



Scottish Campaign on Rights to Social Security: Improving Disability Assistance in Scotland debate briefing, October 2019

About us

The Scottish Campaign on Rights to Social Security (SCoRSS) is a coalition of organisations who advocate for a reformed social security system that reflects the five principles set out in our [Principles for Change](#). SCoRSS (previously the Scottish Campaign on Welfare Reform) encompasses over 40 organisations from key third sector organisations, charities, faith groups, and unions. Our members have a diverse range of experience and expertise and a strong understanding of social security and its impact on the people and communities we work with.

Since 2006 SCoRSS has highlighted the shared concerns of a diverse coalition of organisations in Scotland about the UK Government's welfare reform proposals. Since then, the coalition has informed debates on changes to both UK and Scottish government policy and has influenced the creation of Scotland's first social security system.

Background

As a coalition, we believe the devolution of powers over disability benefits represent a unique opportunity to create a rights-based, principled system of disability assistance that improves on the existing Personal Independence Payment (PIP), Disability Living Allowance (DLA) and Attendance Allowance (AA).

SCoRSS, and our members collectively and individually have engaged with the process of developing Disability Assistance and have made a number of detailed recommendations for change. This briefing summarises our shared priorities, both in the immediate term, and longer term changes once the safe and secure transition is complete.

Assessments, use of evidence and duration of awards

A major issue with the current Personal Independence Payment (PIP) application process is the over-reliance on stressful face-to-face assessments, as opposed to the person's own account of how their condition affects them, as well as further evidence that is readily available. This has resulted in inaccurate decision-making, and a high rate of decisions overturned on appeal.

PIP awards have also previously been for a relatively short duration (typically three years) and often require a full re-assessment after this time, even when a person's condition is unlikely to improve and may have worsened. SCoRSS members welcome the Scottish Government's commitment to substantially reduce the use of face-to-face assessments and recommend:

- The policy aim should be to achieve a substantial reduction in the proportion of people who have to undergo a face to face assessment i.e. from the current 90% to less than 30%.^{i ii}
- With the exception of when an individual requests a face-to-face assessment we believe that Social Security Scotland should be cautious about their use. Evidence shows that there are significant limitations in the information that can be gathered at a face-to-face assessment and it can also be detrimental to mental health.ⁱⁱⁱ
- The process for face to face assessment has to be clearly set out in regulation and not mirror the current system. Assessments should only begin when the person is in the assessment room rather than through observation. All assessments should be recorded and clients should be encouraged to have representation as of right.^{iv} The system should also include increased use of paper-based reviews.^v
- Corroborating evidence should not be required in all cases. It is also important that decisions are being made on a balance of probability, rather than starting from a position of the individual having to *prove* their entitlement.^{vi}
- Although rolling awards are not opposed in principle there needs to be some certainty that those on the Enhanced Mobility component will be entitled to it for at least 3 years otherwise they might find themselves unable to lease a Motability vehicle.^{vii}
- Reviews for people whose condition is unlikely to change should be limited to every ten years (at a minimum) and should focus on offering additional support if needed.^{viii} Rolling reviews have the risk of detrimentally affecting the minority of people who do currently receive longer-term PIP awards (of at least 10 years' duration), so care must also be taken to ensure they are not disadvantaged by the change.^{ix}
- The Scottish Government's policy paper^x states that the regulations will allow an individual "to request a review of their disability assistance". We agree but the regulations should go further. It must not be a requirement that the individual needs to convince the decision maker that there has been a change of circumstances, or a deterioration of their condition, before a fresh determination is made. The regulations must be framed in such a way so that there is an

obligation on the agency to make a fresh determination of an individual's entitlement if an individual requests a review. This is the only way to give the individual a right to appeal the decision if they disagree.

Eligibility criteria

The devolution of disability benefits presents an opportunity to change aspects of the current eligibility rules, descriptors and points system to better reflect a person-centred, dignified and respectful approach. In the immediate term, SCoRSS members recommend:

- Increasing the distance someone can walk for the higher mobility component from 20 to 50 metres, as was previously the case in Disability Living Allowance (DLA)^{xi xii xiii xiv}
- The "50% rule", requiring people to satisfy eligibility descriptors on at least 50% of days, penalises people whose condition is variable in daily impact but constant in terms of the danger posed. For example epilepsy where seizures might be very infrequent but the dangers posed when they occur are significant and life altering). The 50% rule should be abolished for all descriptors - including for daily living descriptors^{xv xvi}
- If retaining a points-based system (in the short/medium term) at a minimum the descriptors need to be rewritten to better allow the impact of mental health to be assessed. This should be done in partnership with people with lived experience and stakeholders across the disability and mental health sector.^{xvii}
- It is welcomed from Scottish Government that Disability Assistance will be paid to aged 18 but we would extend this further for children and extend to aged 19 or end of non-advanced education, especially if already in payment through PIP^{xviii}

Redeterminations and appeals

The introduction of a requirement for regulations to set statutory time limits for Social Security Scotland to make a decision on a redetermination request by someone wishing to challenge an initial decision is warmly welcomed. Currently, there is no time limit for how long DWP has to respond to a request, which has resulted in people waiting several months for a decision to be made. However, SCoRSS members recommend:

- The maximum time limit for Social Security Scotland to undertake a redetermination should be no more than 28 calendar days, as opposed to the 40-60 working days proposed in the consultation document.^{xix xx xxi}
- The period of time given to people to make a redetermination request should also be lengthened. It should be at least equivalent to the length of time the agency has given themselves to make a decision on the request, and ideally 42 calendar

days (six weeks). The consultation document proposed 31 days unless someone has good cause. ^{xxii xxiii xxiv xxv}

Independent advocacy and advice

SCoRSS members would like to see Scotland's social security system as one that is purposefully designed to recognise and promote the importance of independent advocacy and advice as mutually supportive, but distinct, avenues of assistance to help people successfully navigate the system at every stage of the claims process (from understanding entitlement and submitting an application, through to appealing a decision and attending assessments).

The Social Security (Scotland) Act 2018 gives anyone who requires support from an advocate owing to a disability the statutory right to access independent advocacy for support engaging with the new system. Given the purpose of Disability Assistance as being a benefit that recognises the impact of living with a disability or health condition, it is likely that the group of people claiming Disability Assistance will include a large number of people who have this legal right to independent advocacy.

However, there will be additional Disability Assistance claimants who do not identify as having a disability and who might not therefore recognise that they have a statutory right to independent advocacy. Many of them will, nonetheless, be marginalised and vulnerable and would benefit significantly from independent advocacy to support them to understand and navigate complex social security systems.

It is therefore imperative that all people claiming Disability Assistance claimants are provided with high-quality information and timely advice and support about accessing independent advocacy throughout the process, and that local independent advocacy agencies are well funded to ensure they are able to meet the increased demand on their services, alongside increased funding for independent advice agencies. ^{xxvi xxvii xxviii}

Process and regulations

Regulations and guidance are particularly important in clearly setting out what social security support a person is entitled to, together with any conditions and the process for making decisions on applications. In addition to the points raised above and below, SCoRSS members recommend:

- The Scottish Government must ensure that at the very least the legal rights claimants currently have will continue for individuals who claim disability assistance. During the transition period the current legislation and the meaning of important words as established by caselaw should be in regulations. ^{xxix xxx}
- The £200 Winter Heating Assistance payment to families in receipt of the highest rate care component of Disability Assistance for Children and Young People should be extended to families with children in receipt of middle rate care. ^{xxxi xxxii}

- Clarity is needed around what happens when a person leaves hospital. The current system for DLA etc is that the award is just suspended then reinstated when they leave hospital. People shouldn't have to make a new claim in Scotland. ^{xxxiii} We would also recommend the current rule that disability benefits stop after 28 days is reviewed. ^{xxxiv}
- There is a need for a clear and explicit commitment made by the Scottish Government and Parliament to focus efforts on the principle of continuous improvement once the new system is up and running. In order to ensure the agency is tracking how well processes are working, as well as to ensure that staff are continuously learning, there should be a requirement to systematically collect data and report on this, such as on take-up levels. ^{xxxv xxxvi xxxvii}

Longer term changes to Disability Assistance

Whilst SCoRSS members accept the need for a safe and secure transition to a new Scottish disability benefits system, we would encourage all parties to use the opportunities presented by devolution to continue to consider longer-term reforms to disability benefits once the transition is complete. SCoRSS members are collaborating to produce a vision of what a new system for disability assistance could look like. The following are examples of things that could be pursued in designing a new form of disability assistance in the long term:

- A clear purpose for disability assistance – what does it seek to achieve?
- Rights-based – focusing on what a person is able to do and what they need to remove barriers that prevent them participating fully in society, rather than the current needs-based model that asks what people are unable to do
- Ensuring the system supports independent living.
- Adequate – what level of spending would be sufficient to provide this model?
- Provides whole-of-life support, as opposed to three age-based benefits with different rules and processes that have evolved rather than being designed that way.
- Is well-connected to other services, such as social care.
- Interacts well with any future social security developments in Scotland

For more information, please contact:

Rob Gowans (Citizens Advice Scotland)
0131 550 1087/ rob.gowans@cas.org.uk

Jen Gracie (Child Poverty Action Group in Scotland)
0141 611 7090/ jgracie@cpagscotland.org.uk

Further reading

More information about the points made in this briefing can be found in reports and submissions from the following SCoRSS members, who contributed to this briefing as indicated:

[Citizens Advice Scotland](#); [Child Poverty Action Group in Scotland](#); [Inclusion Scotland](#); [SAMH \(Scottish Association for Mental Health\)](#); [One Parent Families Scotland](#), MS Society Scotland; [Energy Action Scotland](#); [Scottish Independent Advocacy Alliance](#); [National Association of Welfare Rights Advisers](#); Glasgow CVS; [The ALLIANCE](#); Scottish Federation of Housing Associations.

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- ⁱ Inclusion
 - ⁱⁱ Citizens Advice Scotland
 - ⁱⁱⁱ Child Poverty Action Group in Scotland
 - ^{iv} One Parent Families Scotland
 - ^v National Association of Welfare Rights Advisers
 - ^{vi} Child Poverty Action Group in Scotland
 - ^{vii} Inclusion Scotland
 - ^{viii} SAMH
 - ^{ix} Glasgow CVS
 - ^x 'Duration of awards and automatic entitlement for disability assistance'
 - ^{xi} MS Society Scotland
 - ^{xii} Citizens Advice Scotland
 - ^{xiii} Inclusion Scotland
 - ^{xiv} National Association of Welfare Rights Advisers
 - ^{xv} Inclusion Scotland
 - ^{xvi} SAMH
 - ^{xvii} SAMH
 - ^{xviii} National Association of Welfare Rights Advisers
 - ^{xix} Citizens Advice Scotland
 - ^{xx} MS Society Scotland
 - ^{xxi} SAMH
 - ^{xxii} Citizens Advice Scotland
 - ^{xxiii} Inclusion Scotland
 - ^{xxiv} One Parent Families Scotland
 - ^{xxv} Child Poverty Action Group in Scotland
 - ^{xxvi} Scottish Independent Advocacy Alliance
 - ^{xxvii} National Association of Welfare Rights Advisers
 - ^{xxviii} Citizens Advice Scotland
 - ^{xxix} Child Poverty Action Group in Scotland
 - ^{xxx} Citizens Advice Scotland
 - ^{xxxi} Inclusion Scotland
 - ^{xxxii} Energy Action Scotland
 - ^{xxxiii} Child Poverty Action Group in Scotland
 - ^{xxxiv} Glasgow CVS
 - ^{xxxv} The ALLIANCE
 - ^{xxxvi} Child Poverty Action Group in Scotland
 - ^{xxxvii} Scottish Independent Advocacy Alliance