

SCORSS

Scottish Campaign on Rights to Social Security



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**BEYOND A SAFE AND SECURE
TRANSITION –**

**A LONG TERM VISION FOR DISABILITY
ASSISTANCE IN SCOTLAND**

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EXECUTIVE SUMMARY

The devolution of powers over social security, especially those related to disability assistance, is widely acknowledged as the biggest transfer of powers to the Scottish Parliament since its establishment in 1999. The Scottish Government intends to make a number of changes to disability assistance ahead of the launch of new disability social security payments. These include a system based on the principles of dignity, fairness and respect; reductions in face-to-face assessments; changes to the redetermination and appeals systems; recognition of the importance of independent advice and right to access independent advocacy services for those who identify as a disabled person.

However, the 'safe and secure transition' to the devolved system of disability assistance leaves some unanswered questions and leaves a number of parts of the current system intact. SCoRSS members believe longer-term reforms are needed to disability assistance to create a world-leading rights based system of support for disabled people. **In this report, we call for the Scottish Government to initiate a fundamental review of disability assistance with reference to six principles for a new rights based disability assistance system.** These provide a vision for what this longer-term system could be in practice.

This includes **designing disability assistance with a clear purpose** - to 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.

We recommend taking a human rights based approach to the development of social security for disabled people, focussing on removing the barriers to people's rights to equal participation in society and independent living. This should replace the current medical and needs-based models. It should draw on the wealth of international conventions and jurisprudence to fully realise the right to social security for disabled people. Supported decision-making, such as independent advocacy, should be at the heart of this approach.

As part of this shift to a human rights based approach, **it is important that social security for disabled people supports their right to independent living.** This should include reviewing eligibility criteria and assessment processes to better reflect the social and human rights models of disability.

One of the fundamental tenets of designing a rights based social security system is that **the support provided should be adequate.** Whilst estimates vary, it would appear that the social security support provided by disability assistance may not bear a good relation to the extra costs associated with an impairment if a person is to be able to fully enjoy their right to equal participation in Scottish society. A solution to this could be to take a human rights budgeting approach, to appropriately reflect the extra costs associated with overcoming disabling barriers.

In the short-to-medium term the Scottish Government proposes to mirror the approach of the existing reserved disability entitlements, and create three distinct age-based payments for children, adults and older people. However, we recommend that **in the longer term, the Scottish Government consider how to address the problems that having separate age payments creates and how best to resolve these issues.** This would make the system fairer and easier to access for disabled people.

SCoRSS members consider it important that **longer-term changes to disability assistance work well with future social security developments.** This would include 'future-proofing' against any changes to wider income-replacement social security entitlements, such as a Citizens Basic

Income, as well as ensuring that disability assistance is well-connected to access to other public services for disabled people.

Following the 2021 Scottish Parliament elections, we call on the Scottish Government to consider more far-reaching changes to disability assistance, based on the principles in this report. We ask all political parties to commit to this transformative, world-leading, long-term vision for disability assistance in their election manifestos to ensure that, regardless of the political composition of the next Scottish Government, Scotland moves towards a rights based system of social security for disabled people.

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SUMMARY OF RECOMMENDATIONS FOR LONGER-TERM CHANGES TO DISABILITY ASSISTANCE

1. During the next parliament (2021-2026) the Scottish Government should initiate a fundamental review of disability assistance with reference to the six principles highlighted in this report - a vision of a system of social security for disabled people that:

- Has a clear purpose
- Is human rights based
- Supports equal participation in society and independent living
- Is adequate
- Provides whole-of-life support
Interacts well with future social security developments and is well connected to other services

2. This review should be:

- Fully independent and fully resourced
- Undertaken in line with the human rights based approach as outlined below
- Accountable to, and co-produced with people in Scotland including both those currently entitled, and those who are not entitled, to disability assistance. It should also include the participation of disabled peoples' organisations, human rights experts, unpaid carers, family members, independent advocates and welfare rights workers.

- Incorporate the evidence gathered during the safe and secure transition to disability assistance. This evidence should be used to identify areas of the Scottish system that are working well, those that are causing difficulties to claimants and those who are not currently entitled to disability assistance. This can be used to inform the debate about entitlement criteria and identify groups that disproportionately struggle to enjoy their right to social security, with particular reference to the six principles outlined above.
- Informed by examples of social security innovation in other countries, and international good practice in the development of social security for disabled people.

3. Disability assistance should retain its two broad functions -

- To compensate people for the extra costs of having an impairment or health condition, to help them realise their right to participate equally in society and independent living; and
- Acting as a 'passport' to additional social security payments, statutory provisions, non-statutory assistance and some charitable forms of assistance.

4. **The Scottish Government should take a human rights based approach (HRBA) to the design of a world-leading rights based system of disability assistance in the long term. In particular, the Scottish Government should take a co-produced and rights based approach to the following matters:**
 - Developing any future eligibility criteria.
 - Assessments.
 - Ensuring the level of payment is adequate.
 - Any model which attempts to embed the social and human rights models of disability.
5. **A co-produced approach must go beyond consultation. It should emphasise working in partnership with people who use Scotland's social security system, those likely to be affected by changes to it and those who are currently excluded from the social security system, either due to the current barriers to claiming or due to being excluded from entitlement due to the current entitlement conditions. We would expect the Scottish Government to deploy a range of rights based participatory methods to future decision-making.**
6. **Equalities Impact Assessments (EQIAs) and Human Rights Impact Assessments (HRIAs) should play a vital role in developing a Social Security System that is compatible with a human rights based approach. We recommend that all stakeholders are involved with the early development of EQIAs and HRIAs, and provided with sufficient resources to play an active and meaningful role. We recommend that EQIAs and HRIAs are made publicly available to ensure they receive the widest possible scrutiny and that they are based on evidence.**
7. **The eligibility and assessment criteria should be reviewed to ensure they reflect the social and human rights models of disability and to better realise the rights to equal participation in society and independent living for all. This should be co-produced with disabled people and people living with long term conditions, and should consider what aspects of society disable a person and infringe their human rights, rather than focussing on the medical or functional aspects of a person's impairment.**
8. **The Scottish Government should adopt a human rights budgeting approach to calculate an adequate rate for disability assistance. This should appropriately reflect the extra costs associated with overcoming disabling barriers, reduces poverty, and enables disabled people to realise their rights to equal participation in society and independent living.**
9. **Long term changes to the social security system in Scotland should consider how to address the problems that having separate age payments creates and how best to resolve these issues.**
10. **Regardless of what wider changes are made to other social security entitlements, a separate non-means tested social security payment for disabled people should be maintained.**

INTRODUCTION

The devolution of powers over social security, especially those related to disability assistance is widely acknowledged as the biggest transfer of powers to the Scottish Parliament since its establishment in 1999. 'Additional costs' social security payments for disabled people – currently represented by Personal Independence Payment (PIP), Disability Living Allowance (DLA) and Attendance Allowance (AA) – provide support for almost 533,000 people in Scotland, with a total value of £2.56 billion per year.¹

The design and delivery of social security for disabled people is important for members of the Scottish Campaign on Rights to Social Security (SCoRSS), both as individual organisations working alongside, representing, advocating for and advising disabled people as large parts of our work, and collectively as a coalition campaigning for a rights based social security system that prevents and reduces poverty and inequality, treats people with dignity and supports everyone to flourish.

The Scottish Government has committed to a number of encouraging changes to disability assistance ahead of the launch of new disability social security payments in 2020 and 2021. These include, for example, a system based on the principles of dignity, fairness and respect, reductions in face-to-face assessments, recognition of the importance of independent advice and right to access independent advocacy services for those who identify as a disabled person. SCoRSS members have

actively contributed to the development of the new system, and successfully campaigned for many of the positive changes. We are encouraged by a number of the commitments.

However, the 'safe and secure transition' to the devolved system of disability assistance leaves some unanswered questions and leaves a number of parts of the current system intact.

Whilst still administered by the UK government, the Scottish Government is now responsible for paying Disability Benefits for additional costs in dealing with disability in Scotland. If not managed effectively we shall see our most vulnerable suffer with increased poverty.

It will be vital that the spirit of social security in Scotland is maintained including promotion of take up across the country and the right to independent advocacy as cemented in the Scottish social security principles and the Social Security Act 2018.

The inherited system of social security for disabled people can be described as a system that has evolved with a succession of partial reforms, rather than being designed as a whole. Despite the positive changes, and the considerable task of transferring people's claims from the reserved to devolved systems between 2020 and 2025, SCoRSS members believe that the resulting system should not be considered 'job done'.

SCoRSS members believe longer-term reforms are needed to disability assistance

¹ May 2019 figures, DWP StatXplore – Department for Work and Pensions <https://stat-xplore.dwp.gov.uk/webapi/jsf/login.xhtml>

to create a world-leading rights based system of support for disabled people. In this report, we set out six principles for a new rights based disability assistance system and provide a vision for what this longer-term system might look like in practice.

We hope this report will be a helpful guide for the Scottish Government when considering longer term reform to disability assistance in Scotland after the 2021 Scottish Parliament elections. We are calling on all political parties to support our proposals in their manifestos for the 2021 Scottish Parliament elections.

A working group of the following SCORSS members collaborated on this report – Citizens Advice Scotland (CAS), the Health and Social Care Alliance Scotland (The ALLIANCE), Inclusion Scotland, Child Poverty Action Group in Scotland (CPAG), National Association of Welfare Rights Advisers (NAWRA), Scottish Council for Voluntary Organisations (SCVO), One Parent Families Scotland (OPFS), MS Society Scotland and the Scottish Independent Advocacy Alliance (SIAA).

NOTE ON TERMINOLOGY – In this report we use the terms ‘disabled people’ and ‘disabled people and those with long term conditions’, to refer to people who are disabled by barriers that arise because society is not being designed to accommodate people who have physical or mental impairments. The Equality Act defines a disabled person as someone who has “a physical or mental impairment which has a substantial and long-term adverse effect on your ability to carry out normal day-to-day activities”². There are many people who are disabled by these barriers who do not regard themselves as disabled, or identify as a disabled person. Others choose to identify in a different way, for example people may identify as a member of the Deaf community, or as having a mental health condition. For the purposes of this report, we intend for the terms to refer to people who are disabled by society’s barriers, even if they choose not to identify themselves in this way.

¹ Section 6, Equality Act 2010 - <http://www.legislation.gov.uk/ukpga/2010/15/section/6>

ABOUT THE SCOTTISH CAMPAIGN ON RIGHTS TO SOCIAL SECURITY

The Scottish Campaign on Rights to Social Security (formerly Scottish Campaign on Welfare Reform) was set up in 2006 to highlight concerns about the UK government's welfare reform proposals from a diverse coalition of organisations in Scotland. Since then, the coalition has informed changes to both UK and Scottish government policy and influenced the creation of Scotland's new social security system.

The social security landscape has changed, and continues to change, significantly since we began campaigning. Much has been achieved, but there is still much more to do.

Social security should be an investment in the people of Scotland yet hundreds of thousands of people remain trapped in poverty. Poverty and inequality can be solved. Together we can realise a rights-based social security system in both Scotland and the UK that prevents and reduces poverty, treats people with dignity and respect and supports everyone to flourish.

To create real change and ensure the UK and Scottish social security systems take a human rights based approach, prevent and reduce poverty, treat people with

respect and support everyone to flourish, Scottish Campaign on Rights to Social Security members believe we must:

- **Increase social security payment rates to a level where no one is left in poverty and all have sufficient income to lead a dignified life**
- **Make respect for human rights and dignity the cornerstone of UK and Scottish social security**
- **Radically simplify social security to ensure social security is easy to access and that barriers to entitlement are removed**
- **Invest in the support needed to enable everyone to participate fully in society**
- **Make social security work for Scotland**

These principles are central to creating the social security system that we all deserve.

For more information about the Scottish Campaign on Rights to Social Security, visit <https://cpag.org.uk/scotland/policy-campaigns/SCoWR>.

DISABILITY ASSISTANCE IN SCOTLAND – THE JOURNEY SO FAR

'Extra costs' social security for disabled people was first introduced in the UK in 1971 with Attendance Allowance for those who required significant amounts of personal assistance, followed by Mobility Allowance in 1975 for people who needed help getting about. These were in response to an earlier survey which identified evidence of widespread poverty amongst disabled people, with substantial additional costs as a result of a disability.³

As a result of further evidence of additional unmet costs, Disability Living Allowance (DLA) was introduced in 1992 to replace Mobility Allowance and Attendance Allowance for those under the age of 65. This aimed to extend social security to people with less severe impairments who previously received nothing.⁴

In turn, Personal Independence Payment (PIP) was introduced to replace DLA in 2013. It was argued that DLA was "no longer in step with the needs of disabled people, that it is not personalised and that it is not sustainable."⁵ The policy was intended to introduce regular checks and reviews on people's social security entitlement, to introduce 'objective assessment criteria', and to reduce the costs of DLA, which had grown since its introduction.⁶

Common themes have emerged from the evolution of 'additional costs' disability entitlements in the UK. Major reforms, at roughly 20 year intervals, have centred around to what extent medical assessments are used, and a desire to either expand or reduce the types of impairments covered (and the costs of the system). A new payment has replaced its predecessor for some recipients – though not all – as part of these reforms

In many ways, it is a system that has evolved rather than been designed. For example, Disability Living Allowance is not an entitlement designed for disabled children, nor Attendance Allowance for older disabled people, rather a consequence of particular age groups not being included when successive new payments came along. The current system is a mixture of different rules originating in different eras, for different purposes, and not always with the human rights of the individual at their heart. Devolution of social security powers presents Scotland with a unique opportunity to create a rights based social security system that is fit for purpose and for the future.

³ The Evolution of Disability Benefits in the UK: Re-weighting the basket – Tania Burchardt, June 1999 http://eprints.lse.ac.uk/6490/1/The_Evolution_of_Disability_Benefits_in_the_UK_Re-weighting_the_basket.pdf

⁴ Disability Living Allowance reform – House of Commons Library, February 2011 <https://commonslibrary.parliament.uk/research-briefings/sn05869/>

⁵ Personal Independence Payment Policy briefing note – Department for Work and Pensions, May 2011 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/180921/pip-briefing-introduction.pdf

⁶ Ibid.

DEVOLUTION

Following the 2014 Scottish independence referendum, the Smith Commission recommended powers over social security for carers, disabled people and those who are ill be devolved to the Scottish Parliament.⁷ Alongside a programme of ongoing stakeholder engagement, the Scottish Government ran a wider-ranging consultation on the future use of their new social security powers in 2016⁸. The passage of the Social Security (Scotland) Act 2018 followed, which set out the framework for disability assistance to operate in⁹. The Scottish Government consulted on more specific proposals for Disability Assistance in 2019¹⁰ with a view to launching successors to Disability Living Allowance for children, Personal Independence Payment, and Attendance Allowance in 2020 and 2021.

SCoRSS members individually and collectively have been extensively involved in the development of the three forms of disability social security. We have successfully campaigned for a number of positive features of the new system. These include:

- The Scottish Government's aspirations to take a human rights based approach to Social Security in Scotland built on the principles of dignity, fairness and respect. These principles closely reflect SCoRSS' five Principles for Change¹¹ (outlined earlier in this report).
- A number of high profile amendments as the Social Security (Scotland) Bill progressed through the Scottish Parliament including (but not limited to) assessments, uprating, the right to entitlements in cash, the right to access advocacy services, and the recovery of overpayments.
- Increased financial support for unpaid carers delivered through the Carer's Allowance Supplement and the Young Carer's Grant, in addition to extra payments to carers of more than one disabled child. This followed calls for increased financial support for unpaid carers in SCoRSS' 2016 Holyrood Manifesto.¹²
- Following our calls for a redesign of delivery of services to make them accountable at a local level, Social Security Scotland aims to have a presence in local communities across Scotland.
- Putting people's needs and rights first, with the aim of ensuring that everyone is treated with dignity and receives an excellent service. Social Security Scotland's purpose is directly linked to a set of requirements in their principles and Charter – these outline that Social Security Scotland must ensure the people they serve are supported and enjoy a positive experience.

⁷ Report of the Smith Commission, November 2014 https://webarchive.nationalarchives.gov.uk/20151202171029/http://www.smith-commission.scot/wp-content/uploads/2014/11/The_Smith_Commission_Report-1.pdf

⁸ Consultation on Social Security in Scotland – Scottish Government <https://consult.gov.scot/social-security/social-security-in-scotland/>

⁹ Social Security (Scotland) Act 2018 <http://www.legislation.gov.uk/asp/2018/9/contents/enacted>

¹⁰ A Consultation on Disability Assistance in Scotland – Scottish Government <https://consult.gov.scot/social-security/improving-disability-assistance/>

¹¹ SCoRSS Principles for Change - <https://cpag.org.uk/scotland/policy-campaigns/SCoWR>

¹² Holyrood Manifesto 2016 - <https://cpag.org.uk/scotland/policy-campaigns/SCoWR>

In the development of its plans for disability assistance, while recognising the exciting opportunity to make a lasting difference to the lives of people across Scotland¹³ the Scottish Government has prioritised a 'safe and secure transition' of people who are currently receiving DLA, PIP and AA to the new devolved system.¹⁴ While this is a sensible approach that minimises the risk of disabled people's social security support stopping overnight, it does place constraints on the degree that successor

social security payments can vary from their predecessors. In turn, this may prevent Scottish Government reaching their ambitious aspirations. Despite the welcome moves highlighted above, the proposed forms of disability assistance closely resemble the existing payments they are replacing.

This report considers what longer-term changes could be made once the 'safe and secure transition' is complete.

¹³ Ministerial Forward, A New Future for Social Security in Scotland consultation document - Scottish Government, July 2016 https://consult.gov.scot/social-security/social-security-in-scotland/user_uploads/consultation-on-social-security-in-scotland---full-version.pdf

¹⁴ Social security Q&A with Shirley-Anne Somerville - Holyrood magazine, September 2019 https://www.holyrood.com/inside-politics/view,social-security-qa-with-shirleyanne-somerville_10816.htm

OUR VISION

We believe that disability assistance has an important role in promoting equality and fairness and upholding human rights. The design of the payments, as well as their delivery, should be consistent with all the Scottish social security principles¹⁵.

SCoRSS have supported the Scottish Government's approach of a safe and secure transition in order to ensure that those currently entitled to disability payments smoothly transfer from the DWP to the new Scottish social security agency, Social Security Scotland. It also removed the need for every person to be reassessed for a new Scottish payment and allowed claimants to continue to benefit from passporting to additional support from reserved social security that continues to be delivered by the DWP.

However there has also been an understanding that this was only a first step to creating a world-class, rights based system of disability assistance. Whilst there are many positive aspects to the current system, our members have documented huge problems with the system as it is at present. Some of these problems may be resolved by the implementation of a system based on the principles as laid out in the Social Security (Scotland) Act. Others may be resolved by the changes that the Scottish Government has already committed to. However, without losing the positive elements of the current system

of disability social security, and within the constraints of the devolution settlement, we believe that a fundamental rethink of disability assistance in Scotland can create a system that allows disabled people to fully realize their rights and help work towards ending stigma and systemic oppression.

This paper calls for a commitment to undertake an independent review of disability assistance after the 'safe and secure' transition, makes recommendations about the direction of travel, and offers some options for future changes to the system.

We recommend that during the next parliament (2021-2026) the Scottish Government should initiate a fundamental review of disability assistance with reference to the six principles highlighted in this report - a vision of a system of social security for disabled people that:

- **Has a clear purpose**
- **Is human rights based**
- **Supports equal participation in society and independent living**
- **Is adequate**
- **Provides whole-of-life support**
- **Interacts well with future social security developments and is well connected to other services**

¹⁵ The Scottish social security principles are set out in Part 1, Section 1 of the Social Security (Scotland) Act 2018 <http://www.legislation.gov.uk/asp/2018/9/section/1/enacted>

We also recommend that this review should be:

- **Fully independent and fully resourced.**
- **Undertaken in line with the human rights based approach as outlined below.**
- **Accountable to, and co-produced with people in Scotland including both those currently entitled, and those who are not entitled, to disability assistance. It should also include the participation of disabled peoples' organisations, human rights experts, unpaid carers, family members, independent advocates and welfare rights workers.**
- **Incorporate the evidence gathered during the safe and secure transition to disability assistance. This evidence should be used to identify areas of the Scottish system that are working well, those that are causing difficulties to claimants and those who are not currently entitled to disability assistance. This can be used to inform the debate about entitlement criteria and identify groups that disproportionately struggle to enjoy their right to social security, with particular reference to the six principles outlined above.**
- **Informed by examples of social security innovation in other countries, and international good practice in the development of social security for disabled people.**

A CLEAR PURPOSE FOR DISABILITY ASSISTANCE

SCoRSS members believe it is important that social security payments are designed with a clear purpose. The Social Security (Scotland) Act explicitly recognises social security as ‘an investment in the people of Scotland’¹⁶. Making it clear who the payment is intended for and what the intended social effects of making it is, reinforces this message.

We believe that disability assistance should retain its two broad functions.

- It is paid to compensate people for the extra costs of having an impairment or health condition, to help them realise their right to participate equally in society and independent living; and
- It acts as a ‘passport’ to additional social security payments (largely reserved), statutory provisions (e.g. blue badges), non-statutory assistance (e.g. disabled persons rail card) and some charitable forms of assistance.

We believe that disability assistance has an important role in promoting equality and fairness and upholding human rights. The design of the payments, as well as their delivery, should be consistent with all the Scottish social security principles¹⁷.

Previous reforms to disability social security, in particular the introduction of Personal Independence Payment by the UK Government in 2013 expressly aimed to reduce the costs of welfare^{18 19}. SCoRSS members believe that this approach is incompatible with the clear purposes above, and longer-term changes to disability assistance in Scotland must not be motivated by cost reduction. While one of the Scottish social security principles states that ‘the Scottish social security system is to be efficient and deliver value for money’, this should not be disproportionately prioritised over other principles - notably that social security is an investment in the people of Scotland, is itself a human right essential to the realisation of other human rights, and is a public service,²⁰ which would also be incompatible with cost-cutting motivations. The ‘Adequacy’ section of this report explores this in more detail.

¹⁶ Part 1, Section 1 of the Social Security (Scotland) Act 2018 <http://www.legislation.gov.uk/asp/2018/9/section/1/enacted>

¹⁷ The Scottish social security principles are set out in Part 1, Section 1 of the Social Security (Scotland) Act 2018 <http://www.legislation.gov.uk/asp/2018/9/section/1/enacted>

¹⁸ Budget 2016: Disability benefit savings offset by rising costs - BBC News, March 2016 <https://www.bbc.co.uk/news/uk-35830275>

¹⁹ PIP is another DWP failure - predicted 20% savings slashed to 5% - Benefits and Work, April 2016 <https://www.benefitsandwork.co.uk/news/3489-pip-is-another-dwp-failure-predicted-20-savings-slashed-to-5>

²⁰ Part 1, Section 1 of the Social Security (Scotland) Act 2018 <http://www.legislation.gov.uk/asp/2018/9/section/1/enacted>

REALISING THE RIGHT TO SOCIAL SECURITY

One of the principles in the Social Security (Scotland) Act 2018 is that 'social security is itself a human right and essential to the realisation of other human rights'.²¹ SCoRSS members consider it crucial that the Scottish social security system is rooted in equality and human rights, including the right to social security. In particular, a rights based system of disability assistance should focus on removing the barriers to people's rights to equal participation in society and independent living. This should replace the current medical and needs-based models that are predominantly focused on 'impairments' and what people are unable to do.

Taking a human rights based approach (HRBA) will also help challenge and overcome the culture of stigma and prejudice that surrounds social security. It will also complement a growing and welcome commitment by the Scottish Government to human rights, for example

in the Human Rights Outcome of the National Performance Framework, that "We respect, protect and fulfil human rights and live free from discrimination."²² The Scottish Government has also committed to incorporate the UN Convention on the Rights of the Child into domestic law,²³ and established a National Task Force for Human Rights Leadership to consider an Act of the Scottish Parliament incorporating a number of human rights instruments into Scots law.^{24 25}

In addition, two statutory obligations apply to both the Scottish Government and Social Security Scotland - the public sector equality duty²⁶ and the socioeconomic duty (known in Scotland as the Fairer Scotland duty²⁷). Both of these emerge from the Equality Act 2010 and oblige relevant public bodies to take equality and socioeconomic issues respectively into account in their work.

²¹ Part 1, Section 1(b), Social Security (Scotland) Act 2018 <http://www.legislation.gov.uk/asp/2018/9/section/1/enacted>

²² National Outcomes: Human Rights – Scottish Government <https://nationalperformance.gov.scot/national-outcomes/human-rights>

²³ Strengthening children's rights – Scottish Government, November 2019 <https://www.gov.scot/news/strengthening-childrens-rights/>

²⁴ New National Taskforce to lead on human rights in Scotland – Scottish Government, June 2019 <https://www.gov.scot/news/new-national-taskforce-to-lead-on-human-rights-in-scotland/>

²⁵ Recommendations for a new human rights framework to improve people's lives – First Minister's Advisory Group on Human Rights Leadership, December 2018 <https://humanrightsleadership.scot/wp-content/uploads/2018/12/First-Ministers-Advisory-Group-on-Human-Rights-Leadership-Final-report-for-publication.pdf>

²⁶ Public sector equality duty in Scotland - Equality and Human Rights Commission <https://www.equalityhumanrights.com/en/public-sector-equality-duty-scotland>

²⁷ Fairer Scotland Duty: interim guidance for public bodies - Scottish Government, March 2018 <https://www.gov.scot/publications/fairer-scotland-duty-interim-guidance-public-bodies/>

THE RIGHT TO SOCIAL SECURITY

The right of everyone to social security is recognised in the Universal Declaration of Human Rights²⁸ and the International Covenant on Economic, Social and Cultural Rights.²⁹ Other human rights instruments and standards provide guidance on governments' obligations to respect, protect and fulfil the right to social security. This includes the Council of Europe's Code of Social Security,³⁰ the European Social Charter,³¹ the EU Charter of Fundamental Rights,³² and General Comment 19 of the UN Committee on Economic, Social and Cultural Rights.³³ ILO Convention No.102 also sets out 'Minimum Standards' for social security.³⁴

The United Nations Convention on the Rights of Persons with Disabilities (CRPD)³⁵ recognises the right of disabled people to an adequate standard of living and social protection, in particular adequate food, clothing and housing, and a continuous improvement of living conditions.

The CRPD also commits governments to equality and non-discrimination in social protection, ensuring access to appropriate services and assistance for disability-related needs, assistance from the state with disability-related expenses including adequate training, counselling, financial assistance and respite care; and to ensure access to social protection and poverty reduction programmes for disabled people, in particular disabled women and girls, and older disabled people.³⁶

It also contains explicit recognition of the equal right of all disabled people to live independently in the community, with choices equal to others and commits governments to take steps to ensure disabled people can enjoy the right to full inclusion and participation in the community.³⁷ The Scottish Government has set out its commitments to delivering the CRPD – including some provisions for social security – in 'A Fairer Scotland for Disabled People: delivery plan'.³⁸

²⁹ Article 9, International Covenant on Economic, Social and Cultural Rights <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

³⁰ European Code of Social Security – Council of Europe <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/048>

³¹ Article 12, European Social Charter <https://rm.coe.int/168007cf93>

³² Article 34, EU Charter of Fundamental Rights <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>

³³ General Comment No. 19: The right to social security (art. 9) – Committee on Economic, Social and Cultural Rights – November 2007 http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/GC/19&Lang=en

³⁴ C102 – Social Security (Minimum Standards) Convention, 1952 (No. 102) – International Labour Organization https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C102

³⁵ Convention on the Rights of Persons with Disabilities (CRPD) <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

³⁶ Article 28, Convention on the Rights of Persons with Disabilities <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-28-adequate-standard-of-living-and-social-protection.html>

³⁷ Article 19, *Ibid.*

³⁸ A Fairer Scotland for Disabled People: delivery plan – Scottish Government, December 2016 <https://www.gov.scot/publications/fairer-scotland-disabled-people-delivery-plan-2021-united-nations-convention/pages/1/>

HUMAN RIGHTS PRINCIPLES

A human rights based approach to putting people's rights and the State's duties at the centre of policy making in practice is summed up in the PANEL principles – Participation, Accountability, Non-discrimination and equality, Empowerment and Legality.³⁹

- Participation – people should be freely, meaningfully and actively involved in decisions that affect their rights.
- Accountability – rights should be monitored, and people should have access to redress if things go wrong.
- Non-discrimination and equality – there should be no discrimination in people realising their rights, and priority should be given to the groups that face the biggest barriers to realising their rights.
- Empowerment – people should understand their rights and be empowered to claim them.
- Legality – rights should be set out in law.

The Scottish Human Rights Commission has developed a self-assessment tool using the PANEL Principles to “help organisations assess their work and identify priorities for improvement towards embedding a human rights based approach.”⁴⁰

There are other relevant principles that apply to the realisation of economic, social and cultural rights – including the right to social security – like progressive realisation and non-regression, minimum core, and maximum available resource.

Progressive realisation means the Scottish Government must take steps to progressively achieve the full realisation of people's right to social security, independent from economic growth, and non-regression means that the government can only reduce the enjoyment of the right if it can be fully justified (for example, by being temporary, necessary and proportionate, but not discriminatory).⁴¹

Minimum core means that the Scottish Government should ensure the satisfaction of minimum essential levels of the right to social security. This principle is intended to ensure that people can live with human dignity and applies to the right to an adequate standard of living, which is of course interdependent with rights like housing, health, education and work.⁴²

Maximum available resource means that the Scottish Government must allocate the maximum available resource to the realisation of the right to social security. It is left to the discretion of the government to decide what is available, but it should take human rights into account when generating and allocating resources to this public service.⁴³

³⁹ PANEL principles – Scottish Human Rights Commission <http://www.scottishhumanrights.com/rights-in-practice/human-rights-based-approach/>

⁴⁰ Human Rights Based Approach: A Self-Assessment Tool – Scottish Human Rights Commission, December 2018 http://www.scottishhumanrights.com/media/1814/shrc_panel_self-assessment_tool_vfinal.pdf

⁴¹ Progressive Realisation and Non-Regression – International Network for Economic, Social and Cultural Rights <https://www.escr-net.org/resources/progressive-realisation-and-non-regression>

⁴² Minimum Core Obligations - International Network for Economic, Social and Cultural Rights <https://www.escr-net.org/resources/minimum-core-obligations>

In considering what disability assistance based on human rights principles could look like, the UN Special Rapporteur on the rights of persons with disabilities has also made a number of recommendations to governments to assist them in developing and implementing disability-inclusive social protection systems.⁴⁴

“(a) Ensure that the right of persons with disabilities to social protection is recognized in domestic legislation and taken into account in national social protection strategies and plans, including nationally defined social protection floors;

“(b) Implement comprehensive and inclusive social protection systems that mainstream disability in all programmes and interventions, and ensure access to specific programmes and services for disability-related needs. Social protection systems should be made available, accessible, adequate and affordable for persons with disabilities;

“(c) Design disability benefits in a way that promotes the independence and social inclusion of persons with disabilities and does not limit their full and equal enjoyment of other human rights and fundamental freedoms;

“(d) Ensure that eligibility criteria and targeting mechanisms do not discriminate directly or indirectly against persons with disabilities; disability determination, when established, must respect the rights and dignity of persons with disabilities;

“(e) Guarantee that benefits and services offered by social protection programmes are relevant for persons with disabilities and consistent with the right to an adequate standard of living;

“(f) Refrain from adopting any retrogressive austerity measures that directly or indirectly affect the right of persons with disabilities to social protection;

“(g) Develop disability-related indicators, undertake research on social protection and collect data, disaggregated on the basis of disability and gender, to adequately assess the impact of social protection programmes on persons with disabilities;

“(h) Establish formal consultative mechanisms to ensure the active involvement and participation of persons with disabilities and their representative organizations in decision-making processes related to social protection, including in relation to budget cuts;

“(i) Encourage international cooperation to support inclusive social protection systems, facilitate cooperation to make mainstream social protection programmes inclusive of persons with disabilities, and develop and improve disability-specific programmes and services.”

⁴⁴ Pages 24 – 25, Report of the Special Rapporteur on the rights of persons with disabilities – United Nations General Assembly, December 2015 https://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/297

In her report, the Special Rapporteur also noted a number of areas of relevance which are explored in the following sections of this report. These include the observation that “social protection systems and programmes can only be effective if they address the specific needs of persons with disabilities throughout their life cycle... aimed at removing existing barriers to accessing age-based benefits and at creating uninterrupted interventions and a smooth transition from one age group to another with regard to the receipt of benefits.”⁴⁵ With regard to adequacy, the Special Rapporteur noted the Social Protection Floors Recommendation of the International Labour Organization.⁴⁶

In a separate presentation to a European Commission Work Forum on the CRPD, the Special Rapporteur also considered the role of disability assessments, noting that the issue had become a priority topic in her country visits.⁴⁷ This mirrors the Scottish experience where changes to the face-to-face assessments for Personal Independence Payment have been prioritised in the development of Scotland’s social security system.

The Special Rapporteur outlined several factors required for a CRPD-compliant assessment including:

- taking into consideration the impact of environmental and contextual factors;
- developing simpler assessments;
- that assessments should contribute to promote the participation of disabled people rather than restrict them;

- be respectful of dignity and privacy;
- disability assessments should not be used to provide persons with disabilities access to mainstream services and social security; or to protect them from discrimination (universal policies and legislations should cover everyone, including persons with disabilities);
- that processes are accessible;
- and that disability assessment processes should include gender and child approaches.⁴⁸

Furthermore it is important that a rights based system takes an intersectional approach and takes full account of the different impacts on other characteristics such as gender and race and how they intersect with disability.

As Engender have noted⁴⁹, no form of assessment is truly gender neutral, as there will be assumptions made about what men and women can do and how that affects the barriers placed on their daily living and mobility. No objective research from what we can find has looked at this, and limited time has passed since Personal Independence Payment was introduced to see how cases were decided over a longer period. However some examples from tribunal case law indicate where disabled women’s care responsibilities, such as being able to dress their children or prepare meals for them, have been used to reject their claims relating to the PIP daily living component, but no equivalent examples of a disabled man’s caring responsibilities being referred to in this manner could be found.⁵⁰

⁴⁵ Page 12, Ibid.

⁴⁶ Page 5, Ibid.

⁴⁷ Disability assessment from a human rights perspective – Catalina Devandas – European Commission Work Forum on the implementation of the UN Convention on the rights of persons with disabilities in the EU and the Member States, May 2017 <https://ec.europa.eu/social/main.jsp?langId=en&catId=88&eventsId=1207>

⁴⁸ Ibid.

⁴⁹ Engender response to the Scottish Government consultation on disability assistance in Scotland - <https://www.engender.org.uk/content/publications/Engender-response-to-the-Scottish-Government-consultation-on-disability-assistance-in-Scotland.pdf>

⁵⁰ Ibid, referencing SB v Secretary of State (2016); SC-v-SSWP (PIP) (2017); ML v SSWP (PIP) (2017)

This limited gender disaggregated data underscores the need, as referred to by the Special Rapporteur above, for gender and child approaches in assessments, and gender disaggregated data to adequately assess the impact of social protection programmes on disabled people.

The United Nations' 'Toolkit on the Right to Social Security' can help ensure that the implementation of social security for disabled people in Scotland follows international human rights norms⁵¹. This sets out the key elements of social security, including that it is available, adequate, affordable and accessible (more information on adequacy is set out in a separate section below). Further guidance on how to implement the right to social security is also provided in General Comment 19 of the UN's Committee on Economic, Social and Cultural Rights⁵².

In addition to stating that human rights are central, it is equally important to alert people of their rights and to support them to enforce them.

Equalities Impact Assessments (EQIAs) and Human Rights Impact Assessments (HRIA) are ways to help ensure that the reality of implementation at a national and local level matches the rhetoric and commitments to a human rights based approach. The preparation of EQIAs and HRIAs should involve stakeholders at an early stage - this would allow the testing of policies and proposals and allow the Scottish Government to work iteratively with stakeholders as EQIAs, HRIAs and policies are developed. Stakeholders should be provided with sufficient resources to enable their meaningful and active participation in this process. Both EQIAs and HRIAs should be evidence based, therefore it is important that Social Security Scotland collects, analyses and publishes data that can then be used to inform future policy developments.

⁵⁰ Ibid, referencing SB v Secretary of State (2016); SC-v-SSWP (PIP) (2017); ML v SSWP (PIP) (2017)

⁵² Toolkit on the Right to Social Security – Office of the UN High Commissioner for Human Rights <https://www.ohchr.org/EN/Issues/RightSocialSecurity/Pages/SocialSecurity.aspx>

⁵² General Comment No. 19: The right to social security (art. 9) – Committee on Economic, Social and Cultural Rights – November 2007 http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/GC/19&Lang=en

INDEPENDENT ADVOCACY

Supported decision-making is a crucial element of a human rights based approach. This can take different forms, and one of the more common currently used in Scotland is independent advocacy.

Independent advocacy plays a key role in a social security system which places human rights at its centre. The reason for this is two-fold:

- some people in Scotland have a right to free independent advocacy services to help them navigate the social security system
- independent advocacy supports marginalised people and ensures their rights (including their right to social security) are recognised, respected and secured.

The Social Security (Scotland) Act 2018 gives anyone who requires support from an advocate owing to a disability the statutory right to access independent advocacy for support engaging with the new system. Access to independent advocacy is therefore particularly relevant in the context of disability assistance.

There will be many people who are eligible for disability assistance who do not identify as having a disability and who might not therefore recognise that they have a statutory right to independent advocacy. This includes, for instance, Deaf people or people with mental health conditions who might not see themselves as disabled, and other people who feel stigmatised by the label of disability. Many of them will, nonetheless, be marginalised and vulnerable and could benefit significantly from independent advocacy to support them to understand and navigate complex social security systems.

It is therefore imperative that all disability assistance claimants are provided with high-quality information and timely advice and support about accessing independent advocacy, and that local agencies are funded in a robust and stable way. This means they will be able to meet the increased demand on their services and provide high-quality independent advocacy.

RECOMMENDATION

It is unclear the extent to which different countries around the world currently implement a fully rights-based and CRPD-compliant system of disability entitlements, eligibility or assessments. However, this presents Scotland with a unique opportunity to lead the world in providing disabled people and people with long term conditions the fullest enjoyment of their right to social security.

We recommend that the Scottish Government should take a human rights based approach (HRBA) to the design of a world-leading rights based system of disability assistance in the long term.

In particular, the Scottish Government should take a co-produced and rights based approach to the following matters:

- **Developing any future eligibility criteria.**
- **Assessments.**
- **Ensuring the level of payment is adequate.**
- **Any model which attempts to embed the social and human rights models of disability.**

A co-produced approach must go beyond consultation. It should emphasise working in partnership with people who use Scotland's social security system, those likely to be affected by changes to it and those who are currently excluded from the

social security system, either due to the current barriers to claiming or due to being excluded from entitlement due to the current entitlement conditions. It would also guarantee that people have access to relevant and accessible information and support to participate if desired, to ensure active participation in meaningful decision-making.

In practice, effective and active participation can range from the sharing of planning and decision-making responsibilities, for example through joint committees, to direct citizen control over the planning, policy making and management of changes. We would expect the Scottish Government to deploy a range of rights based participatory methods to future decision-making.

Equalities Impact Assessments (EQIAs) and Human Rights Impact Assessments (HRIAs) should play a vital role in developing a Social Security System that is compatible with a human rights based approach. We recommend that all stakeholders are involved with the early development of EQIAs and HRIAs, and provided with sufficient resources to play an active and meaningful role. We recommend that EQIAs and HRIAs are made publicly available to ensure they receive the widest possible scrutiny and that they are based on evidence.

SUPPORTS INDEPENDENT LIVING

SCoRSS members support a fundamental shift from the medical model to better reflect the social and human rights models of disability within disability assistance. The social model holds that disability is caused by barriers that arise because society is not designed to accommodate people who have impairments. People are not inherently disabled, but disabled by these barriers. The human rights model frames these barriers as discriminatory infringements of people's rights. If these barriers are removed, a person may still have an impairment but would not experience disability.⁵³ This contrasts with the medical model which says disability is caused by impairments that need to be treated, managed or cured.

As detailed earlier in this report, SCoRSS members consider it important that social security for disabled people supports their right to independent living. The Independent Living movement in Scotland defines independent living as 'all disabled people having the same freedom, choice, dignity and control as other citizens at home, at work and in the community. It does not necessarily mean living by yourself or fending for yourself. It means rights to practical assistance and support to participate in society and live an ordinary life.'⁵⁴

The existing eligibility criteria descriptors for the three disability entitlements, (proposed to be largely replicated in the devolved

system) are more closely associated with the medical model of disability. For instance descriptors that refer to people who 'cannot cook a simple meal using a conventional cooker but are able to do so using a microwave' or who '(need) assistance to be able to wash either their hair or body below the waist' are not consistent with a social model approach.

While not a recommendation of how an assessment process based on these criteria would look, the table in Appendix A based on Oliver's alternative assessment questions⁵⁵, provides an example of the difference viewing disability through a social model can make when framing questions - in this case a questionnaire studying the prevalence of disability within a population.

The current system of assessment for the daily living component of PIP uses a function test as a proxy test for additional costs. The assessment for Daily Living component of DLA and AA looks at the supervision, and the assistance with bodily functions, that the claimant requires. DLA and PIP uses a test of the distance a claimant could physically mobilise and also at looks at the guidance, supervision or support they require to undertake a journey in order to assess entitlement to the mobility components. **It is important to note that a new system might well move towards a different form of assessment.**

⁵³ The Social Model of Disability – Inclusion Scotland <https://inclusionscotland.org/socialmodelofdisability/>

⁵⁴ Independent Living in Scotland <http://www.ills.co.uk/>

⁵⁵ Oliver's Alternative Assessment Questions (Oliver, 1992) as referenced in An Emancipatory Welfare State: How basic income might underpin the development of human potential – Dr Jim Elder-Woodward and Dr Simon Duffy, 2018 <https://www.centreforwelfarereform.org/uploads/attachment/655/an-emancipatory-welfare-state.pdf>

Any changes to the eligibility criteria should balance the improvements they will bring to the system with the potential issues that such changes may cause.

Changes to entitlement conditions could mean a large number of claimants may need to be reassessed. This would create logistical issues and mean that some claimants receive higher awards and some claimants receive lower awards. When considering changes to entitlement careful analysis should be done to understand which claimants this will affect and how.

If claimants are not automatically reassessed once eligibility criteria are changed, some individuals may have to make a difficult decision about whether to request reassessment under the revised criteria.

Changes to entitlement conditions may affect the way that the DWP currently uses disability social security to calculate additional amounts of reserved social security. This will raise a number of policy challenges that will need to be addressed.

This is not to say that radical changes to the system should not be made, but that the impact of any such changes should be carefully considered.

As part of a long-term vision for disability assistance in Scotland, SCoRSS members would recommend the eligibility and assessment criteria are reviewed to ensure they reflect the social and human rights models of disability and to better realise the rights to equal participation in society and independent living for all. This should be co-produced with disabled people and people living with long term conditions, and should consider what aspects of society disable a person and infringe their human rights, rather than focussing on the medical or functional aspects of a person's impairment.

ADEQUACY

One of the fundamental tenets of designing a rights based social security system is that the support provided should be adequate. Adequacy is recognised as one of the key elements of the right to social security under the International Covenant on Economic, Social and Cultural Rights⁵⁶. This right is defined as ‘adequate in amount and duration in order that everyone may realise his or her rights to family protection and assistance, an adequate standard of living and adequate access to health care (as contained in the UNESCR covenant)’. Further recommendations include ensuring the value upholds the principles of human dignity and non-discrimination; that it is regularly monitored to ensure beneficiaries are able to afford the goods and services they require to realise their rights; and enables a minimum secure protection

against poverty, vulnerability and social exclusion and enable a life in health and dignity.⁵⁷

One of SCoRSS’ five Principles for Change for a social security system that treats people with dignity and respect and supports everyone to flourish, is to ‘increase social security payment rates to a level where no one is left in poverty and all have sufficient income to lead a dignified life.’⁵⁸ As such adequacy is one of the most important common priorities for our diverse coalition of organisations, as well as being crucial to people’s full enjoyment of the right to social security.

Disability Assistance in Scotland is proposed to be set initially at the same weekly rates as the three legacy reserved entitlements. These values are shown below, as at April 2020.

| Component | Rate ⁵⁹ | Social security payment (per week) | | |
|--------------------|--------------------|------------------------------------|-------------------|-------------------|
| | | DLA | PIP | AA |
| Care/ Daily Living | Lower | £23.60 | N/A ⁶⁰ | |
| | Middle | £59.70 | £59.70 | £59.70 |
| | Higher | £89.15 | £89.15 | £89.15 |
| Mobility | Lower | £23.60 | £23.60 | N/A ⁶¹ |
| | Higher | £62.25 | £62.25 | |

⁵⁶ General Comment no. 19 on the right to social security (art. 9) – United Nations Committee on Economic, Social and Cultural Rights, November 2007 <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW1a0Szab0oXTdlmnsJZZVQdrCvvLm0yy7YCIVA9YY61Z8YHJWla0qOfz9fbBAjHL%2fLI5gllsqSBb czFKYIRCH3h0ggclCKMPkxITz7NI9wE>

⁵⁷ Adequacy of Benefits – UN Social Protection and Human Rights platform <https://socialprotection-humanrights.org/framework/principles/adequacy-of-benefits/>

⁵⁸ Principles for Change – Scottish Campaign on Rights to Social Security <https://cpag.org.uk/scotland/policy-campaigns/SCoWR>

⁵⁹ Referred to as ‘Standard’ and ‘Enhanced’ rates for PIP. The ‘Lower’ rate of Attendance Allowance is presented in the middle row

⁶⁰ PIP and Attendance Allowance have no equivalent of the Lower care rate of DLA

⁶¹ Attendance Allowance has no mobility component

Although these values are updated each year in line with inflation, as measured by the Consumer Prices Index, there is no specific formula to measure to what extent rates of disability payments are adequate, nor to what extent they would meet the purpose of helping people with the extra costs of having an impairment or health condition.

A number of studies have aimed to measure the extra costs incurred by disabled people in order to enjoy the same standard of living as a non-disabled person. In 2018 Scope calculated that on average disabled adults in Scotland face extra costs of £632 per month⁶² including specialist goods and services such as equipment, adaptations and therapies, and higher costs for goods and services like energy, transport and insurance. This was the highest figure for any of the UK nations and regions, and higher than the UK average (£570). A 2017 literature review identified 20 separate studies into extra costs for disabled people, with estimates for the UK and Ireland including up to \$10,001, \$10,319 and even \$58,395 per year in 2010 US dollars.⁶³ (Accounting for inflation and conversion, this roughly equates to £750, £774 and £4,379 per month.)

Even considering the variation in estimates it would appear that the social security support provided by disability assistance may not bear a good relation to the extra costs associated with an impairment. They may in fact significantly underestimate the actual costs. Put starkly, this means that people's human rights cannot be realised.

This is further complicated by the different social security payments featuring some different rates compared to others for different age groups. As shown in the table above, and detailed elsewhere in this report, Attendance Allowance has no mobility component, which is many people feel is unfair and discriminatory.⁶⁴ The Scottish Government estimates that the cost of adding a mobility component to the successor payments to be £580 million per year.⁶⁵ It is also worth noting that both PIP and AA do not have an equivalent to the lower rate of the care component of DLA.

It is worth noting the human rights principles of progressive realisation and non-regression whereby states are expected to make use of the maximum resources available to them in order to work towards fully realising economic, social and economic rights.⁶⁶ This would require greater transparency in overall budgets so the government could be held to account on budget decisions to judge whether this commitment is being met.⁶⁷

SCoRSS members recommend that the Scottish Government adopt a human rights budgeting approach to calculate an adequate rate for disability assistance. This should appropriately reflect the extra costs associated with overcoming disabling barriers, reduces poverty, and enables disabled people to realise their rights to equal participation in society and independent living.

⁶² Disability Price Tag report 2019 – Scope <https://www.scope.org.uk/campaigns/extra-costs/disability-price-tag/>

⁶³ Extra costs of living with a disability: A review and agenda for research – Disability and Health Journal, October 2017 <https://www.sciencedirect.com/science/article/pii/S193665741730078X>

⁶⁴ Paragraph 6.50, Analysis of written responses to the consultation on social security in Scotland - Scottish Government, February 2017 <https://www.gov.scot/publications/analysis-written-responses-consultation-social-security-scotland/pages/10/>

⁶⁵ Disability assistance in Scotland: response to consultation – Scottish Government, October 2019 <https://www.gov.scot/publications/consultation-disability-assistance-scotland-scottish-government-response/pages/6/>

⁶⁶ Progressive Realisation and Non-regression - International Network for Economic, Social and Cultural Rights - <https://www.escri-net.org/resources/progressive-realisation-and-non-regression>

⁶⁷ Human Rights Budget Work: What, Why, How? - Scottish Human Rights Commission <http://www.scottishhumanrights.com/economic-social-cultural-rights/human-rights-budget-work/>

WHOLE-OF-LIFE SUPPORT

In the short-to-medium term the Scottish Government proposes to mirror the approach of the existing reserved disability entitlements, and create three distinct payments. These would be based on the age a person was when they first applied for disability assistance. These three payments are planned to have different eligibility rules, processes and will be applied for and assessed in different ways depending if they are for a disabled person under the age of 18, of working age, or over State Pension age.

We believe that a human rights based approach is potentially incompatible with a system that is based on the age of the claimant. The current UK system has been found to be compliant with the law, however this does not mean that the current age based system is compatible with a human rights based approach.

The current system of age related social security payments also produces some practical problems and anomalies. These include:

- When individuals transitioning from disability social security for children to adult social security, which has resulted in people losing entitlement to social security support entirely in the transition from DLA to PIP at the age of 16. This also requires claims to be reviewed and reassessed at the age of transition (proposed to be 18 in the Scottish system).
- The fact that most individuals who claim assistance when they are over 65 are unable to receive assistance with their mobility, due to there being no mobility component for Attendance Allowance, unlike payments for people below that age.

- Different rules and processes for different ages. For instance, rules relating to stoppages and resumption if a person is admitted to hospital are different in each form of disability assistance.

Creating a single disability entitlement across all age groups may resolve some of these issues. It may also allow the simplification of the entitlement criteria, application and assessment process. Simplification of the disability assistance system can increase uptake and reduce barriers to people claiming.

However changing to a single system of disability assistance would present several challenges. Such a change may require the reassessment of a large number of claimants and in any such process some individuals might see their payments increase and some might see their awards decrease, unless action was taken to mitigate or prevent this. Before committing to such a system we would like to fully understand how different groups of claimants would be affected. Creating eligibility criteria that are appropriate to all age groups creates its own challenges.

A human rights based system could resolve these issues in a fair, participatory and transparent way. There may be other ways to create a human rights based system that resolves these issues without creating a single benefit across all age groups.

We recommend that long term changes to the social security system in Scotland should consider how to address the problems that having separate age payments creates and how best to resolve these issues.

INTERACTS WELL WITH FUTURE SOCIAL SECURITY DEVELOPMENTS AND WIDER SERVICES

SCoRSS members consider it important that longer-term changes to disability assistance work well with future social security developments. This would include 'future-proofing' against any changes to wider income-replacement social security entitlements. In particular, it is important that disability assistance would continue to work well if a future government decided to introduce a Citizens Basic Income, or similar far-reaching reform to the wider social security system.

It is also important that disability assistance is well-connected to access to other public services for disabled people. In addition to financial support provided by social security, other services have an integral part to play in ensuring full participation, removing barriers and reducing extra costs associated with having an impairment. It would also ensure the system reflects the human rights principles of interdependence and indivisibility.

FUTURE SOCIAL SECURITY DEVELOPMENTS

Basic Income scheme proponents sometimes advocate it replacing all social security payments (including disability payments). However, unless the value of the Basic Income payments were set at an extremely high level this would leave disabled people significantly worse off compared with the current social security system.⁶⁸

However, other advocates of a Basic Income have suggested that an additional or separate payment to recognise the additional costs associated with having an impairment or health condition could comfortably co-exist with the creation of a Citizens Basic Income scheme.

In particular, Elder-Woodward and Duffy's report 'An Emancipatory Welfare State' considers risks associated with a more universal approach. They suggest disabled people could receive a lower level of income; or be treated as an exceptional factor, further accentuating the 'otherness' of disabled people within society. They propose adding elements to basic income to reflect some of the extra support disabled people might need in order to flourish, as a 'Basic Income Plus'.⁶⁹

⁶⁸ UBI: Solution or Illusion? The Implications of Universal Basic Income for Disabled People in Britain - Disabled People Against the Cuts, January 2019 <https://dpac.uk.net/wp-content/uploads/2019/01/UBI-Solution-or-Illusion.pdf>

⁶⁹ An Emancipatory Welfare State: How basic income might underpin the development of human potential - Dr Jim Elder-Woodward and Dr Simon Duffy, 2018 <https://www.centreforwelfarereform.org/uploads/attachment/655/an-emancipatory-welfare-state.pdf>

The report also considers in detail what the detail of an emancipatory payment and assessment model might look like that has been influential in producing this report.

In addition, Inclusion Scotland's 'Friend or foe? Basic Income and Disabled people in Scotland' discussion paper also explores this idea - and the potential risks - noting that whilst a vision of a Basic Income to eliminate poverty, guarantee a secure income, and valuing caring responsibilities and other unpaid work on a par with paid work is attractive to disabled Scots, discussions about Basic Income often fail to involve disabled people and as a result fail to address key issues such as how a Basic Income would meet extra costs relating to disability.⁷⁰

There have also been suggestions that Employment and Support Allowance (ESA) should be merged into PIP, that additional support for people who are unable to work because of ill-health or disability should be reduced⁷¹, or that PIP could be merged into Universal Credit⁷². SCoRSS members would be opposed to these proposals, which conflate means-tested social security support, with 'extra costs' disability

assistance which is available, regardless of a person's employment status, income or savings. Both forms of support are essential to preventing poverty and promoting participation for disabled people and should be retained as distinct forms of social security support.

SCoRSS members believe that regardless of what wider changes are made to other social security entitlements, a separate non-means tested social security payment for disabled people should be maintained.

However it is also important that future reforms to the wider social security system are co-produced with disabled people, people living with long term conditions and other people with lived experience of receiving social security payments. The involvement of disabled people, and organisations that work for and with them, should not be restricted to the design of disability and ill-health entitlements, but should be considered key to any planned improvements to the social security system more widely.

⁷⁰ Friend or foe? Basic Income and Disabled people in Scotland - Inclusion Scotland, February 2020 <https://inclusionScotland.org/wp-content/uploads/2020/02/Basic-Income-discussion-paper.pdf>

⁷¹ Working welfare: a radically new approach to sickness and disability benefits - Reform, February 2016 https://reform.uk/sites/default/files/2018-10/Working%20Welfare_FINAL.pdf

⁷² Iain Duncan Smith interview - The Guardian, October 2015 <https://www.theguardian.com/politics/2015/oct/02/ian-duncan-smith-interview>

WIDER SERVICES

Beyond the realm of social security, people's lives are interconnected, and will receive services from a range of agencies. It is important that these services complement each other and are joined up. SCoRSS members believe that it is important that additional costs social security for disabled people - and its budget - remains distinct from other services, whilst ensuring that the following services fit well with disability assistance, and it sits as part of a wider package of support for disabled people:

- Healthcare and Social Care Support
- Employment and employability
- Community transport
- Housing and landlords

Additionally, the Scottish Government could use its reach to ensure everyone who makes a claim for disability assistance (whether or not this claim is successful) is referred to all the relevant local service that may be able to provide assistance, whether they are statutory or voluntary, which could be possible in a country the size of Scotland.

CONCLUSION AND NEXT STEPS

The transition from a reserved system of social security for disabled people to one administered by the Scottish Government is a historic milestone. A number of welcome and positive changes have already been committed to. However, SCoRSS members believe that the devolution of social security is a process not an event, and the opportunity exists to create a world-leading rights based system of support for disabled people.

In this report, we have set out the case for longer-term change, and have provided a vision for what this longer-term system can look like in practice. Following the 2021 Scottish Parliament elections, we call on the Scottish Government to consider more far-reaching changes to disability assistance, based on the principles in this report.

SCoRSS members would ask all political parties to commit to this transformative world-leading long-term vision for disability assistance in their 2021 Scottish Parliament election manifestos to ensure that, regardless of the political composition of the next Scottish Government, Scotland moves towards a rights based system of social security for disabled people that is an international exemplar.

APPENDIX A –

EXAMPLE OF QUESTIONNAIRE USING THE SOCIAL MODEL OF DISABILITY

| Existing survey question | Social model question |
|--|---|
| Can you tell me what is wrong with you? | Can you tell me what is wrong with the way society treats you? |
| What complaint causes you difficulty in holding, gripping or turning things? | What defects in the design of everyday equipment like jars, bottles and tins cause you difficulty in holding, gripping or turning them? |
| Are your differences in understanding people mainly due to a hearing problem? | Are your difficulties in understanding people mainly due to their inability to communicate with you? |
| Do you have a scar, blemish or deformity which limits your daily activities? | Do other people's reactions to you limit your daily activities? |
| Have you attended a special school because of a long term health problem or disability? | Have you attended a special school because of your education authority's policy of sending people with your condition or disability to such places? |
| Does your health problem/disability mean that you need to live with relatives or someone else who can help look after you? | Are community services so poor that you need to rely on relatives or someone else to provide you with the right level of personal assistance? |
| Did you move here because of your health problems/disability? | What inadequacies in your housing caused you to move here? |
| How difficult is it for you to get about your immediate neighbourhood on your own? | What are the environmental constraints which make it difficult for you to get about in your immediate neighbourhood? |
| Does your health problem/disability prevent you from going out as often or as far as you would like? | Are there any transport or financial problems which prevent you from going out as often or as far as you would like? |
| Does your health problem/disability make it difficult for you to travel by bus? | Do poorly-designed buses make it difficult for you to use them? |
| Does your health problem/disability affect your work in any way at present? | Do you have problems at work because of the physical environment or the attitudes of others? |

WHO WE ARE

SCORSS is a diverse coalition of organisations working across Scotland with collective expertise across a range of different aspects of the social security system. Whilst coming from different areas of expertise, all members of SCORSS are united in our belief in a social security system that prevents poverty and supports those in need whilst also protecting their dignity.

SCORSS members include:

- Advocard
- Camphill Scotland
- Carers Trust Scotland
- Child Poverty Action Group (CPAG) in Scotland
- Citizens Advice Scotland (CAS)
- Coalition of Care and Support Providers in Scotland (CCPS)
- Dalkeith Citizens Advice Bureau
- Energy Action Scotland (EAS)
- Engender
- Epilepsy Connections
- Glasgow Council for the Voluntary Sector (GCVS)
- Health and Social Care Alliance Scotland (the ALLIANCE)
- Hazel Kennedy
- Inclusion Scotland
- MS Society Scotland
- NAWRA (National Association of Welfare Rights Advisers)
- One Parent Families Scotland
- Oxfam Scotland
- Prof Adrian Sinfield
- Save the Children in Scotland
- Scottish Association of Mental Health (SAMH)
- Scottish Drugs Forum
- Scottish Federation of Housing Associations
- Scottish Independent Advocacy Alliance (SIAA)
- Scottish Refugee Council
- Scottish Women's Aid
- Scottish Women's Convention
- Scottish Council for Voluntary Organisations (SCVO)
- Shelter Scotland
- The Action Group
- The Poverty Alliance
- Turning Point Scotland.



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To join us, find out more or read our latest briefings visit:
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