



**One Parent
Families Scotland**
changing lives, challenging poverty

Scottish Government Adult Disability Payment

Consultation OPFS Submission



April 2021



Introduction

One Parent Families Scotland welcomes the opportunity to respond to this Scottish Government consultation on the draft regulations for the Adult Disability Payment. The Adult Disability Payment is a new Scottish benefit which will replace the UK Personal Independence Payment and be delivered by Social Security Scotland. This form of assistance is provided to disabled people between the ages of 16 and state pension age to mitigate the additional costs of living with a disability or health condition.

The regulatory framework for the Adult Disability Payment gives Scotland the chance to move towards creating a system that delivers the social security required to support people with the extra costs associated with a disability or health condition, enough for people to participate in society and to live as autonomously as possible.

Social security is particularly important for many disabled people, as they face higher barriers to employment, lower pay when in work and higher living costs. All these barriers can lead to higher poverty rates for disabled people, who, in Scotland, are around seven percent more likely to live in relative poverty after housing costs than non-disabled people.¹

Evidence from three main sources: the Scottish Government Experience Panel surveys, the DWP's 2018 PIP claimant experience survey and the DWP's 2017/18 claimant service and experience survey describe the broad range of concerns about the current reserved disability benefits system. This includes: Evidence from three main sources: the Scottish Government Experience Panel surveys, the DWP's 2018 PIP claimant experience survey and the DWP's 2017/18 claimant service and experience survey describe the broad range of concerns about the current reserved disability benefits system.²

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1 [Poverty and income inequality in Scotland: 2015-2018 - gov.scot \(www.gov.scot\)](http://www.gov.scot)

2 [Welfare reform: impact report on benefits for disabled people - gov.scot \(www.gov.scot\)](http://www.gov.scot)



This includes:

- A system that causes stress and anxiety for claimants
- A lack of trust in the benefits system
- A complex or unsuitable application process
- A lack of help and communication

The Scottish Adult Disability Payment will replace Personal Independence Payment for disabled people of working age in Scotland. It will represent a significant landmark in the development of Scotland's social security system, and we hope will be the first step on the journey to a system based on dignity, fairness, and respect.

One Parent Families Scotland (OPFS)

OPFS is the leading charity working with single parent families in Scotland. With 75 staff, we provide expert advice, practical support and campaign with parents to make their voices heard. For over 75 years we've been supporting single parent families find a way forward through difficult times.

OPFS gives support to over 7000 parents, children, and young people each year through our national advice and information service, online information and resources, training for practitioners and local services in Edinburgh, Dundee, Glasgow, Falkirk and Lanarkshire.

COVID-19 is a global public health crisis which is rapidly developing into an unparalleled economic catastrophe. Before this crisis single parent families already faced significant challenges: poverty, isolation and loneliness, poor health or disability and judgemental attitudes. The majority of single parents are women, so gender inequality is a key issue. In the UK single parents and their children face around twice the risk of poverty as couples - 48% compared to 26%.³

- A third (36 %) of all children in poverty in Scotland live in a single parent family⁴

3 <https://socialmetricscommission.org.uk/wp-content/uploads/2020/06/Measuring-Poverty-2020-1.pdf>

4 <https://povertyinequality.scot/Poverty-Delivery-Plan-advice p41 table 2>



- Almost half of children (50%) in single parent families live below the poverty line⁵
- Before this crisis this was predicted to rise to over 62% by 2021⁶

When disability is combined with the experience of living in a single parent household, inevitably social disadvantages are magnified. Single parents are more likely to have a disability - around one in four (27 per cent) single parent households have a disabled adult, compared with around a fifth (21 per cent) of couple parent households in the UK. The difference is even more pronounced for children - 16 per cent of single parent households had at least one child with a disability, compared with 9 per cent of couple parent households.⁷

Poverty and isolation have an impact on parent's and children's wellbeing, causing stress, anxiety, and poor mental health. The challenge of being both sole carer and breadwinner has been magnified by the impact of the present COVID-19 crisis.

Money in parents pockets matters - research shows its impact on children's education and health, and how it makes parenting easier. Social security has a crucial role to play in reducing child poverty among both out-of-work and in-work families. That will be even more important now, as financial pressures increase. We are therefore very pleased to be able to contribute evidence to this consultation.

OPFS Submission

Our submission will focus on the draft regulations which we can comment on based on the experience of our case work with disabled single parents. This will cover:

- Incorporation of case law
- Award length and indefinite awards
- Past presence test - Regulation 14 (b)

5 <https://www.gov.uk/government/statistics/households-below-average-income-199495-to-201617>

6 https://www.equalityhumanrights.com/sites/default/files/cumulative-impact-assessment-report.pdf_p153

7 9 DWP and NatCen (2017). Family Resources Survey, 2015-2016. [One-in-four-a-profile-of-single-parents-in-the-UK_compressed.pdf \(gingerbread.org.uk\)](https://www.gov.uk/government/statistics/households-below-average-income-199495-to-201617)



- Overpayments - Regulation 46
- The 20-metre rule and 50% rule
- Sharing of Information
- Assessors
- Determinants of entitlement without an application
- Period in respect of redeterminations
- Review of disability assistance

Incorporation of Case Law

There are gaps in the regulations that should be amended to recognise areas of caselaw that are well recognised and no longer open to challenge. Case law has important significance not only for the individual case but has significant wider public interest beyond those directly involved in it.

As we move from the existing UK disability benefits to the new Scottish Social Security System, we feel it's important that individual rights are upheld and there are no gaps in the law. It is important that applicable case law is implemented in the Scottish system, so that the interpretation of ADP regulations is no more limiting than those of PIP.

Award length and indefinite awards

OPFS would like to see a policy of safeguarding awards of a suitable length fixed in law. If this is not in the regs then changes in policy would be made easier by future governments with a different policy goal for example reducing social security spend.

We have welcomed the Scottish Government commitments to longer term award periods of 5-10 years.⁸ However to make this a reality the

⁸ Disability Assistance awards and entitlement: policy position paper - gov.scot (www.gov.scot)



regulations should unambiguously specify the minimum period before a claim is given a ‘light-touch review’ in keeping with the 5-10 years policy.

The Scottish Government should also look at lifetime awards of the new benefit - people whose disability or ill-health are not expected to improve should not have to reapply. We believe the regulations should make unambiguous provision for indefinite awards, where someone is disabled due to a progressive condition and/or has needs that will not decrease. There is no mention in the regulations that lays down when an indefinite award should be made - unlike under the rules for PIP.⁹

Past presence test - Regulation 14 (b)

OPFS has concerns about the ‘past presence’ test which requires a person to have been present in the UK for two out of the last three years to be eligible to claim Adult Disability Payment.

We are disappointed the Scottish Government has not taken the opportunity to remove the past presence test or create further exclusions to it. We recognize that the draft regulations include exceptions to the test, such as: for people with terminal illness, people awarded refugee status; and where someone can “demonstrate a genuine and sufficient link to Scotland.” However, we are not convinced by these - for example how would a claimant “demonstrate a genuine and sufficient link to Scotland”? The test creates an unwarranted barrier to newly resident disabled single parents and other disabled people, based on a random time period, being able to apply for urgent social security support. The past presence test is not in keeping with the principal that social security is a human right. Scottish Government commitment to incorporate the International Covenant on Economic, Social and Cultural Rights into domestic law¹⁰ during the next parliament, enshrining the right to social security, makes the ‘past presence test’ purpose seem inappropriate and in contradiction to the Scottish Government’s positive aspirations for the new system.

⁹ Welfare Reform Act 2012, Section 88 (2)

¹⁰ <https://www.gov.scot/news/new-human-rights-bill/>



Overpayments - Regulation 46

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We have unease regarding the scope of the current reasons that permit the agency to seek recovery for overpayment - including for official error.

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People may receive benefits to which they are not entitled, or payments in excess of their entitlement, as a result of fraud, or because of mistakes, omissions, or failures, either by the claimant, or by the agency itself.

OPFS believes overpayments that are caused by official error on the part of Social Security Scotland should not be recoverable by the agency. Making official error payments recoverable would penalise vulnerable claimants who receive incorrect payments through no fault of their own

We have unease regarding the scope of the current reasons that permit the agency to seek recovery for overpayment - including for official error. It would be wrong to penalise people for errors over which they have no control and which often they are unable to identify due to the complexity of the combined systems - effectively passing the risk of error within the new system on to shoulders of claimants.

If overpayments caused by official error on the part of Social Security Scotland are to be recoverable by the agency, they should not start until liability has been determined and the person has had the right to contest the decision.

The 20-metre rule and 50% rule

OPFS has substantial concerns about both the 20-meter rule used for determining eligibility to the enhanced rate of the mobility component and also the 50% rule. We recognise the requirement for a ‘safe and



'secure transition'. However, it is our view that these rules unjustly deny some disabled single parents and others the support to which they should be entitled.

The 50 metre DLA qualifying criteria for Higher Rate Mobility would be fairer than the current PIP 20-metre rule. This would show consistency and be a fairer distance if considered over a period of time as most conditions change from day to day.

The 50% rule - says that you must be impacted by your condition, to the extent set out in the descriptors (for example be unable to prepare and cook a meal or to get dressed) on at least half the days in every month. What happens, however, when you have a condition which affects you differently hour by hour over the day, maybe a bit differently every day? Where a condition affects someone for any part of a day, then it should be treated as applying for the whole of that day.

We support Inclusion who favour a social model approach to the impact of variable conditions on daily living rather than the medical/functional approach which was adopted under PIP and is being continued with the Adult Disability Payment.

Sharing of Information

We are concerned about issues around the sharing of information with other agencies particularly local councils.

Useful information/evidence can include medical reports from consultants, information from support workers, including third sector support workers, nurses etc who are dealing with application during the period before claim and during claim. In order to build trust in the system and its processes, individuals should also have a right to see and comment on both 'supporting information' and the result of a face-to-face assessment. How this is done should be consulted on with service users and experts. Where sufficient evidence is available, the fact that there is even a slight chance that a face to face can happen will cause many families real concern.

While sharing information regarding benefit entitlement may increase



take up there are fears that information may be inaccurate due to changing circumstances. Some services provided by local councils are individually assessed, for example the Scottish Welfare Fund involves local decision making, so individual assessors may interpret information to the client's disadvantage.

The process on 'opting out' rather than 'opting in' puts the claimant at a disadvantage as they may not fully understand the implications of their decision or rights due to mental health or learning difficulties. We would propose an 'opt in' approach would offer a more robust process to ensure claimant's right to choose are respected.

Assessors

OPFS welcomes draft regulations 38 (2) (b) and 38 (2) (c) which provide extra assurance that if an assessment is for mental ill health it should be done by an assessor with a background in this field as this is a specialist area. People with mental health conditions can often be unwilling to divulge details to people they do not know well, therefore it is imperative that the assessor is skilled in obtaining information from them. While they should have medical experience, they should also receive training on specific vulnerabilities. For example, they should be given independent training on single parent awareness and the lack of support many single parents have dealing with their own ill health and that of their children.

We believe assessors should have 3 years' experience within a five year period.

Determinants of entitlement without an application

We welcome the move to a fairer review system that reduces the burden on claimants to provide information repeatedly to maintain their award when there can be no significant change to their condition and need for support

However, we would caution that reviews without an application must



have the same rights of appeal as those made with an application.

Period in respect of redeterminations

OPFS welcomes that there will be a maximum period for Social Security Scotland to undertake a redetermination. We believe in order to provide a speedy response to the claimant the time span for both requesting a redetermination and making a redetermination should be the same. While we welcome the more generous period for individuals to request a re-determination, our advisors have found that single parents with mental health issues can be particularly affected while waiting on the re-determination decision. They can be terrified of losing their benefit or not being entitled to it and 56 days is a long time to wait. Their anxiety can then cause them to contact their support agency (such as OPFS) and the government department dealing with the request multiple times. By cutting down the time to respond this will reassure the claimant and also reduce the contact between the claimant and advice agencies who are struggling to cope with demand. Between 28 and a maximum of 42 days would be preferable. we think that all the available information should be collectable in such a time frame. During any appeal process many clients will experience increased levels of stress and anxiety therefore 56 days is far too long.

If it is not possible to reduce the 56 days wait, then we would ask that in the interests of being fair and reasonable that the 42 day period for claimants is extended to 56 days to give both an equal time period.

Equality Impact Assessments

An equality impact assessment (EIA) is an evidence-based approach designed to help organisations ensure that their policies, practices, events, and decision-making processes are fair and do not present barriers to participation or disadvantage any protected groups from participation.

As part of an EIA barriers or impact should be identified, however the impact assessment provides no estimate of whether the new Scottish system will reduce negative impacts. In this respect it would be useful to have access to the full Equality Impact Assessment.

Very few changes to the detail of the Adult Disability Payment in



comparison to PIP have been made so it is ambiguous as to how for example, gender concerns and analysis have apprised decision-making.

We note along with colleagues in partner organisations that it seems unlikely that there will be a substantial improvement in restoring disabled people's eligibility if the key concerns affecting reduced entitlement, the 20-metre walking test and the 50% rule, stay untouched. The Impact Assessment should recognise this.

Review of Adult Disability Payment

We welcome the proposed review of Adult Disability Payment. As an active member of the Scottish Campaign on Rights to Social Security (SCoRSS) we have been fully involved in the development of the SCoRSS "Beyond a Safe and Secure Transition" document outlining a long-term vision for Disability Assistance.¹¹

We would argue that vision should provide the basis for the review. The date given is 2023 we would like it to start earlier than this. Importantly the review should look at all facets of Disability Assistance, including adequacy, intent, relationship to wider benefits, and alternatives to a points-based systems. This would include exploring alternatives to the medical model of the current system of activity descriptors, in line with the social model of disability.¹² The review should be independent from government and led by people with experience of disability. We support SCoRSS recommendations¹³ that:

- The review is widened in scope to all three new age-based (children and young people, adult, and older people's) disability entitlements that will eventually be in payment in Scotland.
- The full incorporation of the recommendations set out in Beyond a Safe and Secure Transition - A Long Term Vision for Disability Assistance in Scotland.
- The review is adequately resourced and funded, and considers all aspects of disability assistance, not only the activities, descriptors and supporting criteria and potential alternatives; but also, the

11 SCoRSS [Beyond a Safe and Secure Transition 2020](#)

12 <https://www.scope.org.uk/campaigns/extracosts/disability-price-tag/>

13 SCoRSS [Beyond a Safe and Secure Transition 2020](#)



processes put in place such as the application process, the assessment process and the decision making process.

To sufficiently assess the working of the Adult Disability Payment, as part of the wider review, it is essential to ensure that the agency is methodically collecting pertinent data from the start. The tracking of how well procedures are working is vital for evaluation, continuous improvement, and action.

In conclusion we believe the Scottish Government should ensure that at the very least the legal rights claimants currently have will continue for individuals who claim disability assistance in Scotland. This can be done during the transition period by including the current legislation and the meaning of important words as established by caselaw in the Scottish disability assistance regulations. This gives clarity around who will be entitled to disability assistance in Scotland in a way that guidance does not. If conditions of entitlement, definitions of terms and processes for determining entitlement are only included in guidance, individuals in Scotland will have fewer rights than claimants currently enjoy.

It is time for a social security system that prevents poverty, treats people with dignity and respect and supports everyone to flourish.¹⁴ We welcome the steps the Scottish Government have made to contribute towards achieving this goal.



¹⁴ Scottish Campaign on Rights to Social Security - Principles for Change



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changing lives, challenging poverty

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