

Child Rights and Wellbeing Impact Assessment – Stage 3

CRWIA for legislation

CRWIA title: The Social Security Information-sharing (Scotland) Amendment Regulations 2022 ('the Amendment Regulations') Date of publication: 17/12/2021	
Executive summary	<p>This Child Rights and Wellbeing Impact Assessment (CRWIA) identifies, analyses and records the anticipated impact of the regulations on children's human rights and wellbeing in Scotland.</p> <p>The provisions in Social Security Act (Scotland) 2018 ('the 2018 Act') have been considered and assessed for compliance with/advancement of the articles of the UNCRC and how they will protect and promote the wellbeing of children and young people who may be affected by it, using the child wellbeing indicators.</p> <p>The Social Security Information-sharing (Scotland) Regulations 2021 ('the 2021 Regulations') expanded the list of persons Scottish Ministers may require information from, in order to discharge their social security functions in relation to the launch of Child Disability Payment in 2021. The Amendment Regulations will add further functions for which information may be shared for purposes related to the upcoming launch of Adult Disability Payment (ADP) in 2022.</p> <p>The impact of social security information sharing on child rights and well-being has previously been considered as part of the development of 2018 Act and the 2021 Regulations. Our approach for the Amendment Regulations is similarly proportionate, in going no further than is necessary in terms of the persons within the scope of section 85 of the Act.</p> <p>The Amendment Regulations specify additional functions for which the persons named in section 85 of the Act may share social security information. The information-sharing enabled by the regulations is necessary to enable the proper delivery of ADP and other government services that rely on information about ADP eligibility for proper delivery. Children aged 16+ may be indirectly affected by this information sharing because individuals can apply for and receive ADP from the age of 16+.</p> <p>The regulations may also indirectly impact families who are acting on behalf of a child or young person in connection with their rights to devolved forms of assistance.</p> <p>Based on the evidence gathered, the Scottish Government considers that the regulations and Code of Practice do not infringe upon the rights of the child as set out in the Articles of the UNCRC, nor upon the indicators of wellbeing (SHANARRI).</p>
Background	<p>Social Security Scotland is an Executive Agency of the Scottish Government and will eventually be making payments to 1.4 million citizens in Scotland, with a value in excess of £3 billion per year.</p>

	<p>The Scottish Government will, in coming years, be responsible for delivering benefits for disabled people, to replace the current disability benefits delivered by the Department for Work and Pensions on behalf of the UK Government. The first such benefit, Child Disability Payment, started to replace Disability Living Allowance for Children (DLAC) in summer 2021. The next benefit, ADP, will start the phased replacement of Personal Independence Payment (PIP) in spring 2022.</p> <p>The Scottish Government is committed to delivering a system of social security founded on core principles of fairness, dignity and respect. As part of that approach, this new social security system will rely upon the ability of Social Security Scotland to obtain information from others in order to make determinations of entitlement to benefits, and to make the application process for those benefits as simple as possible for individuals.</p> <p>Section 85 of the Social Security (Scotland) Act 2018 facilitates information sharing in connection with social security functions (as defined in subsection 10). Subsection 5 allows the Scottish Ministers to give information which they hold for the purpose of a social security function to one of the persons listed in subsection 2, provided it is given for a purpose specified in regulations made under subsection 5.</p> <p>The persons specified in the Regulations may be required to supply data to the Scottish Ministers: (i) in relation to an individual's application; (ii) to support individuals who apply for social security assistance and wish for the supporting information necessary for their application to be supplied by the person on their behalf, in an open, transparent and client-led way; and (iii) to verify information for the prevention or identification of error.</p> <p>For the devolved Scottish disability benefits to be delivered properly and cohesively without any detriments to Scottish individuals, it will be necessary for Social Security Scotland to share information with other persons who provide services that depend on social security information for delivery. This information sharing enables the other persons to fulfil their legal duties and ensure clients who receive ADP can continue to receive the same support and access to services they would have if they were in receipt of PIP.</p>
<p>Scope of the CRWIA</p>	<p>Consideration has been given to the impact of the policy on the rights and wellbeing of children and young people in Scotland. This policy should have a direct, positive impact on disabled children and young people, and an indirect positive impact on their families and carers by making provision for the use of information held by the Scottish Ministers for specified purposes, for the benefit of the individual.</p>

	<p>In 2020, there were estimated to be 110,139 children aged 16-17 in Scotland¹. In April 2021 there were 3,422 children aged 16-17 who were entitled to PIP². This represents around 3% of the population.</p> <p>UK wide, disabled people have higher poverty rates than the general population. Disabled people make up 28% of people in poverty. A further 20% of people who are in poverty live in a household with a disabled child. In Scotland 410,000 households in poverty (42%) include a disabled person. Disabled young adults in the UK aged 16-24 years have a particularly high poverty rate of 44%.</p> <p>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).</p> <p>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 illness³. Child material deprivation in households containing a disabled person reaches 20% compared to 8% of households without a disabled person.</p> <p>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 Trust⁴ 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 condition⁵. Travel costs too, may be higher as families have to afford the cost of taxis to and from hospital where it is not possible</p>
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¹ NRS Scotland Mid-Year Population Estimates (2020): <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/mid-year-population-estimates/mid-2020>

² DWP Stat-Xplore (retrieved September 2021): <https://stat-xplore.dwp.gov.uk/webapi/jsf/dataCatalogueExplorer.xhtml>

³ Scottish Government, Poverty in Perspective: A typology of poverty in Scotland: <https://www.gov.scot/publications/poverty-perspective-typology-poverty-scotland/pages/5/>

⁴ 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>

⁵ Joseph Rowntree Foundation: <https://www.jrf.org.uk/income-and-benefits/>

	<p>to use public transport (and/or public transport may not be available).</p> <p>The CRWIA should be read in conjunction with the other impact assessments conducted for the policy (namely, the Business and Regulatory Impact Assessment, The Island Communities Impact Assessment and Equality Impact Assessment), and for the Social Security (Scotland) Act 2018⁶ as a whole.</p> <p>The Equality Impact Assessment (EQIA) for these regulations considers the potential impact of the policy on each of the protected characteristics which are also applicable to children and young people (for example race, religion or beliefs). A Business and Regulatory Impact Assessment (BRIA) will analyse the cost and benefits of the policy to businesses and the third sector.</p>
<p>Children and young people’s views and experiences</p>	<p>Research has been carried out with children and young people throughout Scottish social security policy development. Feedback from the Disability and Carers Benefits Expert Advisory Group and Social Security Experience Panels has included input from children and young people. Additionally, we have consulted widely with stakeholders who represent and engage with disabled children and we have engaged with families of disabled children. The Information Commissioner(s) Office (ICO) have also been formally consulted about the regulations and their recommendations are taken into account to ensure the regulations protect the data rights and privacy of children and young adults.</p>
<p>Key Findings, including an assessment of the impact on children’s rights, and how the measure will contribute to children’s wellbeing</p>	<p>What aspects of the policy/measure will affect children and young people up to the age of 18?</p> <p>The Articles of the UNCRC and the wellbeing indicators under the Children and Young People (Scotland) Act 2014 apply to all children and young people up to the age of 18 including non-citizen and undocumented children and young people.</p> <p>As the regulations cover a range of areas, not all provisions relate to each United Nations Convention on the Rights of the Child (UNCRC) article, but cumulatively the Scottish Government has assessed that the Regulations will impact on the following UNCRC articles:</p> <p>Article 2 - Non-discrimination Article 3 - Best interests of the child Article 16 - Right to privacy Article 23 - Children with a disability Article 26 - Social Security Article 27 – Adequate standard of living</p> <p>The key findings section explains what parts of the Regulations impact on each particular right, and explains whether the effect on the realisation of this right is positive, neutral or negative. The key findings section also details how each provision is considered to</p>

⁶ <http://www.legislation.gov.uk/asp/2018/9/contents/enacted>

measure up against the wellbeing indicators listed in section 96(2) of the Children and Young People (Scotland) Act 2014.

Sharing social security information

Section 85 of the Social Security (Scotland) Act 2018 facilitates information sharing in connection with social security functions (as defined in subsection (10)). Subsection (5) allows the Scottish Ministers to share information held for a social security function to a person named in subsection (2) for purposes of that person as specified in regulations.

Regulation 2 of the 2021 Regulations specified a number of additional persons whom social security information may be shared with under section 85(2) of the 2018 Act. Regulation 4 of the 2021 Regulations specified a number of functions of suppliers of accessible vehicles and equipment (AVE) and local authorities for which social security information may be supplied to them by Scottish Ministers under section 85(5) of the 2018 Act. The sharing enabled by the 2021 Regulations was necessary for the seamless delivery of Child Disability Payment.

The Amendment Regulations will amend Regulations 2 and 4 of the 2021 Regulations to enable additional sharing that will be necessary for the seamless delivery of Adult Disability Payment. In particular, the Amendment Regulations will: (i) update the description of AVE suppliers in Regulation 2 to include Adult Disability Payment; (ii) update the statutory references in the 'blue badge' function in Regulation 4(3)(e) to include a reference to the legislation that will make ADP and eligibility criterion for 'blue badges'; and (iii) add another local authority function under Regulation 4(3) relating to assessments of a client's income when determining what level of contribution the client should pay towards the cost of social care services provided by the local authority.

These amendments will ensure AVE suppliers and Scottish local authorities can continue to provide the relevant services to recipients of Adult Disability Payment without any interruption or degradation, ensuring those individuals can continue to get support when applying for AVE services or blue badges, and continue to have their income fairly assessed when they receive local authority-funded social care.

With regard to section 96(2) of the Children and Young People (Scotland) Act 2014, this provision is considered to measure positively against the following wellbeing indicators:

- **nurtured** (having a nurturing place to live, in a family setting with additional help if needed or, where this is not possible, in a suitable care setting),
- **respected** (having the opportunity, along with carers, to be heard and involved in decisions which affect them), and
- **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.)

The provision is considered to measure neutrally against the other wellbeing indicators:

- **safe** (protected from abuse, neglect and harm by others at home, at school and in the community),
- **healthy** (having the highest attainable standards of physical and mental health, access to suitable healthcare, and support in learning to make healthy and safe choices),
- **achieving** (being supported and guided in their learning and in the development of their skills, confidence and self-esteem at home, at school and in the community),
- **active** (having opportunities to take part in activities such as play, recreation and sport which contribute to healthy growth and development, both at home and in the community), and
- **responsible** (having opportunities and encouragement to play active and responsible roles in their schools and communities and, where necessary, having appropriate guidance and supervision and being involved in decisions that affect them).

The provisions concerning AVE are considered to have a positive impact on realisation of Article 26 of the UNCRC (social security) by ensuring that individuals entitled to AVE services are able to access those services easily, quickly and seamlessly.

The provisions concerning blue badges are considered to have a positive impact on realisation of Article 26 of the UNCRC (social security) by ensuring that individuals entitled to a blue badge are able to access such support easily, quickly and seamlessly.

The provisions concerning assessments of an individual's income in relation to calculating what contribution the individual should pay towards local authority-funded social care are considered to have a positive impact on realisation of Article 27 (the right of the child to an adequate standard of living) and Article 2 (freedom from discrimination in relation to enjoyment of the rights under the UNCRC) by ensuring that individuals who receive funded social care have their income assessed fairly and are only required to contribute to the costs of that care when they can afford to do so and the charges have been accurately balanced against the individual's financial means.

With regard to the right to protection against unlawful interference with privacy arising from Article 16 of the UNCRC, safeguards are provided by regulations 5 of the 2021 Regulations which specify that Scottish Ministers must supply no more information than is necessary for the purpose for which it is to be used by the recipient. Regulation 5 shall not be amended by the Amendment Regulations and will continue to apply to all sharing under Regulation 4.

With regard to section 96(2) of the Children and Young People (Scotland) Act 2014, this provision is considered to measure positively against the following wellbeing indicators:

	<ul style="list-style-type: none"> • nurtured (having a nurturing place to live, in a family setting with additional help if needed or, where this is not possible, in a suitable care setting), • respected (having the opportunity, along with carers, to be heard and involved in decisions which affect them), and • 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.) • safe (protected from abuse, neglect and harm by others at home, at school and in the community), • healthy (having the highest attainable standards of physical and mental health, access to suitable healthcare, and support in learning to make healthy and safe choices), <p>The provision is considered to measure neutrally against the other wellbeing indicators:</p> <ul style="list-style-type: none"> • achieving (being supported and guided in their learning and in the development of their skills, confidence and self-esteem at home, at school and in the community), • active (having opportunities to take part in activities such as play, recreation and sport which contribute to healthy growth and development, both at home and in the community), and • responsible (having opportunities and encouragement to play active and responsible roles in their schools and communities and, where necessary, having appropriate guidance and supervision and being involved in decisions that affect them).
<p>Monitoring and review</p>	<p>The Act places a duty on Scottish Ministers to report annually to the Scottish Parliament on the performance of the Scottish social security system during the previous financial year.</p> <p>Scotland's Commissioner for Children and Young People also has a role to play. The Commissioner has a duty to review law, policy and practice to examine their effectiveness in respecting the rights of children and young people. The Commissioner can investigate on behalf of groups of children and young people.</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>

Regulation/ Clause	Aims of measure	Likely to impact on . . .	Compliance with UNCRC requirements	Contribution to local duties to safeguard, support and promote child wellbeing
Amendments to Regulation 4 of the 2021 Regulations	To provide legal gateways for information sharing that are necessary for the delivery of Adult Disability Payment	Children and young people in Scotland who apply for or are entitled to Adult Disability Payment paid by Social Security Scotland	The section's compliance with the UNCRC is detailed in the 'key findings section' above	The section's contribution to children's wellbeing measured against the wellbeing indicators is detailed in the 'key findings section' above

CRWIA Declaration

Authorisation

Policy lead

Andrew Hiskett, Social Security Programme

Date

07 September 2021

Deputy Director or equivalent

Ian Davidson, Social Security Policy

Date

15th October 2021