

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

EQIA Results

September 2021



Scottish Government
Riaghaltas na h-Alba
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Title of Policy	Social Security (Claims and Payments) (Miscellaneous Amendments) (Scotland) Regulations 2021
Summary of aims and desired outcomes of Policy	These regulations make amendments to the Social Security (Claims and Payments) Regulations 1987 and the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013. The amendments will have the effect of allowing large payments of benefit arrears to be paid to Scottish clients in instalments instead of a lump sum if it is in the person's best interests and if the person agrees to the payment of the arrears in that way.
Directorate: Division: Team:	Social Security Directorate Social Security Policy Division Funerals, Resolutions and Early Years Unit

Executive Summary

This policy will introduce new powers to allow 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.

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 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

The change will apply across all devolved benefits delivered under the Agency Agreements. However, in practice, PIP clients will be the most likely to be affected. This is because there are a number of ongoing PIP Legal Entitlements and Administrative Practice (LEAP) exercises. LEAP exercises are administrative exercises that are undertaken to ensure clients have received the correct benefit entitlement. The need for a LEAP exercise can emerge when the Upper Tribunal or

court interprets legislation in a way which widens access to benefits affecting other clients or, systematic error in guidance or procedures applying legislation has resulted in clients being underpaid. These exercises can result in clients receiving payments of arrears. If a long time has passed since the original decision, this can result in clients being due a large back payment. 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.

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.

Background

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 which could have tragic consequences.

The aim of this approach would be to reduce the possibility of this happening in cases involving some of the most vulnerable clients.

The approach is in line with Scottish Social Security principles to respect the dignity of individuals and the client's right to choose.

The scope of the Equality Impact Assessment

The scope of this EQIA is to look at the impact the amendment regulations will have on people living in Scotland who are in receipt of any of the devolved benefits being delivered by the DWP under the Agency Agreements. However, in practice, DWP have advised that individuals in receipt of PIP will be the most likely to be affected.

Key Findings

The policy may impact clients in different ways according to their individual circumstances. This section considers whether there are any greater or lesser impacts expected on individuals according to protected characteristics.

Age

In April 2021, there were 288,135 people entitled to Personal Independence Payment in Scotland¹. The number of cases with entitlement increases with age up to the most common age band of '60-64' (44,569 cases, 15 per cent). From age 65 and over the number of cases decreases, with only 14,889 cases (five per cent) in the 70 and over age band. This is because people are generally unable to start a new claim for Personal Independence Payment after they reach State Pension Age.

There is very limited data available which suggests that the option of staggered payments will be offered to younger or older claimants. The policy will be applied equally, regardless of age, and based on the client's vulnerability. There is no evidence to suggest there will be a disproportionate adverse impact on any particular age group.

Anyone over the age of 16 who is applying to, or in receipt of PIP may be impacted by the policy. This EQIA has concluded that it is unlikely that this policy will have specific positive or negative impacts on people as a result of their age.

Disability

PIP is a benefit for disabled people or those with long term ill health conditions and any changes will have a direct impact on disabled people. The majority of PIP clients in are likely to be covered by the definition of "disability" in the Equality Act 2010.

This change may affect any PIP client who is due a large payment of arrears. 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 decision and court judgments. The majority have related to Employment Support Allowance (ESA) (which is a reserved benefit) and PIP. For PIP in particular there have been a number of LEAP exercises arising from decisions of the Upper Tribunal and court judgments which have re-interpreted the law. Therefore, cases involving large payments of arrears are more likely to involve people living with a disability and there is a possibility they will be proportionately more affected by the proposal to offer large payments to be made in instalments.

It is possible that individuals living with certain disabilities may find it more difficult to understand what is being offered to them in terms of the option to stagger a large payment, or who may find it challenging to advocate for themselves in terms of giving their consent.

DWP have advised that an 'Advanced Customer Support Check' will be undertaken in any PIP 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 if any concerns are identified, DWP will take

¹ [Summary statistics for Personal Independence Payment at April 2021](#)

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 detailed guidance for DWP staff on how to identify when a client may be vulnerable, how to engage with clients to ensure the client is not put under pressure to agree with receiving large payments in instalments and how to signpost clients to third party support if appropriate.

DWP are also introducing an additional step for any one-off, out-of-cycle payment of £5,000 or more, even if there are no Advanced Customer Support concerns identified. In these cases a call will be made to the client to advise the client that a large payment is due and to discuss if the client can manage the payment. This could help to identify any vulnerability concerns that are not obvious from the information already held.

Sex

Data from the Papworth Trust found that women make up a small majority of disabled people in the United Kingdom (23% of females compared to 19% of males)². A report by the Women's Budget Group has also found that overall, women are more likely to rely on social security than men³.

As at April 2021, over half (55 per cent) of people entitled to Personal Independence Payment in Scotland were female, and 45 per cent were male⁴.

The proposed change will be applied equally to all clients on the basis of their individual circumstances, rather than on the basis of their sex. We do not anticipate anyone to be negatively impacted by the policy on the basis of their sex. We anticipate everyone to receive positive benefits from the added flexibility of receiving instalments of large payments, and only if they consent, irrespective of their sex. However, given that females are slightly more likely to be in receipt of PIP than males, the policy may impact more on females.

Religion or belief

The DWP data that the Scottish Government has access to about those in receipt of PIP does not include information about these protected characteristics.

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

² [papworth-trust-disability-facts-and-figures-2018.pdf \(papworthtrust.org.uk\)](https://www.papworthtrust.org.uk/papworth-trust-disability-facts-and-figures-2018.pdf)

³ [Social-security-gender-and-Covid-19.pdf \(wbg.org.uk\)](https://www.wbg.org.uk/social-security-gender-and-covid-19.pdf)

⁴ [Personal Independence Payment at April 2021: summary statistics - gov.scot \(www.gov.scot\)](https://www.gov.scot/Personal-Independence-Payment-at-April-2021-summary-statistics)

Race

DWP do not publish ethnicity data for PIP. Just under 4% of Scotland's population belong to minority ethnic groups, and 7% of our total population communicate in home languages other than English⁵. Although statistics showing the number of people within Scotland who are in receipt of disability benefits and who belong to minority ethnic groups are not available, we know that they generally make up 3.7% of those with a reported learning disability or developmental disorder.

The Scottish Government is aware that there are particular barriers for individuals from minority ethnic groups in applying for disability benefits, especially those with English as a second language, as there may be difficulties in accessing or understanding their entitlements due to language or other communication barriers. It is possible that these clients may find it more challenging to understand the options that may be offered to them in terms of getting a large payment in instalments instead of a lump sum. DWP have advised that guidance will be provided for case workers and case managers around ensuring that clients understand the proposed option and are not put under pressure to agree.

To address this barrier, work has been undertaken by the Scottish Government with ethnic minorities alongside the main Experience Panels as part of our Benefit Take-up Strategy for devolved social security benefits delivered by Social Security Scotland.

Marriage and civil partnership

The DWP do not currently collect data on this protected characteristic. Although the Scottish Government does not require assessment against this protected characteristic unless the policy or practice relates to work (for example Human Resource policies and practices), we have not identified any particular barriers resulting from this policy which may affect people with the protected characteristic of marriage or civil partnership.

Sexual orientation and gender reassignment

In 2017, 2% of people in Scotland identified their sexual orientation as "Lesbian, Gay, Bisexual or other"⁶.

There is no robust data relating to the proportion of people in Scotland to whom the gender reassignment protected characteristic applies and DWP do not collect data on this protected characteristic. We have not identified any particular barriers resulting from this policy which may affect people with the protected characteristic of sexual orientation and gender reassignment.

⁵ [Home | Scotland's Census \(scotlandscensus.gov.uk\)](https://www.scotlandscensus.gov.uk)

⁶ [Sexual orientation in Scotland 2017: summary of evidence base - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/sexual-orientation-in-scotland-2017/summary-of-evidence-base-2017/pages/10.aspx)

Pregnancy and Maternity

DWP do not have any data on the number of disabled people that fall under this protected characteristic. We have not identified any particular barriers resulting from this policy which may affect people with the protected characteristic of pregnancy and maternity.

Monitoring and Review

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.

Conclusion

These amendments will extend the option of payment flexibility across all benefits to which the Regulations apply and allow all clients to be considered, irrespective of which benefit they are receiving. No negative impacts have been identified on the basis of any protected characteristic.

However there are significant data gaps around protected characteristics. Social Security Scotland published an Equality Strategy on 22 June 2021 which will help us to meet our responsibilities under the Equality Act 2010. The strategy is accompanied by a set of Equality Outcomes. These measurable outcomes are based on information set out in our Mainstreaming Equality Report and are informed by our stakeholders.

Social Security Scotland has developed an action plan to put this strategy in place and achieve our equality outcomes. Under outcome three, "Delivering and improving our service" we have committed to taking forward a number of actions including actions to:

- Carry out more analysis of clients' diversity and equalities information, in particular the disabled people category and intersectionality.
- Build on the work of the National Engagement and Local Delivery teams to understand the needs of specific equality groups and communities. This includes demand for translated information, making our application process easier, and specific support needs.
- Be aware of and understand the findings from client panels, experience panels and equalities research when we are developing and improving our services.
- In line with our commitment under the Social Impact Pledge, encourage everyone to use their allocated volunteering hours. This will help to increase awareness of the differing needs and the specific inequalities faced by our current and potential clients.

- Improve joint working with our Policy and Directorate colleagues, particularly in relation to the Maximising Benefit Uptake Strategy and Policy Evaluation Strategy for Benefits.

Authorisation

I am satisfied with the equality impact assessment that has been undertaken for the Social Security (Claims and Payments) (Miscellaneous Amendments) (Scotland) Regulations 2021 and give my authorisation for the results of this assessment to be published on the Scottish Government's website.

Name: Ian Davidson

Position: Deputy Director

Authorisation date: 31/08/2021



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