

POLICY NOTE

THE DISABILITY ASSISTANCE FOR CHILDREN AND YOUNG PEOPLE (SCOTLAND) AMENDMENT REGULATIONS 2021

SSI 20XX/XXX

The above instrument will, if approved by the Scottish Parliament, be made in exercise of the powers conferred by sections 31(2), 36(2), 43(5), 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.

Summary Box

This instrument amends the Disability Assistance For Children And Young People (Scotland) Regulations 2021 (“the principal regulations”) which set out the rules and eligibility criteria for Child Disability Payment (CDP), a form of assistance to support children and young people who have a physical or mental disability, or who have a terminal illness. This new form of social security assistance will replace Disability Living Allowance for children (DLAC) in Scotland for children and young people aged between 3 months and 18 years.

This instrument also includes amendments to the provisions that effect the transfer of responsibility for delivering disability benefits for children and young people under the age of 18 who receive DLAC in Scotland from the Department for Work and Pensions (DWP) on behalf of Scottish Ministers to Social Security Scotland; changing the disability benefits for these children and young people from DLAC to CDP.

Policy Objectives

These regulations make a number of amendments to the principal regulations. Amending the principal regulations ensures that CDP entitlement is aligned with the Scottish Government’s overall policy intent, which is to help improve outcomes for disabled children and young people, by providing financial assistance to help meet the additional costs associated with care and mobility needs as a result of being disabled.

The regulations amend the definition of legal detention, and make changes to eligibility criteria resulting in further improvements to the CDP application process for young people between the age of 16-18, and for serving civil servants and members of the armed forces.

They also make minor technical amendments to the rules of entitlement for both the care and mobility component of CDP, and bring clarity to the duration of eligibility for individuals who have reported a change of circumstances, and those who move between Scotland and the rest of the United Kingdom. These regulations make amendments to clarify the effect of admission to a care home or legal detention on ongoing entitlement to care component and for individuals whose entitlement to care component begins while in alternative accommodation. These regulations also make amendments to clarify when an increase and decrease in level of entitlement takes effect. These changes will allow the Scottish Ministers to make more robust and reliable decisions about entitlement to CDP.

There are changes to the re-determination and appeals process which clarify the policy intention by making clear the period of time Social Security Scotland has to complete a re-determination, and extend the scenarios where short-term assistance is payable and confirms which determination terminates short-term assistance in particular scenarios.

The regulations also makes other minor and consequential amendments to the principal regulations.

Case transfer

These regulations make some technical amendments to the case transfer provisions of the principal regulations. These include the correction of citations to the Social Security Contributions and Benefits Act 1992, clarification of interpretation to ensure clients with severe visual impairment receive the correct rate of the mobility component, and clarification of the effective date of determinations without application that result from a change to a relevant past DLAC award whether the change to that award was made under the UK or Northern Irish rules. They also clarify the timescales in which an individual case must complete the transfer process and ensure cases identified as meeting the special rules for terminal illness receive the highest rate of both components when the case is transferred.

These regulations also introduce the ability to backdate CDP entitlement where the award of CDP is higher than the DLAC award at the point of case transfer due to cited differences in DLAC and CDP eligibility rules. Any payment of CDP made for this backdated period will be reduced by the amount of DLAC the individual was entitled to in that same period. This is to ensure that individuals whose awards are selected for transfer later are not disadvantaged when compared to those whose awards are selected for transfer earlier.

Consultation

Scottish Commission on Social Security

In accordance with section 97(2) of the Social Security (Scotland) Act 2018, the Scottish Ministers have consulted the Scottish Commission on Social Security (SCoSS). SCoSS published their scrutiny report on 6 August 2021¹. The Scottish Government's response will accompany these regulations. This follows extensive scrutiny by SCoSS of the principal regulations, with a number of changes made in response.

There are amendments to the regulations which have not been referred to SCoSS, as they were identified late in the process. Of these amendments that fall under SCoSS' remit under section 97 of the Social Security (Scotland) Act 2018, these are made using the regulation making power under section 31(2) of that Act. They make changes to regulations 5, 15, 28 and 31 of the principal regulations. It was considered appropriate not to delay the proposed laying timetable in order to provide SCoSS with an opportunity to report on these further amendments because of the benefit of laying all the proposed amendments as part of a single instrument and because they are judged to be technical in nature.

The changes to periods in respect of a re-determination request at regulation 37, have been made under section 43(5) of the Social Security (Scotland) Act 2018. As such, they do not need to be referred SCoSS for formal scrutiny, however these provisions have been included

¹ [Scottish Commission on Social Security: publications - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/scoss-reports/pages/20210806.aspx)

the draft regulations provided to SCoSS for information and context.

Some of the case transfer provisions were also included in the draft regulations provided to SCoSS on this occasion. However, the case transfer provisions were not included for scrutiny when SCoSS considered the principal regulations as the provisions are made under section 95 of the Social Security (Scotland) Act 2018. As such, Scottish Ministers are not required to refer them to SCoSS for formal scrutiny, but they have been shared so SCoSS can consider those parts of the Regulations they are required to scrutinise in the context of the full set of regulations.

Stakeholder engagement

Between 5 March and 28 May 2019, the Scottish Government undertook a public consultation on its proposals for the delivery of disability assistance. The consultation received 263 responses from individuals and stakeholder organisations, and a summary of these responses can be found in the analysis of written responses². The views expressed within the consultation responses helped shape the proposals for CDP, and the Scottish Government published its response in October 2019³. Respondents were broadly supportive of the policy proposals, however, several changes were made in response to the consultation. These regulations do not introduce new policy so are still in alignment with the consultation and views expressed by stakeholders.

In January and February 2019, two surveys regarding the case transfer process were sent out to Experience Panel members. 404 and 559 responses were received respectively. A series of individual and group interviews were also conducted. Results from both surveys and the interviews were published in 2019. These surveys confirmed that of most importance to panel members was that they continue to receive the correct payment at the correct time.

Additionally, the Scottish Government has been working with relevant stakeholders to specifically engage with disabled people from seldom heard groups as part of its ongoing wider case transfer strategy. This research and engagement with stakeholders has been key to developing a set of case transfer principles to guide the development of the approach to case transfer.

Impact Assessments

The following Impact Assessments have been completed for the principal regulations, and have been updated for this instrument:

- A Child Rights and Wellbeing Impact Assessment
- An Equalities Impact Assessment
- A Business and Regulatory Impact Assessment
- An Islands Screening Assessment
- A Fairer Scotland Duty Impact Assessment

It is anticipated from the analysis in these impact assessments that the commencement of CDP will have a broadly positive impact on a range of groups with protected characteristics,

² <https://consult.gov.scot/social-security/improving-disability-assistance/>

³ Disability assistance in Scotland: response to consultation - gov.scot (www.gov.scot)

island communities and in relation to the realisation of childrens' rights and improving their wellbeing. There are no significant equalities or rights impacts that require further consideration in relation to the commencement of these regulations.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed. The impact of this policy on business is limited and no quantifiable financial effects have been identified. The Scottish Government does not believe that these amendments will have an adverse impact on the competitiveness of Scottish companies or the third sector within Scotland, the UK, or elsewhere in Europe or the rest of the world.

Scottish Government
Social Security Directorate

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