

Business and Regulatory Impact Assessment

Title of proposal

Personal Independence Payment (Transitional Provisions) Amendment (Scotland) Regulations 2020

Purpose and intended effect

Background

1. The Social Security (Scotland) Act 2018 (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 under the Social Security Contributions and Benefits Act 1992, and the Welfare Reform Act 2012, covering a range of benefits including Disability Living Allowance (DLA), Attendance Allowance (AA) and Personal Independence Payment (PIP).
2. 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, and subject to the direction of Scottish Ministers, to ensure the safe and secure devolution of disability benefits.
3. In a statement to the Scottish Parliament on 28 February 2019, the Cabinet Secretary for Social Security and Older People set out the Scottish Government's vision for disability assistance in Scotland.
4. As part of that announcement, the Scottish Government set out a commitment that children who are entitled to DLA immediately prior to their sixteenth birthday would have their award extended until their eighteenth birthday, rather than be asked to apply for PIP. It is the intention of the Scottish Government that this will allow continuity for families during those crucial transition years when a child becomes an adult.
5. These Regulations will ensure that young people resident in Scotland who are entitled to DLA Child (DLAC) immediately prior to their sixteenth birthday, and whose sixteenth birthday falls on or after 1 September 2020, will not be required to apply for Personal Independence Payment (PIP) at age 16 as is currently the case. Instead, their award of DLAC will be extended until they reach age 18, and they will then be invited to claim PIP or Disability Assistance for Working Age People (DAWAP). DAWAP will be the replacement benefit for PIP in Scotland.
6. The Personal Independence Payment (Transitional Provisions) Amendment (Scotland) Regulations 2020 describe the changes being made to the eligibility criteria for Personal Independence Payment by the Scottish Government.

7. The Scottish Government intends to replace DLAC, PIP and AA with new forms of assistance under the 2018 Act, although it is not intended that significant changes will be made to the criteria for each new devolved benefit. These new benefits will be delivered by Social Security Scotland on behalf of the Scottish Ministers, with most determinations carrying a right of appeal to the First-Tier Tribunal for Scotland's Social Security Chamber.

8. Child Disability Payment (CDP) will replace DLAC and like DLAC, this benefit will be available to disabled children aged from 3 months to 16 years old. Where an individual is entitled to CDP immediately prior to their sixteenth birthday, as with DLAC, their award will be extended until the client reaches age 18.

9. The Scottish Government intends to begin accept applications for assistance from new clients who do not receive either a UK or Scottish Government disability benefit first, and at a later date, existing DWP clients will transfer to Social Security Scotland without having to make a new application and Social Security Scotland will handle all aspects of the client's case.

Objective

10. The new Social Security (Scotland) Act 2018 will allow Scottish Ministers to create a distinctly Scottish approach to developing a new social security system which has dignity and respect at its core. Extending awards of DLA for young people reaching age 16 by two years provides continuity at a key transitional stage in a disabled young person's life.

11. The Scottish Health Survey 2018 provides an accurate estimate of the number of disabled children and young people in Scotland. Within the 12-15 age group, 15% of children have a limiting longstanding illness¹. For young people aged 16-24, 19% of young people have a limiting longstanding illness.

12. In 2019, there were 55,962 children aged 15 in Scotland², and 3,372 children in Scotland aged 15 who were entitled to DLAC³. This represents around 6% of the population.

13. 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%.

¹ Scottish Health Survey (2018) <https://www.gov.scot/publications/scottish-health-survey-2018-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 DWP Stat-Xplore (Accessed May 2020)

14. 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).

15. 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. 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 illness⁴. Child material deprivation in households containing a disabled person reaches 20% compared to 8% of households without a disabled person.

16. 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. Research conducted by the Papworth Trust⁵ showed that the annual cost of bringing up a disabled child is three times greater than for a non-disabled child. Disabled people face higher costs than non-disabled people, such as the cost of specialist equipment, therapies and home adaptations to manage a condition⁶. Travel costs too, 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).

Rationale for Government Intervention

17. In the current system, the upper age limit for DLA Child eligibility is 16, which means that a young person has to undergo what is experienced by many as a stressful PIP assessment just before their 16th birthday.

18. The Scottish Government has set up Social Security Experience Panels, and 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, and we have been working with relevant stakeholders to specifically target young people, ethnic minorities, and people in remote and rural areas.

⁴ <https://www.gov.scot/publications/poverty-perspective-typology-poverty-scotland/pages/5/>

⁵ 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>

⁶ <https://www.jrf.org.uk/income-and-benefits/>

19. We asked Experience Panel members if they felt 16 was the right age to transfer from DLA to PIP⁷. Almost all respondents felt that 16 was not the right age to transition. It was suggested that 18 was a more suitable age. Transitioning to PIP at 16 was seen to be “an extra stress on the parents” and many thought that children were still too young at 16 to move on to PIP. Respondents suggested that 18 was more “age appropriate” and that an extra two years would “give the parent more time to teach their child about their benefits”.

20. This policy is closely aligned with the Healthier, Wealthier and Fairer Strategic Objectives, and contributes to the following National Outcomes:

- 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;
- We grow up loved, safe and respected so that we realise our full potential.

In relation to the five principles of better regulation:

- **proportionate** – the changes will mainly impact young people receiving DLA and their families. The Scottish Government will look to identify and minimise any indirect impacts, for example administrative burdens, on local government, private businesses or third sector organisations as a result of the changes.
- **consistent** – this change builds on the Social Security (Scotland) Act 2018 framework of a new system that is underpinned by dignity, respect and a human rights based approach.
- **accountable** – young people receiving DLA will continue to have a right to challenge decisions regarding their level of entitlement by way of a redetermination, and an onward appeal to the First-Tier Tribunal (Social Entitlement Chamber) if they are unhappy with a decision.
- **transparent** – we will develop a communications strategy with the DWP. This will aim to ensure that people who are eligible, the third sector, local government, education sectors and advice providers are aware of the changes being made.
- **targeted only where needed** – There are an estimated 3,600 young disabled people that we expect to be affected by the changes every year. These changes are targeted at young people with significant disabilities to ensure targeted assistance is provided to those most in need.

⁷ <https://www.gov.scot/publications/social-security-experience-panels-disability-living-allowance-DLAC-children-visual-summary/>

Consultation

Within Government

21. The Social Security Directorate within Scottish Government has, and continues to, engage with all Directorates involved in the development and delivery of social security in Scotland. This includes: Directorates for Housing and Social Justice, Digital, Local Government and Communities; Director General Economy, Director General Health & Social Care, Director General Learning and Justice and Director General Finance. Officials within the Social Security Directorate also maintain regular engagement with counterparts in DWP, HM Revenues & Customs and HM Treasury regarding the devolution of disability assistance.

22. The Scottish Government social security programme has its own governance arrangements and is aligned to the wider Scottish Government and Devolution arrangements at both official and Ministerial level in order to ensure appropriate decision making, monitoring and control. The social security programme is delivery-focussed, tasked with establishing the new Social Security Scotland agency and the safe and secure transition of the devolved benefits. The Programme Board that oversees the delivery of the social security programme includes representation from a range of senior officials across Scottish Government, DWP, and non-executive Directors who provide insight and critical challenges.

Public Consultation

23. 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. 521 formal written responses were 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.

24. The Consultation on Disability Assistance built on the work on the Experience Panels and was published on 5 March 2019. In line with the principles of 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.

25. 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.

26. 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 experts from a range of professional backgrounds. This group, which is independent of the Scottish Government, was established to advise Scottish Ministers on specific policy options for disability assistance and carers benefits due to be delivered in Scotland.

27. 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.

Business

28. The impact of the benefit is going to be dispersed across the country and sectors of the economy. For 2022-23 the financial impact to the Scottish Government of the cost of payments to individuals caused by delaying the PIP assessment for DLAC cases from age 16 to 18 could range from an annual saving of £2.3 million to an additional annual cost of £2.5 million. The uncertainty is largely a result of uncertainty around the success rate for PIP applications made by individuals when they migrate from DLAC after their 16th birthday.

Scottish Firms Impact Test

29. Stakeholder events were also run in tandem with the Consultation on Disability Assistance between 5 March and 28 May 2019 to obtain as wide a view as possible on the forthcoming Scottish social security system. Views were received from many different types of interested stakeholder organisations, such as Child Poverty Action Group in Scotland, Citizens Advice Scotland, the Scottish Association for Mental Health (SAMH), Engender, CEMVO Scotland, Rights Advice Scotland, LEAD Scotland, MND Scotland, National Deaf Children's Society, Royal Blind and Scottish War Blinded, the National Association of Welfare Rights Advisers, Down's Syndrome Scotland, Royal College of Paediatrics and Child Health, Scotland, One Parent Families Scotland, Children's Hospices Across Scotland (CHAS), The Poverty Alliance, Epilepsy Scotland and Glasgow Disability Alliance.

30. It is expected that the introduction of these regulations could cause additional requests for information and support from existing advice services. As a new policy, this may result in additional pressure on advice agencies to become informed. The Scottish Government will continue to engage with the advice services sector as the programme to implement the social security system in Scotland progresses.

31. The Scottish Government does not believe that the extension of DLA awards to age 18 will have an adverse impact on the competitiveness of Scottish companies or the third sector within Scotland, the UK, or elsewhere in Europe or the rest of the world. The change does not directly or indirectly limit the number of suppliers, nor does it limit the ability of suppliers to compete or reduce suppliers' incentives to compete vigorously. Additionally the Scottish Government does not expect there to be any significant impact on the operational business of local authorities or health boards as a result of introducing this provision.

32. There may be some negligible impact on businesses and third sector organisations operating in Scotland in relation to the way the new Social Security Scotland agency delivers the devolved benefits compared to the status quo. These changes are unlikely to place significant demands on third sector organisations providing advice and support for people receiving and enquiring about social security payments and should not require a significant change to their operations.

33. No new procurement is required to support the regulations, as the DWP will continue to administer DLA on behalf of the Scottish Government, subject to the terms of an Agency Agreement between the Scottish and UK Governments. When clients are invited to apply for DAWAP upon reaching age 18, Social Security Scotland is responsible for administration of this form of assistance.

Business Forms

34. No new business forms will be brought in with the implementation of the proposed legislation.

Legal Aid Impact Test

35. Clients will continue to have a right of appeal against decisions made by the DWP to the First-Tier Tribunal (Social Entitlement Chamber). When clients are invited to apply for DAWAP upon reaching age 18, Social Security Scotland is responsible for administration of this form of assistance. Clients applying for DAWAP will have a right to request a redetermination of their entitlement, and have a right of appeal to the First-Tier Tribunal for Scotland's Social Security Chamber.

36. It is not envisaged that there will be any greater demands placed on the legal aid system as a result of implementing this change, principally because the caseload is unlikely to change, and because the measures will be time-limited pending the roll out of CDP (see paragraph 6). Legal Assistance is available to individuals and is subject to a financial eligibility test based on the “disposable income” and “disposable capital” of the applicant. It is a demand led budget and will continue to be available to individuals to appeal an entitlement decision to the First-Tier tribunal, to the Upper Tribunal, the Court of Session or Supreme Court. The Scottish Government does not expect any new impact on the legal aid budget, and expects legal assistance through the statutory scheme of Advice and Assistance, and Advice by Way of Representation will continue.

Enforcement, sanctions and monitoring

37. 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.

38. The Communities Analysis Division within the Scottish Government will also 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.

39. 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.

Implementation and delivery plan

40. A communications strategy will be developed in advance of 1 September 2020. This will aim to ensure that young people who will be affected by the extension of DLA awards to age 18, the third sector, local government, education sector and advice providers are aware of the change, and understand the eligibility criteria. We will develop the communication strategy so that it will be linked in with wider Scottish Government initiatives for improving outcomes for disabled people. This change is transitional pending commencement of the rollout of CDP, and case transfers of clients from DWP to Social Security Scotland. During the case transfer process, a client will not be required to make a new application for benefit, and we have taken a safe and secure approach that ensures clients continue to get the right payment, at the right time.

Summary and recommendation

In summary, the Scottish Government has identified evidence that the extension of DLA awards will contribute an additional investment into the Scottish economy. It is anticipated that these funds will be used to pay for care, goods and services and therefore businesses could benefit from the introduction of the grant.

Any impact to businesses of the regulations should be positive or neutral. The Scottish Government have worked closely with stakeholders to develop the policy and will continue to do so until the change is implemented and will monitor the success of the change once live.

The available evidence shows that there is a strong case to provide the proposed financial assistance and support to young disabled people. We therefore intend to proceed with the extension of DLA awards from age 16 to 18 for clients whose sixteenth birthday falls on or after 1 September 2020.

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: Ann McVie

Date: 24 June 2020

Ann McVie, Deputy Director Social, Security Policy Division

Scottish Government Contact point:

Any queries about this BRIA should be addressed to:

David George
Social Security Policy Division
Social Security Directorate
Scottish Government
Area 1B South
Victoria Quay
Edinburgh
EH6 6QQ

Tel: 0131 244 6212

Email: david.george@gov.scot