



Welfare Rights Conference 2025

Scottish social security – legal updates

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What we'll cover

- Changes to the Social Security (Scotland) Act 2018 ('the Act')
- Changes to Scottish benefit regulations
- Selected Upper Tribunal for Scotland(UTS) decisions about:
 - when ADP starts/increases
 - disability conditions
 - adequacy of reasons
 - evidence

Recent changes (highlights)

- Introduction by regulations of:
 - Pension age disability payment
 - Scottish adult disability living allowance
- From 10 May (23 June for Scottish child payment), the First-tier Tribunal (FTS) can only consider the claimant's circumstances 'at the time the individual's entitlement fell to be determined ... by the Scottish Ministers in making the original determination'

The previous situation remains unclear if a claim was refused - to be considered by the Upper Tribunal for Scotland in an ongoing case

Future changes to the Act (highlights)

- Late claims/redeterminations/appeals in 'exceptional circumstances' (replacing 'due to coronavirus')
- Scottish child payment becomes a type of 'assistance'
- Ability to withdraw a redetermination request
- Appointeeship changes
- Social Security Scotland (SSS) will be able to make a new determination ending an appeal *
- Change to overpayment recovery and appeal rights*

Some of the policy detail remains unclear at present

New determinations by SSS once an appeal is made

- A new power will allow SSS to make a new determination that brings an appeal to the FTS to an end, providing:
 - the new determination is more favourable to the claimant than the determination under appeal; *and*
 - the appellant 'consents' to the determination.

If a claimant later changed their mind, they would have to request another redetermination before they could appeal against the new determination.

Overpayments, recovery and appeal rights

- There will be a new requirement for SSS to make a 'decision' about liability to repay an overpayment.
- 'Representatives' can be liable if the claimant didn't benefit from the overpayment (must be shown)
- The liable person will be able to request a 'review' if they disagree and then have a right of appeal (to First-tier Tribunal for Scotland)

These new provisions will allow claimants to challenge the decision that an overpayment is recoverable from them, a right which is currently absent - even though not all overpayments of Scottish benefits are recoverable

Future changes to regulations (highlights)

- Need to claim Scottish benefits if get a DWP benefit and move to Scotland (from September 2025 onwards?)
- Pension age winter heating payment of £203.40 / £305.10, taxable if income over £35,000 (winter 2025)
- Carer support payment changes (September 2025?):
 - 'carers additional person payment'
 - carer's allowance supplement incorporated into '[carer support]'
- One-off £2,000 care experience assistance/care leaver payment - may not be delivered by SSS (April 2026)

All proposals still to be finalised at time of writing

Case law – correct start dates and the required period condition

- *SSS v FK* [2024] UT 23
- *SSS v GK* [2024] UT 71
- *SSS v JS* [2025] UT 27
- All deal with the misapplication of the required period condition by the FTS (in both directions)
- In *GK* and *JS* the UTS was able to quash and re-make the decision with the correct start date.
- In *FK* the case was remitted for re-hearing

Case law – correct start dates and the required period condition

- *SSS v AM* [2025] UT 28
- *SSS v AM* [2025] UT 29
- Both cases deal with transfer from PIP to ADP after reporting a change of circumstances
- The FTS found, in both cases, that ADP should have been increased following the 'review determination'
- However, FTS failed to apply the law properly in choosing the date the increase should start (Schedule 2 paragraph 12(4) ADP Regulations)

Representatives should be alert to the importance of addressing these issues in their submission. In particular, by making a clear submission on the correct start date

Case law – disability conditions

- *LK v SSS* [2025] UT 6 (CDP case)
- SSS awarded the lowest rate of the care component only and the FTS upheld this determination. LK argued that the FTS had erred in law because it concluded that, as E (the child) qualified for the lowest rate of CDP by virtue of requiring attention in connection with their bodily functions for a significant portion of the day, she could not also qualify for the middle rate for requiring frequent attention in connection with their bodily functions throughout the day.
- UTS decided this was clearly wrong and she met the conditions for middle rate care component (quashed and re-made FTS decision to this effect)

Case law – disability conditions

- *RC v SSS* [2025] UT 32 (mobility: safely, etc considerations)
- RC scored insufficient points for an award of either component of ADP. The FTS upheld the determination. In relation to the mobility component, FTS decided that he scored 4 points for satisfying mobility descriptor 2b (able to move between 50 and 200 metres).
- The basis for this was that RC had completed Stage 1 of an Exercise Tolerance Test at a cardiac clinic in early 2024, and the medically qualified member had advised the tribunal that a patient would have to walk for 140 metres to complete Stage 1 of such a test.
- Erred in law in failing to consider regulation 7(2)(b) ADP Regs (safely, to an acceptable standard, repeatedly, within reasonable time period)

Case law – disability conditions

- *KK v SSS* [2025] UT 33 (mobility case: familiar/unfamiliar route)
- FTS awarded 10 points under mobility descriptor 1(d), resulting in an award of standard rate mobility component
- UTS found that there was little, if anything, to differentiate between familiar and unfamiliar routes in terms of the claimant's difficulties
- Quashed FTS decision and re-made, awarding enhanced rate mobility component

Following PIP caselaw?

***SSS v AH and AS and SS and GA* [2024] UT 63**

- Four cases heard together – all related to mobility descriptor 1(d) (“cannot follow the route of an unfamiliar journey without another person, assistance dog or orientation aid”) and whether FTS erred in law in failing to follow *MH v SSWP* [2016] UKUT 531 (AAC) (PIP UT decision)
- In all four cases, the FTS found to erred in law and remitted for re-hearing in the issue of mobility descriptor 1 only

Following PIP caselaw?

- Common ground that the FTS was not bound by the decision in *MH* (in a general sense)
- However, there is a presumption that Parliament makes law in the knowledge of, and having regard to, relevant judicial decisions: *Barras v Aberdeen Steam Trawling and Fishing Co Ltd* 1933 SC (HL) 21, . . .
- In the absence of material to rebut the presumption the legislator must be taken to have intended that descriptor d. in the 2022 regulations be interpreted in accordance with the decision in *MH*

Message – where law is the same, expect SSS and FTS to follow pre-existing case law

Case law – adequacy of reasons

- *EC v SSS* [2025] UT 4
- *RM v SSS* [2025] UT 18
- *SSS v DM* [2024] UT 61
- The 'classic test for adequacy of reasons in Scotland' is found in *Wordie Property Co Ltd v Secretary of State for Scotland* 1984 SLT 345.
- The tribunal must 'give proper and adequate reasons for [its] decision which deal with the substantial questions in issue in an intelligible way. The decision must, in short, leave the informed reader ... in no real and substantial doubt as to what the reasons for it were and what were the material considerations which were taken into account in reaching it.'

Representatives should highlight anything in oral evidence that they wish the FTS to consider, even if it was not part of their written submission

Case law – evidence

- *SSS v DG* [2025] UT 23
- SSS refused ADP. FTS awarded ADP at a 'paper hearing'. The basis of the award was the decision of a First-tier Tribunal on the issue of UC LCWRA
- FTS erred in law in assuming an equivalence in the LCWRA and ADP descriptors
- FTS decision quashed and remitted for re-hearing: the evidence used to decide the LCWRA descriptors may be relevant to the ADP descriptors but the FTS did not have that evidence before it

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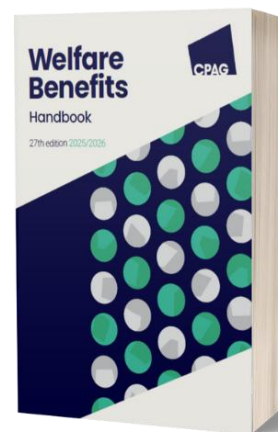
New Welfare Benefits Handbook

The structure of this edition reflects that, in 2025/26, income support, income-based jobseeker's allowance and tax credits are due to be fully replaced by universal credit. It covers transitional protection for people who get less money on universal credit and the special rules for pensioners who were getting tax credits.

Written by a team of over 20 experts, our flagship handbook is an essential guide to navigating the social security system. It equips you with the knowledge to maximise your clients' income, conduct thorough benefits checks, assist with claims, and confidently handle challenges when things go wrong.

We've also produced a wall chart (available in A2 and A4) which give quick and handy access to the benefit rates for 2025/26.

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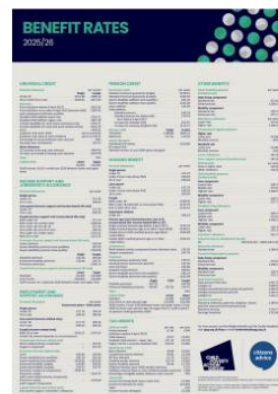
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