

Children's Rights and Wellbeing Impact Assessment (CRWIA) of The Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022

Executive Summary

1. The Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations, therefore, make provision for the transfer of the award of any individual in Scotland in receipt Working Age Disability Living Allowance to Adult Disability Payment, where the individual wishes to move to Adult Disability Payment or would otherwise be required to apply for Personal Independence Payment.
2. A Children's Rights and Wellbeing Impact Assessment was carried out for the Disability Assistance for Working Age People (Scotland) Regulations 2022. This assessment noted the policy intent of Adult Disability Payment is to provide payments to contribute to the additional care and mobility costs resulting from a disability or long term condition, to enable people to mitigate these costs, and to mitigate societal barriers to ensure they are able to live a life of their own choosing.
3. Adult Disability Payment is anticipated to be broadly positive in relation to the impact on children's rights and wellbeing. This is both directly where a young person is an Adult Disability Payment individual and also for the children of parents who are an Adult Disability Payment individual. Based on the evidence gathered, previous consultative engagement with users and stakeholders, and assessment of the demographic makeup of current Personal Independence Payment recipients, the Scottish Government does not consider that Adult Disability Payment infringes upon the rights of the child as set out in the articles of the UNCRC. The assessed impacts of the policy make a positive contribution to the rights and wellbeing of young people who are eligible to receive Adult Disability Payment as set out in the assessment of the policy against UNCRC articles outlined above.
4. The Scottish Government also assessed Adult Disability Payment against the indicators of wellbeing as set out by the Children and Young People (Scotland) Act 2014 and has concluded that the policy is likely to have a positive impact against each of the indicators, for young people who meet the eligibility rules and for the children of adults who are awarded Adult Disability Payment.
5. Individuals transferring from Working Age Disability Living Allowance to Adult Disability Payment will be between 25 and 74 years old. We do not anticipate that these regulations will apply directly to children and young people. However, children and young people may be living in households and/or cared for by an individual in receipt of Working Age Disability Living Allowance. Where this is the case, we anticipate that the same positive impacts will be felt when an individual transfers to Adult Disability Payment from Working Age Disability Living Allowance.

Background

6. 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 non-means tested disability benefits, including Disability Living Allowance for Children, Disability Living Allowance for Adults, Attendance Allowance and Personal Independence Payment.

7. The Scottish Government is replacing Disability Living Allowance for Children, Personal Independence Payment and Attendance Allowance with new forms of assistance under the 2018 Act. These new benefits will be delivered by Social Security Scotland on behalf of Scottish Ministers. People will have a right to challenge determinations made by Social Security Scotland, including a right to appeal to the First-Tier Tribunal for Scotland's Social Security Chamber.

8. At the transfer of executive competence for disability benefits from the Secretary of State for Work and Pensions to Scottish Ministers on 1 April 2020, the Department for Work and Pensions agreed to continue to deliver Disability Living Allowance in Scotland on behalf of Scottish Ministers under an agency agreement to any individual who was aged between 16 and 65 on 08 April 2013 when Personal Independence Payment was introduced. It was also agreed that the Department for Work and Pensions would halt the programme of managed migration onto Personal Independence Payment for individuals resident in Scotland. However, any individual reporting a relevant change of circumstances, due an award renewal, otherwise requiring an award review or requesting to move would still be invited to apply for Personal Independence Payment until such times as Adult Disability Payment was launched in Scotland. These individuals' awards are referred to as 'Working Age Disability Living Allowance' awards, due to the individuals' age at the time Personal Independence Payment was introduced even though some of these individuals may now be over the state pension age. None of these individuals will be aged under 25.

9. The Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations, therefore, make provision for the transfer of the award of any individual in receipt Working Age Disability Living Allowance to Adult Disability Payment, where an individual wishes to move to Adult Disability Payment or would otherwise be required to apply for Personal Independence Payment.

Policy

10. The Scottish Ministers have developed a safe and secure process for these individuals' awards, which will require no action on behalf of the individual wherever possible, and has been designed in line with the following case transfer principles:

- no individual will be required to re-apply for their benefit;
- after Adult Disability Payment is launched nationally individuals will, wherever possible, be transferred before they are required to undergo a DWP face-to-face assessment;

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

- individuals will continue to receive the right payment, at the right time; and
- we will complete the case transfer process as soon as possible while ensuring it is safe and secure.

11. The eligibility criteria for Adult Disability Payment differs from the eligibility criteria for Disability Living Allowance and broadly aligns with the eligibility criteria for Personal Independence Payment. However, the Scottish Government has made improvements to the application process, the way awards are made, and the collection of supporting information about an individual's disability or health condition, to make the processes involved in assessing entitlement for Adult Disability Payment less onerous and to improve decision-making. The Scottish Government has also introduced a new individual consultation service to aid the decision making process. This will be substantially different from the assessments used to determine entitlement to Personal Independence Payment by the Department for Work and Pensions.

12. To facilitate a safe and secure transfer, the regulations provide that the initial determination without application of entitlement to Adult Disability Payment, the transfer determination, must set the individual's award level for Adult Disability Payment at the equivalent rate as they are currently receiving for Disability Living Allowance. This applies regardless of whether the individual would otherwise meet the eligibility rules for those components of the Adult Disability Payment mobility and daily living components. Because there are three rates of care component for Disability Living Allowance but only two for Adult Disability Payment, the regulations also make provision for the introduction of a transitional daily living component within Adult Disability Payment for the purposes of these transfer determinations only. The determination of the individual's entitlement to Adult Disability Payment will also end the corresponding award of Personal Independence Payment.

13. A further review determination will be made of an individual's entitlement to Adult Disability Payment after the individual has been transferred onto Adult Disability Payment. This review will consider the individual's entitlement against the usual criteria for the mobility and daily living components of Adult Disability Payment and take into consideration any relevant change of circumstance that triggered the transfer or was reported to the Department of Work and Pensions during the transfer window. This process will likely require the gathering of additional evidence and information from the individual and supporting sources. This is because of the differing eligibility criteria and because records for these transferring individuals are all paper based and have not been reviewed since prior to 08 April 2013. Through our experience panels, we also heard that some people with Working Age Disability Living Allowance awards have avoided reporting a relevant change of circumstances out of fear of having to apply for Personal Independence Payment and undergo a DWP face-to-face assessment. There may, therefore be a number of individuals who are currently on a lower rate of award than they are entitled to. The review will ensure each individual's entitlement is considered on the basis of their current condition using the most up to date information.

14. This review determination will occur as soon as reasonably practicable after the transfer process is completed, and within 12 months of the issue of the notice of intention to transfer. It is anticipated that the majority of individuals will see their award increase or remain the same as a result of this review. If the individual's

award increases, the increase will be apply from the date of the transfer determination. If an individual's award is decreased following the review, the change will only take effect from the date the decision is made. There will, therefore, be no overpayment the person could be asked to repay. Short-term assistance will be available to individuals during the re-determination and appeals process, where they have had a decrease or nil award, to avoid financial hardship.

Scope of the Child Rights and Wellbeing Assessment

15. This Child Rights and Wellbeing Assessment considers the wider impact on children living in families where an adult receives Adult Disability Payment.

16. The delivery of Adult Disability Payment and the case transfer process in Scotland is anticipated to have a broadly positive impact on children's rights and welfare. We are delivering person centred disability assistance rooted in the values of providing disabled people and their families with dignity, fairness and respect.

Who was involved in this Assessment?

17. 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.

18. In July 2016, the Scottish Government launched a public consultation to support the development of a framework that would become the 2018 Act. The questions relating to disability benefits received over 200 responses with an even split between organisational and individual respondents.

19. 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 groups which were previously underrepresented, including young people.

20. Specifically, with regards to case transfer, 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 2019.² These surveys confirmed that of most importance to panel members was that they continue to receive the correct payment at the correct time.

21. The Consultation on Disability Assistance built on the work of the Experience Panels and was published on 5 March 2019. It sought the views of the people of Scotland on the three proposed disability assistance benefits, including Adult

² 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/>

Disability Payment.³ The consultation closed on 28 May 2019, having received 263 replies, of which 74 were from stakeholder organisations and 189 from individuals.

22. The Scottish Government has also undertaken ongoing consultation with stakeholders through our independent Disability and Carers Benefits Expert Advisory Group as well as the Ill Health and Disability Benefits Stakeholder Reference Group. The Disability and Carers Benefits Expert Advisory Group is chaired by Dr Jim McCormick and comprises individuals with significant practical experience of the United Kingdom social security system, from a range of professional backgrounds. It is independent of the Scottish Government.

23. On 21 December 2020, the Scottish Government launched a public consultation on its proposals for the delivery of Adult Disability Payment and on the draft impact assessments. The consultation ran until 15 March 2021. The consultation received 127 responses from individuals and stakeholder organisations.

24. Under section 97 of the Social Security (Scotland) Act 2018, the Scottish Commission on Social Security (SCoSS) was asked to provide a scrutiny report on the draft Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) regulations. On 10 February 2022, the Scottish Government provided draft regulations to SCoSS, SCoSS published its scrutiny report on 30 March 2022, making 8 recommendations and 4 observations in relation to the draft regulations. The Scottish Government will publish its formal response to this report when laying these regulations before the Scottish Parliament.

25. In addition to the above, the views of people with lived experience on the development of Adult Disability Payment 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 their views. Framing exercises have also been taking place in 2020 and 2021 specifically looking at the differing process for transferring individuals from Disability Living Allowance for Children, Personal Independence Payment and Working Age Disability Living Allowance and these will continue to take place with a range of internal Scottish Government stakeholders.

26. The stakeholder engagements, expert advisory groups and events held with people with lived experience as well as the public consultations have helped to identify the potential impact of Adult Disability Payment on other Scottish Government policy areas as well as on children and young people's wellbeing.

Data

27. Based on estimates provided by the Scottish Government's Communities Analysis Division, there are around 39,000 individuals in Scotland currently in receipt of Working Age Disability Living Allowance. We estimate, based on current DWP data showing the number of individuals being invited to apply for Personal Independence payment that we will see around 100 individuals a month transferring to Adult Disability Payment a month following national launch on 29 August 2022.

28. Because young people need to apply for Personal Independence Payment when they reach 16, there should be no individuals between the ages of 16 and 24 in

³ <https://www.gov.scot/publications/social-security-consultation-disability-assistance-scotland/>

receipt of Disability Living Allowance. There is no data available on the number of children and young people in households with and/ or being cared for by an individual with an award of Working Age Disability Living Allowance.

29. 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).

30. 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.⁴ Child material deprivation in households containing a disabled person reaches 20% compared to 8% of households without a disabled person.

31. Data and views were sourced from:

- Scottish Health Survey 2018;
- Census 2011;
- DWP Stat X-plore;
- National Records of Scotland Population Statistics;
- Consultation on social security in Scotland 2016
- Consultation on Disability Assistance in Scotland 2019 and
- Social Security Experience Panel Research.
- The Disability and Carer Benefits Expert Advisory Group (DACBEAG)

United Nations Convention on the Rights of the Child (UNCRC)

32. The policy intent has been assessed against the relevant UNCRC articles:

Article 3 - Best Interests of the Child: Social Security Scotland has been developed around the principles of dignity, fairness and respect, transparent decision making, a person centred approach and rooted in the belief that social security is a human right. Adult Disability Payment will have these principles embedded both in the policy and in the way in which the assistance is delivered. This will help to ensure that all decisions made by Social Security Scotland are made with consideration of the best interests of the young person, both when they are the recipient and where the recipient is a family member of the young person.

Article 6 - Life, Survival and Development: Adult Disability Payment is intended to mitigate the additional costs disabled people, incur in meeting their care and mobility needs. Mitigation of these additional costs is anticipated to provide people with funding to access community resources, education and social activities, develop skills and new experiences and to have a good quality of life. Once people are in receipt of Adult Disability Payment they have the security of the continuity that comes with a form of assistance available, as long as they remain eligible, for the rest of

⁴ <https://www.gov.scot/publications/poverty-perspective-typology-poverty-scotland/pages/5/>

their adult lives. This will in turn have positive impacts on any child or young person, living in a household and/or being cared for by an individual with an award of Working Age Disability Living Allowance.

Article 12 - Respect for the views of the child: Adult Disability Payment and the case transfer principles have 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. These policies will impact the lives of disabled people including young people and their contribution is crucial in shaping a successful policy.

Article 23 - Children with a Disability: Adult Disability Payment will ensure that individuals who receive it are more likely to be able to live a full life, to be as independent as possible and to be able to engage in the community. This will in turn have positive impacts on any child or young person with a disability, living in a household and/or being cared for by an individual with an award of Working Age Disability Living Allowance.

Article 26 - Social Security: We have engaged with individuals and stakeholders to make changes that improve both the rules and the individual experience of applying for, and receiving, Adult Disability Payment. These changes will ensure that throughout their engagement with Social Security Scotland individuals are treated with dignity, fairness and respect. Our case transfer process does not require a new application and provides for a two stage process to transfer an individual's award at their current rates ahead of carrying out a review of the individual's entitlement in order to support individuals through the review process, ensuring take-up of Adult Disability Payment.

Article 27 - Adequate Standard of Living: The key policy intent of Adult Disability Payment is to provide individuals with payments to help mitigate the costs they incur as a result of a disability or long term condition. The case transfer process has been designed to ensure no one with a Working Age Disability Payment, and by extension their household and/or people they care for, are financially disadvantaged as a result of the process and that payment frequencies are maintained. In addition, the two stage process also helps ensure that individuals can access Short Term Assistance where they see a reduction in award or nil award as a result of the review determination and seeks a re-determination, or as a result of the re-determination of the transfer determination and seek to appeal.

Getting it right for every child (GIRFEC) wellbeing indicators

33. The Children and Young People (Scotland) Act 2014 introduced a range of indicators used to measure children and young peoples' wellbeing. Our assessment of the impacts of transferring individuals currently in receipt of Working Age Disability Living Allowance to Adult Disability Payment, in cases where they would otherwise be required to apply for Personal Independence Payment, against this framework is:

Healthy: Adult Disability Payment will improve the health of disabled adults, by ensuring that increased financial support is provided to them, contributing towards the additional costs of care and transport. This will in turn have positive impacts on any child or young person with a disability, living in a household and/or being cared for by an individual with an award of Working Age Disability Living Allowance.

Achieving: The provision of the mobility and daily living components of Adult Disability Payment directly contribute to enabling disabled individuals including young people to engage in activities of their choosing including education, development opportunities and social activities. This will in turn have positive impacts on any child or young person with a disability, living in a household and/or being cared for by an individual with an award of Working Age Disability Living Allowance.

Active: The provision of daily living and mobility components of Adult Disability Payment will provide the funds to enable individuals to engage in community activities of their choosing, ensuring that they have the option to choose to engage in community based activities and resources. This will in turn have positive impacts on any child or young person with a disability, living in a household and/or being cared for by an individual with an award of Working Age Disability Living Allowance.

Respected: The principle of respect for the dignity of individuals is at the heart of the new Scottish social security system and specified in the Social Security (Scotland) Act 2018. Adult Disability Payment will further embed these principles, recognising that disabled individuals, have the right to engage in activities of their choosing and providing funds to enable them to purchase the services or equipment they need to help them do so. The administration of the assistance has been designed to ensure that people are treated with dignity and respect and provided with a service that takes account of, and meets, their needs. This will in turn have positive impacts on any child or young person with a disability, living in a household and/or being cared for by an individual with an award of Working Age Disability Living Allowance.

Responsible: There is not considered to be any specific impact of this policy for children or young people in connection with this specific criteria.

Key findings and conclusion

34. The development of Adult Disability Payment and how it will be delivered – including the case transfer process - has been informed by engagement with a range of stakeholders and people with lived experience of the current benefit system. We have specifically designed the case transfer process in line with our case transfer principles to ensure that individuals are supported through the process, that no one is disadvantaged as a result of the process, that payment frequencies are maintained on transfer and that short term assistance is made available should an individual see a reduction in award following review.

35. Individuals transferring from Working Age Disability Living Allowance to Adult Disability Payment will be between 25 and 74 years old. We do not anticipate that these regulations will apply directly to children and young people. However, children and young people may be living in households and/or cared for by an individual in receipt of Working Age Disability Living Allowance. Where this is the case, the Scottish Government:

- anticipates that the policy measures outlined above will be broadly positive in relation to the impact on children's rights and wellbeing;
- does not consider that Adult Disability Payment infringes upon the rights of the child as set out in the articles of the UNCRC, but is likely to make positive

contribution to the rights and wellbeing of young people as set out in the assessment of the policy against UNCRC articles outlined above; and that

- the policy is likely to have a positive impact against each of the indicators of wellbeing set out by the Children and Young People (Scotland) Act 2014.

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