

The Disability Assistance for Children and Young People (Amendment) (Scotland) Regulations 2021

Amendment Regulations – EQIA

June 2021

Title of Policy	Disability Assistance for Children and Young People (Amendment) (Scotland) Regulations 2021
Summary of aims and desired outcomes of Policy	<ul style="list-style-type: none"> • These regulations make technical amendments to the principal regulations for Child Disability Payment. Amending the principal regulations ensures that CDP entitlement and the case transfer process is aligned to our policy intent which is to help improve outcomes for disabled children and young people, by providing financial assistance to help meet the additional costs associated with care and mobility needs as a result of having a disability. <p>These regulations do not propose to make substantive changes to most eligibility criteria, but will deliver a system that is based on fairness, dignity and respect for the individual.</p>
Directorate: Division: Team:	Social Security Directorate Social Security Policy Division Disability Benefits Team

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, the Scottish Ministers took executive and legal competence for disability benefits, including Disability Living Allowance for Children (DLAC), Attendance Allowance (AA) and Personal Independence Payment (PIP).
- 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 Scottish Government is replacing DLAC, PIP and AA with new forms of assistance under the 2018 Act. These new benefits will be delivered by Social Security Scotland on behalf of Scottish Ministers with most determinations carrying a right of appeal to the First-Tier Tribunal for Scotland's Social Security Chamber.
- The first form of disability assistance the Scottish Government is delivering is Child Disability Payment (CDP). This was formerly known as Disability Assistance for Children and Young People. It replaces DLAC for children and young people in Scotland between three months and 18 years of age.
- The Disability Assistance for Children and Young People (Scotland) Regulations 2021 set out how CDP will be delivered and make provision for the transfer of responsibility for delivering disability benefits for children and young people under the age of 18 who receive DLAC in Scotland from the Department for Work and Pensions (DWP) on behalf of Scottish Ministers to Social Security Scotland, and for changing the disability benefits for these children and young people from DLAC to CDP.
- The amendments being introduced by these regulations are being made with the purpose of aligning existing rules on CDP entitlement with the policy intention which is to help improve outcomes for disabled children and young people by providing financial assistance to help meet the additional costs associated with care and mobility needs, as a result of having a disability. To achieve this we are doing the following:

Amendments relating to the effect of time spent in care homes and in legal detention

- ensuring that children and young people who are in-patients in a hospital or hospice are not treated as though they are in legal detention and will continue to be paid their care component of CDP;
- clarifying the date when payment of the care component will stop when an individual is admitted into a care home or legal detention.

Amendments relating to age criteria

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

- ensuring that young people can remain on Child Disability Payment past the age of 18 in specific circumstances.

Amendments to the past presence test

- dis-applying the past presence test to serving members of the armed forces and civil servants;
- making changes to the temporary absence provision from the Common Travel Area (CTA) to allow Scottish Ministers to temporarily stop payment of CDP rather than end entitlement. The temporary absence can be for up to 13 weeks for any reason, or up to 26 weeks if the absence is in connection with arrangements made for the medical treatment of the individual, provided the absence is not expected to last more than 52 weeks;
- clarifying that an individual should be capable of having an advance award made where they will satisfy the past presence condition in the next three months.

Amendments relating to the mobility component

- clarifying the policy intention as regards the higher rate mobility component to make it clear that clients have to meet the conditions of entitlement for a higher rate of payment for 13 weeks before the new rate of entitlement can begin.

Amendments regarding a late report of a change of circumstances

- clarifying the date when an increase in entitlement can take effect when a change of circumstances is reported late.

Amendments regarding changes in residence between Scotland the rest of the United Kingdom

- clarifying that when an individual fails to report a move from Scotland to either England and Wales, or Northern Ireland, the date that their CDP payment will stop is 13 weeks after the date of the move;
- making it clearer that entitlement to CDP begins on the day after the day on which the person's entitlement to Disability Living Assistance ends.

Amendments relating to re-determination and appeals

- to clarify that the period of time Social Security Scotland has to conduct a re-determination runs from the date the First-tier Tribunal decides that a re-determination request has been made in such form as the Scottish Ministers require.

Amendments to Short-Term Assistance

- to make clear that short-term assistance is payable during the period between the First-tier Tribunal setting aside their own decision and then making a new determination;
- to include admission to alternative accommodation to the scenarios when an individual is not entitled to short-term assistance in respect of the care component of CDP;

- clarifies that Scottish Ministers are to make a determination without application when ending an individual's entitlement to short-term assistance.

Amendments relating to Case Transfer

- to correct citations to the Social Security Contributions and Benefits Act 1992;
 - to clarify interpretation to ensure clients with severe visual disability receive the correct rate of the mobility component;
 - to clarify the effective date of determinations without application that result from a change to a relevant past Disability Living Allowance award whether the change to that award was made under the UK or Northern Irish rules.
- The public sector equality duty is a legislative requirement which states that the Scottish Government must assess the impact of applying a proposed new or revised policy or practice. Policies should reflect that different people have different needs. Equality legislation covers the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex and sexual orientation.
 - This EQIA builds on the principal regulations EQIA that was carried out, ensuring that any potential impacts on young disabled people in Scotland, as a result of the amendments, have been identified. It was found that, overall, our policy would have a positive impact on young disabled people. Where areas of improvement have been identified, we have made changes to better meet the needs of young people in Scotland.
 - These changes build on the Social Security (Scotland) Act 2018 framework of a new system that is underpinned by dignity, respect and a human rights based approach to delivering social security for the people of Scotland.
 - This impact assessment is one of a package to accompany the regulations. The others are: Business and Regulatory Impact Assessment (BRIA); Child Rights and Wellbeing Impact Assessment (CRWIA); Island Community Impact Assessment (ICIA); and the Fairer Scotland Duty Assessment.

Background

Policy Aims

- In a statement to the Scottish Parliament on 28 May 2019², the Cabinet Secretary for Social Security and Older People, Shirley-Anne Somerville MSP set out the Scottish Government's vision for the further devolution of a number of benefits under the Social Security (Scotland) Act 2018, including the following disability benefits: Disability Living Allowance for Children (DLAC); Attendance Allowance (AA); and Personal Independence Payment (PIP). These are currently being delivered by the UK Government's Department for Work and Pensions (DWP).
- As part of this devolution of benefits, individuals will have their reserved benefits changed to the corollary devolved benefits, a process called "case transfer".

² <https://www.gov.scot/publications/devolution-of-benefits-ministerial-statement/>

- These regulations make several technical amendments to the principal regulations. Amending the principal regulations ensures that CDP entitlement is aligned to our policy intent which is to help improve outcomes for disabled children and young people, by providing financial assistance to help meet the additional costs associated with care and mobility needs as a result of having a disability.

Amendments relating to the effect of time spent in care homes and in legal detention

- An individual who is entitled to the care component will be paid the care component for the first 28 days of their stay in a care home or in legal detention. These regulations remove a potential ambiguity regarding on the date when individual stops being paid the care component. The changes made within these regulations make clear that payment will stop on the 29th day, not the 28th.
- There is an overrepresentation of males in the young prison population³. For this reason, young disabled males are likely to benefit more frequently from this amendment. This will however not disadvantage female children and young people.
- They also amend the definition of legal detention as defined in regulation 2, ensuring that children and young people who are in-patients in a hospital or hospice are not treated as though they are in legal detention and will continue to be paid their care component of CDP. This regulation seeks to ensure that an individual detained in these circumstances should not be considered to be in legal detention for the purposes of CDP, and their assistance should remain in payment. This will help ensure consistency for young people and their families regardless of which environment a young person becomes resident in.

Amendments relating to age criteria

- These regulations amend the age criteria to allow for young people to remain on Child Disability Payment after age 18 in specific circumstances. This is to primarily avoid the scenario whereby individuals cease to be entitled because a determination of entitlement has not yet been made in relation to Adult Disability Payment.
- We have heard how the transition from Child DLA to PIP can be challenging for young people. In order to ensure continuity of payments for young people on reaching age of 18 in some exceptional circumstances.

Amendments to the past presence test

³ Meta-analysis conducted in 2015, https://www.cambridge.org/core/services/aop-cambridge-core/content/view/23477B340EDE335069C9050EF9F0DD0A/S0033291714000762a.pdf/metaanalyses_of_the_prevalence_of_attention_deficit_hyperactivity_disorder_in_incarcerated_populations.pdf

- Under the principal regulations, serving members of the armed forces and civil servants are required to have met each of the residence and presence tests immediately prior to the start of their absence caused by their employment, including the past presence test, which requires 26 weeks' presence in the Common Travel Area in the past 52 weeks at the date an application is made. These regulations seek to dis-apply the past presence test to civil servants and members of the forces on the basis that the Scottish Government considers that the policy intent is served by requiring ordinary residence in Scotland and habitual residence in the Common Travel Area immediately prior to the start of any work-related absence, in addition to the broader fact of the individual's employment in the civil service or in the armed forces.
- These regulations also make changes to the temporary absence from the Common Travel Area (CTA). This will allow Scottish Ministers to temporarily stop payment of CDP rather than end entitlement if the child or young person has a temporary absence from the CTA. The temporary absence can be for up to 13 weeks for any reason, or up to 26 weeks if the absence is in connection with arrangements made for the medical treatment of the individual, provided the absence is not expected to last more than 52 weeks.
- By stopping payment rather than ending entitlement after a temporary absence, we will minimise the potential need for children and young people to re-apply for CDP upon return to the Common Travel Area. This change will therefore reduce stress and anxiety for children, young people and their families or carers around having to start a new application.
- This may have a bigger impact on third country nationals who have immigration status that allows them access to public funds, who may need to be absent from the Common Travel Area for longer because of e.g. family reasons. Scottish Government analysts highlighted significant challenges in relation to the data available on the size of this group and interactions with social security benefits.

Amendments relating to the mobility component

- These regulations also make a technical amendment to the requirements for the higher rate mobility component to make it clearer that clients have to have met the eligibility criteria for the higher rate for at least 13 weeks prior to the date when entitlement would begin.
- The policy intention has always been that in order to move from the lower rate to the higher rate of the mobility component, or to qualify for the mobility component for the first time, a client should meet the backwards test of 13 weeks.
- This regulation makes that intention more explicit and places it beyond any doubt the requirement to have those needs for 13 weeks on the date that entitlement would begin, aligning with the rules relating to moving from the lowest or middle rate of the care component, to the highest.

Amendments regarding a late report of a change of circumstances

- These regulations amend the date on which increase of entitlement takes effect, for individuals who report their change of circumstances late, without good

reason. The date will be changed from the when the individual reports their change, to the date when the Scottish Ministers make their determination.

- The Scottish Government considers that this change would ensure better consistency with the policy approach in relation to changes which are reported timeously, ensuring that an individual who has reported their change of circumstance late would not see their entitlement change sooner than someone who reported a change in circumstance on time.

Amendments regarding changes in residence between Scotland and the rest of the United Kingdom

- When an individual moves from Scotland to either England and Wales or Northern Ireland, Social Security Scotland will continue to pay a 13 week run-on of CDP from the date the client moves elsewhere in the UK. This gives the client time to apply to either the Department for Work and Pensions or Department for Communities for DLAC. These regulations make clear that if an individual fails to report a move, that the date that CDP stops is 13 weeks after the date of the move.
- In the principle regulations it states that entitlement to CDP begins on the day after the day on which DLA ceases to be paid. As an individual's payment of DLA might have been reduced to £0, whilst they are still entitled to DLA, we want to remove any potential ambiguity on when a person's entitlement to DLA ends, and their entitlement to CDP begins.
- These amendment will help to prevent a financial 'cliff edge' due to a sudden reduction in part of a household's income and give people time to apply for DLA or PIP. This is particularly important given the data indicates that households with at least one disabled child are far more likely to be in poverty. In mitigating the loss of income to households during moves, we anticipate this will have a positive impact on disabled children and young people. Providing more clarity around the rules will also help ensure that all individuals are treated equally and fairly.

Amendments relating to re-determination and appeals

- Social Security Scotland has 56 calendar days to complete a re-determination. If an individual doesn't request a re-determination in the correct way, or fails to do it within the time specified and lacks good reason, that individual has a right to appeal directly to the First-tier Tribunal for Scotland, Social Security Chamber (this is called a 'process appeal'). The Tribunal may decide the individual either did request the re-determination in the right way, or they had good reason for not meeting the time-limit.
- This amendment clarifies the policy intention regarding when the period Social Security Scotland has to complete a re-determination begins in a case if the Tribunal has decided that a request for re-determination has been validly made. This date will be the day on which the Tribunal makes that decision. This will help ensure that Social Security Scotland will have 56 days to complete the re-determination, ensuring that there is sufficient time to gather any additional supporting information needed to make a new determination.

- This will be beneficial as it will provide certainty for children and their families about how long Social Security Scotland has to complete a re-determination. It will also ensure that re-determinations can be carried out fairly, whilst allowing sufficient time to make more robust and accurate decisions.

Amendments relating to Short-Term Assistance

- The Scottish Government has introduced Short-Term Assistance (STA) where Social Security Scotland has made a decision to reduce or stop a continuing payment of CDP, and that decision is subject to a request for re-determination or an appeal. STA will be available until the First-tier Tribunal (FtT) for Scotland has made a determination, and is non-recoverable. Where a person is eligible for STA, the value of STA will be the difference between the level of assistance paid prior to the reduction and the new level of assistance (including if that amount is now nil because entitlement to CDP has stopped).
- STA is not available in the reserved social security system and providing support in this way is another example of where Scottish Ministers are removing barriers to challenging decisions in the Scottish social security system.
- These regulations clarify the scenarios where short-term assistance is payable to ensure that it covers the period when the change in entitlement is being challenged to the First-tier Tribunal, but the outcome is not yet known. It also includes admission to alternative accommodation to the scenarios when an individual is not entitled to short-term assistance in respect of the care component of CDP. It further clarifies that Scottish Ministers are to make a determination without application when ending an individual's entitlement to short-term assistance. It also corrects a cross-referencing issue in the principal regulations, to ensure entitlement to STA would run from the date of request for re-determination to the date of determination made that the end of that re-determination.
- The intention of the policy is to ensure an individual is not discouraged from challenging that decision or from accessing administrative justice by having to manage, for a period, with a reduced income.

Amendments relating to Case Transfer

- These regulations correct citations to the Social Security Contributions and Benefits Act 1992 to ensure individuals whose Disability Living Allowance was negatively impacted for failing to meet the "substantially in excess" test for either the care component, mobility component, or both before they turned 16 can have their award increased at the point of case transfer where appropriate.
- They also clarify the interpretation of regulation 15 of the CDP regulations to ensure clients with severe visual disability receive the correct rate of the mobility component at the point of case transfer.
- The impact of these changes will be to better reflect the policy intention to ensure children and young people whose entitlements transfer are not disadvantaged

when compared to those who make new CDP applications due to differences in eligibility rules between CDP and DLA.

- The regulations clarify the effective date of determinations without application that result from a change to a relevant past Disability Living Allowance award and highlight this applies to changes to that award made under either the English and Welsh or Northern Irish rules.
- This amendment aims to give Scottish Ministers the necessary powers to set entitlement dates appropriately where the DLA award the transferred CDP award is based on is changed and allow this to apply regardless of whether the DLA award was changed by UK or Northern Irish governments or tribunals.
- We believe these changes will better promote the rights and well-being of children and young people whose initial CDP entitlement is established as a result of the case transfer process by ensuring they are not financially disadvantaged by the transfer process.

Who was involved in this EQIA?

- 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.
- There were 521 formal written responses 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 May 2017⁴. In addition, the Equality Impact Assessment that was published alongside the Social Security (Scotland) Bill and the principal Regulations was used to inform the partial Equality Impact Assessment for these Regulations.
- The Scottish Government has set up Social Security Experience Panels with 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. We have been working with relevant stakeholders to specifically target disabled people from seldom heard groups as part of our engagement.

⁴ <https://www.gov.scot/publications/analysis-written-responses-consultation-social-security-scotland/>

- Two surveys regarding the case transfer process was sent out to Experience Panel members in January and February 2019. 404 and 559 responses were received respectively. A series of individual and group interviews were also conducted. Results from both surveys and the interviews were published in 2019.⁵ These surveys confirmed that of most importance to panel members was that they continue to receive the correct payment at the correct time.
- We have been working with relevant stakeholders to specifically target disabled people from seldom heard groups as part of our engagement. For example, we have reached out to the Inclusive Communications Stakeholder Reference group to seek views from people from seldom heard groups. This is a continuous exercise and more information from this work is imminently forthcoming.
- 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 AA⁶. The consultation closed on 28 May 2019, having received 263 replies, of which 74 were from stakeholder organisations and 189 were from individuals.
- Regarding disability assistance, 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.
- Specifically with regards to case transfer, framing exercises have been taking place in 2020 and will continue to take place with a range of internal Scottish Government stakeholders.
- 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 individuals with significant practical experience of the UK social security system, from a range of professional backgrounds. It is independent of the Scottish Government. The Group's role is to advise Scottish Ministers on specific policy options for disability assistance and carers benefits due to be delivered in Scotland.

⁵ See <https://www.gov.scot/publications/social-security-experience-panels-case-transfer-survey-findings/> and <https://www.gov.scot/publications/social-security-experience-panels-designing-case-transfer-process-main-report/>

⁶ <https://www.gov.scot/publications/social-security-consultation-disability-assistance-scotland/>

- 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 stakeholder engagement.
- Despite the continuing impact of coronavirus, work with Experience Panels has continued, with user testing on digital material that will be available on the Social Security Scotland website. Specifically with regards to case transfer, framing exercises have been taking place in 2020 and will continue to take place with a range of internal Scottish Government stakeholders. This will give information to people who are considering making a CDP application. We focused on making sure that information was easy to find, understand and navigate.

The Scope of the EQIA

- The scope of this EQIA is to look at the impact the amendment regulations will have on:
 - the introduction of the Child Disability Payment (CDP) to replace Disability Living Allowance for Children (DLAC); and
 - the transfer of responsibility for delivering disability benefits for children and young people under the age of 18 who receive DLAC in Scotland from the Department for Work and Pensions (DWP) on behalf of Scottish Ministers to Social Security Scotland, and changing the disability benefits for these children and young people from DLAC to CDP.

Data Sources

- A variety of information sources were used in compiling this EQIA, including:
 - Scottish Health Survey 2018⁷;
 - Scotland's Census 2011⁸;
 - NRS Scotland Mid-year Population Estimates⁹;
 - Social Security Experience Panel findings;
 - responses to our Consultation on Disability Assistance in Scotland¹⁰;
 - advice from our Disability and Carer Benefits Expert Advisory Group¹¹; and
 - DWP stat Xplore statistics.

General Data

⁷ <https://www.gov.scot/publications/scottish-health-survey-2018-summary-key-findings/>

⁸ <https://www.nrscotland.gov.uk/statistics-and-data/census>

⁹ <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/mid-year-population-estimates/mid-2019>

¹⁰ <https://www.gov.scot/publications/consultation-disability-assistance-scotland-analysis-responses/pages/3/>

¹¹ <https://www.gov.scot/groups/disability-carers-benefits-expert-advisory-group/#:~:text=The%20Disability%20and%20Carers%20Benefits,on%20disability%20and%20carers%20benefits.>

- The Scottish Health Survey 2018 provides an accurate estimate of the number of disabled children and young people in Scotland. Within the 0-15 age group, 18% of children have a limiting longstanding illness¹². For young people aged 16-24, 24% of young people have a limiting longstanding illness.
- In 2019, there were 867,345 children aged 15 and below in Scotland¹³. As of August 2020, there were 41,811 children entitled to Disability Living Allowance for Children (DLAC)¹⁴. This accounts for roughly 4.8% of this demographic.
- 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 person¹⁵. Disabled young adults in the UK aged 16-24 years have a particularly high poverty rate of 44%¹⁶.
- 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)¹⁷.
- 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 and/or 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 illness¹⁸. Child material deprivation in households containing a disabled person reaches 20% compared to 8% of households without a disabled person.

¹² Scottish Health Survey (2018) <https://www.gov.scot/publications/scottish-health-survey-2018-supplementary-tables/>

¹³ 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>

¹⁴ DWP Stat-Xplore (Accessed April 2021)

¹⁵ https://www.npi.org.uk/files/3414/7087/2429/Disability_and_poverty_MAIN-REPORT_FINAL.pdf

¹⁶ <https://www.jrf.org.uk/income-and-benefits>

¹⁷ <http://www.gov.scot/isbn/9781787816909>

¹⁸ <https://www.gov.scot/publications/poverty-perspective-typology-poverty-scotland/pages/5/>

- 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 Trust¹⁹ 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 condition²⁰. 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).

Key findings

- A summary of the available evidence and data collected to help inform this EQIA is provided in the table below:

Protected characteristic	Evidence gathered
Age	<ul style="list-style-type: none"> • As of August 2020, 41,811 children in Scotland were receiving DLAC²¹, representing 4.5% of children under age 16²². • The peak age for entitlement to DLAC is at age 11, with 4,102 children receiving an award of DLAC. • As of March 2021, 29 children entitled to DLAC in Scotland were terminally ill, representing 0.04% of all Scottish child DLAC cases²³. • Since 2016, fewer than five individuals under the age of 16 have been detained in legal custody in Scotland²⁴. • Our Experience Panel research highlighted²⁵. <ul style="list-style-type: none"> ○ Almost all respondents to an Experience Panel survey felt that 16 was not the right age to transition to PIP. It was suggested that 18 was a more suitable age.

¹⁹ 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>

²⁰ <https://www.jrf.org.uk/income-and-benefits/>

²¹ DWP Stat Xplore, accessed April 2021

²² NRS Mid-Year Population Estimates (2019), <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/mid-year-population-estimates>

²³ DWP stat Xplore, accessed April 2021

²⁴ <https://www.gov.scot/publications/scottish-prison-population-statistics-2019-20/pages/4/>

²⁵ <https://www.gov.scot/publications/social-security-experience-panels-disability-living-allowance-DLAC-children-visual-summary/>

Protected characteristic	Evidence gathered
Disability	<ul style="list-style-type: none"> • 12% of all children under age 16 have a limiting longstanding illness, whilst 19% of all young people aged 16-24 have a limiting longstanding illness²⁶. • 38% of children with a limiting longstanding illness had a mental health condition, 28% had a respiratory condition, and 12% had a musculoskeletal condition²⁷. • As of August 2020, 41,811 children in Scotland were receiving DLAC²⁸, representing 4.8% of children under age 16²⁹. • As of March 2021, 29 children entitled to DLAC in Scotland were terminally ill, representing 0.06% of all Scottish child DLAC cases³⁰. • In 2018, 1,050 children (1%) within early learning and childcare registrations were either assessed or declared as disabled³¹. 14% of those registered had additional support needs³². • A 2015 research paper comparing 42 global studies reported a five-fold increase in the prevalence of ADHD in youth prison populations (30.1%) compared to the general population which ranged between 3-7%³³. • Work with Experience Panels has identified: <ul style="list-style-type: none"> ○ Support for the introduction of Short-Term Assistance³⁴. • Respondents to our 2019 Consultation on Disability Assistance in Scotland stated³⁵:

²⁶ Scottish Health Survey (2018), <https://www.gov.scot/publications/scottish-health-survey-2018-supplementary-tables/>

²⁷ DWP stat Xplore

²⁸ DWP Stat Xplore,

²⁹ NRS Mid-Year Population Estimates (2019), <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/mid-year-population-estimates>

³⁰ DWP Stat Xplore

³¹ <https://www2.gov.scot/Topics/Statistics/Browse/Children/Pubs-Pre-SchoolEducation/ELCAdditionalTables2018>

³² Autism spectrum, English as an additional language, family issues, including additional support for bereavement, and young carers, speech and communication issues, learning difficulties and dyslexia, looked after, physical or motor impairment, or physical or mental health problems, social, emotional and behavioural difficulties, visual or hearing impairment or are deafblind.

³³ https://www.cambridge.org/core/services/aop-cambridge-core/content/view/23477B340EDE335069C9050EF9F0DD0A/S0033291714000762a.pdf/metaanalysis_of_the_prevalence_of_attention_deficit_hyperactivity_disorder_in_incarcerated_populations.pdf

³⁴ <https://www.gov.scot/publications/social-security-experience-panels-short-term-assistance-visual-summary/>

³⁵ <https://www.gov.scot/publications/consultation-disability-assistance-scotland-scottish-government-response/pages/3/>

Protected characteristic	Evidence gathered
	<ul style="list-style-type: none"> ○ Support for the introduction of STA for individuals undergoing a re-determination or appealing a decision made on an ongoing award of disability assistance. ○ Just under half of respondents who answered (49%) agreed that STA should be subject to deductions in respect of an overpayment agreement. ○ A key theme was that disability assistance is essential to meeting the extra costs associated with ongoing health needs and reducing the level of assistance could cause hardship. ○ Some respondents suggested using a case-by-case approach to decision-making.
Marriage and civil partnership	<ul style="list-style-type: none"> ● No data is available about young disabled people under this protected characteristic grouping. There were no comments during the consultation on marriage and civil partnership.
Pregnancy and maternity	<ul style="list-style-type: none"> ● No data is available about young disabled people under this protected characteristic grouping. There were no comments during the consultation on pregnancy and maternity.
Race	<ul style="list-style-type: none"> ● Just under 4% of Scotland's population belong to minority ethnic groups, and 7% of our total population communicate in home languages other than English. ● This number rises to 9.1% within the population of children registered for Early Learning and Childcare in Scotland³⁶. ● We do not have statistics showing the number of children and young people within Scotland who apply for disability benefits and who belong to minority ethnic groups. However, UK wide information from 2015/16-2017/2018 suggests that minority ethnic families in all age groups are slightly less likely to apply for DLA than white families, with a slight exception for Bangladeshi families who are more likely to receive the DLA care component³⁷. ● The 2011 census found:

³⁶ <https://www2.gov.scot/Topics/Statistics/Browse/Children/Pubs-Pre-SSchoolEducation/ELCAdditionalTables2018>

³⁷ UK Government (2019) <https://www.ethnicity-facts-figures.service.gov.uk/work-pay-and-benefits/benefits/state-support/latest#by-ethnicity-and-type-of-support> Section 4

Protected characteristic	Evidence gathered
	<ul style="list-style-type: none"> ○ both for the general population and the 0-24 age group, “White” people are more likely to say their day to day activities are limited “a lot” or “a little” by their long-term health conditions, compared to their share in the population. This is not true for any of the other ethnic categories apart from “Caribbean or Black” respondents aged 0-24 who are slightly more likely to say their day-to-day activity is limited “a little”³⁸. ○ there was a wide variation between men and women in different ethnic groups. Women from the three groups “Bangladeshi, Pakistani and Gypsy/Traveller” recorded higher rates of 'health problem or disability' than women from the “White: Scottish” ethnic group, while men from only two ethnic groups, “Pakistani” and “Gypsy/Traveller”, recorded higher rates of “health problem or disability” than men from the “White: Scottish” ethnic group³⁹. ○ just over 4,000 people in Scotland (0.1% of the population) identified their ethnic group as “White: Gypsy/Traveller”⁴⁰. Generally, Gypsy/Traveller households were more likely to contain dependent children (36% compared to 26% of the population as a whole) and they were three times more likely to contain “three or more” dependent children⁴¹. The number of Gypsy/Traveller children who receive disability benefits under the current system is unknown. ● Gypsy/Traveller households were more likely to have no central heating (5 per cent) than all households (2 per cent). They were also more likely to have “Electric Central Heating” and “2 or more types of Central Heating”. Only 62 per cent of Gypsy/Traveller households had gas central heating compared to 74 per cent of the population⁴².

³⁸ Scotland's Census 2011 - National Records of Scotland, Table LC3205SC - Long-term health problem or disability by ethnic group by age: All people

³⁹ [Which ethnic groups have the poorest health?](#)

⁴⁰ [Gypsy/Travellers in Scotland - A Comprehensive Analysis of the 2011 Census](#)

⁴¹ [Gypsy/Travellers in Scotland - A Comprehensive Analysis of the 2011 Census](#)

⁴² [Gypsy/Travellers in Scotland: A Comprehensive Analysis of the 2011 Census](#)

Protected characteristic	Evidence gathered
Religion and belief	<ul style="list-style-type: none"> • According to latest data published by Scottish Surveys Core Question in 2019, 50% of respondents identified as having “no religion” while 47% identified as Christian (“Church of Scotland”, “Roman Catholic” or “other Christian”), 2% as Muslim, and 2% as an “other religion”⁴³. • Once age was taken into account, in comparison to those with no religious affiliation, a lower proportion of “other” religious groups reported good/very good general health and a higher proportion reported having a limiting long-term condition. “Other Christians” reported a higher level of good/very good general health than the “no religion” reference group⁴⁴.
Sex	<ul style="list-style-type: none"> • 70.3% of DLA cases under 16 are male. This accounts for 29,205 cases. The remaining 12,319 being female. • One of the main causes of this disparity is the much more frequent diagnosis of boys with behavioural and learning disabilities compared to girls, totalling 15,407 male and 5,351 female⁴⁵. • A 2015 research paper comparing 42 global studies reported a five-fold increase in the prevalence of ADHD in youth prison populations (30.1%) compared to the general population which ranged between 3-7%⁴⁶. • There is no significant difference in the number of individuals applying for DLAC with a terminal illness on the basis of gender⁴⁷.
Sexual orientation and Gender Reassignment	<ul style="list-style-type: none"> • In 2015, 4.5% of young people in Scotland identified their sexual orientation as “Lesbian, Gay, Bisexual or other”⁴⁸. • In 2017, 22% of the LGBTI young people (age 13 to 25 years of age) who completed an online survey (though self-selecting) for LGBT Youth Scotland⁴⁹ reported having a disability.

⁴³ [Scottish Surveys Core Questions 2017](#)

⁴⁴ [Scottish Surveys Core Questions 2017](#)

⁴⁵ DWP stat Xplore

⁴⁶ https://www.cambridge.org/core/services/aop-cambridge-core/content/view/23477B340EDE335069C9050EF9F0DD0A/S0033291714000762a.pdf/metaanalysis_of_the_prevalence_of_attention_deficit_hyperactivity_disorder_in_incarcerated_populations.pdf

⁴⁷ DWP stat Xplore

⁴⁸ Scottish Surveys Core Questions 2016

⁴⁹ LGBT Youth Scotland: *Life in Scotland for LGBT Young People* 2017

Protected characteristic	Evidence gathered
	<ul style="list-style-type: none"> • 84% of LGBTI young people and 96% of transgender young people who completed the LGBT Youth Scotland survey have experienced mental health problems and associated behaviours.⁵⁰ • Many of the young people we engaged with had already undergone a PIP assessment in the current system and had experienced homophobia/ transphobia by assessors. They spoke sometimes of dismissive and disrespectful attitudes towards shared living arrangements with same-sex partners.

Impact of introducing amendment regulations to the Disability Assistance for Children and Young People (Scotland) Regulations 2021 on individuals in protected groups and further considerations

- The impact of introducing Child Disability Payment in place of Disability Living Allowance for Children (DLAC) has been reviewed in the principal regulations EQIA which can be viewed [here](#).
- For the purposes of these amendment regulations, we have not identified evidence of potential negative impacts to people who have one or more protected characteristics.
- We recognise that there is limited data about young disabled people from certain protected characteristic groups, in particular in relation to gender reassignment, marriage and civil partnership, pregnancy and maternity, and religion and belief.

Age

- We are not aware of any evidence that suggests these amendments create any further particular inequalities for this protected characteristic.
- We know that many disabled young people transition between child and adult services at age 16. The changes we are seeking to make to the age criteria will help ensure that young people aged 16-18 will not, have a gap, or lose their entitlement to CDP whilst waiting for their Adult Disability Payment application to be processed, or during case transfer. This will have a positive impact on disabled young people by reducing the anxiety and challenges at this difficult time for families. It will also help mitigate any further drop in household income at a time when other child benefits and respite care stops.
- Adding an exception to the definition of legal detention will help ensure that children and young people who are in-patients in a hospital or hospice are not treated as though they are in legal detention and will continue to be paid their

⁵⁰ LGBT Youth Scotland: *Life in Scotland for LGBT Young People* 2017

care component of CDP. This will provide more consistency for young people and their families regardless of which environment a young person becomes resident in. It avoids potentially putting children and young people and their families in the situation whereby they are faced with a sudden reduction in part of a household's income. This is particularly important given the research which indicates that households with at least one disabled child are far more likely to be in poverty.

Disability

- We are not aware of any evidence that suggests these amendments create any further particular inequalities for this protected characteristic.
- We consider that setting a period for re-determination where the First-tier Tribunal decides that a re-determination request has been made in such form as the Scottish Ministers require, will have a positive impact. It will provide certainty for children and their families about how long Social Security Scotland has to complete a re-determination.
- Short-term assistance is not available in the reserved social security system and is another example of where Scottish Ministers are removing barriers to challenging decisions in the Scottish social security system. The intention of STA is to ensure that an individual is not discouraged from challenging a decision or accessing administrative justice by having to manage, for a period, with a reduced income.
- Extending the scenarios where short-term assistance is payable and providing clarity around how it is ended will enable people to feel more confident in seeking administrative justice. This is particularly important given that in Scotland 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%).⁵¹

Sex

- We are not aware of any evidence that suggests these amendments create any further particular inequalities for this protected characteristic.
- There is an overrepresentation of males in the young prison population⁵². Clarifying the date when payment of the care component will stop when an individual is admitted into a care home, or legal detention will likely benefit more young disabled males. This will however not disadvantage female children and young people.

⁵¹ <http://www.gov.scot/isbn/9781787816909>

⁵² Meta-analysis conducted in 2015, https://www.cambridge.org/core/services/aop-cambridge-core/content/view/23477B340EDE335069C9050EF9F0DD0A/S0033291714000762a.pdf/metaanalyses_of_the_prevalence_of_attention_deficit_hyperactivity_disorder_in_incarcerated_populations.pdf

- The changes being made will have a positive impact regardless of sex or gender on young disabled people in Scotland. It will remove ambiguity around the date when payment of the care component will stop, and provide children and young people and their families with clear information about their entitlement.

Sexual Orientation and Gender Reassignment

- When engaging with young people in the LGBTI+ community, we were told that 17-18 was the most common age to 'come out', including leaving the family home. This was clearly already a period of extreme stress and difficulty for many emotionally and financially.
- For individuals in this group, allowing for children and young people to remain on Child Disability Payment past the age of 18 in some exceptional circumstances may have a negative impact. The reason being is, if they were to transfer to adult services at age 16, they would likely still be living in the family home and have support to complete the application for Adult Disability Payment or PIP. For individuals who have had to leave the family home, they will need to apply for disability assistance on their own at a time when they will likely be facing other significant changes and decisions as they enter adulthood.
- We are aware that there is no one-size-fits-all 'perfect' age at which to transition to adult services for young people in Scotland. We have consulted widely on extending the upper age limit for CDP, both with our stakeholder organisations and with the public during the consultation period. We will continue to monitor and consult with this group so as to mitigate any unintended consequences. It is anticipated overall though that the introduction of CDP will have a positive effect on this group.
- In relation to case transfer, we have not identified any particular barriers resulting from our policy approach which may affect people with the protected characteristic of sexual orientation and gender reassignment.

Marriage and Civil Partnership

- We have not identified any particular barriers resulting from our policy approach which may affect people with the protected characteristic of marriage or civil partnership.

Race

- We are aware of the particular barriers faced by people belonging to ethnic minorities in applying for disability benefits, especially those with English as a second language as they may face difficulties in accessing or understanding their entitlements due to language or other communication barriers. To address this, work has been undertaken with ethnic minorities alongside the main Experience Panels as part of our Benefit Take-up Strategy.

- Furthermore, Social Security Scotland will create a range of CDP stakeholder resources and content in accessible formats that will be proactively supplied to relevant stakeholder organisations through the National Stakeholder Engagement team, for organisations to distribute to people in local communities. The languages we proactively translate materials into were selected through stakeholder consultation. These are: BSL, Farsi, Mandarin, Cantonese, Urdu, Gaelic, Polish, Arabic, braille and easy read formats.
- The impact of the regulations should positively impact on ethnic minorities and foreign nationals, especially in relation to the provision that allows Scottish Ministers to stop payment of assistance during a temporary absence that goes beyond 13/26 weeks, as appropriate, rather than end entitlement. It will do this by minimising the number of times children and young people will need to re-apply for CDP.
- We know, that for many people, having to apply for disability benefits can be stressful. In submissions to a 2019 Scottish Parliament Social Security Committee inquiry into benefits take-up, some of the most common reasons for low benefit take-up mentioned were complexity and lack of knowledge, followed by administrative barriers⁵³. This change seeks to break down some of the complexities and administrative barriers and reducing stress and anxiety for children, young people and their families or carers.
- Social Security Scotland will produce communications materials in other languages on request. Social Security Scotland communications will work with community radio and foreign language press to provide messaging on CDP and case transfer to communities. In some circumstances printed marketing materials may not be the right way to engage with these communities and where this is the case we will provide an engagement approach through work carried out by the National Stakeholder Engagement and Local Delivery functions of the Agency.
- Only those deemed to be “ordinarily resident” in Scotland on the day their case is reviewed for transfer will be subject to the transfer process. This will likely impact those that live more transient lifestyles, especially those regularly moving between Scotland and other parts of the UK, more so than those with a more settled lifestyle.
- This residence requirement is therefore more likely to impact on the gypsy/traveller community. However, we do not have sufficient data to determine how many of the just over 4,000 people in Scotland (0.1% of the population) who identified their ethnic group as “White: Gypsy/Traveller”⁵⁴ regularly travel between Scotland and the rest of the UK. As a result, it is difficult to determine what, if any, negative impact this may have on this community.

⁵³ [Benefit Take-up | Scottish Parliament](#)

⁵⁴ [Gypsy/Travellers in Scotland - A Comprehensive Analysis of the 2011 Census](#)

- We were informed anecdotally that Gypsy/Travellers operate within the ‘cash economy’ and that they are more likely to have a post office account than a bank account. This can be problematic in terms of having benefits paid.
- We recognise that the payment method will be important for some people and in particular Gypsy/Traveller communities. In addition to Post Office and Credit Union accounts, payments can be made using iMovo which is a secure digital voucher system that can be delivered to individuals in several media (SMS, email). These can be redeemed at one of 2850 PayPoint outlets in Scotland. This has also been found to be useful for young adults who have not yet opened a bank account.

Religion or belief

- We have not identified any particular barriers resulting from our policy approach which may affect people with the protected characteristic of religion or belief.

Monitoring and review

- 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.
- 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.
- 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.

Conclusion

- This EQIA process has identified that overall, the amendment regulations to the Disability Assistance for Children and Young People (Scotland) Regulations 2021 have potential to have a positive impact for children and young people in Scotland who share protected characteristics.
- The potential positive impacts identified include:
 - amending the age criteria will help ensure that young people aged 16 to 18 will not have a gap, or lose their entitlement to CDP, whilst waiting for their Adult Disability Payment application to be processed. This will help mitigate any drop in household income and alleviate some of the anxiety and

challenges faced by many young people and their families during the transition from child to adult services;

- the amendments relating to the effect of time spent in care homes and in legal detention will bring clarity to the rules on entitlement and consistency for young people and their families, regardless of which environment a young person becomes resident in;
- clarifying the policy intention regarding when the period Social Security Scotland has to complete a re-determination begins will bring more fairness to the appeal process. It also provides more certainty for children and their families about how long Social Security Scotland has to complete a re-determination;
- extending the scenarios where short-term assistance is payable and providing clarity around when it ends will remove ambiguity and enable people to feel more confident to challenge decisions and seek administrative justice;
- amending the date on which increase of entitlement takes effect will bring more fairness, as it will ensure that an individual who has reported their change of circumstance late would not see their entitlement change sooner than someone who reported timeously;
- stopping payment rather than ending entitlement after a temporary absence from the CTA will minimise the potential need for children and young people to re-apply for CDP upon return to the CTA. This, in turn will reduce stress and anxiety for children, young people and their families or carers around having to start a new application;
- providing more clarity around the date CDP stops when an individual moves between Scotland and the rest of the UK will help mitigate the loss of income to households during moves; and
- ensuring individuals are not financially disadvantaged by the case transfer process.

Authorisation

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