with Attendance Allowance and does not need to be related to the same condition as before.</p> <p>The drafting of Regulation 8 has been updated so that it does not refer to the 26-week required period as a rolling test and to clarify the interaction with Regulation 5(6).</p>	<p>Accept</p>

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<b>SCoSS Recommendation</b>	<b>Scottish Government Response</b>	<b>Accept/ Partially accept/ Reject</b>
<p>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.</p>	<p>Under the current social security system, individuals who need help with renal dialysis by day and night are entitled to the lower rate of AA. As the Scottish Government’s priority remains the safe and secure transfer of individual’s awards from the DWP to Social Security Scotland, we do not currently plan to make changes to the eligibility rules, including the rules for renal dialysis.</p> <p>However, guidance prepared for Social Security Scotland officials will set out how a case manager should consider an individual’s needs from another disability or health condition listed in their application form when they have satisfied the rules for renal dialysis. This also includes seeking advice from a Social Security Scotland practitioner on the impact that other disabilities or health conditions might have on an individual receiving renal dialysis.</p> <p>This approach within PADP guidance will ensure that where an individual receives dialysis and has other needs, an appropriate determination of entitlement will be made using our person-centred approach to decision making.</p>	
<p>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.</p>	<p>The Scottish Government is committed to ensuring human rights and equalities considerations inform the development of all disability benefits policy. We recognise that social security is a human right, and our principles of dignity, fairness and respect are at the forefront of everything we do.</p> <p>Draft impact assessments were published on 7 August 2023 to ensure openness and transparency on the Scottish Government’s draft regulations for PADP and their impact on the people of Scotland.</p> <p>The EQIA we publish when laying the regulations will include updates following the specific session officials had with SCoSS members, including the specific section on the issue of mobility. This final version will of course include any further insights considered in the more recent development of PADP as well as any learning that may come from further engagement with stakeholders around the mitigations related to the mobility component.</p>	

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	We would like to take this opportunity to thank SCoSS for your helpful contributions on the Equality Impact Assessment throughout the scrutiny process, which has been very valuable in the further development of the assessment.	

**Further modifications to the draft regulations**

<b>Further change</b>	<b>Notes</b>
<b>Structural and stylistic</b>	There have been a number of structural and stylistic drafting changes which have not altered the policy to be implemented or the rules of entitlement within the regulations.
<b>Legal Detention</b>	In regulation 22, we have changed the time period required for the value of PADP to be reduced to £0 when an individual is in legal detention. This will now take effect on the day after the day the individual has been in legal detention for 28 days, which makes the treatment consistent with ADP. These 28 days may comprise of two or more separate periods, provided there is no more than one year between each period. This was requested by stakeholders during the Consultation on Disability Assistance in 2019, and allows for greater consistency of approach between all our new disability benefits.
<b>Refugees – Addition of Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights and Lebanon</b>	Within regulation 9(7) we have added Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights and Lebanon to the list of areas an individual could be resident in where the residence and presence conditions do not apply.
<b>References to Northern Ireland hospitals and similar institutions</b>	Within the definition of Attendance Allowance in regulation 2, in regulations 7(3)(a) and 7(4)(d) on renal dialysis, in regulation 20(4)(a)(iv) on admission to hospitals, in regulation 21(2)(d) on hospices and in regulation 26(3)(b) on constant attendance we have added references to the relevant Northern Ireland Acts. Amendment of CDP and ADP regulations to add these references as well.