

The Social Security (Claims And Payments) (Miscellaneous Amendments) (Scotland) Regulations 2021

CRWIA

September 2021



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Child Rights and Wellbeing Impact Assessment (CRWIA) of the Social Security (Claims and Payments) (Miscellaneous Amendments) (Scotland) Regulations 2021

Executive summary

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, executive competence for disability benefits, including Disability Living Allowance for Children (DLAC) and Personal Independence Payment (PIP), transferred to the Scottish Ministers.

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.

The amendments being introduced by these regulations are being made with the purpose of allowing large payments of arrears of devolved disability benefits to Scottish clients to be paid in instalments, with the consent of the client. The aim is to mitigate the risk of vulnerable clients using the lump sum in a way that may be harmful to them.

DWP have advised that in some cases, due to delays in processing applications, successful mandatory reconsiderations, successful appeals or official error, clients can become eligible to receive a large back payment of benefits. For the vast majority of clients, receiving a large arrears payment is not problematic and they can effectively manage the payment themselves, or with some third party support if needed. However, there is a very small minority of clients for whom these payments may pose a potential risk for example, where having large sums of money at any one time might lead to harmful behaviour with potentially tragic consequences.

The proposed amendments are anticipated to have a broadly positive impact on children's rights and welfare. The introduction of flexibility to offer the payment of large arrears in instalments is likely to benefit disabled people and their families.

The policy underpinning these regulations aligns with the following National Outcomes:

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

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

	<ul style="list-style-type: none"> • 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>Getting it right for every child (GIRFEC) wellbeing indicators</p> <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 2014 the policy relates to:</p> <ul style="list-style-type: none"> • Healthy • Safe • Nurtured • Respected <p>Of the UN Convention on the Rights of the Child (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 18 (parental responsibilities and state assistance): Both parents share responsibility for bringing up their child and should always consider what is best for the child. Governments must support parents by creating support services for children and giving parents the help they need to raise their children. • 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.
Background	Executive competence for disability benefits transferred to Scottish Ministers on 1 April 2020, and they are currently being delivered by DWP under the terms of Agency Agreements. While payments are being made by DWP to Scottish clients, Scottish Ministers are legally responsible for the administration of devolved

	<p>benefits, and any changes to the legislation supporting that administration. The benefits that have been devolved to Scotland and are being delivered under Agency Agreements are: Carers' Allowance, Personal Independence Payment (PIP), Disability Living Allowance, Attendance Allowance, Severe Disablement Allowance and Industrial Injuries Disablement Benefit.</p> <p>The making of large payments can occur in any benefit; however DWP, have advised that in recent years, large payments of arrears has mostly occurred because of a number of corrective administrative exercises, Upper Tribunal decisions and court judgments. The majority have related to Employment Support Allowance (ESA) and PIP. For PIP, there are ongoing Legal Entitlements and Administrative Practice (LEAP) exercises. LEAP exercises are administrative exercises that are undertaken to ensure clients have received the correct benefit entitlement. While a LEAP exercise may be required across any benefit, in practice most LEAP activity in the benefits now devolved to Scotland is concentrated around PIP.</p> <p>DWP have advised that an 'Advanced Customer Support Check' will be undertaken in any case where Case Managers/Case Workers identify a concern for any one-off payment out of the customer's normal four-weekly cycle. An Advanced Customer Support Check means that when any concerns are identified, DWP will take steps to support the client, taking account of their abilities and circumstances when considering appropriate steps on a claim. This may include engaging third party organisations who have statutory safeguarding duties to support the client and who can support the client to make an informed decision. There will be guidance for DWP staff on how to identify when a client may be vulnerable and guidance on how to engage with clients to ensure the client is not put under pressure to agree with receiving large payments in instalments.</p>
<p>Scope of the CRWIA, identifying the children and young people affected by the policy, and summarising the evidence base</p>	<p>The scope of this CRWIA is to look at the impact of allowing large payments of arrears of devolved disability benefits to Scottish clients to be paid in instalments, with the consent of the client.</p> <p>This revision of existing policy could affect children and young people living in Scotland who are in receipt of any of the devolved benefits being delivered by the DWP under the Agency Agreements. It could also affect children and young people living in families where an adult is in receipt of any of those benefits.</p> <p>In practice, DWP have advised that individuals in receipt of PIP will be the most likely to be affected. This is because PIP is the</p>

	benefit that is associated with the greatest number of DWP LEAP exercises.
Children and young people's views and experiences	Direct consultation with children and young people has not been possible due to time constraints.
Key Findings, including an assessment of the impact on children's rights, and how the measure will contribute to children's wellbeing	<p>As of February 2021, there are 82,000 carers in Scotland in receipt of Carer's Allowance². This includes around 423 carers under 18 and 3,819 carers in the age bracket 18 – 24³.</p> <p>The mid-year population estimates showed that as of 30 June 2020 there were around 110,000 people aged 16 or 17 in Scotland⁴. At the same time there were around 3,500 16-17 year olds receiving Personal Independence Payment⁵, accounting for 3.2% of this demographic.</p> <p>Our assessment of the impact of these amendments on the relevant articles of the UNCRC are as below. The relevant articles include (but are not limited to):</p> <p>Article 3 - Best interests of the child</p> <p>This revised policy will ensure greater flexibility in making large payments of arrears. This means that those acting on behalf of children in receipt of devolved benefits that are administered by DWP under Agency Agreements may be given the option of receiving staggered payments if they themselves are considered to be vulnerable and if they consent.</p> <p>This will also impact positively on families where the parents or guardians are in receipt of benefits and who may have complex needs such that a large lump sum payment may be harmful for the clients or their families.</p> <p>Young people in receipt of PIP will also be covered by this revised policy and may benefit from the flexibility of staggered payments if their circumstances mean that there is a risk that one large payment may be harmful to them.</p> <p>Article 18 - Parental responsibilities and state assistance</p>

² DWP Stat- Xplore

³ Ibid.

⁴ NRS Scotland Mid-Year Population Estimates (2020) <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/mid-year-population-estimates/mid-2020>

⁵ DWP Stat-Xplore

This revised policy will allow more flexibility for people to receive large amounts of arrears in instalments. For some of the more vulnerable clients, this could mitigate the risk of them using large lump sums in a way that may harm them or their families.

Article 23 - Children with disabilities

The change will apply across all benefits delivered under the Agency Agreements. Children living with a disability and in receipt of DLAC may have parents or guardians who could benefit from the option of receiving staggered payments because of their personal circumstances.

However, in practice, PIP clients will be the most likely to be affected. Young people aged 16 and 17 years old in receipt of PIP may benefit from the flexibility of receiving any arrears in instalments if there is a risk that receiving a lump sum payment could be harmful to them.

Article 26 - Social security

This revised policy does not prevent children or young people from receiving any social security payment due to them. There is an existing duty to ensure clients receive their full legal entitlement and so the arrears must be paid. The revised policy is instead intended to mitigate the risks of the most vulnerable clients receiving large lump sums of money that could be used in a way that is harmful to them or their families.

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 health benefits for children in families where the adults in receipt of social security benefits can better manage their parental responsibilities by staggering payments of arrears. The health and wellbeing of young people in receipt of benefits may benefit from receiving staggered payments, particularly if there is a risk that they will use the money to fund behaviours that negatively impact on their physical or mental health.

Safe, and Nurtured: Staggered payments may be offered as an option where safeguarding concerns are raised and where it is identified that clients are at risk of harm if they receive a large

	<p>payment. This will help to mitigate the risk of clients and their families using large sums of money in a way that could be harmful to them or that could put them in danger.</p> <p>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 approach is in line with Scottish social security principles to respect the dignity of individuals and the client's right to choose.</p>
<p>Monitoring and review</p>	<p>Under the terms of the Agency Agreements DWP have agreed to continue to monitor this policy. We will work with DWP to keep the impacts under review.</p> <p>Scottish Ministers have a responsibility to take positive steps to review and correct any determination that may have been made in error, to the client's detriment. This will likely result in Social Security Scotland making large back payments of benefits from time to time. We will give due consideration to vulnerability issues and safeguarding when developing policy and processes on making large back payments for benefits.</p>
<p>CRWIA Declaration</p>	
<p>Authorisation</p>	
<p>Policy lead</p> <p>Nathalie Leger Policy Manager Social Security Policy Division</p>	<p>Date</p> <p>30/08/2021</p>
<p>Deputy Director or equivalent</p> <p>Ian Davidson Deputy Director Social Security Policy Division</p>	<p>Date</p> <p>31/08/2021</p>



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