

CRWIA title: Personal Independence Payment (Transitional Provisions) Amendment (Scotland) Regulations 2020

Date of publication:

Executive summary

In the current, reserved social security system, children who are entitled to Disability Living Allowance for Children (DLAC) immediately in advance of their sixteenth birthday are required to apply for Personal Independence Payment (PIP). Failure to apply for PIP when invited means that the child's entitlement to DLAC will be ended.

These regulations amend that requirement so that a child in Scotland whose sixteenth birthday falls on or after 1 September 2020 will instead remain on DLAC until reaching age 18. The Scottish Government recognises that at age 16, young people are at a transition point in their life, often moving between child and adult social care services.

It is recognised that this process is stressful, both for young people and their families, and that an extension of existing DLAC awards provides for continuity and stability at a key transitional stage. Research has shown that the process of being invited to apply for PIP, and the likelihood of being asked to attend a face-to-face assessment as part of that process, can be an important barrier to uptake of crucial financial support for disabled young people and their families, particularly at a time when a young person will typically move between child and adult services.

For children who are unsuccessful in apply for PIP, there can be significant implications for a number of other passported benefits and entitlements:

- loss of Motability vehicle;
- loss of Carers Allowance for parents and carers;
- impact on reserved UK benefits, such as ESA and Jobseeker's Allowance, as well as tax credits; and
- impact on housing benefit.

The Scottish Government is also replacing DLAC with a new benefit, Child Disability Payment (CDP). A disabled child or young person aged between 3 months and 16 years will be able to apply for CDP if they are not already in receipt of DLAC. For children and young people entitled to CDP immediately prior to their sixteenth birthday, provision will be made to extend that award to the young person's eighteenth birthday.

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 sixteenth birthday.

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| | <p>The policy underpinning these regulations aligns with the following National Outcomes:</p> <ul style="list-style-type: none"> • 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. <p>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 2014¹, the policy relates to:</p> <ul style="list-style-type: none"> • 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. <p>Of the UNCRC considerations, the policy relates to:</p> <ul style="list-style-type: none"> • 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. <p>The CRWIA has been informed by a range of evidence, including analysis from two public consultations:-</p> |
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¹ <http://www.legislation.gov.uk/asp/2014/8/contents/enacted>

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| | <p>Full analysis report of the Consultation on Social Security in Scotland was published in March 2017 and can be found at: http://www.gov.scot/Resource/0051/00514352.pdf</p> <p>Full analysis report of the Consultation on Disability Assistance in Scotland was published in October 2019 and can be found at: https://www.gov.scot/publications/consultation-disability-assistance-scotland-analysis-responses/</p> |
| <p>Background</p> | <p>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).</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, and subject to the direction of Scottish Ministers, to ensure the safe and secure devolution of disability benefits.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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</p> |

most determinations carrying a right of appeal to the First-Tier Tribunal for Scotland's Social Security Chamber.

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.

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.

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.

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.

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.

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| | <p>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.</p> <p>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.</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>Scope of the CRWIA, identifying the children and young people affected by the policy, and summarising the evidence base</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 by providing continuity and stability.</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 12-15 age group, 15% of children have a limiting longstanding illness². For young people aged 16-24, 19% of young people have a limiting longstanding illness.</p> |

² Scottish Health Survey (2018) <https://www.gov.scot/publications/scottish-health-survey-2018-supplementary-tables/>

In 2019, there were 55,962 children aged 15 in Scotland³, and 3,372 children in Scotland aged 15 who were entitled to DLAC⁴. This represents around 6% of the population.

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%.

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).

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 illness⁵. Child material deprivation in households containing a disabled person reaches 20% compared to 8% of households without a disabled person.

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 Trust⁶ 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 condition⁷. 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).

³ 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>

⁴ DWP Stat-Xplore (Accessed May 2020)

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

⁶ 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>

⁷ <https://www.jrf.org.uk/income-and-benefits/>

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| | <p>We have identified that a small number of clients resident outside of Scotland who reach age 16 on or after 1 September 2020, and subsequently move to Scotland would potentially face unfair treatment compared to a client who is resident in Scotland on reaching age 16, by not being allowed to remain on DLA until age 18.</p> <p>This would engage Article 14 and Article 1 of Protocol 1 of the European Convention on Human Rights (ECHR). Article 14 provides that rights under the Convention (and by extension, the Human Rights Act 1998) shall be secured without discrimination on any ground, such as national or social origin. Article 1 of Protocol 1 provides for the peaceful enjoyment of property, which in this context includes social security assistance.</p> <p>As a result of identifying this impact, we have amended the policy so that for clients who are entitled to DLA whilst resident elsewhere in the UK and reach age 16 on or after 1 September 2020, but subsequently relocate to Scotland, these clients will be allowed to remain on DLA until they reach age 18. If the client has already applied for PIP and had a determination made on their application, they will remain on PIP.</p> <p><u>Wider context</u></p> <p>The CRWIA should be read in conjunction with the other impact assessments conducted for the policy (namely, the Business and Regulatory Impact Assessment, The Island Communities Impact Assessment and Equality Impact Assessment), and for the Social Security (Scotland) Act 2018⁸ as a whole.</p> <p>The Equality Impact Assessment (EQIA) for these regulations considers the potential impact of the policy on each of the protected characteristics which are also applicable to children and young people (for example race, religion or beliefs). A Business and Regulatory Impact Assessment (BRIA) will analyse the cost and benefits of the policy to businesses and the third sector. An 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>Children and young people’s views and experiences</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> <p>Scottish Government Disability Benefits Policy Team officials and Community Analytical Division colleagues also examined evidence</p> |

⁸ <http://www.legislation.gov.uk/asp/2018/9/contents/enacted>

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| | <p>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"> • Scottish Health Survey 2018; • Census 2011; • DWP Stat X-plore; • National Records of Scotland Population Statistics; and • Social Security Experience Panel Research. |
| <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>In the current system, the upper age limit for DLAC 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 sixteenth birthday.</p> <p>We asked Experience Panel members⁹ if they felt 16 was the right age to transfer from DLAC to PIP. 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’.</p> <p>We were told by parents in our focus groups that for some 16 year olds, the threat of an impending face-to-face assessment was so stressful that their children refused to attend, which meant a financial loss to the family income of the disability benefit as well as Carer’s Allowance.</p> <p>We were told too that for many, a PIP award was perceived as being unattainable.</p> <p>We heard too from parents, that their teenage children lacked medical supporting information of their diagnosis because their conditions, such as autism, are unchanging and do not typically require medical attention. This too made applying for PIP more difficult.</p> <p>By the end of October 2019¹⁰ more than 1.4 million DLAC reassessment applications for PIP had been cleared in Great Britain with 39 per cent (556,000) leading to award increases, 14 per cent (200,000) remaining unchanged, and 47 per cent leading to a reduction or disallowance (603,000).</p> <p>Detailed research by the Scottish Government in 2017¹¹ showed that the biggest impact was felt by clients receiving the highest rate for both care and mobility components – between 2013 and 2016,</p> |

⁹ <https://www.gov.scot/publications/social-security-experience-panels-disability-living-allowance-DLAC-children-visual-summary/>

¹⁰ <https://www.gov.uk/government/statistics/personal-independence-payment-april-2013-to-october-2019>

¹¹ <https://www.gov.scot/publications/impact-uk-welfare-policy-disabled-people/pages/4/>

6,400 people lost financial support of up to £7,000 per year as a result of the transfer from DLAC to PIP.

Our policy measure to increase the age of eligibility to eighteen, allowing young people to remain on DLAC for an additional 2 years, will delay them having to undergo a PIP assessment and transition to an adult benefit at a time when they and their family have so many other challenging life events to contend with. It will also mitigate a further drop in household income, at a time when other child benefits and respite care stop.

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, informal research, and public consultation. The decision for the Scottish Government to take forward the policy is deemed in the best interest of young disabled people aged 16 to 17 years old to provide additional financial support at a key stage in their life.

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 young disabled people and their contribution is crucial in shaping a successful policy.

Article 23 - Children with disabilities

This measure is designed to ensure consistency and continuity at a transitional stage in the life of a young person. This additional financial resource is intended to provide additional support to young disabled people, and should have an indirect positive impact on their families and carers.

Article 26 - Social security

This policy will ensure that young disabled people aged 16 and 17 continue to have access to vital financial support, and will also ensure access to passported benefits and forms of assistance during a key transitional stage in a young person's life.

The most relevant wellbeing indicators for this policy are:

Healthy: The extension of DLAC awards from age 16 to 18 is intended to improve the health and wellbeing of young disabled people, by providing financial support that can help to meet the cost of care and mobility associated with having a disability at a key stage in a young person's development.

Responsible: Young disabled people will be responsible for financial management of their DLAC, but will have the option of support from a family member or carer by having an appointee to assist them manage their allowance.

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| | <p>Included: DLAC is intended to provide some financial support to meet the additional cost of having a disability, and to ensure that young disabled 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 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.</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> | | | |
| Regulation - Clause | Aims of measure | Likely to impact on . . . | Compliance with UNCRC requirements | Contribution to local duties to safeguard, support and promote child wellbeing |
| Personal Independence Payment (Transitional Provisions) (Amendment) (Scotland) Regulations 2020 | These Regulations amend the Personal Independence Payment (Transitional Provisions) Regulations 2013/387. In particular, they provide for persons entitled to Disability Living Allowance (DLAC) and ordinarily resident in Scotland to remain in receipt of DLAC until they reach the age of 18, | Children in Scotland in receipt of Disability Living Allowance whose sixteenth birthday falls on or after September 2020. | The regulations do not infringe upon any UNCRC Article. 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 | The regulations do not infringe upon any of the indicators. They are likely to have a positive impact on the following indicators: Healthy, Respected, Responsible, Included |

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| | <p>at which point they will receive notification inviting them to make an application for Personal Independence Payment (PIP). The amendments make clear that no application can be made for PIP by a person who is ordinarily resident in Scotland until they have reached the age of 18, until which time they will remain in receipt of DLAC.</p> | | <p>standard of living) Article 42 (knowledge of rights)</p> | |
| CRWIA Declaration | | | | |
| Authorisation | | | | |
| <p>Policy lead David George Policy Manager Social Security Policy Division</p> | | | <p>Date 24 June 2020</p> | |
| <p>Deputy Director or equivalent Ann McVie Deputy Director Social Security Policy Division</p> | | | <p>Date 24 June 2020</p> | |