



The National Association of Welfare Rights Advisers (NAWRA) was established in 1975 as the Welfare Rights Officers' Group, and then the National Welfare Rights Officers' Group before becoming NAWRA in 1992.

It represents advisers from local authorities, the voluntary sector, trade unions, solicitors, and other organisations that provide legal advice on social security and tax credits.

NAWRA currently has more than 200 plus member organisations. We strive to challenge, influence and improve welfare rights policy and legislation, as well as identifying and sharing good practice amongst our members.

Our members have much experience in providing both front line legal advice on benefits and in providing training and information as well as policy support and development.

It is my privilege to represent NAWRA in Scotland and NAWRA are delighted to provide this submission and accept that introducing the largest transfer of cases for disability payments at this stage will be problematic due to difficulties within the current UK system.

A safe and secure would be difficult given the existing hurdles from DWP to Scotland however whilst it may be safe and secure what it must not be is at any point less than what already exists and if UK case law would be difficult to transfer what must be transferred is the spirit of safeguarding held within PIP case law for disabled people.

NAWRA is also part of SCoRSS and in addition to this submission we have also contributed to SCoRSS submission and during the last 12 months we have contributed to Beyond a safe and secure transition along with our own paper on claiming PIP during Covid.

https://www.nawra.org.uk/wordpress/wordpress/wp-content/uploads/2020/09/Claiming_PIP_during_COVID-19.pdf

<https://www.cas.org.uk/publications/beyond-safe-and-secure-transition-long-term-vision-disability-assistance-scotland>

Our original response recommended:

- 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
- 50 metre test for mobility
- Minimum assessments and only when required and should always be people centred
- Introduction of safeguarding
- Increase in independent advice provision as in accordance with our social security bill and charter

nawra

national association of
welfare rights advisers

NAWRA advocates on behalf of the many not the few and our desire is for equal treatment and kindness so we can all enjoy what society has to offer.

At present sadly not everyone in our societies across Scotland enjoy the privileges most of us enjoy however we are delighted to provide our submission so all of society can be protected and society represents all the wonderful things that we see around us.

If we are genuinely going to have a fairer representations then our legislation on disability payments needs to read this way and not just a translation of the current system that is not fit for purpose unless that purpose is to see more than half of all applications be refused.

When one considers the definition of happiness by Psychologist Daniel Kahneman as “What I experience here and now” then certainly so many people are missing out on this basic human need.

If we want a system that allows disabled people onto the 1st ring of The Cantril Self-Anchoring Scale of happiness, then we must continue to redesign our system once safe and secure transfer is complete and we have completed our review that is scheduled in 2023.

Scotland ranks as the happiest place to live in UK however we are still way behind many countries and we need to keep learning on how our societies can become more equal and happier, with Disability Payments being a conduit to creating a society that is greater represented than it is just now.



Consultation on Adult Disability Payment

RESPONDENT INFORMATION FORM

Please Note this form must be completed and returned with your response.
To find out how we handle your personal data, please see our privacy policy:
<https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

Organisation

Full name or organisation's name

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The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

<input checked="" type="checkbox"/> Publish Response with name

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We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

Consultation questions

Part 1: Introductory and Interpretation (regulations 1 and 2)

Q 1: Do you agree the regulations reflect this policy intent? YES

If the intention is to introduce safe and securely then provide guidance the answer is yes if the question is of introduction in totality then the answer is No.

Q 2: If you have any further comments please provide them here.

We see many references to PIP, CDP however no ADP so we need to define ADP and we also as we move forward, we need to clarify language for Scotland rather than looking back to PIP. Building our system must be ours and be better rather than comparing to a much-maligned UK PIP system. When anything is introduced with negative tone and intent this will be the result and we want a system designed with respect that helps disabled people rather than finding a way to deny as UK did with disabled people and mental health being targeted.

We have been asked to trust the implementation and across the sector we have been and are looking forward to the protective factors held within ADP via existing case law and The Pilot will be of great interest as will the demographic used.

Q 3: Do you agree the regulations reflect this policy intent? YES

Q 4: If you have any further comments please provide them here.

Daily Living Component and Mobility Component (regulations 4 and 5)

Q 5: Do you agree the regulations reflect this policy intent? YES

Q 6: If you have any further comments please provide them here.

This change may be an opportunity to explore conditions beyond physical and mental health conditions as the impact of many social issues lead to a question of safety and health that do not fall under physical/mental health without definition thus putting people off making a claim.

Determination of ability to carry out activities (regulation 6)

Q 7: Do you agree the regulations reflect this policy intent? YES

Q 8: If you have any further comments please provide them here

We must ensure safety is considered and case law is fully considered when making the assessment as merely considering the descriptor without safety in all environments would be wrong.

Upper Tribunal Case No: CPIP/0404/2017

The ordinary meaning of 'assistance' is not in point, because the definition is an exhaustive one, being in the form 'assistance *means*', rather than one that extends the ordinary meaning, which would be in the form 'assistance *includes*'. The important word is 'intervention'.

Without clarity safety is unable to be established when carrying out a task safely.

These activities must relate to safety that is involved and the need must be prescribed to protect the integrity of treating people with respect.

What we also see is a clear prejudice against workers, many who struggle at the advice of professionals, to try and cope safely however this is held against them so many people miss out so what we must assess fully elements throughout the day and night for descriptors that apply.

Even at times promotions or additional tasks have been treated negatively and discussed as fraud when disabled people are working and claim PIP/ADP.

The required period condition: daily living component and mobility component (regulation 10 and 11)

Definition of time needs to be clarified. Every time in the period of 13 weeks etc? Should there be an entry to protect survivors of sexual assault akin to 3rd child policy?

We also recommend that the 50% rule is replaced with safety and likelihood of harm if left alone to cope as opposed to 50% as this sets a negative and damaging target especially when trying to manage disability and work.

Work forces are already under-represented by disabled people and these types of opinions will continue to do harm.

As we did with our original response NAWRA recommends the return of 50 metres criteria for mobilising safely.

Q 9: Do you agree the regulations reflect this policy intent? YES

Q 10: If you have any further comments please provide them here.

Definition of “substantially more” needs to be defined

Q 11: Do you agree the regulations reflect this policy intent? YES

Q 12: If you have any further comments please provide them here.

If it meets the criteria of regulations then yes however, I feel this is creating a 2 tier system for disabled people who have maybe ben living elsewhere but linked to UK and this needs addressing.

The 2 out of 3 year rule could and should be adapted to welcome all people to Scotland and certain criteria needs to be explored.

Section 1G should be explored and defined to protect all categories of status who can reside in Scotland with cherry picking what we do and don't when some benefits do not hold the same restrictions.

Naturally we will need to see the outcome of Fratilla however what we do know if under settled status scheme absence is permitted to 5 years whilst under Right to Reside workers

status is lost after 2 years so I suggest that 5 years is permitted to continue entitlement and this can be re-opened upon return to Scotland.

Q 13: Do you agree the regulations reflect this policy intent? YES

Q 14: If you have any further comments please provide them here.

In our initial response we requested a change to the age and we are pleased that we can see the subsequent age change along with pension age being used.

If Mobility for ADP can be reduced or removed then why can't this be reciprocated with the potential of increasing the award if a worsening of condition is reported even if a new condition is not accepted.

Q 15: Do you agree the regulations reflect this policy intent? YES

Q 16: If you have any further comments please provide them here.

The protection to a terminal child and removing 26 weeks should be extended to Adults however the backdating of 26 weeks is welcomed.

We should not be making this demand of families at the worst moments when we already know of the progressive disease.

We should also increase the 28 day protection of ADP before, during and after when residing in any facility like a hospital or hospice.

What is The Assistance? We need to define.

Q 17: Do you agree the regulations reflect this policy intent? No

Q 18: If you have any further comments please provide them here.

We should always keep open the potential to suspend and re apply expeditiously and it should be time sensitive to get people money ASAP.

28 day rule and transferring should only take into account the transfer time if being transferred otherwise the date of departure should be the date that is accepted.

Part 9 Short Term Assistance

Short Term Assistance is welcomed and we look forward to studying the provisions within this section.

NAWRA recommends that STA is payable immediately at point of decision and should be made available immediately to avoid any financial and health risk to disabled people.

Naturally, some people will fall through the net and therefore safeguarding needs to be applied when the removal of these monies are made as this will in all likelihood have a double impact as UK premiums will be affected.

We are all entitled to a fair hearing and no prejudice should be shown no matter the decision that is being appealed.

Part 10 Making of Applications and Payments

Q 19: Do you agree the regulations reflect this policy intent? NO

Q 20: We should always keep open the potential to suspend and re apply expeditiously and it should be time sensitive to get people money ASAP and a service level agreement should be in place to reinstate money owing.

28 day rule and transferring should only take into account the transfer time if being transferred otherwise the date of departure should be the date that is accepted.

I am sure authors did not mean to treat disabled people leaving detention differently to those leaving hospitals but they have in terms of when the day starts to count. This may have human rights consequences in treating people differently and also if no charges were brought and people are exonerated no loss should apply.

If payment is 28 days in arrears when will prisoners be paid? An advance system or a weekly advance should be paid.

We offer a 2 week payment under U/C so this should be made available under ADP especially when we know financial abuse or domestic abuse are considerations and joining payments could also be an option with all S/G payments but I would always keep open the avenue of single payments for security.

At NAWRA we would also recommend long term awards and if not full life awards then the review process should be covered by internal process rather than asking more of disabled people. At present a short award of 2 years could involve Regulation 11 so 12 months out of 24 you are under review therefore long term awards must take this into account to avoid more stress and a perceived lack of respect and understanding.

As SG are to take the responsibility of getting evidence then this could be covered under this process when reviewing long term awards however life-time awards are recommended for certain degenerative conditions.

Q 21: Do you agree the regulations reflect this policy intent? YES

Q 22: If you have any further comments please provide them here.

There is a real concern that during PIP many assessments were carried out by SALUS and it is felt that there may be a hangover from the previous system so will subsequent training be provided as it was to DWP staff. We are also concerned that any practitioner merely has to be an employee for 2 years meaning any new employee would potentially not have 2 active years so it is recommended that no assessment should be carried out unless 2 years is proven in that particular field so any period of training or probation is not included in the 2 years.

What do we know about ongoing training? Skills? Does 2 years need to show actively working for 104 weeks?

What we have learned from assessments during Covid is that any assessment that is thrust upon people causes alarm so any assessment must be appropriate to the health and considerations of the disabled person thus reducing any likely harm especially when face to face can cause alarm.

All options must be detailed and must be front and centre rather having a cap in hand system begging for telephone over video or paper over person.

The fact that assessments are a final option for Scottish Government then health details will be available to establish risk and establish kindness and respect when inviting a disabled person for an assessment.

An openness should be inserted into legislation and what standards and expectations one would have like BSL, Advocacy provisions etc to be provided by S/G given it is their invitation for assessment after all.

If we place in legislation rather than guidance this will solidify our kindness and respect for disabled people and assessments rather than relying on trust of guidance that can easily be amended.

What we do know under the existing experiences is it causes great upset and ultimately leads to so many appeals and people being sick of the system and their treatment.

Disabled people are losing out on monies that are designed for additional costs to deal with disability and as human rights are embedded in social security structure of assessments this must be included in legislation

Q 23: Do you agree the regulations reflect this policy intent? YES

Q 24: If you have any further comments please provide them here.

Periods in respect of a re-determination request (regulation 44)

Q 25: Do you agree the regulations reflect this policy intent? YES

Q 26: If you have any further comments please provide them here.

It is hard to imagine that appeal rights would not be respected and I am sure this will be clarified but must be clearly evidence in legislation.

It is always difficult when different dates cause confusion and again our legislation lacks parity between S/G and individuals with dealing with cases as 4 weeks exist for disabled people being 28 days which can be extended to 42 , 56 days for S/G and this extends to 56 weeks in some situations.

For transparency we should always use the appropriate language and definitions.

If we are using weeks are these working weeks or if we use days these should be defined as working days with this being accepted as 5 working days per week.

Parity of treatment and language is requested and every decision should bring appeal rights.

The timescales at present are merely on account with no accountability other than a statement which was an offer from IDS stating he would return to parliament if certain timescales weren't met (16 weeks).

What we need in our legislation is timescales and reports to parliament detailing why times ARE or aren't met and what is being done to support disabled people with dates and times with decision making.

At present the return of decisions is 19 and 15 weeks and to add more problems this is 95 and 75 working days.

<https://www.gov.uk/government/statistics/personal-independence-payment-statistics-to-january-2021/personal-independence-payment-statistics-to-january-2021#clearance-outcomes--award-types-and-review-periods-experimental-statistics>

2.6 million people were awarded PIP out of 5.6 million claims that were made by disabled people.

Q 27: Do you agree the regulations reflect this policy intent? YES

Q 28: It is unfortunate that we do not have details of the transfer of cases but we look forward to reading these.

In terms of creating a scheme under Regulation 45 it feels like we could do more to engage with the likes of National Entitlement Card and rather than forcing a further application for a bus pass can we extend what is offered?

Can we use the finance scheme to help disabled people at standard rate or how do we ensure bus passes are provided especially when we see the new policy of travel for ages up to an including 21 years old showing the existence of the infrastructure.

When an award is made, we shouldn't just advise on Cars, Tax but also Bus Pass and also how this can impact in a positive way elsewhere especially with means tested benefits.

Programme for Government includes to develop a benefit check programme so this needs to be included and offered along with other routes on how to access support helping to deal with isolation especially in rural communities where access to a car is literally lifesaving in remote settings.

Q 29: Do you agree the regulations reflect this policy intent?

YES

Q 30: If you have any further comments please provide them here.

Regarding recovery of an overpayment when it was made by an error and especially an official error, I am sure this will be tightened but it must be tightened in legislation not to recover especially when to date we read : (ii) an assumption which proves to be wrong.

Does this mean if I have my wallet taken it is my responsibility?

When a decision is made it must also be made clear on what help is still available especially given our Charter and S1 of Social Security Act.

(2) For the purpose of sub-paragraph (1), “reasonable level” means a level that is reasonable having regard to the financial circumstances of the individual.

Under We must always consider an income and expenditure before recovery is made so reasonable level needs to be defined and it is suggested that it should not be below the existing level before determination.

Recovery should only happen when all appeal rights are exhausted and then when appropriate taken at a minimum to avoid risks.

Full appeal rights must be respected.

Q 31: If you have any comments Schedule 1 please provide them here.

Activity	Descriptors	Points
1. Planning and following journeys	a. Can plan and follow the route of a journey unaided.	0
	b. Needs prompting to be able to undertake any journey to avoid overwhelming psychological distress to the claimant.	4
	c. Cannot plan the route of a journey.	8
	d. Cannot follow the route of an unfamiliar journey without another person, assistance dog or orientation aid.	10
	e. Cannot undertake any journey because it would cause overwhelming psychological distress to the claimant.	10
	f. Cannot follow the route of a familiar journey without another person, an assistance dog or an orientation aid.	12

We appear to have extrapolated old legislation rather than contemporaneous descriptors and once we tidy this up it will be easier to comment as many things have changed since 2013.

Descriptor 9 was covered in 2019 UKSC 34 in an appeal 2017 CSIH 57 and Supreme Court considered when the support is required and by whom.

SB v SSWP (PIP) [2019] UKUT 274 (AAC) Judge Hemmingway promotes that one should have a holistic view of how one plans and follows a journey be that bus, foot or car etc.

As previously indicated whilst we accept the spirit and direction of travel, we are in danger of stepping backwards before moving forwards.

We need to ensure ADP is safe and secure incorporating Upper Tier Tribunal (2017) UKUT 105 (AAC) (RJ, GMcL and CS v SSWP; SSWP v RJ) and to consider not only the harm that may occur but also the likelihood of harm occurring and consider the real possibility of harm occurring.

“safely” means in a manner unlikely to cause harm to C or to another person, either during or after completion of the activity, “repeatedly” means as often as the activity being assessed is reasonably required to be completed; and “reasonable time period” means no more than twice as long as the maximum period that a person without a physical or mental condition which limits that person’s ability to carry out the activity in question would normally take to complete that activity.”

Part 4 Activity 1 is covered in High Court RF v SSWP (2017) EWHC 3375 (Admin) furthermore in MH we can see the further acceptance by the secretary of state when dealing with requiring help when going outside especially in unfamiliar areas this is not possible for the majority of time especially in new places with new people and this requires someone to make this possible for the majority of time.

Part 4 Activity 1 is further covered under MH and anxiety when outside. In MH we can see the further acceptance by the secretary of state when dealing with requiring help when going outside especially in unfamiliar areas this is not possible for the majority of time especially in new places with new people and this requires someone to make this possible for the majority of time.

Q 32: If you have any comments on Schedule 2 please provide them here.

Q 33: If you have any comments about the proposed review of Adult Disability Payment please provide them here.

Q 34: If you have any comments about the impact assessments please provide them here.

Q 35: If there is anything else you would like to tell us about the regulations, impact assessments or Adult Disability Payment in general, please do so here.



NAWRA is a steering group member of SCoRSS and we were grateful to have an audience with The Cabinet Secretary Shirley-Anne Somerville and for completeness and our acceptance of The Review please see our report:

<https://cpag.org.uk/policy-and-campaigns/report/scorss-report-beyond-safe-and-secure-transition>

NAWRA as part of SCoRSS recommends that the review is not limited to an evaluation of the current system, something that would be incorporated into a wider review. Instead, the review must be a truly fundamental reconsideration of disability assistance, which seeks to uncover the best way of supporting as many disabled people in Scotland as possible to realise their human rights through accessible and adequate social security. This would include exploring alternatives to the medical and functional current system of activity descriptors, in line with the Scottish Government's recognition of the social model of disability.

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In our report, *Beyond a Safe and Secure Transition*, we set out how the fundamental review of disability assistance must ensure in the longer-term the system:

- Has a clear purpose. Disability Assistance should compensate people for the extra costs of having an impairment or health condition, enabling them to realise their rights to participate equally in society and to independent living.
- Is human rights based. The current medical and need-based models must be replaced with a social model of disability that focuses on removing the barriers to people's rights to equal participation in society and independent living, enabling the full realisation of the right to social security for disabled people.
- Supports equal participation in society and the right to independent living. The eligibility criteria and assessment processes should be fully reviewed to better reflect the social and human rights models of disability.
- Is paid at an adequate rate. One of the fundamental tenets of designing a human-rights based social security system is that the support provided should be adequate. The current rate of disability payments does not adequately reflect the extra costs disabled people experience.² Payments should be calculated using a human rights budgeting approach that respects, protects and fulfils the human rights of disabled people.
- Provides whole-of-life support. In the longer term, how to address the problems that having separate age payments (child, adult and older people) creates for disabled

people and how best to resolve these issues to make the system fairer and easier to access for disabled people should be considered.

- Interacts well with future social security developments and is well connected to other services. This includes ‘future-proofing’ against any changes to wider income-replacement social security entitlements, as well as ensuring that disability assistance is well-connected to other services.

These principles should be embedded into the review. SCoRSS strongly recommend the review is widened to look at all three new age-based (children and young people, adult and older people’s) disability entitlements that will eventually be in payment in Scotland, as was set out in our 2020 report.

Amongst our recommendations, the campaign is calling for:

- a fully independent and resourced review of disability assistance accountable to and co-produced with those currently entitled and those not entitled to disability assistance
- a human rights-based approach to be taken in the development of disability assistance
- social security for disabled people that supports their right to independent living (including revising eligibility criteria and assessment processes)
- the support provided to be adequate so disability assistance takes into account the extra costs associated with an impairment if a person is to fully enjoy their right to equal participation.