

Draft Fairer Scotland Duty Assessment (FSD): The Disability Assistance for Older People (Scotland) Regulations 2024

August 2023

Draft Fairer Scotland Duty Summary

Title of Policy	The Disability Assistance for Older People (Scotland) Regulations 2024
Summary of aims and expected outcomes of policy	<p>The Social Security (Scotland) Act 2018¹ (the 2018 Act) sets out the broad framework for the delivery of the Scottish Government’s social security benefits. On 1 April 2020, executive and legal competence for disability benefits, including Disability Living Allowance for Children, Personal Independence Payment and Attendance Allowance was transferred to Scottish Ministers.</p> <p>Pension Age Disability Payment will be the replacement for Attendance Allowance in Scotland. Attendance Allowance will continue to be delivered during a transition period by the Department for Work and Pensions under the terms of an Agency Agreement to ensure the safe and secure transfer to Pension Age Disability Payment.</p> <p>The draft Disability Assistance for Older People (Scotland) Regulations 2024 set out the eligibility criteria and how Social Security Scotland will deliver Pension Age Disability Payment. This benefit will accept new applications from those over State Pension age.</p> <p>The regulations also make provision for the case transfer process for people in Scotland who currently receive Attendance Allowance. These provisions are not currently included within the full draft regulations, however they will be added in due course.</p> <p>Based on information from the Department for Work and Pensions’ Stat-Xplore service, there were around 144,000 individuals in August 2022 with an entitlement to Attendance Allowance in Scotland whose awards would transfer to Pension Age Disability Payment.²</p> <p>Pension Age Disability Payment will be delivered by Social Security Scotland on behalf of Scottish Ministers. People will be able to challenge a determination by requesting a re-determination, and subsequently they will be able to appeal to the Social Security Chamber of the First-tier Tribunal for Scotland.</p> <p>As part of the Scottish Government’s commitment to a safe and secure transfer, Scottish Ministers do not propose to make significant changes to the existing</p>

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

² [Stat-Xplore - Home \(dwp.gov.uk\)](https://dwp.gov.uk)

	<p>Attendance Allowance eligibility criteria for Pension Age Disability Payment.</p> <p>The Scottish Government will ensure that individuals in receipt of Attendance Allowance do not need to reapply when transferred to Pension Age Disability Payment. Significant changes to the eligibility criteria from that of Attendance Allowance would risk creating a two-tier system of disability benefits for those over State Pension age.</p> <p>Changes to the eligibility criteria for Pension Age Disability Payment would cause unfairness, confusion and disruption for individuals by having two different sets of eligibility criteria and rules, whilst undertaking a significantly complicated case transfer process.</p> <p>Eligibility to Attendance Allowance also provides individuals with entitlement to various UK Government benefits and premiums, usually referred to as 'passporting'. Throughout the consultation on Disability Assistance, people consistently raised concerns about maintaining other support that they are entitled to as a result of their disability benefit award.</p> <p>An example of a passported entitlement through an award of Attendance Allowance is the Severe Disability premium of Pension Credit. Whilst the passporting of benefit entitlements is not the sole reason for Scottish Ministers' approach to safe and secure transfer, the Scottish Government recognises that these entitlements are crucial to disabled people in Scotland.</p> <p>However, what Social Security Scotland delivers on day one is not the limit of the Scottish Government's aspirations. Scottish Ministers are committed to continually improving disability benefits by continuing engagement with disabled people and stakeholders to identify areas for further improvement in future.</p> <p>However, there are some key changes along with a number of practical administrative differences between Pension Age Disability Payment and Attendance Allowance which Scottish Ministers expect to have a positive impact for disabled people in Scotland. These differences have been developed through the commitments under the Social Security Charter.³ The Scottish Government recognises social security as a</p>
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³ [Social Security Scotland - Our Charter \(socialsecurity.gov.scot\)](https://socialsecurity.gov.scot)

	<p>human right and has designed Social Security Scotland's services with the people who use them so that everyone is treated with dignity, fairness and respect.</p> <p>The Scottish Government has made changes to the application process for all forms of disability assistance, including Pension Age Disability Payment, which will help to reduce stress and anxiety for individuals. People interacting with Social Security Scotland will require options and choices that suit them best. Social Security Scotland offers a multi-channel approach including online, telephone, paper-based and face-to-face applications. As well as offering choices, this ensures that those who cannot or choose not to adopt digital methods will not become isolated.</p> <p>People who require further assistance or would prefer face-to-face support will be able to access that through Social Security Scotland's Local Delivery service. Local Delivery staff will provide one-to-one support and help disabled people to understand what Scottish Government benefits they may be entitled to. They can also provide assistance to complete application forms and take forward any follow-up actions relating to a person's application.</p> <p>It is considered that this support will be of particular benefit to older people applying for Pension Age Disability Payment, as many older people may find completing application forms overwhelming and might not have access to a support network to assist them.</p> <p>The Scottish Government also launched the Social Security Independent Advocacy Service in January 2022, and has committed to investing £20.4 million in the service over the following four years. The service is free and supports people who self-identify as a disabled person to access and apply for Social Security Scotland assistance.</p> <p>As with the Scottish Government's other disability benefits, a new approach to gathering supporting information is being utilised by Social Security Scotland which will help reduce stress and anxiety for individuals. A Case Manager will ordinarily only seek one piece of supporting information from a professional to support the decision-making process when making a determination on an individual's entitlement to Pension Age Disability Payment.</p> <p>Case Managers will use a collaborative approach to help people gather supporting information from a professional, where an individual does not already have this to hand.</p>
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	<p>This includes Case Managers obtaining supporting information from professionals on the individual's behalf. Case Managers can also assist in gathering supporting information from the individual's wider support network, such as a family member or unpaid carer, which can help Social Security Scotland to understand the individual's needs, conditions or disability.</p> <p>Applications will be fast tracked from people with a terminal illness. Individuals who are terminally ill will automatically receive the highest rate of Pension Age Disability Payment and there will be no award reviews.</p> <p>The Scottish Government's new definition of terminal illness will apply to Pension Age Disability Payment. It removes the arbitrary 12 month timescale currently used by the Department for Work and Pensions. Instead, the judgement as to whether a person should be considered terminally ill for the purposes of determining eligibility for Pension Age Disability Payment will be made by clinicians, based on guidance prepared by the Chief Medical Officer.⁴</p> <p>The Scottish Government has committed to providing Short-term Assistance where Social Security Scotland has made a determination to reduce or stop an on-going Scottish Government benefit and that determination is subject to a request for re-determination or an appeal. As with the Scottish Government's other disability benefits, Short-term Assistance will be available for those with an award of Pension Age Disability Payment.</p> <p>The intention of Short-term Assistance is to ensure individuals are not discouraged from challenging a review of their award determination or from accessing administrative justice, by having to manage, for a period, with a reduced income. Short-term Assistance is not available in the UK Government system. Providing support in this way is another example of where Scottish Ministers are removing barriers in the Scottish social security system.</p> <p>This policy is closely aligned with the Healthier, Wealthier and Fairer Strategic Objectives, and contributes to the following National Outcomes:</p> <ul style="list-style-type: none">• We respect, protect and fulfil human rights and live free from discrimination;
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⁴ [Social Security Scotland Disability Benefits - Terminal Illness CMO guidance \(socialsecurity.gov.scot\)](https://socialsecurity.gov.scot)

	<ul style="list-style-type: none"> • We tackle poverty by sharing opportunities, wealth, and power more equally; and • We live in communities that are inclusive, empowered, resilient and safe.
<p>Summary of evidence</p>	<p>This Fairer Scotland Duty assessment has been developed drawing on a range of primary research, including public consultations,^{5,6} engagement with those with lived experience, as well as ongoing consultation with stakeholders including through the independent Disability and Carers Benefits Expert Advisory Group (DACBEAG)⁷ and the Ill Health and Disability Benefits Stakeholder Reference Group.</p> <p>This work also drew upon interviews conducted via the Scottish Government’s Social Security Experience Panels.⁸ The Panels involve people with lived experience of the benefits that are being devolved to Scotland, and have over 2,400 members drawn from people across Scotland. In 2019, a second round of recruitment took place, targeting specific groups identified as being underrepresented such as ethnic minorities and young people.</p> <p>The Scottish Health Survey 2021 provides an accurate estimate of the number of disabled people in Scotland.⁹ For people between 65 and 74 years of age, 46% have a limiting longstanding illness. This number increases to 60% for those over 75 years of age.</p> <p>In 2019, people aged 65 and over accounted for 19% of the Scottish population.¹⁰</p> <p>The link between poverty and disability</p> <p>Research has shown that poverty disproportionately affects individuals with a disability, with higher poverty rates being reported amongst disabled people compared to the rest of the population.¹¹ This is the case across the United Kingdom, and is prevalent amongst disabled people over State Pension age. 24% of people over State</p>

⁵ [Analysis of written responses to the consultation on social security in Scotland - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/analysis-written-responses-to-the-consultation-on-social-security-in-scotland/pages/10/index.aspx)

⁶ [Disability assistance in Scotland: analysis of consultation responses - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/disability-assistance-in-scotland-analysis-of-consultation-responses/pages/10/index.aspx)

⁷ [Disability and Carers Benefits Expert Advisory Group - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/disability-and-carers-benefits-expert-advisory-group/pages/10/index.aspx)

⁸ [Social Security Experience Panels: publications - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/social-security-experience-panels-publications/pages/10/index.aspx)

⁹ [The Scottish Health Survey 2021 - volume 1: main report - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/the-scottish-health-survey-2021-volume-1-main-report/pages/10/index.aspx)

¹⁰ [The Registrar General's Annual Review of Demographic Trends 2019: Population - National Records of Scotland \(nrscotland.gov.uk\)](https://www.nrscotland.gov.uk/publications/the-registrar-general-s-annual-review-of-demographic-trends-2019-population)

¹¹ [The Energy Penalty - Disability and Fuel Poverty - University of Leicester \(le.ac.uk\)](https://www.le.ac.uk/energy-penalty-disability-and-fuel-poverty/)

	<p>Pension age with a disability are in poverty, compared with 17% of those without a disability.¹²</p> <p>410,000 households in poverty within Scotland include a disabled person, accounting for 42% of households. The impact of social inequalities on health outcomes in older people is well documented.¹³</p> <p>In Scotland, 66% of older people in poverty who have ill health also have no savings, with 61% living in a deprived area. 92% of people within this cohort rely on benefits for more than 80% of their income.¹⁴</p> <p>On average, women tend to have a lower income when retired than men.¹⁵ When considered alongside the impact of a long-term health condition or disability, women tend to be disproportionately impacted by low income. A report by the Women’s Budget Group has also found that, overall, women are twice as likely to rely on social security as men.¹⁶</p> <p>In 2018, research from the Papworth Trust has shown that in the United Kingdom, three-quarters of households using foodbanks contain someone with a health condition or disability, with one-third of households containing someone with a mental health condition. This is influenced by the day-to-day living costs of those with a disability, which are 25% higher than those without a disability. Food poverty amongst disabled people over 65 years old is twice as likely when compared to those without a disability.¹⁷</p> <p>Marie Curie and Loughborough University research suggests that 1 in 8 people aged over 65 in Scotland experience poverty in the last year of their life. This increases to 1 in 5 in areas such as Glasgow, Dundee and West Dunbartonshire,¹⁸ which are also areas of relatively high deprivation in Scotland.</p> <p>Poverty amongst disabled people is likely to be exacerbated in light of the COVID-19 pandemic. UNICEF highlighted that: ‘In the context of the COVID-19</p>
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¹² [UK Poverty 2022: The essential guide to understanding poverty in the UK | JRF \(jrf.org.uk\)](https://www.jrf.org.uk/uk-poverty-2022)

¹³ [Older people - Population groups - Public Health Scotland \(healthscotland.scot\)](https://www.healthscotland.scot/older-people-population-groups)

¹⁴ [Poverty types: Older age - Poverty in Perspective: a typology of poverty in Scotland - gov.scot \(www.gov.scot\)](https://www.gov.scot/poverty-types-older-age)

¹⁵ [Poverty in Later Life June 2023: Briefing - Age UK \(ageuk.org.uk\)](https://www.ageuk.org.uk/poverty-later-life)

¹⁶ [Social Security, Gender and Covid-19 - Womens Budget Group \(wbg.org.uk\)](https://www.wbg.org.uk/social-security-gender-covid-19)

¹⁷ [Disability: Facts and figures 2018 - Papworth Trust \(papworthtrust.org.uk\)](https://www.papworthtrust.org.uk/disability-facts-figures-2018)

¹⁸ [Dying in Poverty: Scotland Briefing - Marie Curie \(mariecurie.org.uk\)](https://www.mariecurie.org.uk/dying-in-poverty-scotland)

	<p>pandemic, persons with disabilities may have increased risk'.¹⁹ The report also makes connections between the pandemic and poverty, with disabled people likely to be disproportionately impacted.</p> <p>Research by Age UK suggests that many older people are missing out on maximising their income through the financial support that is currently available. For support such as Attendance Allowance, the main reasons why individuals have not applied are due to not knowing such support exists, or because they did not feel they would be eligible.²⁰</p>
<p>Summary of assessment findings</p>	<p>Improved application process</p> <p>Making the application process more accessible and the provision of comprehensive pre-application advice is intended to make it easier for individuals to secure the financial support that they are entitled to.</p> <p>The Scottish Government recognises that people interacting with Social Security Scotland will require options and choices that suit individuals best. Social Security Scotland offers a multi-channel approach including online, telephone, paper-based and face-to-face applications. As well as offering choices, this ensures that those who cannot or choose not to adopt digital methods will not become isolated.</p> <p>People who require further assistance or would prefer face-to-face support will be able to access that through Social Security Scotland's Local Delivery service. Local Delivery staff will provide one-to-one support and help disabled people to understand which Scottish Government benefits they may be entitled to.</p> <p>Local Delivery staff can also provide assistance to complete application forms and take forward any follow-up actions relating to a person's application. It is considered that this support will be of particular benefit to older people applying for Pension Age Disability Payment, as many older people may find completing application forms overwhelming and might not have access to a support network to assist them.</p>

¹⁹ [COVID-19 response: Considerations for Children and Adults with Disabilities - UNICEF \(unicef.org\)](https://www.unicef.org/uk/COVID-19-response-considerations-for-children-and-adults-with-disabilities)

²⁰ [Benefit Take-up and Older People June 2022: Briefing - Age UK \(ageuk.org.uk\)](https://www.ageuk.org.uk/briefing/benefit-take-up-and-older-people-june-2022/)

	<p>Enhanced support during the application process will also assist the Scottish Government in achieving the commitments made under the Benefit Take-up Strategy.²¹</p> <p>The Scottish Government will ensure that individuals can request a third party representative with ease to support them in their engagement with Social Security Scotland. Scottish Ministers believe this strikes the right balance to encourage people in this age group to gain support from friends and relatives when required, while also maintaining their financial independence.</p> <p>Making the process of applying for Pension Age Disability Payment easier will potentially assist in mitigating the increasing levels of disabled older people living in poverty. This may encourage people facing financial difficulties due to disability or their condition to apply who feel the current system is too overwhelming.</p> <p>It will be important for individuals to understand that if they are receiving Adult Disability Payment prior to reaching State Pension age, they will continue to receive this after reaching State Pension age so long as they remain entitled. Individuals will also be able to apply for Adult Disability Payment after reaching State Pension age in circumstances where no more than a year has lapsed since their previous award of Adult Disability Payment, Personal Independence Payment or Disability Living Allowance has ended, and their condition or disability is substantially the same as when their previous award was made. Guidance and communications will be clear on this so that individuals understand if, and in what circumstances, they should apply for Pension Age Disability Payment.</p> <p>Improved decision-making</p> <p>Case Managers will be empowered to speak to individuals who have indicated that they are willing to be called to gain additional information or to clarify details of their application and supporting information. Supporting information will be used by Case Managers as a resource to support the decision-making process. This information, along with information in application or review forms, will be approached from a position of trust.</p> <p>One piece of supporting information from a professional will ordinarily be sought by Case Managers, such as a</p>
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²¹ [Social Security \(Scotland\) Act 2018: benefit take-up strategy - October 2021 - gov.scot \(www.gov.scot\)](https://www.gov.scot/Information/Policy/2018/06/2018-06-20-social-security-scotland-act-2018-benefit-take-up-strategy-october-2021)

	<p>medical report or a letter from a support worker. This will be used to support the decision-making process by assisting Case Managers in their understanding of an individual's level of need, condition or disability alongside utilising internal Decision Making Guidance. Where an individual does not have supporting information to hand, Social Security Scotland will use a collaborative approach with the individual to assist in gathering supporting information from a professional and/or their wider support network.</p> <p>In instances where supporting information is not available, Case Managers can make a determination of an individual's entitlement to Pension Age Disability Payment with no supporting information from a professional, or from their wider support network. Where it is reasonable that this information is not available, Social Security Scotland will consider this when making a determination.</p> <p>This could be due to the individual's health, condition or personal circumstances. Examples include, if an individual has had a recent hospital stay, if they have been unable to receive the support they need from an advocate or support worker, or where they may have lost contact with their support network, including health and social care professionals.</p> <p>Case Managers will then utilise other decision-making tools, such as case discussions with a health or social care practitioner to assist in using their discretion when making a determination, based on the balance of probabilities. This will have a positive impact on disabled people in this age cohort. As older people are disproportionately impacted by social isolation, this approach will ensure access to a robust determination of entitlement that takes into consideration their current circumstances when supporting information is not available.</p> <p>This will have a positive impact on disabled people in this age cohort. As older people are disproportionately impacted by social isolation, this approach will ensure access to a robust determination of entitlement that takes into consideration their current circumstances when supporting information is not available. This also has the potential to reduce barriers for some individuals to apply for the financial assistance they are entitled to. Therefore, this approach is likely to have a positive impact on reducing inequality.</p>
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	<p>Case discussions with a health or social care practitioner can assist Case Managers through advising on aspects such as the side effects of a particular medication, how a disability or health condition will typically affect someone, or the way in which two conditions may interact. This will help Case Managers to make an informed decision regarding an individual's entitlement to Pension Age Disability Payment.</p> <p>Practitioners are registered health or social care professionals employed by Social Security Scotland who will have access to a range of resources and professionals with expertise in conditions more likely to affect older people, such as dementia.</p> <p>This approach to decision-making will ensure that Case Managers are able to make the right determination at the first opportunity with an informed understanding of the individual's needs and condition(s).</p> <p>Passported entitlements</p> <p>Eligibility to Attendance Allowance currently provides individuals with entitlement to various benefits and premiums, usually referred to as 'passporting'.</p> <p>Throughout the consultation on Disability Assistance, people consistently raised concerns about maintaining other support that they are entitled to as a result of their disability benefit award. An example of a passported entitlement through an award of Attendance Allowance is the Severe Disability premium of Pension Credit.</p> <p>Whilst the passporting of benefit entitlements is not the sole reason for Scottish Ministers' approach to safe and secure transfer, the Scottish Government recognises that these entitlements are crucial to disabled people in Scotland.</p> <p>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.</p> <p>Mobility</p> <p>As Attendance Allowance provides help with the extra costs associated with an individual's care needs, it does</p>
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	<p>not include a mobility component. The Scottish Government has committed to aligning Pension Age Disability Payment with Attendance Allowance to ensure a safe and secure transfer.</p> <p>Following the 2019 consultation and stakeholder feedback that suggested there was interest in the introduction of a mobility component as part of Pension Age Disability Payment, the Scottish Government undertook an analysis of the potential impact of this policy change.</p> <p>The Scottish Government published a Pension Age Disability Payment policy position paper in February 2020 which included a detailed analysis of the relevant considerations regarding a mobility component.²² As part of the development of Pension Age Disability Payment, the Scottish Government has carefully considered whether to introduce a mobility component. Scottish Ministers have concluded that it is not feasible to include a mobility component within the foreseeable future.</p> <p>Within the policy position paper, the Scottish Government estimated that the introduction of a mobility component could cost an additional £580 million annually. However, this cost would increase annually due to uprating with inflation and, with an aging population, is likely to grow substantially in the coming years.</p> <p>Due to the financial implications, as set out in the position paper, the Scottish Government would have to find this additional funding from the fixed budget. Given the highly challenging fiscal environment, such a significant increase in costs would require the Scottish Government to reduce spending on other key social security priorities. Having evaluated the financial implications outlined in this paper, the Scottish Government is not currently in a position to further consider the introduction of a mobility component.</p> <p>As set out above, the Scottish Government intends to align Pension Age Disability Payment with Attendance Allowance to ensure a safe and secure transfer. The introduction of a mobility component as part of Pension Age Disability Payment would be a fundamental change in the policy rationale that underpins Attendance Allowance as a benefit that helps with the additional costs related to an individual's care needs.</p>
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²² [Disability Assistance for Older People: position paper - gov.scot \(www.gov.scot\)](http://www.gov.scot/resources/documents/2020/02/Disability_Assistance_for_Older_People_position_paper_-_gov.scot.pdf)

	<p>As the Scottish Government will ensure that those receiving Attendance Allowance in Scotland do not need to reapply to receive Pension Age Disability Payment, significant changes, such as introducing a mobility component, would risk creating a two-tier system of disability benefits for those over State Pension age. Changes to the eligibility criteria for Pension Age Disability Payment would cause unfairness, confusion and disruption for individuals by having two different sets of eligibility criteria and rules, whilst undertaking a significantly complicated case transfer process.</p> <p>However, it can be noted that following a consultation in 2017,²³ the Scottish Government committed to maintaining free bus travel through the National Entitlement Card scheme for people aged 60 and over. This scheme provides free travel on registered local and long-distance bus services throughout Scotland, at any time of day for any number of journeys. In recognition of the impact of age, the provision of free bus travel allows older people improved access to services, facilities and social networks, therefore promoting social inclusion and reducing inequalities in access to transport options.</p> <p>Qualifying period</p> <p>The current rules set out that an individual must have been disabled or had their condition for six months before becoming eligible for Attendance Allowance. This qualifying period for Attendance Allowance will be replicated as part of Pension Age Disability Payment.</p> <p>However, for people with a terminal illness, there will continue to be no qualifying period. It is understood that some people have concerns about the impact of this rule on those who require financial assistance. Therefore, the Scottish Government undertook an analysis of qualifying periods for disability benefits when establishing a policy position.²⁴</p> <p>The Scottish Government believes that the six month qualifying period prior to payment of Pension Age Disability Payment is appropriate and in keeping with the policy intent for Pension Age Disability Payment. It ensures that this form of assistance is targeted at those with longer-term conditions and disabilities. Changes to the six month qualifying period would lead to people with</p>
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²³ [Concessionary travel consultation | Transport Scotland \(www.transport.gov.scot\)](http://www.transport.gov.scot)

²⁴ [Disability Assistance qualifying periods: policy position paper - gov.scot \(www.gov.scot\)](http://www.gov.scot)

	<p>very short-term conditions becoming eligible, substantially changing both the nature and purpose of Pension Age Disability Payment.</p> <p>When applying the qualifying period, Social Security Scotland will ensure that the impact of unpredictable and fluctuating conditions on individuals is taken into consideration as part of a person centred approach. Unlike Child Disability Payment and Adult Disability Payment, there will be no qualifying period expecting a person's condition to last for a specified time period into the future as part of Pension Age Disability Payment.</p> <p>As with Attendance Allowance, the rationale for this approach is that the number of people who have stopped receiving their award because their condition improves is negligible; largely attributable to the requirement for a six month initial qualifying period. This helps to mitigate the impact of having a longer qualifying period when compared to Child Disability Payment and Adult Disability Payment.</p> <p>Residence and presence</p> <p>The current rules for Attendance Allowance set out that an individual would be required to be present for 104 out of the previous 156 weeks. Since the Disability Assistance public consultation launched, a change has been made to Scottish Government policy to reduce the past presence test from 104 out of 156 weeks to 26 out of 52 weeks.</p> <p>This position has been settled upon to ensure compliance with recent developments in case law in relation to the United Kingdom's social security system.²⁵ Removing the test entirely, would carry a financial cost as well as a number of delivery implications.</p> <p>The test also provides for a number of exceptions such as for individuals with a terminal illness. The Scottish Government believes this strikes the right balance between meeting the policy intent behind the residence and presence eligibility criteria and ensuring fairness for individuals applying for Pension Age Disability Payment.</p> <p>Scottish Ministers have previously legislated to ensure those settling in Scotland from Afghanistan are exempt from having to satisfy the habitual residence and past</p>
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²⁵ [Upper Tribunal Administrative Appeals Chamber - Case Number CDLA/2208/2018 and CDLA/2019/2018 \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/711111/Upper_Tribunal_Administrative_Appeals_Chamber_-_Case_Number_CDLA/2208/2018_and_CDLA/2019/2018.pdf)

	<p>presence tests. These provisions will also be included as part of the Pension Age Disability Payment regulations. This includes those with leave to enter or remain in the United Kingdom under immigration rules in relation to the Afghan Relocations and Assistance Policy, the previous scheme for locally-employed staff in Afghanistan, those granted discretionary leave outside the immigration rules as a dependent of a person in relation to that scheme, as well as those granted leave under the Afghan Citizens Resettlement Scheme.</p> <p>Provisions in relation to individuals from Ukraine that have settled in Scotland due to the Russian invasion which took place on 24 February 2022 and were residing in Ukraine immediately before 1 January 2022 will also be included in the Pension Age Disability Payment regulations.²⁶</p> <p>This exempts individuals from having to satisfy the habitual residence and past presence tests. This exemption will apply to those arriving in the United Kingdom under the Ukraine Family Scheme and Homes for Ukraine. These individuals will be able to meet the residency conditions for Scottish Government benefits from day one, meaning they will be eligible subject to all other entitlement conditions being met.</p> <p>The Scottish Government has also legislated in relation to the conflict in Sudan, whereby those who were resident in Sudan prior to 15 April 2023 will be exempt from the past presence and habitual residence tests for Scottish Government benefits if they left Sudan in connection with the violence.²⁷ This will also be applied to Pension Age Disability Payment.</p> <p>The inclusion of these provisions will assist in reducing inequalities for disabled people who have settled in Scotland from areas of conflict by ensuring that they have access to Pension Age Disability Payment at the earliest possible opportunity, therefore assisting with the additional costs relating to their care needs as a result of a disability or health condition.</p> <p>Terminal illness</p> <p>The Scottish Government’s definition of terminal illness will support recognition of a wider number of illnesses and</p>
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²⁶ [The Social Security \(Residence Requirements\) \(Ukraine\) \(Scotland\) Regulations 2022: policy note - gov.scot \(www.gov.scot\)](https://www.gov.scot/policy-note)

²⁷ [The Social Security \(Residence Requirements\) \(Sudan\) \(Scotland\) Regulations 2023 \(legislation.gov.uk\)](https://legislation.gov.uk)

	<p>conditions through Pension Age Disability Payment than can be accounted for under the current definition in the UK Government system.</p> <p>The new definition in Scotland allows medical professionals, including registered nurses, to use their clinical judgement when determining whether an individual has a condition which can reasonably be expected to result in their death. This means that individuals who would otherwise not be entitled to Attendance Allowance through Special Rules will be able to do so under the Scottish Government definition as part of Pension Age Disability Payment.</p> <p>Applications will be fast tracked from people with a terminal illness. Individuals who are terminally ill will automatically receive the highest rate of Pension Age Disability Payment and there will be no award reviews. This will help to mitigate the risk of living in poverty for those who are terminally ill.</p> <p>Alternative accommodation rules: legal detention</p> <p>Under the UK Government social security system, different approaches have been taken to legal detention for disability benefits for individuals of working age and those of State Pension age.</p> <p>Payments for those receiving Attendance Allowance are stopped the day after an individual enters legal detention. However, for those receiving Personal Independence Payment, the individual's payments are stopped after 28 days from when they entered legal detention. This position has been replicated as part of Adult Disability Payment in order to maintain alignment with Personal Independence Payment. Similarly, the Scottish Government will align Pension Age Disability Payment with the legal detention rules of Attendance Allowance.</p> <p>In the 2019 consultation, a number of respondents noted this difference between the Attendance Allowance rules for those who have entered legal detention and that of Personal Independence Payment and Adult Disability Payment. The Scottish Government has given consideration to this during the development of the Equality Impact Assessment. However, as the Scottish Government's position aligns with Attendance Allowance, this will have no material financial impact on individuals as a result of introducing Pension Age Disability Payment.</p>
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	<p>It is important to note that when an individual enters legal detention, they will continue to have an entitlement to Pension Age Disability Payment, however their award will be reduced to £nil from the day after they enter legal detention. An individual whose award is reduced to £nil due to being in legal detention is not entitled to Short-term Assistance.</p> <p>By reducing the award to £nil during this period, when an individual leaves legal detention they will not be required to make a new application for Pension Age Disability Payment if they continue to be eligible. Therefore, individuals will be able to access their financial support again with relative ease.</p> <p>Alternative accommodation rules: hospitals and care homes</p> <p>Many people with disabilities and long-term health conditions may often experience stays in hospital, sometimes for a lengthy period. As with the current Attendance Allowance rules, Pension Age Disability Payment will continue to be paid to an individual in hospital or a publicly funded care home for 28 days. Beyond 28 days, payment of Pension Age Disability Payment will be reduced to £nil. Pension Age Disability Payment is not intended to be an income-replacement benefit. Payments to support those over State Pension age on a low income are provided by the UK Government through Pension Credit.</p> <p>As part of the Equality Impact Assessment, the Scottish Government has considered the impact of this rule. The intention of Pension Age Disability Payment is to provide financial assistance to mitigate the costs that individuals and their families incur as a result of a health condition or disability.</p> <p>Continuing to pay Pension Age Disability Payment where an individual's care needs are met in full through alternative public funding, for instance in a care home, hospital or secure accommodation, would lead to funding duplication in meeting the individual's care needs. In the majority of instances when an individual is in hospital, their additional care needs are met by the NHS.</p> <p>Child Disability Payment is not stopped when a child or young person undergoes a stay in hospital for longer than 28 days. This is because, when children are in hospital they continue to require care and support, usually from a</p>
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parent or guardian, over and above that which is provided in clinical settings because of their young age. Adult inpatients are not expected to need this kind of pastoral input, and NHS staff are expected to meet essential care needs.

The purpose of the '28 day rule' is to ensure that longer term periods in alternative accommodation are not subject to funding duplication, by receiving Pension Age Disability Payment while the costs of that care are being covered. The 28 day window ensures that people cared for in temporary respite do not lose access to payments as well as recognising that where care placements break down or periods within alternative accommodation end at an early stage, the individual does not experience the additional disruption of losing access to Pension Age Disability Payment.

As set out previously, individuals residing in legal detention will have their payment reduced to £nil from the day after they enter legal detention.

Where an individual undergoes frequent short periods in hospital, their payment of Pension Age Disability Payment will be unaffected. People are entitled to continue receiving their entitlement for the first 28 days of a hospital stay in order to meet any outstanding additional costs incurred prior to their hospital stay. Although payment will stop after 28 days of an individual being in a publicly funded hospital or care home, entitlement is unaffected. Therefore, if and when an individual leaves such accommodation, payments will resume, subject to continuing to meet the eligibility criteria for Pension Age Disability Payment.

It is important to note that there is an exception to this rule for those who are residing in a hospice and have a terminal illness. In these circumstances, an individual's payment of Pension Age Disability Payment will continue, and the 28 day rule will not apply. This will have a positive impact by ensuring that people who are already in extremely difficult circumstances will not see their income reduce as a result of residing in a hospice.

Ongoing awards and reviews

For many people in the current system, the award end date for disability benefits can be extremely stressful, particularly for individuals whose conditions are unlikely to

	<p>change over time and who are consequently subject to unnecessary reviews of entitlement.</p> <p>Providing ongoing awards that are subject to light-touch reviews will help to reduce the stress and anxiety associated with approaching an award review by removing a financial cliff edge for individuals. This is a change from the 'renewal' process for Attendance Allowance, whereby an individual has to complete a new application form and will see payments stop if they do not reapply in time. 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.</p> <p>Light-touch reviews will make the process easier and less stressful for individuals. This means that Case Managers are able to, if needed, gather supporting information for the person whose award is being reviewed and consider existing information and previous determinations to avoid asking unnecessary questions.</p> <p>Case Managers will be empowered to make a determination without supporting information if this information is unavailable during a review, and request case discussions with practitioners to further reduce the need for intrusive questions.</p> <p>Having a light-touch review process is more appropriate, particularly where an individual's needs are unlikely to have changed significantly. 66% of respondents to the Consultation on Disability Assistance agreed with this approach alongside general agreement from Experience Panels.^{28,29}</p> <p>Additionally, when asked if review periods should be between 5-10 years for individuals with conditions unlikely to change, 58% of respondents to the consultation agreed. This will help to cut down on the number of unnecessary award reviews that disabled people will need to go through, and as a result, reduce stress and anxiety, thereby having a positive impact on individuals.</p> <p>Work is also underway to consider in more detail whether and in what circumstances indefinite awards should be</p>
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²⁸ [Social Security - A Consultation on Disability Assistance in Scotland - Scottish Government response \(www.gov.scot\)](http://www.gov.scot)

²⁹ [Social Security experience panels: decision making and reviewing an award - main report - gov.scot \(www.gov.scot\)](http://www.gov.scot)

made available to people whose needs are highly unlikely to change.

Re-determinations and appeals

The Scottish Government wants to ensure that no one is disadvantaged by time limits for challenging a determination. In response to feedback from the Disability Assistance consultation, Experience Panels and the Disability and Carers Benefits Expert Advisory Group, Scottish Ministers have set the time limit for requesting a re-determination to 42 calendar days across the Scottish Government's disability benefits.

This is an increase on the month time limit that is set for requesting a mandatory reconsideration by the Department for Work and Pensions.³⁰ This will provide individuals with additional time to seek advice or gather supporting information which might be required before requesting a re-determination.

If an individual is not able to request a re-determination within 42 calendar days, they can ask for this time limit to be extended. The 2018 Act provides for an extension of up to a year for late re-determination requests. Guidance will ensure that, where an individual requests a late re-determination, their request is considered in a holistic and person-centred manner, taking account of their circumstances.

In the Consultation on Disability Assistance, it was proposed that Social Security Scotland be allowed 40-60 days to carry out a re-determination. 60% of respondents to the Consultation on Disability Assistance agreed with this proposed approach. However, some stakeholders felt that this was an excessive period for someone to be left without clarity over their award level or eligibility.

Given the concerns raised in the consultation, and subsequent stakeholder engagement, the Scottish Government has settled on the timescale for Social Security Scotland to undertake a re-determination at a maximum of 56 calendar days. It may be necessary to gather supporting information on behalf of the individual, and this information may take some time to obtain.

³⁰ [Social Security - A Consultation on Disability Assistance in Scotland - Scottish Government response \(www.gov.scot\)](http://www.gov.scot)

This will be beneficial as it will ensure that disabled people and their families or carers will have certainty about how long Social Security Scotland has to complete a re-determination. Similarly, by enabling individuals to appeal directly to the First-tier Tribunal, should Social Security Scotland be unable to complete the re-determination process within the prescribed timescale, this will further reduce any uncertainty and make people feel more confident in challenging a determination they do not agree with.

Short-term Assistance

The Scottish Government has committed to providing Short-term Assistance where Social Security Scotland has made a determination to reduce or stop an on-going Scottish Government benefit and that determination is subject to a request for re-determination or an appeal. As with the Scottish Government's other disability benefits, Short-term Assistance will be available for those with an award of Pension Age Disability Payment.

Introducing Short-term Assistance will help to mitigate the risk of increasing the number of individuals in poverty by ensuring that, if a mistake has been made by Social Security Scotland, they will continue to receive the payments they would have been entitled to should the mistake not have been made.

Engagement with Experience Panels found that participants believed that Short-term Assistance would make it more likely for people to challenge award reviews made by Social Security Scotland. There was an emphasis on Short-term Assistance reducing financial pressure and giving people more confidence in challenging award reviews they did not agree with.

Short-term Assistance will be available until the First-tier Tribunal for Scotland has made a determination, and is non-recoverable except in cases of fraud or error. Where a person is eligible, the value of Short-term Assistance will be the difference between the level of award paid prior to the reduction and the new level of award. This includes when that amount is now £nil because entitlement to the individual's award has stopped.

This will help to prevent a further reduction in household income and increase financial security in these circumstances, something which was stressed by

	<p>respondents to the 2019 consultation, with 87% agreeing that Short-term Assistance should not be recoverable.</p> <p>There was disagreement from respondents to the consultation on the proposal that Short-term Assistance should be subject to deductions in respect of an overpayment agreement. Only 49% agreed, with many stating that because disability assistance is essential to meeting the additional costs associated with having a disability, reducing this level of assistance could cause hardship.</p> <p>The Scottish Government has considered this carefully, but where a deduction is being made, an individual will already have had dispute rights against the determination that put that deduction in place. Financial and other circumstances will have been considered by Social Security Scotland as part of that process.</p> <p>Recommendations and conclusions</p> <p>This Fairer Scotland Duty has identified that overall, the introduction of Pension Age Disability Payment to replace Attendance Allowance has the potential to have a positive impact on reducing inequality and tackling poverty for disabled people in Scotland.</p>
Sign off	<p>Ian Davidson Deputy Director Social Security Policy Division</p>



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