

Scottish Government Adult Disability Payment Consultation

Citizens Advice Scotland response: March 2021

Summary

Citizens Advice Scotland recommends the draft regulations are amended to change or clarify a number of areas to improve the social security support provided to disabled adults in Scotland through Adult Disability Payment.

Citizens Advice Scotland recommends:

- **Dates for the commencement of the regulations and the pilot scheme are added to the next draft of the Regulations.**
- **Section 54 of the Act is replaced by Section 55 of the Act in relation to defining 'assessment' in regulation 2. (d).**
- **Section 55 of the 2018 Act is amended to ensure that the requirements on the Scottish Ministers to justify assessment requests are consistent across assessment channels.**
- **The full and accurate incorporation of existing case law on Personal Independence Payment is made for within the Regulations.**
- **Adult Disability Payment is defined within the Regulations.**
- **Potential issues in the transfer of entitlement due to Regulation 3. (6) are addressed.**
- **That 'reasonably' is defined in the Regulations in respect of regulation 6. 1. (b).**
- **The criteria for entitlement to the enhanced mobility component should be changed so that the relevant distance is increased from 20 metres to at least 50 metres.**
- **Changes are made to the 50% rule to take into account the ongoing impact of fluctuating conditions experienced by some disabled people.**
- **The past presence condition is removed to ensure that people who would be otherwise eligible to receive Adult Disability Payment can access their right to social security.**
- **The requirement to have a judgement of terminal illness reconfirmed after 26 weeks is removed from the Regulations.**
- **Regulation 29 (2) is amended to ensure that those in hospital on their first day of entitlement can access the 28 day rule.**
- **Regulation 26 (3) (b) is amended to ensure this covers terminally ill people who apply whilst in a hospital or hospice.**
- **Short Term Assistance is available from the date of the original request and not after tribunal.**

- **Short Term Assistance is made available to all clients, regardless of the reason for the break in award, and in cases of suspected fraud until this has been proven.**
- **That consideration is given to offering clients choice in the frequency of their payments rather than a default 4-weekly policy.**
- **It is made clear in the regulations that lifelong awards can be awarded where appropriate, with no requirement for review unless the individual requests a review.**
- **Longer awards are a matter of law within the regulations, supporting disabled people to access their right to social security in a dignified way.**
- **Regulations are added which set out the responsibility of Social Security Scotland to collect the supporting information, where required, and to do so at the initial decision making phase and prior to the request of any 'consultation'.**
- **Provisions are added to make clearer the circumstances where an assessment can be requested and the processes that should be followed by the agency before an assessment is requested.**
- **The right of a person to have an assessment in the format they prefer is added to the Regulations.**
- **The requirement to notify the individual of any informal observations carried out during an assessment and their right to respond should be placed into the Regulations.**
- **Regulation 44. (2) is amended so that redeterminations are made within a time limit of 28 days, at the very most the same 42 days as afforded for an individual to request a redetermination.**
- **Clarity within the regulations that recovery will not begin until liability has been decided and the individual has had the opportunity to go through a full appeal process if necessary.**
- **The grounds for seeking recovery of overpayment are tightened to avoid a client being financially penalised for agency error, particularly when this is based on agency assumption and not false or misleading information from the client.**
- **Debt is prevented from being transferred from the DWP system to Scottish social security.**
- **Provision is made preventing the collection of historic debt of over five years old by Social Security Scotland.**
- **A 10% maximum deduction rate is set out in the regulations.**
- **The regulations are amended to note that the Standard financial Statement should be used to determine affordability with the consent of the client**
- **The full incorporation of the recommendations from the Beyond a Safe and Secure Transition – A Long Term Vision for Disability in Scotland report within the review of Adult Disability Payment.**
- **A duty to carry out a review of disability entitlement (for all ages) in Scotland is put in the Regulations with a legal duty to initiate the review by 2023.**

Background and Context

Citizens Advice Scotland (CAS) welcomes the opportunity to respond to this consultation. The introduction of the regulatory framework for Adult Disability Payment presents a golden opportunity to create a system that can provide adequate social security support for the extra costs associated with a disability or health condition, sufficient for people to participate in society and to live as independently as possible.¹ It also presents an opportunity to address some issues with the current reserved disability benefits system, and move to a system based on dignity, fairness and respect

For Scotland's Citizens Advice network disability benefits have consistently been in the top three areas of advice provided by CAB for a number of years. During 2018/19 and 2019/20, the two components of Personal Independence Payment (PIP) were the most common issues that CAB provided advice about of all advice areas. Between Q1-Q3 of 2020/21, Scotland's Citizens Advice network provided almost 200,000 pieces of advice on benefits; 62,608 pieces of advice were provided on PIP and 4,958 pieces of advice on Disability Living Allowance (DLA). Advice on PIP and DLA accounted for over a third (34%) of all benefit advice provided by the Citizens Advice network.

The experience and expertise within Scotland's Citizens Advice network has provided a wealth of CAB evidence as to how the current system can be improved on. Since 2015, Citizens Advice Scotland have undertaken exhaustive consultation with CAB clients and advisers on what Adult Disability Payment should look like, this is detailed in Appendix A. The recommendations made in this response draw on this evidence and experience.

Consultation Questions

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

Q 1: Do you agree the regulations reflect this policy intent? YES/NO/DON'T KNOW

No

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

Section 1- Citation and Commencement

The addition of dates of commencement for both when the regulations will come into force and the pilot scheme in the next version of the draft regulations would be welcomed. Whilst understandable, delays to the development and delivery of Adult Disability Payment have been caused by COVID-19. Meeting the Scottish Government aspiration of a pilot in Spring 2022 followed by nation-wide rollout in Summer 2022 must be met.² Delivering the new Adult

¹ Citizens Advice Scotland, Page 3, Designing a Social Security System for Scotland: Disability and Carers' Benefit – December 2015

² Scottish Government, Social Security benefits - update: statement by the Cabinet Secretary for Social Security and Older People – 17 November 2020

Disability Payment, with processes based on fairness, dignity and respect cannot come soon enough for people living with a disability and ill-health in Scotland. CAS recommends that dates for the commencement of the regulations and for the pilot scheme are added to the regulations to send a clear signal that these timescales are what the Scottish Government is working towards and intends on meeting. Additionally, the dates added at this point would be indicative, not coming into effect until the regulations have been laid when finalised.

- **CAS recommends that dates for the commencement of the regulations and the pilot scheme are added to the next draft of the regulations.**

Section 2 – Interpretation

CAS highlights that in S2. (d) the definition provided for an ‘assessment’ is in terms of section 54 of the 2018 Act. Section 54 of the 2018 Act sets out the obligations on a person to provide information on request and does not define assessment.³ Section 55 of the 2018 Act, ‘requirement to justify assessment requests’, defines assessment but only in the context of ‘face-to-face assessment’.

Currently, assessments only feature in the draft regulations in relation to Part 11, Section 38; ‘Qualifications and experience to carry out Assessments’. It therefore seems that under S2. (d) where assessment is defined for the purposes of the regulations this is intended to be the carrying out of assessments. CAS suggests that section 54 of the Act is replaced by section 55 of the Act in relation to defining assessment.

- **CAS suggests that section 54 of the Act is replaced by section 55 of the Act in relation to defining ‘assessment’.**

Further changes are required in relation to assessments both in the 2018 Act and in the Regulations. As above, currently Section 55 of the 2018 Act, clearly defines ‘face-to-face assessment’ as being where the individual and assessor are physically present in the same place at the same time. It is unclear whether this includes whether two people are virtually present at the same time, as would be the case in video-consultation. It also appears that this would not cover telephone consultations. CAS recommends that Section 55 of the 2018 Act is amended to ensure that the requirements on the Scottish Ministers to justify assessment requests are consistent across any channel whereby a person may undergo a consultation.

- **CAS recommend Section 55 of the 2018 Act is amended to ensure that the requirements on the Scottish Ministers to justify assessment requests are consistent across assessment channels.**

Under Question 22 in our response, we detail the further changes that are possibly necessary to the current framework for assessments both in the Adult Disability Payment Regulations the 2018 Act in relation to assessments.

³ Social Security (Scotland) Act 2018, Part 2, Chapter 4, S54 - <https://www.legislation.gov.uk/asp/2018/9/section/54>

Caselaw

It is important that as part of a transition from the existing disability benefits to the Scottish system that individual rights are maintained and no unintentional gaps in the law are created. CAS echoes the recommendations made by Child Poverty Action Group Scotland in their response that set out areas where existing caselaw for should be incorporated into the Regulations.

- **CAS recommends the full and accurate incorporation of existing case law on Personal Independence Payment is made for within the Regulations.**

Part 2: Disability Assistance for Working Age People Overview (regulation 3) Overview (covers eligibility criteria)

Q 3: Do you agree the regulations reflect this policy intent? YES/NO/DON'T KNOW

Yes

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

Definition of Adult Disability Payment

No definition of Adult Disability Payment is included within the Regulations. CAS recommend for clarity a definition of Adult Disability Assistance is incorporated within regulation 3.

- **CAS recommends Adult Disability Payment is defined within the Regulations.**

CAS understands the intent behind Regulation 3. (6). Specifically, that it serves to make provision to prevent a person from being in receipt of two elements of social security for disability at the same time. In the consultation document, the parts of the regulations (Parts 15 and 16) that will set out the how the transfer of cases will take place are not included. Therefore, it is not clear whether Regulation 3. (6) could create unintended consequences, where a person might lose out on entitlement and monies when applying for or being moved onto Adult Disability Payment, due to the condition of having to not be entitled to any other disability benefit.

CAS would welcome clarity on whether a person will need to end their award for the disability entitlement they are currently receiving before applying for ADP. For example, a person who is currently in receipt of Personal Independence Payment (PIP) may decide to move onto ADP. From the Regulations, as currently drafted, it appears this person would not be able to claim for ADP whilst being in receipt of PIP. If this person was then required to end their PIP claim and then apply for ADP, this could result in a large gap between payments.

Although an application for ADP is to be treated as being made on the day the required data (name and date of birth) is provided [Reg 35. (1)], this does not ease the concern that disabled people could face a period of dis-entitlement between their claim for PIP and ADP if they must cancel their current disability entitlement prior to claiming for ADP.

CAS recognises the complexity and difficulty of legislating to ensure a person can apply for ADP whilst still receiving another disability entitlement. However, CAS recommends steps should be taken to ensure that a person is not paid for an overlapping period of time from both entitlements but maintains their right to social security throughout, without having to forego entitlement for a period in between moving from one entitlement to another.

CAS would welcome clarity on the terms: eligibility, entitlement, payment, award and receipt. For example, a young disabled person will at times be eligible for both Child Disability Payment and Adult Disability Payment.

Section 3 of the Social Security (Scotland) Act 2018 places a statutory duty on Ministers to promote take-up of social security. CAS believes this measure would assist in promoting take up of ADP, by preventing people from experiencing a period of dis-entitlement and potential hardship this could cause if they wish to apply for ADP.

It may be the intention of the Scottish Government to account for these possibilities within Part 15 and Part 16 of the Regulations; CAS recommends these potential issues are addressed to ensure as seamless as possible a transfer to ADP.

- **CAS recommends that potential issues in the transfer of entitlement due to Regulation 3. (6) are addressed.**

Part 3: Daily Living Component and Mobility Component (regulations 4 and 5)

Q 5: Do you agree the regulations reflect this policy intent? YES/NO/DON'T KNOW

Yes

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

In our answer to Question 8, CAS provides comment on the 'activities' (descriptors) for the Daily Living Component and the Mobility Component noted in regulation 4. (3) and regulation 5. (3).

Determination of ability to carry out activities (regulation 6) Scoring for daily living and mobility activities (regulations 7 and 8) Scoring: further provision (regulation 9)

Q 7: Do you agree the regulations reflect this policy intent? YES/NO/DON'T KNOW

Yes

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

'Reasonably' in Regulation 6.1. (b)

CAS suggests that regulation 6. 1. (b) is strengthened through the addition of a definition of 'reasonably' in the Regulations.

Regulation 6.1. (b) sets out that an individual's ability to carry out an activity should be determined as if a person were wearing or using any aid or appliance which the individual could *reasonably* be expected to wear or use. However, the term 'reasonably' in respect of 6.1. (b) is not defined within the Regulations.

Changes made to clarify what 'reasonably' means in 6.1. (b) should be in line with the social model of disability – acknowledged as the preferred definition of disability by the Scottish Government in A Fairer Scotland for Disabled People Delivery Plan.⁴ As noted in the Scottish Social Security Principles, enshrined in the 2018 Act, respect for the dignity of individuals is to be at the heart of the Scottish social security system. Dignity here should mean respect for the client's choice to use aids or appliances to overcome barriers that – accepting the social model of disability – are caused by society and not the disabled person's 'impairment'.

A definition of 'reasonably' should make clear that the individual should not be expected to reasonably use any aid or appliance which causes distress or that they find does not improve their condition. It should also make clear that a client should not be assessed as using any aid or appliance, which they do not normally use, where this will cause the client to score lower points than they would when considering the aids and appliances the individual does actually normally use.

For example, would it be considered reasonable to assess a deaf person as wearing prescribed hearing aids if the person does not wear hearing aids as they find them to be of little benefit? Or to reasonably expect someone with arthritis to use bath handrails when this causes distress in the form of physical pain.

By adding a definition within the Regulations, the Scottish Government would reduce the scope for potential subjective decision making around the application of 'reasonably'.

The concept of reasonability is defined elsewhere in the Regulations in respect of other regulations such as in 6.4 (d), which relates to reasonable time periods for carrying out an activity.

- › **CAS recommends that 'reasonably' is defined in the Regulations in respect of regulation 6. 1. (b).**

Qualification for the enhanced rate of the mobility component - Regulation 8 (1) and Schedule 1, Part 3, column 1.

CAS recognises the importance of prioritising a 'safe and secure transition' from existing disability benefits to a new system of Adult Disability Payment. However, any steps that can be

⁴ Scottish Government, [A Fairer Scotland for Disabled People, Delivery Plan](#) – 2016

taken to building a fairer framework should be, whilst recognising the various issues with the PIP descriptors as detailed in our response to Question 33.

As part of our 'Empowering Scotland' consultation with CAB clients and advisers in August 2015, one of the priorities for changes to PIP was identified as changing the mobility descriptors. CAB clients and advisers thought restricting eligibility for the enhanced mobility component to those who could walk less than 20 metres was resulting in significant hardship for many disabled people. Most wanted to see the distance increased to at least 50 metres (as under DLA). A survey of CAB advisers in February 2021 found that a majority support increasing the distance from 20m to 50m.

A Fairer Scotland for Disabled People, Ambition 2, notes that 'Benefits are delivered in a way that is rights-based and helps meet the additional living and mobility costs of disabled people and treats them with dignity and respect throughout the process.'⁵ In 2018, Scope calculated that the additional cost of a disability for a person in Scotland is an extra £632 per month.⁶ It can be surmised that those who face the highest costs often have significant mobility needs. Ending the 20m rule would go some way to showing the Scottish Government's commitment to Ambition 2 of the Fairer Scotland for Disabled People Delivery Plan.

As CAS noted when the original proposals for Personal Independence Payment were first made, the decision to reduce the qualifying distance from 50 metres to 20 metres had very little justification, and was at odds with international evidence.⁷ Evidence from the MS Society amongst others has also demonstrated that the changes to the distance required has negatively affected the health, finances and independence of disabled people⁸ and that the total knock-on costs to the UK Government outweigh the savings of reducing PIP support through the 20 metre rule.⁹

In our 2016 consultation events with CAB advisers, a number of advisers from rural bureaux raised the point that the loss of a Motability vehicle was particularly detrimental to clients in remote and rural areas, due to the absence of convenient and suitable public transport.

CAS has seen a number of cases where people who were in receipt of the higher mobility rate under DLA do not qualify for the enhanced rate under PIP. This is particularly detrimental as people can lose their entitlement to the Motability Scheme.

Cases from CAB demonstrate the detrimental impact the 20m rule is having on CAB clients under PIP and the need to ensure change under Adult Disability Payment:

Citizens Alert: A North of Scotland CAB reports of a client moved from DLA to PIP. The client was 'just short' of the levels needed for enhanced mobility eligibility. The result is a client who

⁵ Scottish Government, [A Fairer Scotland for Disabled People, Delivery Plan](#) – 2016

⁶ Scope, [Disability Price Tag report](#) - 2019

⁷ Citizens Advice Scotland, [Response to the consultation on Disability Living Allowance reform](#) - February 2011

⁸ MS Society, [PIP: A step too far – The impact of the 20 metre rule on people with MS](#) – June 2018

⁹ MS Society, [The cost of the PIP 20 metre rule](#) – April 2019

was on a 'lifetime' award for DLA losing out of their essential mobility car. The adviser noted that this type of decision – particularly on DLA to PIP transfer - happens frequently.

Citizens Alert: An East of Scotland CAB reports of a client moving from DLA to PIP. The client was assessed over the phone and during the assessment was asked if they could travel over 20m. The client advised they would not be able to without severe discomfort and pain. However, the client received a decision notice that did not take this into account and the client lost their mobility vehicle. The client has had to give back their mobility vehicle and has been left housebound. The client cannot travel any distance and cannot access public transport due to their disability.

In a recent survey, carried out over February 2021, the majority of CAB advisers surveyed agreed that the 20m rule should be increased to 50m to qualify for enhanced mobility.

When asked about the 20m rule, CAB advisers noted:

'The 20 metre rule is hard to satisfy and anyone who cannot repeatedly mobilise 50 metres should definitely get the higher rate'

'So many people lost their independence by losing their Motability Scheme car when migrating from DLA to PIP. People became housebound or lost their job as they couldn't afford a vehicle. It was a reduction of almost £40 per week. It would be so much better to give people back the ability to be more independent either by enabling them access to a car leasing scheme or having extra money to get taxis to go shopping etc. and become more integrated members of their communities.'

'If someone cannot walk further than 50 metres without experiencing breathlessness, pain or other discomfort I think enhanced mobility is a reasonable award. The 20 metre rule is too harsh on clients.'

'20 metres is, in most cases, an unpractical or non-useful distance to use as an arbitrary assessment since most claimants are unable to access useful amenities within their community at a 20 metre distance, e.g. for some claimants, it is more than 20 metres to get beyond the perimeter of their property and this limits the useful, practical notion of mobility as a means to access services such as a local shop, GP surgery, etc.'

- **CAS recommends the criteria for entitlement to the enhanced mobility component should be changed so that the relevant distance is increased from 20 metres to at least 50 metres.**

50% rule – Regulation 9. (1)

As raised in our response to the 2019 Social Security: A Consultation on Disability Assistance in Scotland, our concerns about the '50% rule' which requires an individual to meet each descriptor on half of the days in a month for it to count towards their award remain unchanged.

One of the concerns raised consistently by CAB clients and advisers is that the PIP descriptors and points system are not as suitable for people with fluctuating conditions and mental health conditions.¹⁰

The 50% rule contributes to this, as it can be difficult to accurately gauge and assess whether a person's condition affects them on 50% of days. Additionally it is problematic for fluctuating conditions where a person is occasionally affected by their condition, but intensely when it occurs (e.g. some clients with epilepsy or Multiple Sclerosis).

In these circumstances, the need for daily living and mobility support can be required due to the barriers faced on 'worst days', but would not currently be provided by ADP because of the 50% rule. CAS would recommend this rule is reconsidered to ensure it does not create a barrier to people with fluctuating conditions or mental health conditions from qualifying for Adult Disability Payment.

Citizens Alert: A West of Scotland CAB reports of a client with a fluctuating condition who lost entitlement to PIP when transferring from DLA.

A CAB adviser responding to a 2019 survey carried out by CAS noted:

'I think PIP's successor should take into account fluctuating conditions which may not cause problems 50% of the time but enough of the time to have an impact on an applicant's life'

- **CAS recommends changes are made to the 50% rule to take into account the ongoing impact of fluctuating conditions experienced by disabled people.**

The long called for changes to the 20m rule and the 50% rule are unlikely to disentitle clients currently in receipt of an award. The opposite is the case, individuals would only see their entitlement increased as a result of our recommended amendments.

We are concerned at the suggestion in the consultation document that 'if the changes we made increased entitlement to Adult Disability Payment, the DWP would need to agree that it would continue to provide automatic access to passported benefits and premiums.' This suggests that eligibility criteria for devolved Adult Disability must be the same as reserved PIP. This could severely restrict the Scottish Government's ability to improve weaknesses in the current rules to enhance the rights of disabled people in Scotland. CAS would welcome clarification from the

¹⁰ Citizens Advice Scotland, Pages 83 – 87, [Response to 'A New Future for Social Security' consultation](#) – October 2016

Scottish Government and DWP as to what extent policy variation is possible within these parameters.

In relation to the scope for change, we also note that replicating the eligibility criteria of PIP does not necessarily represent the safe and secure transition of social security entitlements in Scotland. Particularly, when welcome amendments have been made to existing rules e.g. extension of children and young people's entitlement to 18.

Part 4: The qualifying period conditions (regulations 10 – 13)

Q 9: Do you agree the regulations reflect this policy intent? YES/NO/DON'T KNOW

Yes

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

Part 5: Residence and Presence Conditions (regulations 14 – 21)

Q 11: Do you agree the regulations reflect this policy intent? YES/NO/DON'T KNOW

Yes

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

Past presence test – regulation 14. (d)

The past presence test requires a person to have been present in UK at least 104 weeks out of the previous 156 weeks (two out of the past three years).

Whilst CAS is broadly content with the approach to residency in the Regulations, we would recommend that the past presence test [regulation 14. (d)] is removed, as it is an unnecessary barrier to people receiving social security support and restricts people from accessing their right to Social Security due to an arbitrary timeframe.¹¹ It is not clear what purpose the past presence serves except to reduce the number of people eligible for ADP. CAS raised similar concerns in relation to the past presence test in the Disability Assistance for Children and Young People Regulations where the past presence test exists albeit with different required 'presence' timeframes; the past presence test should be removed from all disability entitlements.

The past presence test is not currently included in any of the other benefits due to be devolved (with the exception of Carer's Allowance) and has not been proposed to be included in any of the Scottish social security payments introduced so far.

The test can mean that disabled people in need of social security support, and who would otherwise be entitled to Adult Disability Payment would miss out. For instance, if a person living abroad became disabled in an accident and moved home to Scotland to be closer to extended

¹¹ [Social Security \(Scotland\) Act 2018, Section 1](#)

family for support, they would not become eligible for Adult Disability Payment until two years later.

The past presence condition does not seem to serve a reasonable purpose other than to reduce the number of people who are eligible to claim. This seems somewhat at odds with the Scottish Government's welcome ambitions for the new system. It would also appear incompatible with the right to social security, enshrined in Section 1 (b) of the Social Security (Scotland) Act 2018.¹²

Penalising people who have recently moved to or returned to Scotland is at odds with the Government's ambition to use inward migration as a mechanism to drive economic growth and counter-act demographic decline.¹³ There is also a duty placed on Ministers to promote take-up and the Fairer Scotland duty that notes socio-economic disadvantage should be considered when making decisions^{14, 15}

When asked about the past presence test in February 2021, CAB adviser responded:

'Health affects people universally regardless of their origin or past living situation. This policy discriminates against New Scots and also British nationals who have been abroad and returned home. If they are medically entitled to the benefit and permanently resident in Scotland they should be awarded it. Waiting to pass the past presence test leads to poverty and debt which can be hard for clients to get out of.'

'This test has no real purpose but to save money. If they have the right to reside and are habitually resident they should be able to make a claim.'

A case from a CAB in the East of Scotland demonstrates the real impact being disentitled to social security support based on past residency can have on a disabled person.

Citizens Alert: An East of Scotland CAB reports of a client who does not meet the past presence test as they have not been in the UK for a two year period. The client has now been forced to wait to become eligible for PIP. The client recently suffered a stroke and still has over six months to wait before they will meet the past presence test and be able to access any disability support.

- **CAS recommend the past presence condition is removed to ensure that people who would be otherwise eligible to receive Adult Disability Payment can access their right to social security.**

A genuine and sufficient link to Scotland – regulation 19.c

¹² [Social Security \(Scotland\) Act 2018, Section 1](#)

¹³ [Scottish Government, Scotland's Population Needs and Migration Policy: Discussion Paper on Evidence Policy and Powers for the Scottish Parliament – February 2018](#)

¹⁴ [Social Security \(Scotland\) Act 2018 Part 1, Section 3](#)

¹⁵ [Scottish Government, Fairer Scotland Duty](#)

The concept of being able to demonstrate 'a genuine and sufficient link to Scotland' [regulation 19. (c)] enabling exemption to the past presence test is not defined anywhere in the Regulations.

CAS primarily recommend the removal of the past presence test and therefore no such definition would be required in relation to regulation 19. (c). However, in the event the past presence test remains in place, a definition of 'genuine and sufficient' for the purposes of regulation 19. (c) should be added to the Regulations.

Part 6: Entitlement under Special Rules Relating to Age (regulations 22 – 25)

Q 13: Do you agree the regulations reflect this policy intent? YES/NO/DON'T KNOW

Yes

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

CAS welcomes that the regulations make provision for those who have an ongoing or previous (from the last two years) award of PIP will be able to continue to receive the mobility component after reaching pensionable age.

Currently Attendance Allowance (due to be replaced by Disability Payment for Older People) does not have a mobility component, whereas a person who is on PIP or DLA prior to pensionable age can continue to receive this. Therefore, a distinction is embedded in the system between people who have additional mobility needs as a result of a disability or condition starting in childhood or working age, and mobility needs as a result of becoming disabled in later life.

Participants in 2016 CAB consultation events were conscious that equalising the mobility rules for older people and working age people would be expensive, pointing out that the introduction of a mobility component for everyone over the age of 65 would increase the costs considerably. However, in the current system the distinction often appears to be unfair and discriminatory, as in some situations clients with significant mobility needs are ineligible for mobility support purely because they are over State Pension age and cannot claim PIP.

Whilst understanding the possible financial costs involved in doing so, CAS recommends the Scottish Government give further consideration to how mobility support for older people could be included in Disability Payment for Older People.

Part 7: Terminal Illness (regulation 26)

Q 15: Do you agree the regulations reflect this policy intent? Yes/No/Don't Know

Yes

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

Requirement to have a judgement confirmed as still accurate after 26 weeks – regulation 26. 7 (b)

CAS welcomes the automatic entitlement to the enhanced rate of both the mobility and daily living component [regulation 26.6 (b)] for those who are terminally ill. CAS also welcomes that for individuals with a terminal illness it will be possible to backdate entitlement for up to 26 weeks.

However, we raise concern around regulation 26. 7. (b) that sets out if the clinical judgement of terminal illness is dated more than 26 weeks prior to the date the client's application or notification of change in circumstances is received, an appropriate healthcare professional is required to confirm the judgement is still accurate, in order for entitlement to begin up to a maximum of 26 weeks before the date the application or notification of change in circumstances is received.

CAS strongly recommends this regulation is removed. A key improvement of the system relating to determining terminal illness was the removal of the requirement to be expected to die within six months. CAS warmly welcomed this change. However, the requirement to have a judgement confirmed if it has been made more than six months ago seems contrary to the aforementioned positive change in removal of time limits and also unnecessary.

CAS can see no reasonable purpose this provision serves other than to potentially cause distress to an individual by having to get the judgement confirmed again when this has already been done. This provision also detracts from the professional ability of a clinician to make an accurate judgement on such an issue as terminal illness, whereby the definition of terminal means progressive disease that will result in death.

- **CAS recommend that the requirement to have a judgement of terminal illness reconfirmed after 26 weeks is removed from the Regulations.**

Chief Medical Officer Guidance – Regulation 26. 9

Regulation 26. (9) notes that the guidance from the Chief Medical Officer must be taken into account by an appropriate healthcare professional when making a judgement on terminal illness. CAS raises concern that the guidance has not been added to the Regulations. Whilst provision is made in the Social Security (Scotland) Act 2018, under Schedule 5, Chapter 1, 1, (3) for the Chief Medical Officer to prepare and make public guidance on terminal illness, this guidance should also be placed into the Regulations. This could be done by adding the guidance as a schedule and making an amendment to regulation 26. (9) that provides a legislative basis for the guidance.

Part 8: Payability when person is residing in certain accommodation or is detained in custody (regulations 27 – 32)

Q 17: Do you agree the regulations reflect this policy intent?

YES/NO/DON'T KNOW

No

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

A change is required in regulation 26 (3) (b) for those who are terminally ill. As currently drafted the regulation only covers those who are in a hospital or hospice while in receipt of the assistance and not those who apply whilst in a hospital or hospice.

'The assistance' in respect of 26 (3) (b) does not appear to be defined anywhere in the Regulations. CAS would recommend a definition is added alongside the addition of a definition of Adult Disability Payment as recommended under Part 2 of our response.

CAS raises that the Regulations do not seem to permit for a person whose first date of entitlement falls on a day when they are in hospital to benefit from the 28 day rule. There is an exemption from this for those who are terminally ill and in a hospice. Regulation 29 (2) should be altered so that a person can become entitled to Adult Disability Payment whilst in hospital and have the benefit of the 28 day rule, as to prevent disorienting those who happen to be in hospital on the first day of their entitlement to Adult Disability Payment.

- **CAS recommends regulation 29 (2) is amended to ensure that those in hospital on their first day of entitlement can access the 28 day rule.**
- **CAS recommends regulation 26 (3) (b) is amended to ensure this covers the terminally ill who apply whilst in a hospital or hospice.**

Part 9: STA

CAS welcomes the introduction of Short Term Assistance and awaits the provisions that will introduce the payments.

Short Term Assistance should be available at the date of the original request and not after a tribunal has overturned the decision of the agency. Short Term Assistance should also be available if a person is appealing a decision that their benefit claim was fraudulent.

CAS strongly recommend that the only circumstances Short Term Assistance should be recoverable would be if it had been proven that it was claimed fraudulently.

In general however, it is important to draw a clear distinction between intentional fraud and unintentional error, recognise that despite public perceptions, the overall levels of benefit fraud are low, and that the process of investigating alleged fraud is shaped by the social security principles related to dignity, respect and human rights.

CAS recommends:

- **Short Term Assistance is available from the date of the original request and not after tribunal.**
- **Short Term Assistance is made available to all clients, regardless of the reason for the break in award, and in cases of suspected fraud until this has been proven.**

Part 10: Making of Applications and Payments (regulations 33 – 37)

Q 19: Do you agree the regulations reflect this policy intent? YES/NO/DON'T KNOW

No

Q 20: If you have any further comments please provide them here.

Time of Payment (regulation 36)

CAS notes that the intention is to replicate the 4-weekly in arrears payment schedule of PIP, with a different arrangement for those who are terminally ill. CAS recommends that the Scottish Government consider whether flexibility could be offered to clients to decide whether an alternative payment schedule such as weekly in arrears, or twice-monthly (such as under Universal Credit Scottish Choices, More Frequent Payment arrangements) would be more appropriate for them.

- **CAS recommends that consideration is given to offering client's choice in the frequency of their payments rather than a default 4-weekly in arrears policy.**

Continuing Eligibility (regulation 37)

At present CAS think clarity is required around awards and continuing eligibility in the Regulations. CAS has consistently recommended the option of indefinite lifelong awards with no requirement for review for people with permanent conditions that will not improve and where a person's needs will not change. A person should be free to request a review of their award at any time, particularly if they are not on the enhanced rates of each component.

CAS would welcome an additional regulation that makes provision for a lifelong award to be made without the requirement of a review. This would set in regulation that entitlement may be granted on a lifelong award, as is the Scottish Government's policy intention, even if the parameters for determining these are later put in guidance. Ideally as much as detail on the parameters as possible should be in the Regulations.

In some cases, where there is no likelihood of a person's condition improving due to it being permanent (e.g. congenital learning difficulties, blindness, brain injury) or progressive (e.g. secondary progressive Multiple Sclerosis), there will often be no need to set a review date unless requested by the individual, if the individual is already receiving the maximum award. If an individual's condition or circumstances are unlikely to change, there should be no requirement for them to be re-assessed to continue receiving an award. The timing of any reassessments should be appropriate to the claimant's condition(s) and circumstances. This

would be in line with the person-centred decision-making approach the agency seeks to adopt and is different from the concept of 'auto-entitlement'.

- **CAS recommends it is made clear in the regulations that lifelong awards can be awarded where appropriate, with no requirement for review unless the individual requests a review.**

Rolling awards and light touch reviews

CAS has welcomed the Scottish Government's intention that for conditions unlikely to change most 'light-touch' reviews will be carried out between 5-10 years. CAS would like to see these longer award periods in the regulations; these could be drafted in such a way that they constitute the minimum time period a person will be entitled before being asked to comply with a review.

When responding to the recommendations from the Expert Advisory Group, and, the Ill Health Reference Group chaired by CAS, the Scottish Government noted that social security will give a reason to individuals where awards are reviewed earlier than the date set at initial decision.¹⁶ CAS recommend that provision to this effect is made within the regulations, and also a regulation that requires Social Security Scotland to collect data that can be analysed for these cases.

The same report also noted in cases where there is no likelihood of improvement there will be at least five years between Light-Touch reviews and that Disability Payment should not stop whilst an award review is being undertaken. CAS would like to see this made explicit within the Regulations.

CAS highlights that when any review does take place the emphasis should be on whether a person needs more help, not whether the person is still eligible.

A recent case reported by a CAB demonstrates the impact having to undergo a review for PIP had on one client who has a progressive condition:

Citizens Alert: An East of Scotland CAB reports of a client who required assistance with a PIP review. The client was awarded the standard rate of the daily living and mobility components. The client had Multiple Sclerosis. The process of having to go through a review was distressing for the client's mental health, particularly when they also have anxiety. The client found the review process a reminder that their condition is only getting worse and will not get better.

When asked in a recent online survey, 'To what extent do you agree or disagree with the statement: 'Indefinite awards should be introduced, ending award reviews and reassessment for people with progressive conditions or needs that will not reduce' 94% of CAB advisers surveyed agreed with the statement (70% 'strongly agreed').

When asked why, CAB advisers responded:

¹⁶ Scottish Government, Disability Assistance Awards and Entitlement Policy Position Paper – February 2019

'It is very upsetting for people with MS or MND for example to have to go through the process of review every couple of years. The process is made worse by the poor decision making process and flawed assessments. People feel that they are not believed. I fully support indefinite awards for these types of progressive conditions.'

'The need for review or reassessment increases anxiety and worry for claimants who are already most vulnerable due to their conditions. For claimants with progressive illnesses, or illnesses where there is no expectation of improvement, it is an unnecessary re-examination of the client's personal health information that can cause further distress relating to their understanding and handling of their illness or condition. Additionally, it is an unnecessary and wasteful use of time and resources for staff who are asked to reassess these claimants.'

'For clients with progressive conditions, reviews and reassessments are completely unnecessary, certain disabilities and their descriptors should show the initial assessor that the client is not going to get better and that they will need ongoing help. If anything, the client/caregiver/GP should be able to contact and advise of worsening conditions without the need to review' – shows that for client's especially already on highest rate there is no need'

- **CAS recommends that longer awards are a matter of law within the regulations, supporting disabled people to access their right to social security in a dignified way.**

Supporting Information

CAS would welcome the inclusion of provisions reflecting the Scottish Government's intent for the onus to be on the agency, rather than the client, when it comes to collecting supporting information or evidence. Further medical evidence not being sought by decision-makers, causing clients to be charged by GPs for evidence to be provided, was identified early on by CAS as a priority for the new Scottish disability payments.

Social Security Scotland should be responsible for gathering this information and covering any associated costs. The agency should ensure they routinely gather medical evidence from a wide range of relevant health and social care professionals (not solely GPs, as in many cases where a person has a long-term condition they may not often see their GP, and a GP may not be best placed to comment on the functional impact of a client's condition). Medical evidence should be gathered at the initial assessment phase to inform the decision regarding the claimant's eligibility. This would improve accuracy of decisions and therefore avoid the administrative costs associated with reconsiderations and appeals.

The key message that emerged from participants in CAS' consultations with CAB clients and advisers¹⁷ was that, in assessing people's eligibility for disability benefits, much greater emphasis should be given to evidence from people who know the claimant, such as carers, family and friends, support workers, social workers, occupational therapists, community psychiatric nurses, employers, as well as GPs etc. It was widely thought that evidence from

¹⁷ Citizens Advice Scotland, Designing a Social Security System for Scotland: Disability and Carers' Benefit – December 2015

such sources gave a much better insight into how a person's disability or health condition affects them than a one-off face-to-face assessment.

Under current guidance to both health professionals and individuals it is clear that, during the assessment phase, claimants should not be approaching their GP to gather further evidence.

Guidance on the PIP claimant journey states that, at the stage the claimant is sending in their 'How your disability affects you' form they should also send any supporting evidence, but that should only be things that the individual already has available. It advises: 'You are not expected to pay to get hold of your evidence. If you are unable to get it, please provide contact details for the people who look after you and know you best on your PIP application form (for example; GP, consultant, psychiatrist, specialist nurse, psychiatric nurse, teacher, carer or support worker).'¹⁸

Guidance for health professionals similarly states: 'Claimants are only required to send in evidence they already hold, such as copies of clinic letters, they are not told to contact their GP or health professional to obtain further evidence'.

On receiving the claimant's PIP2 form, it is for the Assessment Provider to request further information from a claimant's GP or other health professional. This is done by sending a Factual Report for completion. The GP/health professional will receive a payment for completing this report from the Assessment Provider.

However, case evidence from bureaux as well as the views gathered from CAB clients and advisers as part of our 'Empowering Scotland' consultation in 2015, strongly suggests that the DWP/Assessment Provider do not seek information from an individual's GP or other relevant professional, and instead decisions are too often based solely or primarily on the report from the face-to-face assessment.

To avoid repetition of the aforementioned issues from the PIP system in ADP, CAS suggest that regulations are added which set out the responsibility of Social Security Scotland to collect the supporting information, where required, and to do so at the initial decision making phase and prior to the request of any 'consultation'

- **CAS recommends that regulations are added which set out the responsibility of Social Security Scotland to collect the supporting information, where required, and to do so at the initial decision making phase and prior to the request of any 'consultation'.**

Part 11: Qualifications and Experience Necessary to Carry out Assessments (regulation 38)

Q 21: Do you agree the regulations reflect this policy intent? YES/NO/DON'T KNOW
Yes

¹⁸ DWP, [Paragraph 2.3.4 of Department for Work and Pensions PIP Assessment Guide](#)

Q 22: If you have any further comments please provide them here.
Experience and Training of Assessors

CAS recommends that training in human rights and the right to social security are also provided to all assessors.

Assessments or 'consultations' in the regulations

As noted under our response to Question Two, s54 of the Social Security (Scotland) Act 2018 appears to require to be amended. CAS also notes there is a lack of detail in any of the legal framework, in either the Act or Regulations, specifically around the circumstances where an assessment will be carried out. Both Part 1, s14 of the Social Security (Scotland) Act and the Regulations for ADP specifically should both be clarified in terms of the situations requiring an assessment and the steps that must be taken before an assessment can be justified.

Page nine of consultation document notes 'clients and consultations will only be carried out where it is the only way to obtain the information needed to make a decision.' CAS recommends this intent should be mirrored firmly in the Regulations, with the onus on the agency to do everything practicable to seek information prior to requesting an assessment.

CAS also recommends that the Regulations should make clear that where a person is invited to attend an assessment, they have a right to choose the format in which the assessment takes place (i.e. face-to-face, video, telephone etc). There should also be an explicit duty on the agency to inform the person at point of being asked to attend an assessment that they have the right to seek independent advice and independent advocacy.

By putting into legislation a more explicit process that should be followed before an assessment is requested, the Scottish Government would help realise the welcome policy intention of significantly reducing the number of face to face consultations.¹⁹

The welcome intention that any informal observations made during an assessment will have to be brought to the individual's attention with a right to respond should be placed into regulation. This would go some way to giving a legal underpinning and awareness to assessors that they must follow this procedure.

- > **CAS recommends that provisions are added to make clearer the circumstances where an assessment can be requested and the processes that should be followed by the agency before an assessment is requested.**
- > **CAS recommends the right of a person to have an assessment in the format they prefer is added to the regulations.**
- > **CAS recommends that the requirement to notify the individual of any informal observations carried out during an assessment and their right to respond should be placed into the regulations.**

¹⁹ Scottish Government, [Disability Assistance Assessments Policy Position Paper](#) – February 2019

Part 12: Consideration of entitlement after specified period (regulation 39) Other situations requiring a determination without an application (regulation 40)

Determination following official error – underpayments (regulation 41)

Determination following error – overpayments (regulation 42)

Q 23: Do you agree the regulations reflect this policy intent? YES/NO/DON'T KNOW

Yes

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

Part 13: Periods in respect of a re-determination request (regulation 44)

Regulation 44. (2)

For some time CAS has raised concerns regarding the time period for the agency to respond to a redetermination request. Unfortunately, these concerns remain. Regulation 44 (2) gives the agency 56 days to respond to a redetermination. This is more time than the client has to actually submit the redetermination (42 days).

Setting a statutory time limit for a re-determination to be made is important, considering CAB clients' experience of the current reserved benefits system. CAS has previously raised concerns that no statutory time limit exists within which the DWP must provide a decision in response to a mandatory reconsideration request²⁰. The DWP indicated that a mandatory reconsideration should be processed within 14 working days, although data on the time taken to reach a decision has been described by the Work and Pensions Committee as "sporadic and incomplete"²¹.

From previous consultation with CAB advisers with experience of advising clients with mandatory reconsideration requests, a period of four weeks (28 calendar days) was seen to be a fair and reasonable period for a response to a request. There was also a feeling that it would be fair to expect the agency to be given the same period as is expected of individuals making the request.²²

CAS considers the 56 day period currently in the regulations to be too long for clients to wait for a decision. The Social Security (Scotland) Act already provides for the time for a redetermination to be extended if the individual agrees to it, so it would be possible for a longer period to be taken for a decision if the person is content for it to take that long.

²⁰ Citizens Advice Scotland, [Response to Social Security Advisory Committee Consultation on Decision Making and Mandatory Reconsideration](#) –March 2016

²¹ UK Parliament, Work and Pensions Committee, [Benefit delivery: Fourth Report of Session 2015-16](#)

²² Citizens Advice Scotland, [Response to Consultation on Disability Assistance](#) – May 2019

CAS recommends that regulation 44. (2) is amended and that redeterminations should be made as soon as is practically possible, ideally with a time limit of 28 days but at the very most the same 42 days as afforded an individual to request a redetermination.

The majority of CAB advisers when asked in a recent survey felt that the 56 days for the agency to make a redetermination was too long for clients to wait.

When asked why they thought the timescale was too long advisers noted:

'While I support the principle of a timescale, where none exists for MR of DWP benefits, eight weeks is far longer than the vast majority of DWP MRs take in fact. Two to three weeks for less complex decisions where additional evidence has been provided should be achievable, therefore a maximum of four, or six where there is an unavoidable delay in the claimant providing additional evidence, seems appropriate.'

'While a definitive timescale for a response is welcome, an 8-week waiting period is lengthy and will likely increase existing stress and anxiety for claimants who have already had to wait for their initial assessment outcome and manage the upset/disappointment of a lower award than anticipated. A shorter timescale would be more helpful in managing claimants' needs.'

'People with significant care and mobility needs should not have to wait this amount of time as the stress over a prolonged period of time can make their conditions worse'

- **CAS recommends that regulation 44. (2) is amended and that redeterminations are made within a time limit of 28 days, or at the very most the same 42 days as afforded for an individual to request a redetermination.**

Part 14: Provision of vehicles (regulation 45)

Q 27: Do you agree the regulations reflect this policy intent? YES/NO/DON'T KNOW

Q 28: If you have any further comments please provide them here.

Regulation 25. (1) (a) notes that only those in receipt of the enhanced rate of the mobility component can access the accredited scheme providing mobility vehicles.

In our 2016 consultation events with CAB advisers, some participants thought that, rather than enhanced mobility being a passport to the Motability Scheme, all claimants should be able to use their PIP award to access Motability. CAS see no reason why this could not be achieved within Adult Disability Payment.

- **CAS recommends that the 'standard rate' is included within regulation 25. (1) (a).**

Part 15: Transfer from CDP to ADP – no detail

CAS await the detail of the transfer regulations for CDP to ADP with interest. In principle CAS would suggest that this process should as far as possible be done automatically and without the burden of responsibility on the client.

16: Case transfer

CAS await the detail of case transfer regulations with interest.

Part 17: Liability for assistance given in error (regulation 46) Determination to effect a deduction decision (regulation 47)

Q 29: Do you agree the regulations reflect this policy intent? YES/NO/DON'T KNOW

Yes

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

Liability (Regulation 46)

CAS would like to see the regulations improved to ensure that no recovery for overpayments takes place until liability is determined.

Social Security Scotland should not recover overpayments if the claimant wishes to appeal and should instead wait until the outcome of the appeal before recovery of overpayments begins.

Under the DWP system if a person is overpaid any disability entitlement, they have the chance to argue that the overpayment is not recoverable (due to DWP error or another reason). Only once liability is established is a decision made about the recovery. Currently, the 2018 Act only gives an individual the opportunity to show that the overpayment is not recoverable at the point the agency decides to start recovery.

- **CAS recommends clarity within the regulations that recovery will not begin until liability has been decided and the individual has had the opportunity to go through a full appeal process if necessary.**

CAS also has serious concerns that the grounds for seeking recovery of an overpayment under ADP are less generous than that under PIP. Under PIP, overpayments can only be recovered if someone failed to disclose or misrepresented a material fact (s71 of the Social Security Administration Act 1992).

CAS has concerns about the scope whereby recovery of overpayments of Adult Disability Payment can be pursued, which in the regulations include official error made by Social Security Scotland in 42 (2) (.c) and 46. (5)(a)(i) 'decision made on an assumption'. This appears incompatible with S64 of the Social Security (Scotland) 2018 Act where an individual has no liability unless the error was:

'(a)the individual's fault, nor

(b)the kind of error that an individual could reasonably be expected to notice.'

CAS would welcome clarity on the statement and the intent behind regulation.

CAS also highlights that regulation 40(1)(vii) specifies that where someone has been overpaid PIP in another part of the UK before they transfer to Scotland, this overpayment can be recovered from ADP. CAS would welcome clarity on the exact details of this arrangement and how these overpayments will be managed. CAS recommends that overpayments for DWP benefits cannot be recouped by means of deduction of Scottish social security entitlements.

Social Security Scotland should not seek recovery of historic debt which was accrued more than 5 years previously – this should be set out in the regulations. Similarly, overpayment debt should not be carried over from one benefits system to another. For example, if someone has historic debt related to any of the benefits being devolved, Social Security Scotland should make no efforts to recover this debt on behalf of the DWP.

CAS recommends the regulations are clarified to:

- **Ensure the grounds for seeking recovery of overpayment are tightened to avoid a client being financially penalised for agency error, particularly when this is based on agency assumption and not false or misleading information from the client.**
- **Prevent debt from being transferred from the DWP system to Scottish social security**
- **Make provision preventing the collection of historic debt of over five years old by Social Security Scotland.**

Maximum Deduction Rate

If it is the Scottish Government's intention to set a maximum deduction rate, something which CAS previously called for to be set at 10%, this should be included within the regulations. Without a maximum rate in the Regulations, technically the First Tier Tribunal could determine a deduction at a higher rate than the Scottish Government's policy intention.

- **CAS recommends a 10% maximum deduction rate is set out in the regulations.**

Affordability

CAS welcomes that the Scottish Government has made provision to ensure that reasonable regards to the financial situation of individuals is considered before applying a deduction [regulation 46. (1) (a) when read with regulation 46. (2)]. However, these provisions could go further and explicitly note that the agency will use the Standard Financial Statement as a means of assessing affordability where the client consents to this.

- **CAS recommends the regulations are amended to note that the Standard financial Statement should be used to determine affordability with the consent of the client.**

Part 18: Pilot

Part 19: consequential amendments

Schedule 1 – Adult Disability Assistance Determination

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

In our response to Question 8, we have noted our concerns regarding the 20m rule descriptor used to determine eligibility of the Mobility Component.

Schedule 2 – Members of Her Majesty’s Forces: Excluded Persons

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.

CAS warmly welcomes the review as a much needed step to ensure that Scotland can create a world-leading system of social security for disabled people. In the report *Beyond a Safe and Secure Transition – A Long Term Vision for Disability Assistance in Scotland*, the Scottish Campaign on Rights to Social Security (SCoRSS) called for the implementation of a review based around a number of principles summarised below and found in full detail in the report.²³ These principles should be embedded into the review of ADP, which SCoRSS and CAS (as a member of SCoRSS) believe should be widened to look at all disability entitlements in Scotland and not just ADP.

In the report *Beyond a Safe and Secure Transition*, SCoRSS called on the next Scottish Government to undertake a fundamental review of disability assistance to ensure 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. 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

²³ Scottish Campaign for Rights to Social Security, *Beyond a Safe and Secure Transition – A Long Term Vision for Disability Assistance in Scotland* – August 2020

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.

When asked in a recent survey:

- The majority of CAB advisers support the introduction of a whole-of-life disability benefit in the longer term.
- A significant majority (82%) of CAB advisers agreed that the review should consider whether alternative models to the point-based system for assessing disability could be used to replace the current descriptor system.

CAS strongly recommends that the review must not be limited in scope and should be wide-ranging. The review should involve examination of differing approaches for assessing the needs of disabled people, particularly focused on the social model and human rights approach.

The review must not be limited to a de facto evaluation of the current system, which would be incorporated into the fundamental review, but should be truly a fundamental review that seeks to uncover the best way of supporting as many disabled people in Scotland as possible to realise their human rights.

The review should be independent and should be co-produced by disabled people with lived experience (both disabled people who currently qualify under eligibility rules but also disabled people who currently do not qualify for support due the eligibility criteria). The review must also be adequately resourced and funded, with Social Security Scotland collecting and sharing all relevant data that will be relevant to the review.

CAS recommends the duty to carry out a review of disability entitlement in Scotland is put in the Regulations with a legal duty to initiate the review by the date provided for the review of 2023. This would formalise the Scottish Government duty as set out in the Social Security (Scotland) Act 2018, S1,7, 'to continuously improve the Scottish social security system in ways which – put the needs of those who require assistance first, and advance equality and non-discrimination'. Giving the review a statutory footing would enable this to be realised and send a strong signal of the Scottish Government intention to adopt a continuous improvement approach to the future of ADP.

CAS recommends:

- **The full incorporation of the recommendations from the Beyond a Safe and Secure Transition – A Long Term Vision for Disability in Scotland report within the review of Adult Disability Payment.**
- **A duty to carry out a review of disability entitlement (for all ages) in Scotland is put in the Regulations with a legal duty to initiate the review by 2023.**

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

CAS welcome the publication of the impact assessments at this point in the consultation process.

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.

Appendix A – Consultation activities with CAB clients and advisers

In December 2015, CAS published a suite of five reports named *Fair, Equal and Responsive: Designing a Social Security System for Scotland*.²⁴ These reports provided recommendations to the Scottish Government on how it might use the new social security powers based on extensive consultation activities with bureaux carried out that year. These consultation activities included:

2015 'Empowering Scotland' consultation on disability benefits

- Focus groups run by bureaux during September 2015. Bureaux were offered a small grant to conduct a focus group with clients with a disability or health condition, advisers and/or representatives from local agencies. 10 bureaux organised a focus group.
- Client interviews conducted during September 2015. Bureaux were offered a small grant to conduct 10 telephone or face-to-face interviews with clients with a disability or health condition. 7 bureaux conducted these interviews.
- Additional interviews conducted during September – October 2015. Participating bureaux were offered a small grant to carry out a further 8 telephone or face-to-face interviews with clients. 9 bureaux conducted these additional interviews.
- A full-day focus group was held at CAS with 14 benefits advisers from different bureaux.
- An online adviser survey between 18 September – 9 October 2015. Bureaux advisers were invited to respond to an online survey (via SurveyMonkey). 37 advisers responded.

2016 CAB client focus groups

Fourteen Citizens Advice Bureau across Scotland carried out focus groups with clients on specific areas of the 'A New Future for Social Security' consultation, including fixing the principles in legislation, outcomes and the user experience, carers benefits, and the Best Start Grants. Participating bureaux were provided with a focus group toolkit which included guidance on how to arrange and carry out the focus groups as well as specific questions relating to the topic. In total, CAB consulted with 144 clients.

CAB	Number of clients	Topic
Airdrie CAB	10	Best Start Grant
Caithness CAB	10	User experience
Central Borders CAB	9	Best Start Grant
Clackmannanshire CAB	8	Carers benefits

²⁴ Citizens Advice Scotland, *Fair, Equal and responsive: Designing a Social Security System for Scotland* – December 2015

Coatbridge CAB experience	14	User
Dumfries CAB	10	User experience
Dalkeith CAB	12	User experience
Drumchapel CAB	6	User experience
East Ayrshire CAB	6	Carers benefits
Grangemouth CAB	8	Claimant Charter
Motherwell CAB	11	Claimant Charter
Nairn CAB	14	User experience
Parkhead CAB	20	Carers benefits
West Dunbartonshire CAB	6	Carers benefits

2016 CAB adviser Regional events

CAS hosted three regional events in Edinburgh, Glasgow and Inverness which were attended by staff and volunteers from Citizens Advice Bureaux across Scotland as well as Scottish Government officials. At each regional event, advisers had the opportunity to discuss different topics, and the views and experiences shared were collated by CAS to inform our response to the 'A New Future for Social Security' consultation.

Location	Participants	Discussion topics
Serenity Café, Edinburgh	21	Fixing the principles in legislation Delivery options Overpayments and debt Fraud
RSS Centre, Glasgow	15	Advice and representation Equality and low income Fixing the principles in legislation
Eden Court, Inverness	12	Carers benefits Benefit delivery in rural areas Disability benefits Cold Weather Payments Winter Fuel Payments

In addition to these regional events, CAS also hosted an adviser focus group at our offices in Edinburgh, to seek advisers' and tribunal representatives' views regarding how the complaints, reviews and appeals process should work under the new system. This was attended by 11 CAB advisers.

2016 Adviser surveys

During September and October 2016, CAS carried out an online survey of CAB advisers on 'Designing a New Social Security System for Scotland' which included 60 questions about a

number of consultation topics. The survey was answered by 43 respondents from 25 bureaux across Scotland, from Dumfries and Galloway to Caithness. The majority of respondents were advisers, welfare rights advisers and managers, but the survey was also completed by specialists such as Armed Services Support Service staff, Kinship Care Project staff, Debt Advisers and Money Advice staff.

To inform CAS's response to the Second Independent Review of Personal Independence Payment, CAS conducted an adviser survey which was carried out in August 2016 and received a total of 61 responses from 40 CAB offices, which represents 65% of the bureaux across Scotland.

Policy Forum

In July 2016, CAS hosted a meeting of representatives from bureaux who make up the Policy Forum – a Standing Committee to the Board of Directors. This meeting was attended by 18 CAB managers, staff and volunteers, who discussed the implications of the devolved social security powers for advice, representation and advocacy carried out by the Scottish CAB Service. The report from this event was sent directly to the Scottish Government.

2019 CAB adviser survey

To inform our response to the 2019 consultation 'Disability Assistance in Scotland', CAS carried out an online survey of CAB advisers on some of the areas in the consultation document. This included 18 questions about a number of aspects of the consultation document. The survey was answered by 36 respondents from 24 bureaux across Scotland, from Stranraer to Orkney. The majority of respondents were specialist welfare rights advisers.

2019 consultation with Armed Service Advice Project (ASAP) workers

We also specifically received specific comments from Armed Service Advice Project workers. ASAP is provided by the Scottish CAB service to support people who are serving in the Armed Forces, Regular or Reserve or their dependents; ex-service, Regular or Reserve and their dependents; and members of the Merchant Navy who served in a commercial vessel in support of legally defined UK military operations, or a dependent.

Most clients are veterans (80%) and their dependants (10%) with the remaining 10% currently serving or their dependants. There is an average of 5 issues per client, so these are often complex cases. Benefits make up 49% of issues, including 12% PIP (Daily Living) and 9% PIP (Mobility).

2019 consultation event with CAB advisers and the Cabinet Secretary

In April 2019, Citizens Advice Scotland hosted a consultation event which allowed three CAB managers and advisers to share their views on disability benefits directly with the Cabinet Secretary for Social Security and Older People.

2021 CAB adviser survey

To specifically inform this response, CAS carried out an online survey of CAB advisers on some of the areas in the consultation document. This included 10 questions about a number of aspects of the consultation document. The survey was answered by 61 CAB advisers from Bureaux across Scotland.

Citizens Alerts

Citizens advice bureaux in Scotland routinely collect statistical data on the number of pieces of advice given on any particular issue. CAB also annually survey clients to establish a demographic profile of who visits a bureau for advice and on which issue.

Throughout this document, we also highlight 'Citizens Alerts'. These are cases that have arisen across the Citizens Advice service in Scotland – examples of real issues faced by real people that bureaux advisers have supported. They provide clear illustrations of the impact set out in this report.

For more information about this response, please contact Debbie Horne, Senior Policy Officer (Social Justice), at Debbie.Horne@cas.org.uk .