

POLICY NOTE

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

SSI 2021/174

The above instrument will, if approved by the Scottish Parliament, be made in exercise of the powers conferred by sections 31(2), 36(2), 41(4)(a), 43(5), 51(1), 52(1) and (2) 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.

This instrument sets 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.

This instrument also includes provision to 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

Child Disability Payment is intended 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 having a disability.

This form of assistance will replace Disability Living Allowance for Children (DLAC) in Scotland for children and young people aged between 3 months and 18 years. This new form of devolved social security assistance will be delivered by Social Security Scotland on behalf of the Scottish Ministers. The regulations include provision for eligibility, what assistance is to be available, and making an application for assistance.

CDP consists of two components: the care component provides three levels of assistance for children who require assistance with personal care, or supervision as a result of a physical or mental disability; the mobility component provides two levels of assistance for children who have a disability that affects their ability to move around outdoors, or who require supervision to do so.

The eligibility criteria for CDP broadly aligns with the eligibility criteria for DLAC, however, the Scottish Government is making improvements to the application process, and the collection of supporting information about an individual's disability to make more robust and reliable decisions about entitlement to CDP.

The benefit will be delivered by Social Security Scotland from 26 July 2021, with an initial application period in three local authority areas: Perth and Kinross, Dundee City and Western

Isles local authority areas. Social Security Scotland will then accept new applications from individuals in other Scottish local authority areas from 22 November 2021.

Case Transfer

Responsibility for delivering disability benefits for individuals living in Scotland under the age of 18 who receive DLAC will transfer from the Department for Work and Pensions on behalf of Scottish Ministers to Social Security Scotland from autumn 2021. The disability assistance these individuals are entitled to will also change from DLAC to CDP.

Scottish Ministers will gradually take responsibility for disability benefits for all of these individuals, starting with those aged 16 and 17 to avoid the need for those individuals to apply for Personal Independence Payment. Scottish Ministers will also prioritise transferring the benefits of individuals who have been diagnosed with a terminal illness to CDP.

Scottish Ministers have developed a safe and secure process, which will require no action on behalf of the individual wherever possible and has been designed in line with the following case transfer principles:

- no child or young person will be required to re-apply for their benefit;
- children and young people will continue to receive the right payment, at the right time; and
- no child or young person will be financially disadvantaged at the point of transfer to CDP.

When an individual's disability benefit has been selected for transfer, Scottish Ministers will receive from DWP data and information relevant to the individual's most recent DLAC award. Once Scottish Ministers have received this information, they will issue the individual with a notice of intention to transfer, which will set out the process and timescales for that transfer.

Scottish Ministers will use the information from DWP to make a determination without application of the individual's entitlement to CDP on a like for like basis within 13 weeks. This 13 weeks can be extended if both Scottish Ministers and the Secretary of State for Work and Pensions agree there is good reason to do so. The determination of the individual's entitlement to CDP will also end the corresponding award of DLAC. A determination of entitlement in respect of CDP made as a result of the case transfer process comes with the same rights to re-determination and appeal as any other determination made under section 52 of the Social Security (Scotland) Act 2018.

As there are some small differences in the eligibility criteria between DLAC and CDP, there may be some limited circumstances where an individual's entitlement to CDP should be higher than their DLAC award. Where Social Security Scotland have identified such a case, either from the information provided by DWP or additional information from the individual, provision has been made to pay CDP at the relevant higher rate from the point of transfer.

Scottish Ministers will identify individuals who will transfer from DLAC to CDP using the residential address held by DWP in the individual's DLAC record. An individual will be assumed to meet the residence and presence conditions for CDP at the point of transfer if they have a Scottish postcode. If Scottish Ministers determine after transfer that an individual should not have transferred because they fail to meet the residence and presence conditions, a

further determination without application will be made that will end their CDP entitlement. This will also reverse the decision to end the individual's DLAC award.

All individuals appointed by DWP in respect of a DLAC award will be temporarily deemed to act as an appointee for the purposes of CDP until it is reasonably practicable for Scottish Ministers to consider whether to make an appointment under the Social Security (Scotland) Act 2018.

Consultation

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 responses. The views expressed within the consultation responses helped shape the proposals for CDP, and the Scottish Government published its response in October 2019. Respondents were broadly supportive of the policy proposals, however, several changes were made in response to the consultation, including:

- extending the time limit for requesting a re-determination of a decision made by Social Security Scotland from 31 to 42 calendar days;
- if Social Security Scotland is unable to complete a re-determination within 56 calendar days, an individual has a right to appeal to the First-Tier Tribunal for Scotland;
- aligning the rules on payment of the care component when a child or young person is resident in a care home, a residential educational establishment, or is in legal detention
- ensuring that children and young people in receipt of the mobility component can continue to be paid the mobility component when in legal detention.

Two surveys regarding the case transfer process was sent out to Experience Panel members in January and February 2019. 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 target disabled people from seldom heard groups as part of its ongoing wider case transfer engagement. This user 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.

A policy position paper on case transfer was published in February 2019.

Officials met with the Disability and Carers Benefits Expert Advisory Group (DACBEAG) to discuss case transfer in June 2020. The Group provided their full advice in July.

Scottish Commission on Social Security

The Scottish Government published draft regulations in December 2019. Under section 97 of the Social Security (Scotland) Act 2018, the Scottish Commission on Social Security (SCoSS) was asked to provide a scrutiny report on the regulations. In February 2020, the Scottish Government provided redrafted regulations to SCoSS, with a revised policy note to accompany the regulations. SCoSS published its draft scrutiny report on 9 March 2020, making 34 recommendations in relation to the draft regulations.

A further draft of the regulations was formally referred to SCoSS on 29 October 2020 for a supplementary scrutiny report. SCoSS published its supplementary scrutiny report on 17 December 2020, 12 recommendations and four observations in relation to the draft regulations.

The Scottish Government will publish its formal response to both reports when laying these regulations before the Scottish Parliament.

The case transfer provisions were not included in the draft regulations SCoSS were asked to scrutinise. These provisions have been made under section 95 of the Social Security (Scotland) Act 2018, and therefore do not need to be referred to SCoSS for formal scrutiny.

Impact Assessments

An Equalities Impact Assessment, Island Communities Impact Assessment, Fairer Scotland Duty Impact Assessment and a Children's Rights and Wellbeing Impact Assessment were finalised in January 2021 and are provided with this instrument. 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 equalities groups, island communities and in relation to the realisation of children's right 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 and is attached. The Scottish Government does not believe that CDP 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. The Scottish Government expects that there may be limited impact on the operational business of local authorities or health boards as a result of introducing this provision, principally because Social Security Scotland will seek to obtain (with the individual's consent) information held by public sector bodies about the individual's disability to make determinations of entitlement.

The right to appeal to a First-tier Tribunal is provided for in the Social Security (Scotland) Act 2018. Legal Assistance will continue to be available to individuals to appeal an entitlement decision to the Upper Tribunal, Court of Appeal or Supreme Court. The Scottish Government does not expect any adverse impact to the Legal Aid budget as a result of the introduction of CDP. Current recipients of DLAC are already able to access legal aid to appeal entitlement decisions.

Scottish Government
Social Security Directorate

February 2021