POLICY NOTE

THE SOCIAL SECURITY (PERSONAL INDEPENDENCE PAYMENT) AMENDMENT (SCOTLAND) REGULATIONS 2020

SSI 2020/340

The above instrument was made in exercise of the powers conferred by sections 83(3) and 94(2) of the Welfare Reform Act 2012. The instrument is subject to negative procedure.

Summary Box

To amend regulation 27 of the regulations to ensure that the existing restrictions on awards of the mobility component of PIP apply to clients whose award is superseded after State Pension Age on medical evidence grounds, in a way that is consistent with claimants whose award is superseded after that age on grounds of a relevant change in circumstances

Policy Objectives

The Scottish Government is responding to an Upper Tier (Administrative Appeals Chamber) decision relating to Regulation 27 of the PIP Regulations, which found in favour of the appellant. In the decision 'MH v Secretary of State for Work and Pensions' it was found that that a supersession on grounds of new medical evidence does not fall within the scope of regulation 27 as it was not of itself a relevant change of circumstances for the purposes of that provision. Without amendment, it would therefore be the case that in any supersessions on grounds of medical evidence, the restrictions could not apply, which is contrary to the policy intent. The policy intent is for the restrictions to apply where the award is superseded on grounds of medical evidence in the same way as they apply where the award is superseded on grounds of a relevant change of circumstances. This ensures fairness and consistency of approach for clients over State Pension Age (Spa). An amendment to regulation 27 is required to achieve that effect.

It is a long standing policy position that individuals should not be newly entitled to a mobility component of disability benefits once they have reached SPa as some restriction of mobility is an expected consequence of aging. It is for this reason that eligibility for PIP ends at SPa and individuals not in receipt of PIP before that age must apply for Attendance Allowance, which only provides a care component. Regulation 25 provides an exception to the general rule so those clients eligible for PIP prior to SPa can continue to receive it after that age.

This provision is however limited by Regulation 27 so that where the mobility component is concerned, such clients are only able to have their award maintained, rather than increased, by way of a new entitlement decision arising from a change of circumstances. PIP is administered as if, the provision of a new medical report by a healthcare practitioner amounted to a change of circumstances and therefore triggered the application of Regulation 27. The Tribunal found that the PIP Regulations would require to specifically refer to the provision of a new medical report in order for the benefit to be administered in such a way and so these amending Regulations do so.

Consultation

The Scottish Government has not undertaken consultation activity because this is a technical amendment required to allow the existing policy to be delivered as intended. As highlighted above, the Scottish Government intend to replicate the age criteria of PIP when it is replaced with Adult Disability Payment. ADP will replace PIP when Social Security Scotland deliver this benefit. The Scottish Government do not intent to introduce a mobility component for clients over SPa applying for disability assistance when it introduces Pension Age Disability Payment to replace Attendance Allowance.

A consultation was undertaken in 2019 to seek views on the eligibility criteria that would be applied to Adult Disability Payment (ADP). The consultation did not invite views specifically of the age criteria for ADP but it did make clear that: 'The entitlement for DAWAP [the previous name for Adult Disability Payment] will align with the state pension age, opening it to clients from age 16 to state pension age when Social Security Scotland begin accepting new applications.' It also included equality questions to inform the Scottish Government's approach.

Impact Assessments

Impact Assessment	Status	Comment
EQIA	Complete	No adverse impacts identified as a consequence of this change.
Fairer Scotland	Partial Assessment complete	Combined with EQIA- no impacts identified.
BRIA	Not required	This is a technical amendment to give effect to existing policy.
CRWIA	Screening complete	No impacts identified.
Islands	Not required	An Islands Impact Assessment should be completed for any new policy, strategy or service which is likely to have an effect on an island community which is significantly different from the effect on other communities
Environmental	Not required	This is not a qualifying plan under the Environmental Assessment (Scotland) Act 2005

Financial Effects

The Cabinet Secretary for Social Security and Older People confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Social Security Directorate

October 2020