

Scottish Commission on Social Security consultation – The Disability Assistance for Children and Young People (Scotland) Regulations 2020

Response from Citizens Advice Scotland November 2020

Summary

Citizens Advice Scotland (CAS) welcome changes within the revised regulations that address many of the concerns raised in our previous submission, including on the suspension rather than ending of entitlement and terminal illness requirements.

To further improve the social security support that will be provided to disabled children and young people we make the following recommendations:

- The statutory timescale for Social Security Scotland to make a re-determination should be reduced to no longer than 42 days.
- The past presence requirements should be removed.
- Amendments should be made to ensure that children and young people who face barriers as a result of a mental health condition can qualify for disability assistance on a fair basis.

Part 9: The provisions relating to the periods for requesting and making re-determinations

CAS is disappointed that the statutory time limit for Social Security Scotland to respond to a request remains set in the regulations at 56 days.

Evidence from CAB clients has consistently shown that detriment has been caused due to lengthy waits for a decision to be made on a mandatory reconsideration request, both in terms of hardship and causing stress and worry.¹ CAS is concerned that setting the time limit at 56 days (8 weeks) is too long, given that a person will have already had to wait for an original determination on their application, and that evidence will already have been gathered in making the original determination, so will not need to be re-sought.

Additionally, the Social Security (Scotland) Act provides an option for the period to be extended with the person's consent, which would cover more complex cases and avoids a requirement for an extended period to be set due to concern about these cases.

¹ Page 20 – 21, Citizens Advice Scotland response to Consultation on Disability Assistance in Scotland, May 2019
<https://www.cas.org.uk/publications/cas-response-consultation-disability-assistance-scotland>

CAS strongly recommends the statutory time limit to respond to a re-determination request is reduced to no more than 42 days, the same time that is given to people to make the request. Regulation 29 (2) should be amended to change the number of days from 56 to 42.

Regulations 6 – 8: The provisions applicable to the mobility component

CAS notes the addition of paragraphs (5) and (6) to Regulation 6. CAS raises concern around the need for these additions and clarity on the policy intent of this would be welcome. The Social Security Advisory Committee when responding to the addition of the paragraphs in existing DLA Regulations in 2002 noted the issues arising from the inclusion of the regulations.²³ CAS recommends that paragraphs (5) and (6) are removed from Regulation 6.

CAS recommends that the regulations are amended to provide clarity that children who have a mobility impairment due to a mental health issue can qualify for disability assistance, distinct from a learning disability ('severe mental impairment') or physical condition. This could be achieved by adding 'psychological distress' to the conditions at regulation 7 (2).⁴

An additional test related to visual impairment has been added to the mobility component eligibility criteria by Regulation 7(4)(b); the requirement for help or supervision to mobilise safely whilst taking into account age. CAS questions the need for this additional test and raises concern that this restriction of the criteria, without precedent in current DLA rules, may result in less children qualifying for CDP.

Part 5: The provisions relating to temporary absences from home, including non-payability of assistance

CAS welcomes the changes to the regulations making provision for the suspension of payment rather than removal of entitlement when a child or young person is resident in a care home, educational establishment or has been legally detained.

We were also pleased that the regulations have been amended, as recommended in our previous submission, to make explicit that when a person is an in-patient in a hospital or hospice this has no effect on entitlement to the care component of CDP (Regulation 16).

CAS notes that Regulation 11 (3) and Regulation 13 (3) are new additional paragraphs in the regulations. The impact of the additional paragraphs allows for the value of CDP to be set at £0 if a person is temporary absent from home for 28 days on separate occasions, provided there is no more than 28 days between each period. In practice it appears that for example a person who has three stays in a care home, totalling ten days each over a three-month period, would meet the threshold for payment to be set at £0 despite there being substantive time between

² See Reg 12(7) and (8) of The Social Security (Disability Living Allowance) Regulations 1991 No. 2890

³ The Social Security (Disability Living Allowance)(Amendment) Regulations 2002(S.I. 2002 No. 648) [Report](#) by the Social Security Advisory Committee

⁴ SAMH [response to Consultation on Disability Assistance in Scotland](#), May 2019

each temporary absence. CAS would welcome information surrounding the impact and intent of this change.

CAS would welcome amendments to Regulation 13 (read with Regulation 20 (7)) and Regulation 14 to allow for the child to become entitled to SDP whilst in a care home, residential educational establishment or in legal detention. This could be achieved by redrafting regulations to allow entitlement to begin with payment set at £0. As well as aiding towards benefit take up in line with the duty in the Act,⁵ this change would allow a parent to access entitlements to premiums in reserved benefits as is currently the case with DLA.

Regulation 4: Residence and presence conditions

CAS recommends that the past presence test, Regulation 4 (2), is removed. It is unclear whether the provisions paragraphs (11)(c) and 12(c): 'the individual can demonstrate a genuine and sufficient link to Scotland' effectively removes the past presence test. For clarity, the past presence test 4 (2) should be removed from the regulations, as it is an unnecessary barrier to people receiving social security support.

The past presence test requires a person to have been present in Great Britain for two out of the last three years to be eligible to claim PIP, DLA or Attendance Allowance, and is proposed to be replicated in the new system. However, CAS recommends that the requirement is removed.

The past presence condition is not currently included in any of the other benefits due to be devolved (with the exception of Carer's Allowance) and has not been proposed to be included in any of the Scottish social security payments introduced so far.

The condition can mean that disabled people who are in need of social security support, and who would otherwise be entitled to disability assistance would miss out. For instance, if a family living abroad had a child who became disabled in an accident and moved home to Scotland to be closer to extended family for support, they would not become eligible for Disability Assistance for Children and Young People until up to two years later.

The past presence condition does not seem to serve a reasonable purpose other than to reduce the number of people who are eligible to claim. This seems somewhat at odds with the Scottish Government's welcome ambitions for the new system, and is penalising people who have recently moved to or returned to Scotland at odds with the Government's ambition to use

⁵ Part 1, Section 3 – Social Security (Scotland) Act 2018
<http://www.legislation.gov.uk/asp/2018/9/section/3/enacted>

inward migration as a mechanism to drive economic growth and counter-act demographic decline.⁶ There is also a duty placed on Ministers to promote take-up.⁷

CAS recommends the past presence condition is removed to ensure that people who would be otherwise eligible to receive Disability Assistance for Children and Young People are allowed to claim it.

Regulation 18: Age criteria

The draft regulations make provision for an award of disability assistance for children and young people to continue past the age of 18 if a person has applied for disability assistance for working age people but has not yet received a determination. Regulation 18 (2)(b) however makes the caveat that the payment would stop once a person turned 19, even if no decision had been made on their application for DAWAP.

This risks creating a 'cliff edge' in the scenario that a decision was substantially delayed, a delay in notifying a person that they should make an application for the working age benefit, or because their application and assessment was delayed for a medical reason. This means that a person may lose their entitlement and their right to social security through no fault of their own. CAS recommend the withdrawal of paragraph (2)(b); that SDP will end when a person turns 19, if they have applied for DAWAP, but no determination has been made on their application.

Regulation 20: When an application is to be treated as made and beginning of entitlement to assistance

As currently drafted Regulation 20(2)(b) seems to permit for discretion to treat the application as being made on any day after the entitlement conditions are met. It is unclear whether this is a drafting error. CAS recommend that this is redrafted to ensure that entitlement begins on the first day that requirements are satisfied.

Regulation 30: Recovery of liability

As currently drafted the regulations do not cap the rate at which a deduction for a liability can be given in explicit terms. Not making provision to limit the rate at which a deduction can be made would allow the First-tier Tribunal to determine a deduction at a higher rate than the agency's policy may allow for. CAS would welcome the inclusion of a maximum deduction rate within the regulations.

⁶ Scotland's Population Needs and Migration Policy: Discussion Paper on Evidence Policy and Powers for the Scottish Parliament – Scottish Government, February 2018
<https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-paper/2018/02/scotlands-population-needs-migration-policy/documents/00531087-pdf/00531087-pdf/govscot%3Adocument/00531087.pdf>

⁷ Part 1, Section 3 – Social Security (Scotland) Act 2018
<http://www.legislation.gov.uk/asp/2018/9/section/3/enacted>