

Child Rights and Wellbeing Impact Assessment (CRWIA) of the Disability Assistance for Children and Young People Amendment (Scotland) Regulations 2021

**Executive summary**

The Social Security (Scotland) Act 2018<sup>1</sup> (“the 2018 Act”) sets out the broad framework for the delivery of devolved social security in Scotland. On 1 April 2020, the Scottish Ministers took executive and legal competence for disability benefits, including Disability Living Allowance for Children (DLAC), Attendance Allowance (AA) and Personal Independence Payment (PIP).

These benefits will continue to be delivered during a transition period by the Department for Work and Pensions (DWP) under the terms of an Agency Agreement agreed with the Scottish Government, to ensure the safe and secure devolution of disability benefits.

The first form of disability assistance the Scottish Government is delivering is Child Disability Payment (CDP). This was formerly known as Disability Assistance for Children and Young People. It replaces DLAC for children and young people in Scotland between three months and 18 years of age.

The Disability Assistance for Children and Young People (Scotland) Regulations 2021 set out how CDP will be delivered and makes provision for 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. These children and young people will transfer from DLAC to CDP.

The amendments being introduced by these regulations are being made with the purpose of aligning existing rules on CDP entitlement with the policy intention 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 policy underpinning these regulations aligns with the following National Outcomes:

- We grow up loved, safe and respected so that we realise our full potential;
- We tackle poverty by sharing opportunities, wealth and power more equally; and
- We respect, protect and fulfil human rights and live free from discrimination.

<sup>1</sup> <http://www.legislation.gov.uk/asp/2018/9/contents/enacted>

### Getting it right for every child (GIRFEC) wellbeing indicators

We consider that of the eight wellbeing indicators (Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible, Included) set out in the Children and Young People (Scotland) Act 2014<sup>2</sup> the policy relates to:

- Healthy: Having the highest attainable standards of physical and mental health, access to suitable healthcare and support in learning to make healthy, safe choices.
- Responsible: Having opportunities and encouragement to play active and responsible roles at home, in school and in the community, and where necessary, having appropriate guidance and supervision, and being involved in decisions that affect them.
- Included: Having help to overcome social, educational, physical and economic inequalities, and being accepted as part of the community in which they live and learn.

Of the UN Convention on the Rights of the Child (UNCRC) considerations, the policy relates to:

- Article 3 (best interests of the child): The best interests of the child must be a top priority in all decisions and actions that affect children.
- Article 12 (respect for the views of the child): Every child has the right to express their views, feelings and wishes in all matters affecting them, and to have their views considered and taken seriously.
- Article 23 (children with a disability): A child with a disability has the right to live a full and decent life with dignity and, as far as possible, independence and to play an active part in the community. Governments must do all they can to support disabled children and their families.
- Article 26 (Social Security): Every child has the right to benefit from Social Security. Governments must provide Social Security, including financial support and other benefits, to families in need of assistance.
- Article 27 (adequate standard of living): Every child has the right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

The CRWIA has been informed by a range of evidence, including:

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<sup>2</sup> <http://www.legislation.gov.uk/asp/2014/8/contents/enacted>

	<ul style="list-style-type: none"> <li>• analysis from two public consultations<sup>34</sup>;</li> <li>• responses from participants in our Social Security Experience Panels<sup>5</sup>; and</li> <li>• advice from the Disability and Carer Benefits Expert Advisory Group (DACBEAG).<sup>6</sup></li> </ul>
<b>Background</b>	<p>In July 2016 the Scottish Government launched a public consultation to support the development of a framework that would become the Social Security (Scotland) Bill. This received more than 200 responses to questions relating to disability benefits with an even split between organisational and individual responses. In particular comments were invited on a partial Equality Impact Assessment which represented the Scottish Government’s work on the impact of social security policy on people with protected characteristics prior to the consultation.</p> <p>There were 521 formal written responses submitted, of which 241 were from organisations and 280 from individual respondents. Of the 241 organisational responses, 81 were received from stakeholder groups relating to children/young people, equalities and human rights, disability and long term conditions, and carers. The independent analysis of the responses along with the Scottish Government response were published on 22 February 2017. In addition, the Equality Impact Assessment that was published alongside the Social Security (Scotland) Bill was used to inform the partial Equality Impact Assessment for these Regulations.</p> <p>The Scottish Government has set up Social Security Experience Panels with over 2,400 people across Scotland registered as panel members when the Panels opened in 2017. The Panels involve people with lived experience of the benefits that are coming to Scotland. In July 2019 recruitment to the Experience Panels was reopened. We have been working with relevant stakeholders to specifically target disabled people from seldom heard groups as part of our engagement.</p> <p>The Consultation on Disability Assistance built on the work of previous consultation and the Experience Panels and was published on 5 March 2019. In line with the principles of</p>

<sup>3</sup> Full analysis report of the Consultation on Social Security in Scotland was published in March 2017: <http://www.gov.scot/Resource/0051/00514352.pdf>

<sup>4</sup> Full analysis report of the Consultation on Disability Assistance in Scotland was published in October 2019: <https://www.gov.scot/publications/consultation-disability-assistance-scotland-analysis-responses/>

<sup>5</sup> List of experience panel publications: <https://www.gov.scot/collections/social-security-experience-panels-publications/>

<sup>6</sup> List of publications by the Disability and Carer Benefits Expert Advisory Group (DACBEAG): <https://www.gov.scot/groups/disability-carers-benefits-expert-advisory-group/#:~:text=The%20Disability%20and%20Carers%20Benefits,on%20disability%20and%20carers%20benefits.>

dignity, fairness and respect, the Scottish Government sought the views of the people of Scotland on the three proposed disability assistance benefits, namely Disability Assistance for Children and Young People (now known as CDP), and replacement benefits for PIP and AA . The consultation closed on 28 May 2019, having received 263 replies, of which 74 were from stakeholder organisations and 189 were from individuals.

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.<sup>7</sup> These surveys confirmed that of most importance to panel members was that they continue to receive the correct payment at the correct time.

We have been working with relevant stakeholders to specifically target disabled people from seldom heard groups as part of our engagement. For example, we have reached out to the Inclusive Communications Stakeholder Reference group to seek users who come from seldom heard groups. This is a continuous exercise and more information from this work is imminently forthcoming.

An initial framing exercise for the partial Equalities Impact Assessment relating to disability assistance was carried out in 2017 involving a range of internal Scottish Government stakeholders. In addition to highlighting a number of positive impacts and potential barriers, the exercise enabled significant data gaps to be identified. This in turn led to the targeted consultation with stakeholders representing people with protected characteristics which was undertaken during the Consultation on Disability Assistance between 5 March and 28 May 2019.

The Scottish Government has also undertaken ongoing consultation with stakeholders through our independent Disability and Carers Benefits Expert Advisory Group (DACBEAG) as well as the Ill Health and Disability Benefits Stakeholder Reference Group. DACBEAG is chaired by Dr Jim McCormick and comprises individuals with significant practical experience of the UK social security system, from a range of professional backgrounds. It is independent of the Scottish Government. The Group's role is to advise the Scottish Ministers on specific policy options for disability

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<sup>7</sup> See <https://www.gov.scot/publications/social-security-experience-panels-case-transfer-survey-findings/> and <https://www.gov.scot/publications/social-security-experience-panels-designing-case-transfer-process-main-report/>

	<p>assistance and carers benefits due to be delivered in Scotland.</p> <p>The Ill Health and Disability Benefits Stakeholder Reference Group was set up in March 2016 to inform and influence the development of policy options relating to devolved Disability Assistance. This group has advised on the potential impact of policy decisions as well as user and stakeholder engagement.</p> <p>Despite the continuing impact of coronavirus, work with Experience Panels has continued with user testing on digital material that will be available on the Social Security Scotland website. Specifically with regards to case transfer, framing exercises have been taking place in 2020 and will continue to take place with a range of internal Scottish Government stakeholders. This will give information to people who are considering making a CDP application. We focused on making sure that information was easy to find, understand and navigate.</p>
<p><b>Scope of the CRWIA, identifying the children and young people affected by the policy, and summarising the evidence base</b></p>	<p>Consideration has been given to the impact of the policy on the rights and wellbeing of children and young people in Scotland. This policy should have a direct, positive impact on disabled children and young people and an indirect positive impact on their families and carers.</p> <p>The views of people with lived experience have been captured through a range of user research and stakeholder engagement activities held throughout Scotland. These events have provided stakeholders the opportunity to feed into the early development of policy discussions, raising awareness of the consultation and further exploring the views of stakeholders and service users in more depth. The events have also provided the Scottish Government opportunity to engage specifically with particular groups that would be impacted by the proposed policy.</p> <p>The Scottish Health Survey 2018 provides an accurate estimate of the number of disabled children and young people in Scotland. Within the 0-15 age group, 18% of children have a limiting longstanding illness.<sup>8</sup> For young people aged 16-24, 24% of young people have a limiting longstanding illness.</p> <p>In 2019, there were 867,345 children aged 15 and below in Scotland.<sup>9</sup> As of November 2020, there were 42,531 children</p>

<sup>8</sup> Scottish Health Survey (2018) <https://www.gov.scot/publications/scottish-health-survey-2018-supplementary-tables/>

<sup>9</sup> NRS Scotland Mid-Year Population Estimates (2019) <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/mid-year-population-estimates/mid-2019>

	<p>entitled to Disability Living Allowance for Children (DLAC)<sup>10</sup>. This accounts for roughly 4.9% of this demographic.</p> <p>UK wide, disabled people have higher poverty rates than the general population. Disabled people make up 28% of people in poverty. A further 20% of people who are in poverty live in a household with a disabled child. In Scotland 410,000 households in poverty (42%) include a disabled person. Disabled young adults in the UK aged 16-24 years have a particularly high poverty rate of 44%.</p> <p>Scotland-wide, there are higher levels of child material deprivation in households containing a disabled person, at 20% compared to households without a disabled person (at 8%). There are higher rates of food insecurity among disabled people (18%) compared to non-disabled people (5%). There is a higher likelihood of living in relative poverty after housing costs with a disabled person in the household (24% of families with a disabled person compared to 17% of families with no disabled members).</p> <p>Disability and unemployment / under-employment are positively correlated. 14% of 'workless families' (defined as families where parents are predominately out of work or have little connection to the labour market; who live in social rented accommodation and are reliant on benefits for their income) have one or more children with a disability or long-term illness.</p> <p>A further 17% of 'struggling to get by' families (unemployed or working part-time, half of which are single-parent families) have one or more children with a disability or long-term illness.<sup>11</sup> Child material deprivation in households containing a disabled person reaches 20% compared to 8% of households without a disabled person.</p> <p>Even where one or more parent in the household is in employment, within families with a disabled child, the same level of income secures a lower standard of living than it would for a disabled person.</p> <p>Research conducted by the Papworth Trust<sup>12</sup> showed that the annual cost of bringing up a disabled child is three times greater than for a non-disabled child. Disabled people face</p>
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<sup>10</sup> DWP Stat-Xplore (Accessed August 2021)

<sup>11</sup> <https://www.gov.scot/publications/poverty-perspective-typology-poverty-scotland/pages/5/>

<sup>12</sup> Papworth Trust, Disability in the United Kingdom 2010, in <https://www2.le.ac.uk/departments/law/research/cces/documents/the-energy-penalty-disability-and-fuel-poverty-pdf>

	<p>higher costs than non-disabled people, such as the cost of specialist equipment, therapies and home adaptations to manage a condition.<sup>13</sup> Travel costs also may be higher as families have to afford the cost of taxis to and from hospital where it is not possible to use public transport (and/or public transport may not be available).</p> <p><u>Wider context</u></p> <p>The impact of introducing CDP in place of DLAC has been reviewed in the principal regulations CRWIA which can be viewed <a href="#">here</a>.</p> <p>This CRWIA will focus on the changes we are making to the Disability Assistance for Children and Young People (Scotland) Regulations 2021 and should be read in conjunction with the other impact assessments conducted for the policy. This includes:</p> <ul style="list-style-type: none"> <li>• the Business and Regulatory Impact Assessment;</li> <li>• the Island Communities Impact Assessment;</li> <li>• the Equality Impact Assessment); and</li> <li>• the Fairer Scotland Duty Assessment.</li> </ul> <p>The Equality Impact Assessment (EQIA) for these regulations considers the potential impact of the policy on each of the protected characteristics including race, religion or belief.</p> <p>The Business and Regulatory Impact Assessment (BRIA) will analyse the cost and benefits of the policy to businesses and the third sector.</p> <p>The Island Community Impact Assessment considers the potential impacts of the policy on people living in island and remote communities and any further barriers that they may face.</p> <p>The Fairer Scotland Duty Assessment considers the potential impact of the policy on inequality in Scotland.</p>
<p><b>Children and young people’s views and experiences</b></p>	<p>Specific questions about key principles of social security in Scotland were asked as part of the Scottish Government’s Consultation on Social Security (2016) and further detailed questions about disability benefits for children and young people were asked in the Scottish Government’s Consultation on Disability Assistance in Scotland (2019). Scottish Government officials also gathered evidence from a range of sources to identify options to support children and young people through the disability benefits system.</p>

<sup>13</sup> <https://www.jrf.org.uk/income-and-benefits/>

	<p>Scottish Government Disability Benefits Policy Team officials and Community Analytical Division colleagues also examined evidence from a range of studies, reports and surveys as well as gathering the views and experiences of parents of children and young people.</p> <p>Data and views were sourced from:</p> <ul style="list-style-type: none"> <li>• Scottish Health Survey 2018;</li> <li>• Census 2011;</li> <li>• DWP Stat X-plore;</li> <li>• National Records of Scotland Population Statistics;</li> <li>• Consultation on social security in Scotland 2016;</li> <li>• Consultation on Disability Assistance in Scotland 2019; Social Security Experience Panel Research; and</li> <li>• The Disability and Carer Benefits Expert Advisory Group (DACBEAG).</li> </ul>
<p>Key Findings, including an assessment of the impact on children’s rights, and how the measure will contribute to children’s wellbeing</p>	<p><u>Amendments relating to the effect of time spent in care homes and in legal detention</u></p> <p>An individual who is entitled to the care component will be paid the care component for the first 28 days of their stay in a care home or in legal detention. These regulations remove a potential ambiguity regarding on the date when individual stops being paid the care component. The changes made within these regulations make clear that payment will stop on the 29th day, not the 28th.</p> <p>These regulations also amend the definition of legal detention as defined in regulation 2 as read with regulation 18 of the principal regulations will ensure that children and young people who are in-patients in a hospital or hospice are not treated as though they are in legal detention and will continue to be paid their care component of CDP. This regulation seeks to ensure that an individual detained in these circumstances should not be considered to be in legal detention for the purposes of CDP and their assistance should remain in payment.</p> <p>There is an overrepresentation of males in the young prison population<sup>14</sup>. For this reason, young disabled males are likely to benefit more frequently from these changes. This will however not disadvantage female children and young people.</p> <p>Since 2016, fewer than five individuals under the age of 16 have been detained in legal custody in Scotland.<sup>15</sup></p>

<sup>14</sup> Meta-analysis conducted in 2015, [https://www.cambridge.org/core/services/aop-cambridge-core/content/view/23477B340EDE335069C9050EF9F0DD0A/S0033291714000762a.pdf/metaanalysis\\_of\\_the\\_prevalence\\_of\\_attention\\_deficit\\_hyperactivity\\_disorder\\_in\\_incarcerated\\_populations.pdf](https://www.cambridge.org/core/services/aop-cambridge-core/content/view/23477B340EDE335069C9050EF9F0DD0A/S0033291714000762a.pdf/metaanalysis_of_the_prevalence_of_attention_deficit_hyperactivity_disorder_in_incarcerated_populations.pdf)

<sup>15</sup> <https://www.gov.scot/publications/scottish-prison-population-statistics-2019-20/pages/4/>



We know that, on average, children and young people spend more periods of time out-with legal detention as part of the rehabilitation process with shorter sentences. This policy will have a positive impact as it provides consistency for young people and their families regardless of which environment a young person becomes resident in.

It will ensure that a child or young person's care needs are met whilst they are at home or in legal detention. It avoids potentially putting children and young people and their families in the situation whereby they are faced with a sudden reduction in part of a household's income. This is particularly important given the research which indicates that households with at least one disabled child are far more likely to be in poverty.

It also makes for a smoother transition back into the community and removes the need for re-application by safeguarding children and young person's entitlement to assistance during what can be a potentially turbulent part of their life.

#### Amendments relating to age criteria

These regulations amend the age criteria to allow for young people to remain on CDP after age 18 in specific circumstances. This will give more flexibility around the time of transition from CDP to Adult Disability Payment and will help avoid any gaps in entitlement.

The specific circumstances are individuals:

- o receiving CDP under terminal illness rules;
- o awaiting a determination of their entitlement to Adult Disability Payment;
- o in receipt of DLA in rest of the UK immediately before moving to Scotland; or
- o having their case transferred.

We have sought to include a time limit of age 19 for these individuals to avoid the potential situation whereby a person could remain on CDP indefinitely. We consider that allowing this particular cohort of individuals to remain in receipt of CDP up until their 19th birthday, will provide sufficient time for a decision to be made regarding their Adult Disability Payment entitlement and in doing so will help alleviate any undue stress and anxiety.

We have inserted an amendment to clarify, for the avoidance of doubt, that the rules that CDP may be paid in respect of individuals who are aged at least 3 months and under 18 years old do not apply to terminally ill children and young people. We have also sought to clarify that the limitation that payment of CDP may only be paid in respect of an individual who is under the age of 16 years on the day on which entitlement begins doesn't apply for transferring individuals who transfer after the age of 16.

These changes have been made in response to feedback on the challenges young people face during the transition from Child DLA to PIP. The changes are intended to introduce further flexibility and eliminates the risk of individuals having gaps in entitlement and removes the need to undergo a PIP assessment during what is cited as a stressful transition period for young people.

These amendments will allow for the individual's needs to be met during the period of transition between child and adult services. It also aligns with the original intentions of CDP, which is to provide some financial support to meet the additional cost of being disabled, and to ensure that disabled children and young people can access appropriate care and remain mobile, allowing them to feel more included in society.

The changes have been largely informed by the original output from our Social Security Experience Panels, our expert advisory groups, informal research and public consultation. They are deemed to be in the best interest of children and young people and will help ensure that young people are not impacted negatively during their transition from child to adult services.

#### Amendments to the past presence test

Under the principal regulations, serving members of the armed forces and civil servants are required to have met each of the residence and presence tests immediately prior to the start of their absence caused by their employment, including the past presence test, which requires 26 weeks' presence in the Common Travel Area in the past 52 weeks at the date an application is made. These regulations also seek to dis-apply the past presence test to civil servants and members of the forces on the basis that the Scottish Government considers that the policy intent is served by requiring ordinary residence in Scotland and habitual residence in the Common Travel Area immediately prior to the start of any work-related absence, in addition to the broader fact of the individual's employment in the civil service or in the armed forces.

These changes will result in a more straightforward application journey for individuals who are existing civil servants and members of the armed forces. It reduces the risk of any ambiguity in deciding entitlement to CDP and in doing so, increases inclusivity for children and young people by providing some consistent financial support to meet the additional cost of being disabled. It also makes it easier for disabled children and young people to access appropriate care and remain mobile, allowing them to take advantage of opportunities for learning, employment, leisure and social situations in a more seamless manner.

#### Amendment relating to the care component criterion

This amendment changes the wording for night-time care needs from “throughout the night” to “at night”. The Scottish Government considers that the change in wording will avoid any interpretation that goes against the original policy intention, which is in alignment with the DLA provision.

The purpose of the amendment is to avoid any confusion on the level of care which is required to constitute ‘throughout’ the night and will be the same as the DLA criteria. It also aligns with the rules relating to moving from the lowest or middle rate of the care component, to the highest. This will help remove any ambiguity and provides certainty for disabled children and their families on the rules for entitlement to the mobility component.

#### Amendment regarding changes in residence between Scotland and the rest of the United Kingdom

When an individual moves from Scotland to either England and Wales or Northern Ireland, Social Security Scotland will continue to pay a 13 week run-on of CDP from the date the client moves elsewhere in the UK. This gives the client time to apply to either the Department for Work and Pensions or Department for Communities for DLAC or PIP (if the client is now over 16). These regulations make clear that if an individual fails to report a move, that the date that CDP stops is 13 weeks after the date of the move.

In the principal regulations it states that entitlement to CDP begins on the day after the day on which DLA ceases to be paid. As an individual’s payment of DLA might have been reduced to £0, whilst they are still entitled to DLA, we want to remove any potential ambiguity on when a person’s entitlement to DLA ends, and their entitlement to CDP begins and have therefore amended this to refer to when DLA entitlement ends.

These amendments will help to prevent a financial ‘cliff edge’ due to a sudden reduction in part of a household’s income and give people time to apply for DLA or PIP. This is particularly important given the data indicates that households with at least one disabled child are far more likely to be in poverty. In mitigating the loss of income to households during moves, we anticipate this will have a positive impact on disabled children and young people. Providing more clarity around the rules will help ensure that all individuals are treated equally and fairly.

#### Amendments relating to re-determination and appeals

Social Security Scotland has 56 calendar days to complete a re-determination. If an individual doesn’t request a re-determination in the correct way, or fails to do it within the time specified and lacks good reason, that individual has a right to appeal directly to the First-tier Tribunal for Scotland, Social Security Chamber (this is called a ‘process appeal’). The Tribunal may decide the individual either did request the re-determination in the right way, or they did not have good reason for not meeting the time-limit.

This amendment clarifies the policy intention regarding when the period Social Security Scotland has to complete a re-determination begins in a case if the Tribunal has decided that a request for re-determination has been validly made. This date will be the day on which the Tribunal makes that decision. This will help ensure that Social Security Scotland will have 56 days to complete the re-determination, ensuring that there is sufficient time to gather any additional supporting information needed to make a new determination.

We want to ensure that no one is disadvantaged by time limits for challenging a decision. In our Consultation on Disability Assistance, feedback suggested that accessing support or advice on challenging a decision can be time consuming with more time being needed to do so. Not having clear information may act as a barrier and deter individuals from challenging decisions. This policy will be beneficial as it will provide certainty for children and their families about how long Social Security Scotland has to complete a re-determination. This in turn, will make people feel more confident in challenging a decision they do not agree with.

#### Amendments relating to Short-Term Assistance

The Scottish Government has introduced Short-Term Assistance (STA) where Social Security Scotland has made a decision to reduce or stop a continuing payment of CDP and that decision is subject to a request for re-determination or an appeal. STA will be available until the First-tier Tribunal (FtT)

for Scotland has made a determination and is non-recoverable. Where a person is eligible for STA, the value of STA will be the difference between the level of assistance paid prior to the reduction and the new level of assistance (including if that amount is now nil because entitlement to CDP has stopped).

The intention of the policy is to ensure an individual is not discouraged from challenging that decision or from accessing administrative justice by having to manage, for a period, with a reduced income.

STA is not available in the reserved social security system and providing support in this way is another example of where the Scottish Ministers are removing barriers to challenging decisions in the Scottish social security system.

These regulations also clarify the scenarios where short-term assistance is payable to ensure that it covers the period when the change in entitlement is being challenged to the First-tier Tribunal, but the outcome is not yet known. It also includes admission to alternative accommodation to the scenarios when an individual is not entitled to short-term assistance in respect of the care component of CDP.

It further clarifies that the Scottish Ministers are to make a determination without application when ending an individual's entitlement to short-term assistance. It also corrects a cross-referencing issue in the principal regulations, to ensure entitlement to STA would run from the date of request for re-determination to the date of determination made at the end of that re-determination. We have also introduced a time limit for STA requests to be made. These mirror the time periods that are currently in place for re-determination appeals. This means that individuals will have 42 days to request a redetermination on a decision on STA. This will remove any confusion on how STA should operate and more clearly reflects the policy intention.

We do not consider that this change will have any impact on children's rights, or children's wellbeing.

#### Amendments to determinations following change of circumstances

The changes we are making will require the Scottish Ministers to make a determination of an individual's entitlement to CDP when they become aware that a determination of an individual's entitlement was made in ignorance of a material fact, which would possibly result in an alteration to the component or rate of CDP payable to the individual, or which

is likely to mean that the individual is no longer entitled to CDP.

The Scottish Government considers that this change better reflects the policy approach and brings more fairness to decision making which will result in child and young people receiving the correct award of CDP they are entitled to.

Amendments relating to when an increase in level of entitlement takes effect

The changes we have made clarify the policy intention to better recognise that sometimes a determination without application will not only affect entitlement but payment. In addition to clarifying what will be considered, the changes also make clear the dates when any increase in level of entitlement takes effect and that the provision applies to determinations made due to the case transfer process.

The impact of these changes will bring more transparency and fairness to our decision making and will help ensure that people have full understanding of the process.

We do not consider that these changes will have any impact on children's rights, or children's wellbeing.

Amendments relating to when a decrease in level or cessation of entitlement takes effect

These regulations seek to clarify that where clients knowingly fail to report a change in circumstance, or fails to notify the change as soon as reasonably practicable after it occurs, the effective date of the determination should be the date on which the client should have reported the change, and not when a determination is made.

The Scottish Government considers that this change would ensure better consistency with the policy approach and will ensure that people who report changes timeously are not disadvantaged in comparison to people who knowingly report them late.

We do not consider that these changes will have any impact on children's rights, or children's wellbeing.

Amendments relating to Case Transfer

These regulations correct citations to the Social Security Contributions and Benefits Act 1992 to ensure individuals whose Disability Living Allowance was negatively impacted for failing to meet the "substantially in excess" test for either the care component, mobility component, or both before they

turned 16 can have their award increased at the point of case transfer where appropriate.

They also clarify the interpretation of regulation 15 of the CDP regulations to ensure clients with severe visual impairment receive the correct rate of the mobility component at the point of case transfer.

The impact of these changes will be to better reflect the policy intention to ensure children and young people whose entitlements transfer are not disadvantaged when compared to those who make new CDP applications due to differences in eligibility rules between CDP and DLA.

The regulations clarify the effective date of determinations without application that result from a change to a relevant past Disability Living Allowance award and highlight this applies to changes to that award made under either the English and Welsh or Northern Irish rules.

This amendment aims to give the Scottish Ministers the necessary powers to set entitlement dates appropriately where the DLA award the transferred CDP award is based on is changed and allow this to apply regardless of whether the DLA award was changed by UK or Northern Irish governments or tribunals.

The regulations also amend the timescales in which an individual case must complete the transfer process.

They 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 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.

We believe these changes will better promote the rights and well-being of children and young people whose initial CDP entitlement is established as a result of the case transfer process by ensuring they are not financially disadvantaged by the transfer process.

Based on the evidence gathered, previous consultative engagement with users and stakeholders, the Scottish Government does not consider that the amendment regulations infringes upon the rights of the child as set out in the articles of the UNCRC. Our assessment of the impact of the policy on the relevant articles of the UNCRC is as follows:

**Article 3 - Best interests of the child**

This policy was largely informed by the output from our Social Security Experience Panels, our expert advisory groups, informal research, and public consultation. The decision for the Scottish Government to take forward the policy is deemed in the best interest of children and young people aged 3 months to 18 years old as it will provide additional financial support to help mitigate the additional costs incurred as a result of being disabled.

**Article 12 - Respect for the views of the child**

This policy has been developed through consultation with and input from people with lived experience of the current social security system, including young people, their families and carers through our Social Security Experience Panels. This policy will impact the lives of disabled children and young people and their contribution is crucial in shaping a successful policy.

**Article 23 - Children with disabilities**

The financial resource provided by CDP is intended to ensure that children and young people who receive it are more likely to be able to live a full life, to be as independent as possible and to be able to engage in the community. By ensuring that some of the additional costs incurred as a result of additional care or mobility requirements are mitigated, eligible disabled children and young people will have the option to engage in more activities of their choosing. It should also have an indirect positive impact on the families and carers of these individuals through connected services.

**Article 26 - Social security**

CDP has been developed for children and young people in Scotland. We have engaged with individuals and stakeholders to make changes that improve both the rules and the client experience of applying for, and receiving, CDP. These changes will ensure that the application process is easily accessed by those who are eligible, that take up amongst eligible individuals increases, and that, throughout



	<p>engagement with Social Security Scotland, individuals are treated with dignity, fairness and respect.</p> <p><b>Article 27 - Adequate Standard of Living</b></p> <p>The key policy intent of CDP is to provide children and young people with payments to help mitigate the costs they incur as a result of a disability or long term condition. CDP will not be means-tested. Children and young people in receipt of CDP will be able to use it to pay for things such as care, access to community resources, transport, social activities, and any other goods or services of their choosing.</p> <p>We consider that the policy measures outlined above are anticipated to be broadly positive in relation to the impact on children's rights and wellbeing. The most relevant wellbeing indicators for this policy are:</p> <p><b>Healthy:</b> The introduction of CDP is intended to improve the health and wellbeing of disabled children and young people by providing financial support that can help to meet the cost of care and mobility associated with being disabled.</p> <p><b>Responsible:</b> CDP is intended to provide children and young people with a disability and their families the support needed to live a responsible life. This is achieved by providing opportunities and encouragement to be active in family, school and community life, ensuring individuals are able to be involved in the decisions that affect their lives.</p> <p><b>Included:</b> CDP is intended to provide some financial support to meet the additional cost of being disabled, and to ensure that disabled children and young people can access appropriate care and remain mobile, allowing them to take advantage of opportunities for learning, employment, leisure and social situations.</p>
Monitoring and review	<p>On-going stakeholder engagement with key organisations – such as the Child Poverty Action Group, Rights Advice Scotland, Young Scot, DACBEAG, and our Ill Health and Disability Benefit Stakeholder Reference Group – will provide the Scottish Government with an opportunity to monitor the impact of the changes made by these regulations.</p> <p>The Communities Analysis Division within the Scottish Government will run a comprehensive evaluation programme to consider the impact of the changes made by these regulations, with a full suite of equalities data for new applicants. The Scottish Government will also be publishing a Disability Benefits Evaluation Strategy in Summer 2021, which</p>

	<p>will set out how effective our policy choices have been for clients.</p> <p>The Scottish Ministers have also committed to engaging with, and reporting regular progress to, the Islands Strategic Group to ensure that those representing the interests of island communities and others with experience of the current system are fairly represented in the development and delivery of the Scottish social security system.</p>			
<b>Regulation - Clause</b>	<b>Aims of measure</b>	<b>Likely to impact on . . .</b>	<b>Compliance with UNCRC requirements</b>	<b>Contribution to local duties to safeguard, support and promote child wellbeing</b>
Disability Assistance for Children and Young People (Scotland) Amendment Regulations 2021	These amendment regulations build on the principal regulations which set out how CDP will be delivered and make provision for 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 the Scottish Ministers to Social Security	Children and young people in Scotland between the ages of three months and 18 years (and older in some specific circumstances) with a disability or health condition and their families.	The regulations do not infringe upon any UNCRC Article. The Scottish Government considers that it gives further effect to: Article 3 (best interests of the child) Article 12 (respect for the views of the child) Article 23 (children with disabilities) Article 26 (social security) Article 27 (adequate standard of living)	The regulations do not infringe upon any of the indicators. They are likely to have a positive impact on the following indicators: Healthy, Responsible, Included

	Scotland. These children and young people will transfer from DLAC to CDP.			
<b>CRWIA Declaration</b>				
<b>Authorisation</b>				
<b>Policy lead</b> Jennifer Sinclair Policy Manager Social Security Policy Division  David Hilber Case Transfer Policy Lead Social Security Policy Division		<b>Date</b>		
<b>Deputy Director or equivalent</b> Ian Davidson Deputy Director Social Security Policy Division		<b>Date</b>		