

POLICY NOTE

SOCIAL SECURITY (INDUSTRIAL INJURIES BENEFIT AND PERSONAL INDEPENDENCE PAYMENT) (TELEPHONE AND VIDEO ASSESSMENT) (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2021

SSI 2021/97

The above instrument was made in exercise of the powers conferred by sections 80(1) and 94(1) of the Welfare Reform Act 2012 and sections 9(1) and 189(1) of the Social Security Administration Act 1992. The instrument is subject to negative procedure.

Summary Box

The changes are required to Regulation 9 of the Social Security (Personal Independence Payment) Regulations 2013 and Regulation 26 of the Social Security (Claims and Payments) Regulations 1979 . The amendment will give a legislative basis to the undertaking of assessments through multiple channels for the relevant benefits. Current Personal Independence Payments regulations make provision for assessments to be carried out either face-to-face or by telephone. Industrial Injuries Disablement Benefit regulations make provision for face-to-face assessments only.

Policy Objectives

The regulations are required to amend the PIP and IIDB regulations to provide a statutory basis to the practice of undertaking assessments through alternative channels such as video or, in the case of IIDB, telephone.

Since March 2020, the DWP have undertaken health assessments to determine eligibility for PIP remotely to comply with restrictions imposed as a result of Covid-19. The DWP have undertaken telephone assessments in this period and are currently carrying out a proof of concept exercise in relation to the use of video assessments. The DWP have not undertaken any assessments for IIDB in this period. These amendments will provide a legislative basis for the continued use of telephone assessments and future use of video assessments. DWP are seeking to introduce video assessments once the relevant amendments are made. This will bring DWP practice closer to the Scottish Government's proposed approach to the delivery of disability benefits.

Telephone assessments that have been carried out since March have been done so on the basis of responding to the extraordinary circumstances of Covid-19. As the regulations remain in their current form, there is a risk of legal challenge to the undertaking of assessments for PIP and IIDB by DWP who are administering these benefits on Scottish Ministers' behalf. If the Scottish Government did not make any amendments, there would be legislative divergence between Scotland and England and Wales. This would mean there would be an increased risk of legal challenge to the way assessments would be carried out in Scotland.

DWP are bringing forward regulations to make this change to come into force on 25 March. 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 so as to amend the Regulations as they apply in Scotland to reflect the amendment being carried out by the DWP.

Consultation

The Scottish Government has not undertaken consultation activity because of the short amount of time available to make the required amendments. However, a consultation was undertaken in 2019 which sought views on the way assessments were carried out for disability benefits, including PIP. The consultation made clear that respondents believed that there should be a more flexible approach to assessments and stakeholders have endorsed the Scottish Government’s proposed approach to “significantly reduce face-to-face assessments.”

In 2016 the Scottish Government carried out a consultation on social security in Scotland which sought views on IIDB. No significant concerns were raised about the way assessments for IIDB were carried out.

Key stakeholders such as the Disability and Carer Benefits Expert Advisory Group have expressed support for the Scottish Government’s proposed approach to client consultations which will replace DWP health assessments. Clients will be given a choice of time and place for their consultation if one is required. The Scottish Government will take a multi-channel approach to consultations and communicating with clients when the Scottish Government commences delivery of Adult Disability Payment and Employment Injuries Assistance which will replace PIP and IIDB respectively. The Scottish Government has undertaken extensive engagement with stakeholders and individuals with experience of the current system of disability benefits in developing this approach. These amendments provide a greater degree flexibility in the undertaking of assessments for PIP and IIDB. Stakeholders and clients would therefore expect the Scottish Government to support them.

The 2019 consultation included equality questions to inform the Scottish Government's approach. The Scottish Government launched a public consultation on the Adult Disability Payment draft regulations on 21 December 2020. The consultation also included a full Equalities Impact Assessment.

Impact Assessments

Impact Assessment	Status	Comment
EQIA	Complete	No impacts identified.
Fairer Scotland	Partial Assessment complete	Combined with EQIA- no impacts identified.
BRIA	Not required	This is a technical amendment to give effect to existing policy.
CRWIA	Complete	No impacts identified.
Islands	Complete	A positive impact was identified

Environmental	Not required	This is not a qualifying plan under the Environmental Assessment (Scotland) Act 2005
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Financial Effects

The Cabinet Secretary for Social Security and Older People confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Social Security Directorate

February 2021