

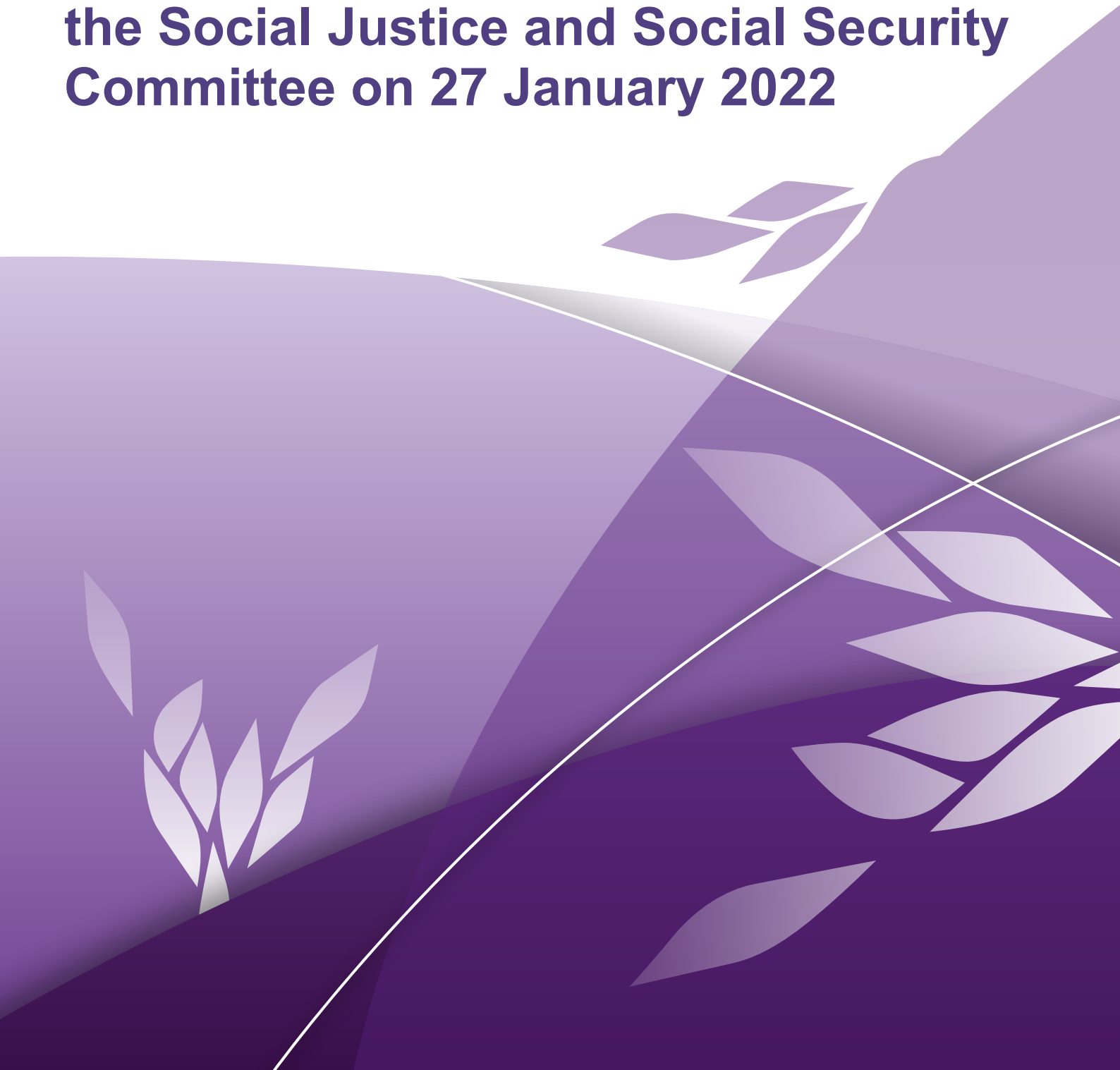


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## **Social Justice and Social Security Committee**

# **Subordinate legislation considered by the Social Justice and Social Security Committee on 27 January 2022**



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# Contents

<b>Introduction</b>	<b>1</b>
Disability Assistance for Working Age People (Scotland) Regulations 2022	1
The Social Security Information-sharing (Scotland) Amendment Regulations 2022	3

# Social Justice and Social Security Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Social Justice, Housing and Local Government, excluding matters relating to local government, housing and planning.



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# Committee Membership



**Convener**

**Elena Whitham**  
Scottish National Party



**Deputy Convener**

**Natalie Don**  
Scottish National Party



**Jeremy Balfour**  
Scottish Conservative  
and Unionist Party



**Miles Briggs**  
Scottish Conservative  
and Unionist Party



**Foyso Choudhury**  
Scottish Labour



**Pam Duncan-Glancy**  
Scottish Labour



**Marie McNair**  
Scottish National Party



**Emma Roddick**  
Scottish National Party

# Introduction

1. At its meeting on 27 January 2022 (3rd meeting, 2022)<sup>i</sup>, the Social Justice and Social Security Committee considered the following affirmative instruments:
  - [Disability Assistance for Working Age People \(Scotland\) Regulations 2022](#)
  - [The Social Security Information-sharing \(Scotland\) Amendment Regulations 2022](#)
2. The [minutes](#) of the meeting have been published on the Committee's webpages. The [Official Report of the meeting](#) will be published in due course.

## **Disability Assistance for Working Age People (Scotland) Regulations 2022**

3. The Disability Assistance for Working Age People (Scotland) Regulations 2022 were laid on 17 December 2021. This Scottish Statutory Instrument (SSI) was made in exercise of the powers conferred by sections 31(2), 36(2), 41(4)(a), 43(5), 51(1), 52 and 95 of the Social Security (Scotland) Act 2018. Some of those powers are subject to negative procedure and others to affirmative procedure. The powers are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 and section 33(3) of that Act makes the instrument subject to the affirmative procedure. That means it is for the Committee to recommend to the Parliament whether the draft regulations be approved.
4. According to the Scottish Government's [Policy Note](#), this instrument:
  - sets out the rules and eligibility criteria for Adult Disability Payment (ADP), a form of assistance to provide support to disabled individuals between the ages of 16 and (subject to some exceptions) state pension age to mitigate the additional costs of living with a disability or health condition. This new form of social security assistance will replace Personal Independence Payment (PIP) in Scotland.
  - This instrument includes provision to transfer individuals who live in Scotland and receive PIP (which has been administered by the Department for Work and Pensions (DWP) on behalf of Scottish Ministers), to instead receive ADP, to be administered by Social Security Scotland on behalf of the Scottish Ministers.
  - It also includes provisions for individuals who wish to move from Child Disability Payment (CDP) onto ADP, and provisions for those who move from Scotland to reside in other parts of the UK, or to Scotland.
  - It further provides for when Short-term Assistance is to be given to those who have been in receipt of ADP.
5. The Delegated Powers and Law Reform (DPLR) Committee considered the instrument at its meeting on 18 January 2022, and noted a number of drafting errors

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<sup>i</sup> Emma Roddick MSP did not attend this meeting.

as outlined in the [Committee's report](#). The DPLR Committee has called on the Scottish Government to lay an amending instrument to rectify the errors in time for the instrument coming into force on 21 March 2022.

6. The Committee took evidence on the regulations on [7 October](#) and [16 December](#) 2021, in advance of them being laid. Following these sessions, the Committee [wrote to the Minister](#) asking for further information on: the independent review, terminal illness rules and changes to eligibility criteria. A [reply](#) was received on 21 January. A [letter from the Cabinet Secretary](#) following the session on the budget on 13 January was also received on [21 January](#) and includes information on ADP. The Minister provided further written responses to the Committee's questions on [26 January](#).
7. During the evidence session Committee members raised several points regarding the regulations. Members discussed the eligibility criteria, including details of the independent review which will consider any potential changes to eligibility in the future. Members had questions around the support available for clients with fluctuating conditions, potential divergence between UK and Scottish case law and case transfer from Personal Independence Payment and Disability Living Allowance to Adult Disability Payment as well as transfer from Child Disability Payment to Adult Disability Payment. The Minister highlighted work being done to ensure that people are treated with dignity and respect. The impact of the pandemic on case transfer and the launch of new benefits was also noted. Members were interested in the financial projections outlining the cost of Adult Disability Payment in relation to benefit uptake. Ongoing recruitment and training within Social Security Scotland was noted.
8. The Minister made a commitment to update the Committee on progress of the case transfer process and timescales and scope for the independent review once available.
9. Following the evidence session, the Minister for Social Security and Local Government moved motion S6M-02604 in his name—  
  
That the Social Justice and Social Security Committee recommends that the Disability Assistance for Working Age People (Scotland) Regulations 2022 be approved.
10. During the debate of the motion some Committee Members welcomed the regulations and expressed their full support. Other Members felt that more changes to eligibility criteria could have been made and expressed disappointment that the regulations did not go further in addressing their concerns.
11. After debate, the motion was agreed to without division.

12. The Social Justice and Social Security Committee recommends to the Scottish Parliament that the Disability Assistance for Working Age People (Scotland) Regulations 2022 be approved.

## **The Social Security Information-sharing (Scotland) Amendment Regulations 2022**

13. The Social Security Information-sharing (Scotland) Amendment Regulations 2022 were laid on 17 December 2021. This Scottish Statutory Instrument (SSI) was made in exercise of the powers conferred by sections 85(2)(g) and (5) of the Social Security (Scotland) Act 2018. Regulations made under section 85(2)(g) and (5) attract the affirmative procedure. That means it is for the Committee to recommend to the Parliament whether the draft regulations be approved.
14. According to the Scottish Government's [Policy Note](#), this instrument will amend the Social Security Information-sharing (Scotland) Regulations 2021 ('the 2021 Regulations') to provide additional legal gateways for information sharing that are necessary for the upcoming launch of Scottish Adult Disability Payment in 2022. The new legal gateways will ensure Scottish individuals who are entitled to Adult Disability Payment will be able to continue to access the full range of other benefits and welfare services that those on the UK equivalent benefit (Personal Independence Payment) would have access to by virtue of their disability benefit award.
15. The DPLR Committee considered the instrument at its meeting on [11 January 2022](#) and made no recommendations in relation to the instrument.
16. Following the evidence session, the Minister for Social Security and Local Government moved motion S6M-02603 in his name—  
  
That the Social Justice and Social Security Committee recommends that the Social Security Information-sharing (Scotland) Amendment Regulations 2022 be approved.
17. The motion was agreed to without division.
18. The Social Justice and Social Security Committee recommends to the Scottish Parliament that the Social Security Information-sharing (Scotland) Amendment Regulations 2022 be approved.



