

**Child Rights and Wellbeing Impact Assessment (CRWIA) of the Disability Assistance for Children and Young People (Scotland) Regulations 2021**

**Executive summary**

The Social Security (Scotland) Act 2018<sup>1</sup> (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 intends to replace 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 Scottish Government intends to launch disability assistance for new applicants first. This includes individuals who are not in receipt of a UK or Scottish Government disability benefit.

In addition to supporting new applications, Scottish Ministers will 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 cases and supporting information for these clients will transfer to Social Security Scotland once new applications functionality for the respective devolved benefit is in place. Over 700,000 existing clients will require to be transferred from the Department for Work and Pensions (DWP) to Social Security Scotland as devolved benefits 'go live'.

Based on estimates provided by the Scottish Government's Communities Analysis Division, there are 57,000 children and young people who will transfer to CDP from DLAC.

Scottish Ministers have set out a number of case transfer principles which we have used to guide the development of our approach to case transfer.<sup>2</sup> Our commitment to equalities will run through all of these principles and also guides our overall approach. The principles are:

- **Correct payment at the correct time** – ensuring that the case transfer process is designed so that clients will receive

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

<sup>2</sup> <https://www.gov.scot/publications/social-security-case-transfer-policy-position-paper/>

the same amount for the Scottish benefit as they received for the corresponding UK benefit to include checks at the point of transfer

- **No re-applications** - we will not require clients to re-apply for their benefit as part of the case transfer. We will work with DWP to move clients automatically to Social Security Scotland and the corresponding new Scottish benefit.
- **No face to face DWP re-assessments** - we will ensure that no-one will be subject to a face to face re-assessment by DWP when new applications for Adult Disability Payment are open. DWP do not conduct face to face assessments for DLA Child renewals, so this is not a consideration for DLA Child case transfer.
- **Complete as soon as possible** – Whilst the previously set out timetable will no longer be possible due to the impacts of Covid-19, Scottish Ministers have been clear that they want to complete the transfer of cases as soon as is possible in a way that will not create unacceptable risks for clients.
- **Clear communication with clients** – we will inform our clients the date their case will be transferred and will keep them informed at the various stages of the case transfer process.

The first form of disability assistance the Scottish Government will deliver 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 changes we are implementing include:

- automatically extending awards of CDP for individuals approaching age 16 to age 18;
- a new definition of terminal illness that removes the time limit that applies in the reserved social security system;
- continuing entitlement to the mobility component of CDP while a child or young person is in legal detention;
- revising the definition of a severe visual disability for the purposes of entitlement to the higher rate of the mobility component in line with national clinical best practice;

- making all awards of CDP rolling, subject to reviews which take account of how likely it is for an individual's condition or disability to change over time and continuing entitlement during the review process;
- extending the time an individual has to request a re-determination from 31 to 42 calendar days;
- Social Security Scotland will have 56 calendar days to complete a re-determination process before the individual can appeal a determination to the First-Tier Tribunal for Scotland; and
- introducing Short-Term Assistance (STA) which will 'top up' an individual's ongoing award which has been reduced or stopped due to a new determination, which can be applied for during re-determinations or appeals.

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;
- We tackle poverty by sharing opportunities, wealth and power more equally; and
- We respect, protect and fulfil human rights and live free from discrimination.

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<sup>3</sup> the policy relates to:

- 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.

Of the UN Convention on the Rights of the Child (UNCRC) considerations, the policy relates to:

- 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.

<sup>3</sup> <http://www.legislation.gov.uk/asp/2014/8/contents/enacted>

	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> </ul> <p>The CRWIA has been informed by a range of evidence, including:</p> <ul style="list-style-type: none"> <li>• analysis from two public consultations<sup>45</sup></li> <li>• responses from participants in our Social Security Experience Panels<sup>6</sup>; and</li> <li>• advice from the Disability and Carer Benefits Expert Advisory Group (DACBEAG).<sup>7</sup></li> </ul>
<p><b>Background</b></p>	<p>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.</p> <p>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 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.</p> <p>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</p>

<sup>4</sup> Full analysis report of the Consultation on Social Security in Scotland was published in March 2017: <http://www.gov.scot/Resource/0051/00514352.pdf>

<sup>5</sup> Full analysis report of the Consultation on Disability Assistance in Scotland was published in October 2019: <https://www.gov.scot/publications/consultation-disability-assistance-scotland-analysis-responses/>

<sup>6</sup> List of experience panel publications: <https://www.gov.scot/collections/social-security-experience-panels-publications/>

<sup>7</sup> List of publications by the Disability and Carer Benefits Expert Advisory Group (DACBEAG): <https://www.gov.scot/groups/disability-carers-benefits-expert-advisory-group/#:~:text=The%20Disability%20and%20Carers%20Benefits,on%20disability%20and%20carers%20benefits.>

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.

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.

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.<sup>8</sup> 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 users who come from seldom heard groups. This is a continuous exercise and more information from this work is imminently forthcoming.

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.

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

<sup>8</sup> 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/>

	<p>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>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. This will give information to those who are considering making a Child Disability Payment application. We focused on making sure that information was easy to find, understand and navigate. This was for people who don't necessarily have existing knowledge of disability benefits. We worked with participants and asked them to read through the material. We then asked them 20 questions to test how easily they could find and understand the information.</p>
<p><b>Scope of the CRWIA, identifying the children and young people affected by the policy, and summarising the evidence base</b></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.</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 0-15 age group, 18% of children have a limiting longstanding illness.<sup>9</sup> For young people aged 16-24, 24% of young people have a limiting longstanding illness.</p> <p>In 2019, there were 867,345 children aged 15 and below in Scotland.<sup>10</sup> As of May 2020, there were 41,521 children entitled to Disability Living Allowance for Children (DLAC).<sup>11</sup> This accounts for roughly 4.8% of this demographic.</p> <p>UK wide, disabled people have higher poverty rates than the general population. Disabled people make up 28% of people in</p>

<sup>9</sup> Scottish Health Survey (2018) <https://www.gov.scot/publications/scottish-health-survey-2018-supplementary-tables/>

<sup>10</sup> 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>

<sup>11</sup> DWP Stat-Xplore (Accessed May 2020)



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 illness.<sup>12</sup> 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 Trust<sup>13</sup> 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 condition.<sup>14</sup> 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).

#### Wider context

The CRWIA should be read in conjunction with the other impact assessments conducted for the policy. This includes:

<sup>12</sup> <https://www.gov.scot/publications/poverty-perspective-typology-poverty-scotland/pages/5/>

<sup>13</sup> 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>

<sup>14</sup> <https://www.jrf.org.uk/income-and-benefits/>

	<ul style="list-style-type: none"> <li>• the Business and Regulatory Impact Assessment;</li> <li>• the Island Communities Impact Assessment;</li> <li>• the Equality Impact Assessment); and</li> <li>• the Fairer Scotland Duty Assessment.</li> </ul> <p>The Equality Impact Assessment (EQIA) for these regulations considers the potential impact of the policy on each of the protected characteristics such as race, religion or belief.</p> <p>The Business and Regulatory Impact Assessment (BRIA) will analyse the cost and benefits of the policy to businesses and the third sector.</p> <p>The 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>The Fairer Scotland Duty Assessment considers the potential impact of the policy on inequality in Scotland.</p>
<p><b>Children and young people’s views and experiences</b></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 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"> <li>• Scottish Health Survey 2018;</li> <li>• Census 2011;</li> <li>• DWP Stat X-plore;</li> <li>• National Records of Scotland Population Statistics;</li> <li>• Consultation on social security in Scotland 2016</li> <li>• Consultation on Disability Assistance in Scotland 2019 and</li> <li>• Social Security Experience Panel Research.</li> <li>• The Disability and Carer Benefits Expert Advisory Group (DACBEAG)</li> </ul>
<p><b>Key Findings, including an assessment of the impact on children’s rights, and how the measure will</b></p>	<p><u>Extending CDP to age 18</u></p> <p>We asked Experience Panel members<sup>15</sup> 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</p>

<sup>15</sup> <https://www.gov.scot/publications/social-security-experience-panels-disability-living-allowance-DLAC-children-visual-summary/>



**contribute to children's wellbeing**

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'.

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. We were also told that for many, a PIP award was perceived as being unattainable.

We also heard 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.

The data show that whilst 39% of young people in Scotland moving from DLA to PIP saw their entitlement increase<sup>16</sup>, 11% saw their entitlement decrease and 25% had their entitlement stopped following their PIP assessment. We also know that around 2% of young people in Scotland fail to attend an assessment and almost 7% fail to return the forms for PIP.

Allowing young people to remain on CDP for an additional two years by automatically extending awards for children who are entitled to CDP immediately before their sixteenth birthday will avoid the need to apply for PIP 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. This extends to pasported benefits such as Carer's Allowance, disability premiums and, for children and young people entitled to the highest rate of the care component, Child Winter Heating Assistance (CWhA).

Terminal Illness

As of May 2020, there were 25 Scottish DLAC clients with a terminal illness.<sup>17</sup>

<sup>16</sup> DLA Stat-Xplore, accessed January 2021

<sup>17</sup> DWP stat Xplore

We know that the definition of terminal illness used in the current system can be limited, imposing a time limit of six months and, thus, not taking account of a range of conditions and situations which may affect children and young people. For example, we know from engagement with stakeholders that, for some conditions. It can be especially difficult to predict length of life, meaning that individuals who would otherwise qualify for assistance under SRTI are unable to do so as they do not fit the strict definition in the current system.

Our new definition will be able to take account of such cases by allowing medical professionals to use their clinical judgement on a case by case basis. This, in turn, will mean that a broader range of conditions will be able to be accounted for and, thus, allow more children and young people to be entitled to CDP through SRTI.

This will be beneficial to children and young people and allow those that need support to receive it quickly.

For case transfer, whilst most of the eligibility requirements for DLAC and CDP are the same, there are some instances where someone receiving CDP will be eligible for a higher award than they would if they were receiving DLAC. We will be able to identify some, such as clients with a terminal illness who are only on low mobility awards for DLAC, as part of the case transfer process and these regulations provide for exceptions to the rule that the CDP determination on case transfer will be based on the equivalent rates and components for the client's DLAC award.

These regulations do not make provision for a client to initiate case transfer. A client is still free to choose to end their DLAC award and to make a new application to CDP but we cannot guarantee there will be no break or delay in payment. We are, however, putting in place a process to prioritise the transfer of individuals who have been diagnosed with a terminal illness.

#### Accessible Vehicles and Equipment Scheme

Children and young people in receipt of the higher rate mobility component of Disability Living Allowance for Children (DLAC) are able to transfer this directly from DWP to Motability, a provider of accessible cars, vehicles and equipment.

The Scottish Government will ensure that children and young people in receipt of the higher rate mobility component of CDP have access to an equivalent service so that their mobility needs continue to be met.

The Accessible Vehicles and Equipment Scheme will provide disabled children and young people's families with a choice of vehicles (including cars, wheelchair accessible vehicles, powered wheelchairs and scooters), on affordable leasing terms, from accredited providers. All leases include insurance, breakdown cover, servicing and road tax.

It is anticipated that continued access to this form of support with mobility and transport will help ensure that young people and children in receipt of CDP will be able to engage in community activities, social events, education and training and to live a life of their own choosing.

#### Legal Detention and the Mobility Component

In 2015, a meta-analysis of 42 global studies reported a five-fold increase in the prevalence of ADHD in young prison populations (30.1%) compared to the general population which ranged from an average of 3-7%.<sup>18</sup> Part of this might be overrepresentation of males in prison populations and the far higher rate of diagnosis of behavioural and learning disabilities in boys compared to girls (18,828 male and 6,435 female).<sup>19</sup>

Since 2016, fewer than five individuals under the age of 16 have been detained in legal custody in Scotland.<sup>20</sup>

While in legal detention, it is important that a child or young person remains in contact with their family, maintaining necessary relationships to support them during a time which can be very stressful. We expect that continuing entitlement to the mobility component will help facilitate this as it could be put towards visiting the child or young person in legal detention.

Furthermore, we also know that, on average, children and young people spend more periods of time out-with legal detention as part of the rehabilitation process with shorter sentences. Continuing entitlement to the mobility component will help ensure that, when children and young people are not in legal custody, their needs can continue to be met. This will help to ease the transition back into the community upon completion of the child or young person's sentence.

Continuing entitlement to the mobility component while the child is in legal detention will also continue access to the AVE scheme for those who have opted into it. This means that, when a child spends periods of time outwith legal custody while serving their sentence, their mobility needs will still be able to be met as the family will have retained access to the leased vehicle, wheelchair or scooter.

Finally, continuing entitlement to the mobility component while a child is in legal detention will provide continuity for the child and for their family. This is because it will bring legal detention in line with the regulations surrounding other forms of alternative accommodation such as care homes and residential care institutions.

<sup>18</sup> [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](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)

<sup>19</sup> DWP stat Xplore

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

### Severe visual disabilities and the higher rate mobility component

Under the rules applicable to DLAC, a child or young person who has been “certified blind or severely sight impaired” will qualify for the higher rate of the mobility component. As of May 2020, there are 107 children in Scotland<sup>21</sup> who are entitled to the higher rate of the mobility component under these rules.

From April 2018, children under 16 years of age are no longer registered as having a severe visual disability, but will instead be provided with support as part of a national care pathway, the Visual Impairment Network for Children and Young People (VINCYP). If a child has a severe visual disability, they will be provided with a letter from an ophthalmologist, orthoptist, optometrist or paediatrician confirming that this.

Unlike adults, the definition of ‘severe’ in children cannot always be measured in terms of the standard sight tests of visual acuity, either because they are too young, or because visual impairment is due to an abnormality of brain function so that they cannot ‘see’ due to profound difficulties with visual processing in the brain.

Where it is not appropriate to apply the adult visual acuity criteria, clinicians form a professional opinion on whether a child has equivalent visual function to someone meeting the adult criteria. Best practice is for a child to have a functional assessment by a team of professionals with expertise in visual impairment including a teacher and habilitation specialist.

For CDP an individual will qualify for the higher rate of the mobility component if they have been diagnosed as having a severe visual disability fulfilling the VINCYP definition.

Whilst the VINCYP network has not yet published data on the number of children and young people who have been diagnosed with a severe visual disability, in light of the length of time that the VINCYP definition of severe visual impairment has been operational, we do not anticipate any significant change to the numbers of children who will qualify under this route for CDP.

The Scottish Government will monitor the number of children and young people who do qualify through this route, to ensure that any additional impacts of this change can be identified.

### Award Duration and Reviews

We know that, for many people in the current system, the end of their award for disability benefits can be extremely stressful, particularly for individuals whose conditions are unlikely to change

<sup>21</sup> DWP Stat-Xplore, May 2020 statistical release

over time and who are consequently subject to unnecessary reassessments of entitlement.<sup>22</sup>

Making awards rolling, subject to reviews, will help to reduce stress and anxiety associated with coming to the end of an award for assistance by removing the perception of reaching a financial cliff edge.

By continuing entitlement while a review is taking place, we will further help to mitigate the risk of a financial cliff edge by ensuring that children and young people continue to receive the assistance they are entitled to until a case manager has made a new determination.

The process for reviewing awards will be light-touch, providing a balance between respecting the needs of the individual and robust decision-making. Having a light-touch review process is more appropriate, particularly where a client's needs are unlikely to have changed significantly.

This process still enables Social Security Scotland to undertake reviews as appropriate to determine continuing entitlement to CDP. 66% of respondents to our Consultation on Disability Assistance agreed with this approach<sup>23</sup> alongside general agreement from our Experience Panels.

Similarly, when asked if awards should be between 5-10 years for individuals with conditions unlikely to change, 58% of respondents to the Consultation agreed.

This will help to cut down on the number of unnecessary reviews of awards children and young people will need to go through. In particular, for children with conditions that are unlikely to change, we will use light-touch reviews to reduce stress and anxiety experienced as a result of an award being reviewed.

#### Residence and Presence conditions

The Scottish Government has considered the implications of removing or adjusting the existing DWP residence and presence conditions. This is the type of policy change which could potentially have implications for individuals moving around the UK whilst in receipt of Scottish Disability Assistance. There may also be issues around eligibility for a range of payments, exemptions and entitlements associated with reserved UK benefits which remain within the control of DWP, eligibility for which currently depends on receipt of a UK disability benefit.

A majority of respondents to the consultation on Disability Assistance agreed with the proposed approach taken to residence

<sup>22</sup> <https://www.gov.scot/publications/social-security-experience-panels-award-duration-automatic-entitlement/pages/5/>

<sup>23</sup> <https://www.gov.scot/publications/consultation-disability-assistance-scotland-analysis-responses/pages/3/>

and presence tests for Child Disability Payment. However, we also received suggestions about how we could change the rules, including the removal or shortening of the 'past presence test'.

In developing the past presence test for CDP, we considered the responses to the consultation on disability assistance, the need to maintain a test that would retain access to reserved passported payments and entitlements, and the latest developments in Human Rights jurisprudence. The past presence test for CDP thus requires that all children over the age of 6 months should require 26 of the past 52 weeks' presence in the UK to establish eligibility for CDP, and that children under the age of 6 months should require presence amounting to 13 of the past 26 weeks to establish eligibility, in accordance with the most recent developments in case-law<sup>24</sup>

There are features built in to the test that mitigate the test for the youngest and most vulnerable:

- If a child becomes entitled to CDP at an age of 6 months or less, the shorter test will apply to them if they apply by the time they are 12 months;
- Individuals who are terminally ill do not need to satisfy the PPT;
- And in addition, CDP regulations provide that an advance award (with a delayed start date for payments) can be made where it appears that the applicant will meet the necessary conditions within three months of their application.

The past presence test will impact UK nationals returning to Scotland, and to third country nationals who have immigration status that allows them access to public funds. Scottish Government analysts highlighted significant challenges in relation to the data available on the size of these groups and interactions with social security benefits.

From the analysis available, the relative change in size of cohorts eligible under adjusted past presence tests is expected to be small. Previous analysis suggests that the impact of removing the past presence test for DLAC in its entirety for UK Nationals moving to Scotland from outside the EEA might affect some 25 children.

There would be a further cohort of children moving to Scotland from outside the European Economic Area (EEA) who could be eligible, if they hold a visa that allows them access to public funds. Data constraints make it very difficult to assess the number of such children who might be affected any further reduction or removal of the award.

#### Re-determinations and Appeals

<sup>24</sup> TS (by TS) v SSWP (DLA); EK (by MK) v SSWP (DLA) [2020] UKUT 284 (AAC)



While a majority of respondents to our Consultation on Disability Assistance (58%) agreed with the proposal that individuals should have 31 days to request a re-determination, some organisations held differing views. Feedback suggested that accessing support or advice on challenging a decision can be time consuming with more time being needed to do so.<sup>25</sup> There was an emphasis on the need to take account of individual circumstances.

We also noted concerns raised by a small number of respondents that a short timescale may deter individuals from challenging a decision.

We want to ensure that no one is disadvantaged by time limits for challenging a decision. In response to the feedback in the consultation and our Experience Panels,<sup>26</sup> we have extended the time limit for requesting a re-determination to 42 calendar days. Key stakeholders have agreed with this change.

In doing so, we will give individuals more time to gather any supporting information that may be required alongside providing more time to seek advice on challenging a decision should it be required.

We proposed to give Social Security Scotland 40-60 days to reconsider a decision, as it may be necessary to collect supporting information on a child's behalf, and this information may take some time to obtain. A majority of respondents to our 2019 consultation (60%) agreed with this proposed approach though some stakeholders felt that this was an excessive period for someone to be left without clarity over their award level or eligibility.

Given these concerns and subsequent stakeholder engagement, we have determined that Social Security Scotland will have 56 calendar days (8 weeks) to complete the re-determination process before an individual can apply directly to the First-Tier Tribunal.

This will be beneficial as it will ensure that children, young people and their families or carers will have certainty about how long Social Security Scotland has to complete a re-determination. Similarly, by enabling individuals to appeal directly to the FtT should Social Security Scotland be unable to complete the re-determination process within the timescale, this will further reduce any uncertainty and, consequently, make people feel more confident in challenging a decision they do not agree with.

If for any reason clients feel their new CDP award is incorrect at the point of transfer, they will be able to request a re-determination and appeal any such re-determination in the normal way through Social Security Scotland.

<sup>25</sup> <https://www.gov.scot/publications/consultation-disability-assistance-scotland-analysis-responses/pages/3/>

<sup>26</sup> <https://www.gov.scot/publications/social-security-experience-panels-complaints-re-determination-appeals/>

Clients can continue to request a revision or supersession to their DLAC award through DWP, even after it has ended on transfer.

### Short-Term Assistance

During the Parliamentary passage of the Social Security (Scotland) Act 2018, the inclusion of STA was welcomed by stakeholders and supported by Parliament.

When asked about STA in our Consultation on Disability Assistance, it was found that:

- 73% agreed that STA should not be paid to individuals not living or present in Scotland;
- 87% agreed that STA should not be recoverable; and
- 49% agreed that deductions being made from an on-going assistance (such as CDP) should also be applied to STA.<sup>27</sup>

Based on feedback from respondents, we have since changed the rules around STA and residency and presence, allowing children and young people living outside of the UK to apply for STA if they are in receipt of a qualifying benefit such as CDP.<sup>28</sup> We recognise the complexities involved and will need to carry out further work to understand the impacts.

Because STA is not recoverable, there will be no overpayments which individuals will need to worry about should their re-determination or appeal be unsuccessful. This will help to prevent a further reduction in household income in these circumstances, something which was stressed as important by respondents.

Engagement with our Experience Panels has found that participants believe introducing STA is a good idea,<sup>29</sup> stating: “Nothing in place at the moment so this is a good system, means nobody is left out to dry”.

When asked if the introduction of STA would make it more likely for people to challenge a decision by Social Security Scotland, almost all participants agreed that it would with particular emphasis on STA reducing financial pressure and giving people confidence in challenging a decision.

This will help to ensure that, if a mistake has been made by Social Security Scotland, disabled children and young people will continue to receive the payments they would have been entitled to should the mistake not have been made. STA will therefore enable people to feel more confident in seeking administrative justice should a mistake have been made by Social Security Scotland.

<sup>27</sup> <https://www.gov.scot/publications/consultation-disability-assistance-scotland-analysis-responses/pages/3/>

<sup>28</sup> <https://www.gov.scot/publications/consultation-disability-assistance-scotland-scottish-government-response/pages/3/>

<sup>29</sup> <https://www.gov.scot/publications/social-security-experience-panels-short-term-assistance-visual-summary/>

	<p>Our assessment of the impact of the policy on the relevant articles of the UNCRC is as follows:</p> <p><b>Article 3 - Best interests of the child</b>  This policy was largely informed by the output from our Social Security Experience Panels, our expert advisory groups, informal research, and public consultation. The decision for the Scottish Government to take forward the policy is deemed in the best interest of children and young people aged 3 months to 18 years old as it will provide additional financial support to help mitigate the additional costs incurred as a result of having a disability.</p> <p><b>Article 12 - Respect for the views of the child</b>  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 disabled children and young people and their contribution is crucial in shaping a successful policy.</p> <p><b>Article 23 - Children with disabilities</b>  The financial resource provided by CDP is intended to provide support to disabled children and young people. It should also have an indirect positive impact on the families and carers of these individuals through connected services.</p> <p><b>Article 26 - Social security</b>  This policy will ensure that disabled children and young people are able to access assistance in meeting the additional costs that can be incurred as a result of having a disability. This includes access to passported benefits such as Carer’s Allowance or Child Winter Heating Assistance, depending on the rate and component the child or young person is entitled to.</p> <p>The most relevant wellbeing indicators for this policy are:</p> <p><b>Healthy:</b> The introduction of CDP is intended to improve the health and wellbeing of disabled children and young people by providing financial support that can help to meet the cost of care and mobility associated with having a disability.</p> <p><b>Included:</b> CDP is intended to provide some financial support to meet the additional cost of having a disability, and to ensure that disabled children and young people can access appropriate care and remain mobile, allowing them to take advantage of opportunities for learning, employment, leisure and social situations.</p>
<p><b>Monitoring and review</b></p>	<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>				
<b>Regulation - Clause</b>	<b>Aims of measure</b>	<b>Likely to impact on . . .</b>	<b>Compliance with UNCRC requirements</b>	<b>Contribution to local duties to safeguard, support and promote child wellbeing</b>
Disability Assistance for Children and Young People (Scotland) Regulations 2021	These regulations 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.	Children and young people in Scotland between the ages of three months and 18 years with a disability or health condition and their families.	The regulations do not infringe upon any UNCRC Article. The 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 standard of living)	The regulations do not infringe upon any of the indicators. They are likely to have a positive impact on the following indicators: Healthy, Respected, Included
<b>CRWIA Declaration</b>				

<b>Authorisation</b>	
<b>Policy lead</b> David George Disability Benefits Policy Team Leader Social Security Policy Division  David Hilber Case Transfer Policy Lead Social Security Policy Division	<b>Date</b> 12 February 2021
<b>Deputy Director or equivalent</b> Ann McVie Deputy Director Social Security Policy Division	<b>Date</b> 12 February 2021