

Fairer Scotland Assessment

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| <p>Title of Policy, Strategy, Programme etc.</p> | <p>The Disability Assistance for Children and Young People Amendment (Scotland) Regulations 2021</p> |
| <p>Summary of aims and expected outcomes of policy</p> | <p>The Social Security (Scotland) Act 2018¹ (“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).</p> <p>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.</p> <p>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.</p> <p>The Disability Assistance for Children and Young People (Scotland) Regulations 2021 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 Scotland. These children and young people will transfer from DLAC to CDP.</p> <p>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.</p> <p>This policy is closely aligned with the Healthier, Wealthier and Fairer Strategic Objectives, and contributes to the following National Outcomes:</p> |

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

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| | <ul style="list-style-type: none"> • We respect, protect and fulfil human rights and live free from discrimination; • We tackle poverty by sharing opportunities, wealth, and power more equally; • We live in communities that are inclusive, empowered, resilient and safe; and • We grow up loved, safe and respected so that we realise our full potential. |
| <p>Summary of evidence</p> | <p>This Fairer Scotland Duty assessment has been developed drawing on a range of primary research, including 2 public consultations,²³ engagement with those with lived experience via focus groups, as well as ongoing consultation with stakeholders through our independent Disability and Carers Benefits Expert Advisory Group (DACBEAG)⁴ and the Ill Health and Disability Benefits Stakeholder Reference Group.</p> <p>This work also drew upon interviews conducted via the Scottish Government’s Social Security Experience Panels.⁵ The Panels involve people with lived experience of the benefits that are coming to Scotland and have over 2,400 members drawn from people across Scotland. In 2019, a further round of recruitment took place, targeting specific groups identified as being underrepresented such as ethnic minorities and young people.</p> <p>A specific survey regarding the case transfer process was sent out to Experience Panel members in February 2019. 559 responses were received and a summary of these responses was published.⁶</p> <p>Despite the continuing impact of coronavirus, work with Experience Panels has continued, with engagement around the following topics helping to inform our policy.</p> <p><u>The link between poverty and disability</u></p> <p>Research has shown that poverty disproportionately affects those with a disability, with disabled people experiencing higher poverty rates than the rest of the</p> |

² <http://www.gov.scot/Topics/People/fairerscotland/Social-Security/SG-Response>

³ <https://www.gov.scot/publications/consultation-disability-assistance-scotland-analysis-responses/>

⁴ <https://www.gov.scot/groups/disability-carers-benefits-expert-advisory-group/#:~:text=The%20Disability%20and%20Carers%20Benefits,on%20disability%20and%20carers%20benefits.>

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

⁶ <https://www.gov.scot/publications/social-security-experience-panels-designing-case-transfer-process-main-report/>

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| | <p>population.⁷ UK-wide, disabled people make up 28% of people in poverty and a further 20% of people in poverty live in a household with a disabled person. This statistic is largely replicated in Scotland where around 410,000 households in poverty (42% of all households in poverty) include a disabled person or are disabled themselves.⁸</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). If disability benefits are not counted towards household income, this raises to 30%. 'Family' in these circumstances referred to the core family in a household, comprising one or two adults and children, if any.</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 illness⁹. 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 Trust¹⁰ showed that the annual cost of bringing up a disabled child is three times greater than for a non-disabled child. Disabled</p> |
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⁷ <https://www2.le.ac.uk/departments/law/research/cces/documents/the-energy-penalty-disability-and-fuel-poverty-pdf>

⁸ https://www.npi.org.uk/files/3414/7087/2429/Disability_and_poverty_MAIN_REPORT_FINAL.pdf

⁹ <https://www.gov.scot/publications/poverty-perspective-typology-poverty-scotland/pages/5/>

¹⁰ <https://www2.le.ac.uk/departments/law/research/cces/documents/the-energy-penalty-disability-and-fuel-poverty-pdf>

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| | <p>people face higher costs than non-disabled people, such as the cost of specialist equipment, therapies and home adaptations to manage a condition.¹¹ Travel costs may also 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>Poverty amongst disabled people is likely to be exacerbated in light of the COVID-19 crisis. In the United Nations policy brief on disability- inclusive response to COVID-19¹², the report makes connections between the pandemic and poverty, with disabled people likely to be disproportionately impacted.</p> |
| <p>Summary of assessment findings</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.</p> <p>These changes will help to reduce inequalities of outcome as it will ensure that a child or young person’s care needs are met and the household does not suffer financial deprivation because of the financial impact of supporting a disabled child whilst under legal detention at home. It also 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.</p> <p><u>Amendments relating to age criteria</u></p> <p>These regulations amend the age criteria to allow for young people to remain on CDP after age 18 in specific</p> |

¹¹ <https://www.jrf.org.uk/income-and-benefits/>

¹² [sg_policy_brief_on_persons_with_disabilities_final.pdf \(un.org\)](#)

circumstances. This will give more flexibility around the time of transition from CDP to Adult Disability Payment (ADP) and will help avoid any gaps in entitlement.

The specific circumstances are individuals:

- receiving CDP under terminal illness rules;
- awaiting a determination of their entitlement to ADP;
- in receipt of DLA in rest of the UK immediately before moving to Scotland; or
- 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 ADP 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.

This will have a positive impact on disabled young people by reducing the anxiety and challenges during what can often be a challenging time for families. It will also help mitigate any further drop in household income at a time when other child benefits and respite care stops.

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 help reduce the inequalities of outcomes for young people and their families who are existing civil servants and members of the armed forces by having a more straightforward application journey.

It will also reduce 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 will make 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. We believe this change will be beneficial to disabled children and young people and their families as it will relieve any concerns that a different criteria on the level of care will be applied under CDP.

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. 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.

Providing more clarity around the rules will help ensure that all individuals are treated equally and fairly. It will also 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.

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 had 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).

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 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.

Extending the scenarios where STA is payable and providing clarity around how it is ended will enable people to feel more confident in seeking administrative justice. Having prescribed time limits for requesting a redetermination on a decision on STA will also remove any potential confusion on how STA should operate. This again will help encourage those to challenge decisions, in a way which does not negatively impact on the families or young person's finances. This is particularly important given that in Scotland 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%).

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 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 people have a full understanding of how decisions are made about entitlement to CDP.

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 in addition to bringing more transparency and fairness to our decision making, it will ensure that people who report changes timeously are not disadvantaged in comparison to people who knowingly report them late.

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 financially 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.

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| | <p>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. This will ensure individuals receive their correct entitlement for past periods. The regulations also amend the timescales in which an individual case must complete the transfer process.</p> <p>They ensure cases identified as meeting the special rules for terminal illness receive the highest rate of both components when the case is transferred.</p> <p>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.</p> <p>We believe these changes will better promote the reduction of inequality and poverty for 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.</p> |
| <p>Recommendations and conclusion</p> | <p>This Fairer Scotland Duty has identified that overall, the amendment regulations has the potential to build on the positive impact that the introduction of CDP will have in reducing inequality and tackling poverty for disabled people in Scotland.</p> |
| <p>Sign off</p> | <p>Ian Davidson Deputy Director Social Security Policy Division</p> <p style="text-align: right;">September 2021</p> |