POLICY NOTE

THE PERSONAL INDEPENDENCE PAYMENT (TRANSITIONAL PROVISIONS) AMENDMENT (SCOTLAND) REGULATIONS 2020

SSI 2020/218

The above instrument was made in exercise of the powers conferred by sections 93 and 94 and schedule 10 of the Welfare Reform Act 2012. The instrument is subject to negative procedure.

Purpose of the instrument.
These Regulations will ensure that young people resident in Scotland who are entitled to DLAC immediately prior to their sixteenth birthday, and whose sixteenth birthday falls on or after 1 September 2020, will not be required to claim Personal Independence Payment (PIP) at age 16 as is currently the case, but at age 18.

These Regulations also provide for persons entitled to DLA, who have reached the age of 16 on or after 1 September 2020 in England and Wales and then become resident in Scotland, to also remain in receipt of DLA until they are 18, at which point they will then receive a notification inviting them to claim PIP.

Policy Objectives

The Social Security (Scotland) Act 2018[1] ("the 2018 Act") sets out the broad legal framework for the delivery of devolved social security benefits in Scotland. In terms of the Scotland Act 2016 (Transitional) Regulations 2017[2], as of 1 April 2020, the Scottish Ministers now have executive competence for disability benefits under the Social Security Contributions and Benefits Act 1992, and the Welfare Reform Act 2012, covering Disability Living Allowance for Children (DLAC), Attendance Allowance and Personal Independence Payment.

These benefits will continue to be delivered in Scotland during a transition period by the Department for Work and Pensions (DWP) under the terms of an Agency Agreement agreed with the Scottish Government, and subject to the direction of Scottish Ministers, to ensure the safe and secure devolution of disability benefits.

As part of the devolution of disability benefits, the Personal Independence Payment (Transitional Provisions) Amendment (Scotland) Regulations 2020 detail the changes being made by the Scottish Government to the eligibility criteria for Personal Independence Payment, found in the Personal Independence Payment (Transitional Provisions) Regulations 2013 ("the 2013 Regulations")[3].

Changes in respect of DLA entitled young people resident in Scotland

[1] http://www.legislation.gov.uk/asp/2018/9/contents
[2] http://www.legislation.gov.uk/uksi/2017/444/contents/made
[3] http://www.legislation.gov.uk/uksi/2013/387/made

These Regulations will ensure that young people resident in Scotland who are entitled to DLAC immediately prior to their sixteenth birthday, and whose sixteenth birthday falls on or after 1 September 2020, will not be required to claim Personal Independence Payment (PIP) at age 16 as is currently the case. Instead, they will not be invited to claim PIP until shortly after they turn 18, and their award of DLAC will be extended until they reach age 18 years and 6 months. This will allow time to receive the invitation and subsequently claim PIP.

Changes in respect of DLA entitled young people who relocate to Scotland from elsewhere in the United Kingdom

These Regulations also make changes for young people resident in England and Wales who are entitled to DLAC immediately prior to their sixteenth birthday, and whose sixteenth birthday falls on or after 1 September 2020, but who subsequently move to Scotland. These regulations provide that where a person within this group has already been sent an invitation to claim PIP, from the date they become resident in Scotland, that invitation ceases to have effect and is treated as though it has not been made.

The practical effect is that a young person in these circumstances may, along with those already resident in Scotland, remain in receipt of DLAC until they are 18, at which point they will then receive a notification inviting them to claim PIP. They may then also continue to receive DLAC until they reach the age of 18 years and 6 months, to afford time for them to claim PIP.

These Regulations also provide, however, that where a person within this group has already made a claim following receipt of the invitation, that claim will continue until a determination is made on it under regulation 4 of the Social Security (Personal Independence Payment) Regulations 2013[4].

Having made a claim for PIP, though, the young person may still choose to withdraw their claim under regulation 31 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013. These regulations have the effect that, if they choose to do this, they will remain entitled to DLAC until reaching 18 years and 6 months, and are treated as though they have never made the claim.

Key Policy Divergence from DLAC

The Welfare Reform Act 2012 introduced significant changes to disability benefits in Great Britain, by abolishing Disability Living Allowances for people aged 16 and over.

When a young person is entitled to DLAC immediately prior to their sixteenth birthday, currently in terms of regulation 3 of the 2013 Regulations, they will be issued with an invitation to claim PIP shortly after reaching age 16.

There is also provision in regulation 18 of the 2013 Regulations allowing for certain fixed term period awards to be extended until a person reaches the age of 17.

[4] http://www.legislation.gov.uk/uksi/2013/377/made

Following the transfer of executive competence for disability benefits (including PIP, DLAC and Attendance Allowance) from the UK to the Scottish Government on 1 April 2020, the Scottish Government announced its intention[5] that young people who resident in Scotland and are already entitled to DLAC immediately prior to their sixteenth birthday will not be invited to claim PIP until they reach the age of 18.

These regulations make that change for young people who turn 16 on or after 1 September 2020, by adding to regulation 3.

The regulations also make alternative provision to regulation 18 for Scotland, for the extension of certain fixed term period awards of DLAC to persons resident in Scotland until the person reaches the age of 18 years and 6 months. This is the maximum extension allowed.

For young people who reach age 16 in England and Wales, who have received a notification to claim PIP, and subsequently move to Scotland, additional provision is made in respect of extending their award of DLAC to the age of 18 years and 6 months.

The existing provisions of the 2013 Regulations apply to these extensions, however, and so an award to DLAC may still terminate earlier in terms of those regulations. In particular, in terms of regulations 7-11, if a claim for PIP is not made within 28 days of the invitation, then entitlement to DLAC will be suspended. The person will then have a further 28 days to make a claim. If following the expiry of this period there has still been no claim, then entitlement to DLAC is terminated.

Provision is also made within these regulations so that, if a person who moves to Scotland from England and Wales has already received a notification inviting them to claim PIP, that notification ceases to have effect and, for the purposes of the rest of the 2013 Regulations, it is treated in effect as though it were never made. Provision is also made though, for if such a person, having received an invitation, has already made a claim for PIP. It is provided that such a claim will continue until a determination is made, unless the individual elects to withdraw it. If the individual does decide to withdrawn their claim, provision is then made to ensure that they too will remain entitled to DLAC until they are 18 years and 6 months (unless the award terminates earlier).

Consultation

During the Consultation on Disability Assistance[6] many respondents expressed the view that asking a young person to transfer from DLAC to PIP at age 16 was a stressful experience, with face-to-face assessments being highlighted as a significant issue for many young people.

The change made by these regulations will provide continuity and reassurance at a time when young people will be transitioning between childhood and adulthood, as well as moving between health and social care services. This will also help families and carers of young people during what can be a key time in a young person's life.

Young people aged 16 and 17 who are not already entitled to DLAC will not be able to claim DLAC, but will instead be required to claim PIP. This approach has been selected to avoid a

[5] https://www.gov.scot/news/16-year-olds-will-no-longer-need-to-apply-for-pip-in-scotland/
[6] http://consult.gov.scot/social-security/improving-disability-assistance/

young person having to claim DLAC, receive it for a short period and then be required to claim PIP shortly thereafter.

Policy Summary

The policy summary for the provisions within the regulations are as follows:

Regulation 2(1) sets out that the Regulation provisions modify the Personal Independence Payment (Transitional Provisions) Regulations 2013 (S.I. 2013/387).

Invitations to persons entitled to disability living allowance to claim personal independence payment

Regulation 2(2) modifies regulation 3 of the existing Regulations, by inserting paragraph (3ZA). This provides that the Scottish Ministers must not issue an invitation to claim PIP to a person entitled to DLAC who is resident in Scotland until that person reaches the age of 18.

Paragraph (3ZA) also details that upon that person reaching age 18, the Scottish Ministers must as soon as reasonably practicable issue an invitation for them to claim PIP.

Claims by persons entitled to disability living allowance for personal independence payment upon becoming resident in Scotland

Regulation 2(3) inserts Regulation 4A. Regulation 4A(1) provides that this regulation makes provision in respect of DLA entitled persons who reach the age of 16 on or after 1 September 2020, who have been sent a notification under regulation 3(1) whilst resident in England and Wales, and subsequently become resident in Scotland before an assessment determination is made.

Regulation 4A(2) provides that from the date on which the person becomes resident in Scotland:

- the notification sent to the them under regulation 3(1) ceases to have effect;
- regulations 8 to 11 are of no effect in respect of that notification;
- regulation 3(3ZA) and 18A will apply in respect of the person; and
- for the purposes of regulation 4, the person will be treated as though they have not received a notification in terms of regulation 3(1).

By virtue of Regulation 4A(3), nothing in regulation 4A(2) affects the validity of a claim for PIP made following a notification under regulation 3(1), and the claim will continue towards an assessment determination.

Regulation 4A(4) provides that where a person in paragraph (3) withdraws their claim for PIP under regulation 31 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations (S.I. 2013/380) , before an assessment determination is made, then regulation 15 does not apply.

Extension of certain fixed term period awards of disability living allowance for persons reaching 16

Regulation 2(4) modifies regulation 18(1) by referring the reader to the new provisions inserted at regulation 18A, which make alternative provision to that in regulation 18 for Scotland.

Regulation 2(5) inserts Regulation 18A. Regulation 18A(1) provides for the extension of a fixed term award of DLAC where:

- there is an award of one or both components of DLAC for a fixed period;
- the person reaches age 16 on or after 1 September 2020;
- the fixed term period expires after the person reaches the age of 16, but before they reach the age of 18; and
- the person is resident in Scotland.

Reulation 18A(2) provides that a fixed term period extended under paragraph (1) is to expire when the person reaches 18 years and 6 months of age, or if the 2013 Regulations provide for the person's entitlement to expire on an earlier date, on that date.

Impact Assessments
The following impact assessments have been completed and are attached:

- A Child Rights and Wellbeing Impact Assessment
- An Equalities Impact Assessment
- A Business Regulatory Impact Assessment
- An Islands Communities Impact Assessment
- A Fairer Scotland Duty Assessment

Financial Effects

A partial Business and Regulatory Impact Assessment (BRIA) has been completed. The impact of this policy on business is limited and no quantifiable financial effects have been identified.

Scottish Government
Social Security Directorate

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