

Children's Rights and Wellbeing Impact Assessment (CRWIA) summary - Social Security (Industrial Injuries Benefit and Personal Independence Payment) (Telephone and Video Assessment) (Miscellaneous Amendments) (Scotland) Regulations 2021

Introduction

1. The Scottish Government has had Executive Competence for Personal Independence Payment (PIP) and Industrial Injuries Disablement Benefit (IIDB) since April 2020. However, PIP and IIDB are currently delivered by the Department for Work and Pensions (DWP), on behalf of the Scottish Government under the terms of Agency Agreements, prior to the Scottish Government establishing new benefits to replace these in Scotland.

2. Prior to March 2020, clients applying for PIP and IIDB were required by the DWP, in most circumstances, to attend a face-to-face assessment with an Assessment Provider to help to determine their entitlement to the benefit.

3. In March 2020, in light of the escalating situation around Covid-19 and to safeguard the health of clients and staff, the DWP suspended face-to-face assessments for all health and disability benefits.

The DWP took the following action:

- Stopped new face-to-face assessments being scheduled across PIP and IIDB
- Contacted clients to cancel planned face-to-face assessments where possible
- Developed and delivered a PIP telephone assessment service to replace the face-to-face assessment (in addition to paper-based assessments which were already taking place)
- Suspended all new applications to IIDB which require a face-to-face assessment.
- Continued to assess some new applications for IIDB on paper evidence alone - these are for clients who are terminally ill, and others with diseases assessed on a fast-track basis, which attract automatic 100% awards.

4. Since November 2020 DWP has also commenced a project to explore the feasibility and benefits of conducting assessments by video. DWP believe that video assessments may be helpful in cases where a

telephone assessment is not sufficient or appropriate and where face-to-face assessments are not possible.

5. This proposed legislative amendment will provide a legal basis for the continued use of telephone assessments and future use of video assessments. DWP have advised that they are seeking to introduce video assessments once the relevant legal amendments are made. They have concluded that a change to PIP and IIDB regulations relating to England and Wales is necessary in order to reflect this policy. This will bring DWP practice closer to the Scottish Government's proposed approach to the delivery of Adult Disability Payment.

6. The Agency Agreements between the Scottish and UK Governments require that the Scottish Government consider mirroring changes to the required legislation to enable PIP and IIDB to be administered for Scotland consistently with the rest of the UK. Section 32 of the Scotland Act 2016 and section 53 of the Scotland Act 1998, taken together, require that where functions in relation to disability assistance have been devolved, the Scottish Ministers must exercise those functions instead of the Secretary of State. In this instance that means Regulations require to be laid before the Scottish Parliament to amend the legislation as it applies in Scotland to reflect the amendment being carried out by the DWP for England and Wales.

PIP

7. PIP is a disability benefit for people of working age (16 to State Pension age (SPa)) to contribute towards the extra costs associated with living with a long-term health condition or disability.

8. New clients do not receive any financial support until a decision is made on their application. When the DWP suspended face-to-face assessments in March, it introduced telephone assessments for all new PIP applications where they deemed it possible to do so. This was also the case for existing clients who required to be re-assessed following a change in their circumstances. This left ~2% of applications where a paper-based review or telephone assessment was regarded by DWP as not possible. For these cases, recommendations were made on the information available.

9. The DWP have informed the Scottish Government that, subject to public health advice, they intend making face-to-face assessments

available for clients unable to undertake a telephone assessment in the future.

IIDB

10. IIDB is a form of compensation for clients who have been injured or contracted a disease or health condition through the course of their employment. Individuals can receive IIDB for life provided they continue to meet the entitlement conditions. The assessment determines the percentage of disablement that is a result of a workplace acquired disease or workplace accident.

Overview

11. This Child Rights and Wellbeing Assessment sets out the Scottish Government's analysis of the potential impact of the legislation on children and young who it applies to. It also considers the wider impact on children living in families where an adult is likely to be required by DWP to participate in an assessment for PIP or IIDB.

12. The proposed legislation is anticipated to have a broadly positive impact on children's rights and welfare. The introduction of greater flexibility in the provision of PIP and IIDB assessments is likely to benefit disabled people and their families.

Who was involved in assessing the Child Rights and Wellbeing impact?

13. The Scottish Government has not undertaken consultation activity on this particular amendment because of the short amount of time available to make the required amendment. However, the Scottish Government has carried out extensive research and engagement with individuals with lived experience in developing a new system of Scottish Disability Assistance, including with children, young people, and representative stakeholder organisations. We have received particularly extensive feedback in relation to the assessment process.

14. The Scottish Government intend to replace PIP with Adult Disability Payment in 2022, replacing face to face assessments with client consultations. These consultations will only be undertaken when it is the only practical way to gather the information required to make a determination. Consultations will be held in a manner that suits the client, including by phone and video.

15. When the Scottish Government commence delivery of Adult Disability Payment, clients will be given a choice of time for their consultation if one is required and, if carried out face to face, will be in a place that suits the client. Therefore, the proposed amendment to the PIP and IIDB regulations align with the general policy commitments of the Scottish Government around providing an increased level of flexibility in the application and decision making process for Adult Disability Payment.

16. A consultation was undertaken in 2019 to seek views on disability assistance including how assessments are carried out. The consultation results were clear that respondents believed that there should be a more flexible approach to assessments. Stakeholders have endorsed the Scottish Government's proposed approach to "significantly reduce face-to-face assessments."

17. Many respondents cited issues faced when travelling to an assessment. One in three of those responding said that the ability to travel depended on the particular condition, disability or health status of the client at the time of the assessment.

18. Stakeholders such as the Disability and Carer Benefits Expert Advisory Group (DACBEAG) have expressed support for the Scottish Government's proposed approach to client consultations. DACBEAG have stated that "face-to-face assessments will not, in the majority of cases, provide any useful additional evidence regarding a client's entitlement to Disability Assistance and we agree with the Scottish Government's commitment to reduce the number of these assessments."

19. The 2019 consultation also included equality questions to inform the Scottish Government's approach. We sought views on an Equalities Impact Assessment that analysed the impacts of the policies contained in the consultation on those with protected characteristics. No significant concerns were raised in relation to the "age" protected characteristic.

20. A public consultation on draft regulations for Adult Disability Payment was launched on 21 December 2020. The consultation will run until 15 March 2021. An Equalities Impact Assessment was also carried out relating to the draft regulations and respondents invited to comment on the report.

21. The Scottish Government intend to replace IIDB with Employment Injuries Assistance. A date for implementation has not yet been confirmed. A public consultation and a further Equalities Impact Assessment will be undertaken to inform the delivery of Employment Injury Assistance.

Data

22. The Scottish Health Survey covering the calendar year 2019 reports that among young people aged 16-24, around 22% have a limiting longstanding illness¹.

23. The mid-year population estimates showed that as of 30 June 2019 there were almost 108,000 people aged 16 or 17 in Scotland². At the same time there were around 3,700 16-17 year olds receiving PIP³, accounting for 3.4% of this demographic. For context, there were almost 201,000 working age PIP recipients among over 3.5 million people of working age (including 16 and 17 year olds). PIP recipients account for 5.7% of this wider group. In the financial year 2019-20 there were around 2,800 applications to PIP for 16 or 17 year olds in Scotland.

24. In the PIP caseload information to the end of July 2020, there are around 3,200 people in Scotland of all ages that have received a PIP award under the Terminal Illness Special Rules⁴. A very small number of these are aged 16 or 17 (figures suggest there are around 20 young people at GB level).

25. According to DWP data, no-one aged 16-17 in Scotland is in receipt of IIDB. However it is possible that someone applying for IIDB for the first time aged 16-17 may be affected by the proposed change.

United Nations Convention on the Rights of the Child (UNCRC)

26. The policy intent has been assessed against the relevant UNCRC articles:

Article 3 - Best Interests of the Child: This proposed change ensures greater flexibility in the provision of PIP and IIDB assessments. This

¹ <https://www.gov.scot/publications/scottish-health-survey-2019-supplementary-tables/>

² 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>

³ Department for Work and Pensions Stat-Xplore (accessed 07 October 2020)

⁴ Department for Work and Pensions Stat-Xplore (accessed 20 November 2020)

means that some 16-17 year olds who DWP require to participate in an assessment will be able to do so without being required to travel to an unfamiliar location. During extensive engagement carried out by the Scottish Government in developing policy for Adult Disability Payment, we heard from young people and their parents about the stressful and anxiety-inducing nature of face-to-face assessments. This is why the Scottish Government has committed to replacing assessments with client consultations. Social Security Scotland has been developed around the principles of dignity, fairness and respect. The proposed change brings current practice closer to the policy intentions of the Scottish Government in that it is likely to reduce face-to-face assessments.

Parents of 16-17 year olds who are disabled or have a health condition may also be impacted by the proposed legislation. If a parent is not required to travel to attend a PIP or IIDB assessment, it may mean that they do not have to arrange alternative child care if this is required. This may particularly benefit parents in receipt of PIP or IIDB who care for a disabled children and/ or young people.

Article 12 - Respect for the views of the child: The proposed legislation will introduce more flexibility in the undertaking of PIP and IIDB assessments and therefore young people applying for or in receipt of these benefits should be more likely to have an assessment carried out in a way that meets their needs. It should be noted that DWP have advised that clients will not be given the choice as to how their assessment is carried out. This will apply equally to all clients, regardless of age. When the Scottish Government commence delivery of Adult Disability Payment, clients will be given the choice over how they engage with Social Security Scotland. They will also be able express a preference relating to how a consultation is carried out.

Article 23 - Children with a Disability: The proposed amendment may benefit children with a disability who have a parent(s) in receipt of PIP and/ or IIDB when required to attend an assessment by DWP. It also may mean that young people who themselves partake in a video or telephone assessment will save on the travel and associated costs of attending an assessment centre. Although DWP provide clients with travel expenses, some travel, such as by taxi, is not always covered. Furthermore, some clients experience a loss of earnings because of the amount of time it takes to travel to and from an assessment centre, depending on the circumstances of their employment.

We have also heard that disabled people face increased barriers in accessing public transport. The proposed legislation should mean that some clients participating in a remote assessment will not have to overcome these barriers in order to access the financial support they are entitled to.

Article 26 - Social Security: Young people aged 16 and 17 years old can apply for PIP and IIDB. DWP have advised that the proposed legislation will ensure that the assessment process is made more accessible. This brings current DWP practice closer in line with the Scottish Government commitment to treat individuals with dignity, fairness and respect.

Getting it right for every child (GIRFEC) wellbeing indicators

The Children and Young People (Scotland) Act 2014 introduced a range of indicators used to measure children and young peoples' wellbeing. Our assessment of this proposed policy against this framework is:

Healthy: There may be some limited health benefits, particularly mental health benefits, to clients who do not have to attend a face-to-face assessment. This is based on the significant engagement we have carried out with people with experience of the current system.

Achieving: The provision of telephone and video assessments means that some clients will have less of their time taken up by travelling to attend an assessment. This will contribute to enabling disabled individuals, including children and young people, to engage in activities of their choosing including education, development opportunities and social activities.

Active: As outlined above, the provision of telephone and video assessments may increase the ability of individuals, including children and young people to engage in community activities of their choosing.

Respected: The principles of dignity, fairness and respect are at the heart of the new Scottish social security system and specified in the Social Security (Scotland) Act 2018. The proposed legislation increases the amount of flexibility in the PIP and IIDB assessment process and thereby brings current practice closer in line with the Scottish Government's commitments.

Specific policy impacts

Young People Aged 16-18

27. Young people in receipt of PIP and IIDB may benefit from the possibility of a remote assessment. This is because some young people and their families will not have to undergo a potentially stressful and anxiety inducing face-to-face assessment. Being required to undertake an assessment often happens at a time when young people are experience a transition to adult services, which can be an uncertain and stressful time in itself.

Conclusion

28. Based on the evidence gathered, previous consultative engagement with clients and stakeholders, and assessment of the demographic makeup of current PIP and IIDB recipients, the Scottish Government does not consider that this legislation infringes upon the rights of the child as set out in the articles of the UNCRC. The assessed impacts of the policy make a positive contribution to the rights and wellbeing of young people who are eligible to receive PIP and IIDB as set out in the assessment of the policy against UNCRC articles outlined above.

29. The Scottish Government has assessed the Social Security (Industrial Injuries Benefit and Personal Independence Payment) (Telephone and Video Assessment) (Miscellaneous Amendments) (Scotland) Regulations 2021 against the indicators of wellbeing as set out by the Children and Young People (Scotland) Act 2014 and has concluded that the policy is likely to have a positive impact against each of the indicators, for young people who are affected and for the children of adults who are required to undertake a PIP or IIDB assessment.