

# **Disability Assistance for Children and Young People Regulations 2020**

## **Policy Note – February 2020**

### **Introduction**

1. The Social Security (Scotland) Act 2018 (the 2018 Act) sets out the broad framework for the delivery of devolved social security in Scotland. The draft Disability Assistance for Children and Young People Regulations 2020 describe the detailed entitlement and administrative rules for delivery of this form of Disability Assistance.

2. The full new claims service for Disability Assistance for Children and Young People (DACYP) will commence in Summer 2020 with the process of transferring existing Disability Living Allowance for Children (DLAC) cases from the Department for Work and Pensions (DWP) to Social Security Scotland (SSS) beginning shortly after.

### **Key Policy Divergence from DLAC**

3. As part of the process of devolution, the Scottish Government will deliver DACYP which will replace DLAC in Scotland. There are a number of key areas of policy divergence from the existing DLAC system including:

- the extension of the entitlement age from 16 to 18, where a young person is in receipt of the benefit prior to their 16<sup>th</sup> birthday;
- the introduction of Short-Term Assistance (STA), a new form of assistance that ensures that clients can continue to receive their previous payment amount, where an award is reduced or stopped, until the conclusion of any challenge of the decision to reduce or stop the award;
- the introduction of Child Winter Heating Assistance (CWhA), a £200 annual payment that constitutes a new form of assistance paid to clients in receipt of the highest rate care component in the qualifying week; and
- the implementation of a new definition of terminal illness, removing the existing requirement that a person must reasonably be expected to die within 6 months.

4. In addition to these areas of significant policy divergence from the existing DLAC benefit, there are a range of proposed operational and administrative measures that will ensure that DACYP is delivered in a way that is consistent with the values of Social Security in Scotland. These include:

- the provision of a range of application channels which clients can select based on preference including online, by phone, paper applications and face to face;
- the delivery of a local delivery service that will provide support and information to clients and stakeholders at a local level; and
- that the decision making process is holistic and considers each client's individual circumstances.

## **Current Draft Regulations**

5. The draft regulations that this paper accompanies are provided to the Scottish Commission on Social Security (SCoSS) to discharge the duty placed on Scottish Ministers under section 97 of the 2018 Act to send policy proposals to SCoSS in the form of draft regulations.

6. An earlier draft of the regulations was provided to SCoSS on 12 December 2019.

## **Policy Summary**

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

### **Part 1: Introductory and Interpretation**

8. Regulation 2 sets out the interpretation, for the purposes of the DACYP regulations, key terms used in the regulations. Definitions of specific terms from DLA case law have been added here to ensure that existing DLA case law is reflected in the interpretation of specific phrases. These include the addition of interpretation of the use of the phrase, 'attention' and 'bodily function.' Other terms and phrases have been defined specifically in later provisions, generally within the regulation the term or phrase is used.

### **Part 2: Disability Assistance for Children and Young People**

9. Regulation 3 provides an overview of the form of assistance that the regulations make provision for including that:

- the form of assistance will be paid to children and young people who meet the entitlement criteria;
- that the assistance will comprise of a care component and a mobility component;
- that entitlement may be to either care, or mobility, or both;
- an exclusion from entitlement applies to individuals in receipt of Disability Assistance for Working Age People; and
- exclusions from entitlement apply to people in receipt of Personal Independence Payments and Disability Living Allowance.

### **Part 3: Eligibility**

#### **Residency and Presence**

10. **Regulation 4** sets out the entitlement rules relating to residing in Scotland and the exceptions to the residency tests. The residence and presence rules require that individuals are:

- ordinarily resident in Scotland;
- habitually resident in either the United Kingdom, the European Economic Area or Switzerland;
- not subject to immigration control; and

- have been present in the United Kingdom for a prescribed number of weeks as described by paragraphs (2)(a)(b) and (c), dependent on the age of the child.

11. A number of children in receipt of DACYP are likely to live with parents or step-parents who do not meet the residency test set out in paragraph 10 above because they are serving members of the armed forces, employed in connection with continental shelf operations or are temporarily absent from the UK for a continuous period of less than 13 weeks. Individuals in one of these three situations are specifically excluded from the requirement to meet the past presence test set out in paragraph (2) of the regulations.

12. The Scottish Government has extended the upper age of entitlement of 16 in the existing DLA benefit to age 18 for clients in receipt of DACYP. For this reason, a very small number of clients may require exemption from the past presence test set out in paragraph (2) of the regulations because they are either employed in connection with continental shelf operations or they are serving members of the armed forces.

13. Individuals who meet the definition of being terminally ill, as set out in regulation 9, and individuals who have been granted refugee status or humanitarian protection are also exempted from the past presence test.

### **Care Component**

14. **Regulation 5** sets out the entitlement rules for the care component of the benefit, paid to clients who require support from another person in relation to either personal care, prompting or motivation in relation to bodily functions, the presence of another person to ensure their safety or assistance with communication needs.

15. The care component is provided at three different levels: highest rate, middle rate and lowest rate depending on what level of needs the client has. The purpose of the care component is to provide financial assistance to mitigate some of the costs that disabled people, and those with long-term conditions, incur in meeting their care needs.

16. To qualify for DACYP, a client must satisfy one of the conditions that they require:

- support for a significant portion of the day; or
- either frequent support throughout the day or continual supervision throughout the day in order to avoid danger to the individual or others; or
- prolonged or repeated support at night;
- if they are 16 or older, they must be unable to make a main meal if provided with the ingredients; or
- another person to be awake for a prolonged period or frequent intervals to avoid danger to the individual or others.

17. Paragraph (2) describes how these conditions only taken to be satisfied where:

- the individual requires support that is substantially in excess of the requirements of the expected level of support someone their age might require; or
- the individual requires support that a younger person might be expected to require but which someone of the individual's age would not be expected to have.

18. Paragraph (3)(a) sets out the qualifying period rule, that an individual must have had the requirement for support, as outlined above, for at least 13 weeks.

19. Paragraph (3)(b) describes the prospective test, that to be entitled to the care component an individual must be expected to continue to require the support outlined above for at least 26 weeks.

20. Paragraph (4) sets out an exclusion to both the qualifying period and the prospective test for individuals who have made an application shortly in advance of turning 16. This exclusion ensures that people approaching the age of 16 are not excluded from the benefit because they cannot meet the prospective test because a portion of it falls after their 16<sup>th</sup> birthday.

21. Paragraph (6) sets out the entitlement rules for the different rates of the care component. Individuals will be entitled to:

- the highest rate of the care component if the person requires support both in the day and the night;
- the middle rate of the care component if the person requires support either in the day or the night; and
- the lowest rate in any other case.

22. Paragraph (7) contains an exception to the requirement that clients require support both in the day and the night to qualify for the highest rate of care, for clients who have a terminal illness as defined by the 2018 Act.

23. Paragraph (8)(i) provides a definition of 'day' and 'night,' reflecting existing DLA case law.

24. Paragraph 8(ii) provides a definition of 'prolonged,' reflecting DLA case law.

25. Paragraph (9) defines 'supervision,' reflecting DLA case law.

26. Paragraph (10) defines 'require,' reflecting existing DLA case law.

## **Mobility Component**

27. **Regulation 6** sets out the entitlement rules for the lower rate mobility component, paid to individuals who require guidance or supervision from another person most of the time when moving around outdoors.

28. The mobility component is paid at one of two rates depending on what level of needs a client has: lower or higher rate. The mobility component is paid to clients to

provide some mitigation of the additional costs they incur as a result of requiring support with their mobility.

29. Paragraph (1) describes the broad entitlement criteria for the component as well as the age restriction that it can only be paid to individuals from the age of 5 years old.

30. Paragraph (2) sets out that to qualify for the component, the guidance or supervision required must be substantially more than would be expected for a person of that age.

31. Paragraph (3) sets out that, in considering whether the individual requires guidance and supervision substantially in excess of that expected for another person their age, no consideration should be given to routes or journeys that the individual is familiar with and where they may not require guidance or supervision.

32. Paragraph (4)(a) sets out that a client will only be entitled to lower rate mobility component if their need for guidance and supervision to move around out of doors has been required for at least 3 months.

33. Paragraph (4)(b) sets out that a client will only be entitled to the lower rate mobility component if their need for guidance and supervision to move around out of doors is expected to continue for a further 6 months.

34. Paragraph (5) defines 'guidance' to reflect existing DLA case law.

35. Regulation 7 sets out the entitlement criteria for the higher rate mobility component.

36. Paragraph (1) describes how only people aged 3 or over can qualify for the higher rate mobility component because, for all children under 3, it is expected that significant support will be required in relation to mobility.

37. To qualify for the higher rate mobility component, individuals must meet at least one of the following conditions, that:

- they are unable to walk as a result of a physical disability;
- they are virtually unable to walk as a result of a physical disability when speed, manner of walking and ability to cover distance, including how far without experiencing significant discomfort, are considered;
- the exertion required to walk would lead to a danger to the individual's life;
- they are entitled to the highest rate care component of DACYP and has significant needs as a result of a learning disability, autism or other cognitive disability;
- they have no legs or no feet (regardless of the use of artificial limbs);
- they have a severe visual disability;
- they are blind;
- they have a profound learning disability, autism or other cognitive disability;
- they have severe behavioural difficulties.

38. Paragraph (3) sets out two exclusions to the entitlement criteria above where the individual either would not be unable, or virtually unable, to walk if they had an artificial limb or aid suited to their needs or if they normally use an artificial limb or aid.

39. Paragraph (4) defines a 'severe visual impairment', in relation to the entitlement criteria for the higher rate mobility component.

40. Paragraph (5) defines the use of the term 'blind' in relation to the entitlement criteria.

41. Paragraph (6) defines the term 'blind and deaf.'

42. Paragraph (7) defines 'severe mental impairment' in relation the entitlement criteria.

43. Paragraph (8) defines 'severe behavioural difficulties' in relation to the entitlement criteria as an individual exhibiting behaviour which:

- is extreme;
- requires another person to undertake a physical intervention to prevent injury to themselves or others or damage to property;
- is so unpredictable that the person requires another person to be awake during the night to provide support if required;

44. Paragraph (9) defines a range of terms including 'visual acuity,' that this is measured on the Snellen Scale, and that references to the visual field of an individual refer to both eyes, where the person has two eyes.

45. Paragraph (10)(a) sets out that an individual must have met one of the criteria above for the higher rate mobility component for at least 3 months to be entitled.

46. Paragraph (10)(b) sets out that an individual must be expected to meet one of the criteria above for at least the following 6 months to be entitled to the higher rate mobility component.

47. **Regulation 8** sets out an exclusion relating to both mobility components, that a person in a coma or a person who cannot be moved safely because of their condition are not entitled to either level of mobility component.

#### **Part 4: Entitlement Under Special Rules for Terminal Illness and when undergoing dialysis**

##### **Terminal Illness**

48. DACYP as the first form of devolved disability assistance to commence will introduce the first payments to people with a terminal illness who will be entitled under the terminal illness provisions as set out in the 2018 Act.

49. **Regulation 9** sets out that individuals under the age of 18 who meet the definition of having a terminal illness in the 2018 Act are entitled to the highest rate

of the care component of DACYP and, from their third birthday, the higher rate mobility component.

50. Paragraph (2) sets out the exclusion that individuals who meet the definition of having a terminal illness in the 2018 Act do not need to have had the condition for at least 13 weeks, as required in the entitlement rules for each component, and will be entitled regardless of time spent in a care home, or hospital while in receipt of assistance.

51. Paragraph (3) and (4) set out that people who meet the definition of having a terminal illness, as defined in the 2018 Act, are entitled to DACYP from the date at which a medical practitioner makes a judgement that they meet the definition.

52. Paragraph (5) states that this judgement from a medical practitioner must have been made not more than 26 weeks prior to the date of the application.

53. Paragraph (6) sets out that in cases of applications made under SRTI rules, entitlement can only begin on or after the date that the regulations come into force and, more generally, only up to 26 weeks prior to the date that the clinical judgement is received.

54. Paragraph (7) defines terminal illness, for the purpose of this regulation.

55. Paragraph (8) sets out the requirement that in exercising the judgment that a person is terminally ill, for the purpose of entitlement to DACYP, medical practitioners must take account of Guidance for Doctors Completing Benefits Assessment under Special Rules in Scotland Form for Terminal Illness.

### **Entitlement to care component when undergoing dialysis**

56. Children and young people undergoing dialysis will be entitled to receive the relevant level of the care component, recognising the additional support and care they require solely as a result of undergoing this form of treatment.

57. **Regulation 10** sets out entitlement criteria for individuals undergoing dialysis, that:

- where the individual undergoes dialysis either by day or by night, they are entitled to the middle rate care component; and
- where the individual undergoes dialysis both by day and by night, they are entitled to the highest rate care component.

### **Part 5: Effect of Admission to a care home, residential educational establishment and in legal detention**

#### **Effect of admission to a care home or residential educational establishment on ongoing entitlement to the care component**

58. **Regulation 11** sets out how admission to a care home or residential educational establishment impacts the ongoing entitlement to the care component. Where a care home or residential educational establishment is publicly funded, the

care needs of the individual are met by public funds and if entitlement to DACYP was provided for, it would create a duplication of public funding. For this reason, entitlement to the care component of DACYP is removed, after a period, when a person enters one of these types of accommodation.

59. Paragraph (2) sets out that an individual ceases to be entitled to the care component of DACYP on the after they have been resident in either a care home or in a residential education placement for 28 days.

60. Paragraph (3) sets out that the 28 day period may consist of consecutive days or may be made up of periods, so long as there is no more than 28 days in between each period. Where there is a break of more than 28 days between two periods of residence in a care home or residential educational establishment, the 28 day period is reset and starts again.

61. Paragraph (4) sets out exclusions from the 28 day rule where the care home or residential educational services are paid:

- entirely from the funds of the individual to whom the services are provided;
- partly out of the resources of the individual for whom the services are provided and partly out of the resources of another person (other than a local authority) or from a charity; or
- entirely out of the resources of another person (other than a local authority) or from a charity.

62. Paragraph (5) sets out a number of exceptions to the definition of being resident in a care home or residential educational establishment and, therefore, situations where the individual will continue to be entitled to the care component:

- where the individual has been placed temporarily in private dwelling with a family or other while under the age of 16 or, where aged 16 to 18 is receiving services specified by the Child (Scotland) Act 1995 sections 93(4)(a)(ii) or 93(4)(a)(iii);
- where the individual is accommodated in a care home or residential educational establishment outside the United Kingdom, where the costs of that service are met by a local authority exercising powers under section 25 of the Education (Additional Support for Learning)(Scotland) Act 2004.

63. Paragraph (6) defines terms specific to regulation 11 including:

- (a) 'qualifying services' are defined as accommodation, board and personal care;
- (b) 'looked after by a local authority' is to be interpreted in accordance with section 17(6) of the Children (Scotland) Act 1995, section 105(4) of the Children Act 1989 or article 25 of the Children (Northern Ireland) Order 1995.

### **Calculation of periods of time spent in a care home or a residential educational establishment**

64. **Regulation 12** describes how periods of time spent in a care home or residential educational establishment are to be calculated for the purpose of making a determination of entitlement to DACYP.



65. Paragraph (1) sets out that, for the purpose of calculating the 28 day period, both the day that someone enters a care home or residential educational establishment and the day that they leave that accommodation are not to be counted as part of the calculation.

66. Paragraph (2) sets out that where an individual takes leave from a care home or residential educational establishment both the day that the individual leaves and the day the individual returns to the accommodation are not to be counted as days resident in that form of accommodation.

67. Paragraph (3) sets out that where an individual enters or returns to a care home or residential educational establishment either by transferring from hospital, a hospice or from another care home or residential educational establishment, the day of transfer is taken to be the first day of residence in the new care home or residential educational establishment.

### **Effect of legal detention on entitlement to care component of DACYP**

68. **Regulation 13** covers the impact of detention in legal custody on the care component of the benefit. Under existing DLA regulations, where a child or young person is detained in legal custody, their entitlement to both the mobility and care components of the benefit ceases. Under DACYP, children and young people detained in legal custody will continue to be entitled to the mobility component, if they were in entitled to it prior to their detention.

69. Paragraph (1) defines legal custody as within the meaning of section 295 of the Criminal Procedure (Scotland) Act 1995.

70. Paragraph (2) sets out that an individual will no longer be entitled to the care component of DACYP the day after the individual has been detained for 28 days in legal custody. This period is taken to have begun on the day after the day the individual was initially detained.

### **Entitlement beginning while resident in a care home or residential educational establishment**

71. **Regulation 14** relates to applications made where the client is applying whilst resident in a care home or other residential education establishment.

72. Paragraph (2) sets out that, in relation to this regulation, a client ceases to be entitled to the care component after 28 days from the date that an application is taken to have been made.

73. Paragraph (3) places a duty to make a determination of the person's entitlement in according with paragraph (2) after the 28 day period ends.

74. Paragraph (4) sets out that an individual's entitlement ends once they have been resident in a care home or residential educational establishment for a period of 28 days but only applies where the individual has spent 28 days in a care home or

residential educational establishment, since the day they were first entitled to assistance.

75. Paragraph (5) defines the 28 day period as being either made up of consecutive days or the cumulative total of days spent in more than one care home or residential educational establishment.

76. Paragraph (6) sets out an exemption to the 28 day rule where the care home or residential education services are funded by either the resources of the individual, partly out of the resources of the individual and partly out of the resources of another organisation or person; or entirely out of the resources of another person or organisation, including assistance from a charity.

77. Paragraph (5) sets out a number of exceptions to the definition of being resident in a care home or residential educational establishment and, therefore, situations where the individual will continue to be entitled to the care component:

- where the individual has been placed temporarily in private dwelling with a family or other while under the age of 16 or, where aged 16 to 18 is receiving services specified by the Child (Scotland) Act 1995 sections 93(4)(a)(ii) or 93(4)(a)(iii);
- where the individual is accommodated in a care home or residential educational establishment outside the United Kingdom where the costs of that service are met by a local authority exercising powers under section 25 of the Education (Additional Support for Learning)(Scotland) Act 2004.

### **Application for DACYP while on leave from a care home or residential educational establishment**

78. **Regulation 15** has been drafted to ensure that where an individual is in receipt of only the care component of DACYP, enters a care home or residential educational establishment for more than 28 days and is therefore subject to a determination that they are not entitled to either component, there is a suitable mechanism to enable them to access assistance when they are on leave from that accommodation.

79. This mechanism replaces the existing process under the administration of DLA of suspending benefit when a client enters one of these types of accommodation. It will ensure that clients are able to enter and leave either a care home or residential education, and to quickly restart their entitlement to DACYP and receive disability assistance.

80. Paragraph (2) sets out that a determination without application must be made for the period of leave described in paragraph 68 above where the individual:

- was previously entitled to DACYP prior to entering the care home or residential educational establishment;
- takes leave from that accommodation;
- notifies Social Security Scotland of that leave and;
- the review date of the initial determination of entitlement that was made, prior to their placement in a care home or residential educational establishment,

falls after the date the notification of leave is made to Social Security Scotland.

81. Paragraph (3) sets out that entitlement to the care component begins on the day the person leaves the care home or residential educational establishment and that entitlement ends on the day after the day the person returns to the care home or residential educational establishment.

82. Paragraph (4) defines entitlement for the purpose of this regulation as beginning on the day the person goes on leave and ending on the day after the day on which they return to the care home or residential educational establishment.

83. The regulations are silent on the process for clients in receipt of the mobility component of DACYP who enter a care home or residential educational establishment, receiving payment of the care component whilst on leave from that accommodation. These individuals retain entitlement to DACYP, though only the mobility component, and as a result will be required to notify a change of circumstances to trigger payment of the care component. This process will be identical to the process for clients in receipt of neither component of the benefit: it is only the legal mechanism that differs. Notification to clients regarding this process will be set out in publicly available guidance and through communications activity.

### **Entitlement to care component of disability assistance while an inpatient**

84. Paragraph (16) sets out that periods where a person is an in-patient in a hospice have no effect on entitlement to the care component of DACYP.

## **Part 6: Winter Heating Assistance**

### **Payment of winter heating assistance**

85. Winter Heating Assistance for children (WHA) and young people in receipt of the highest rate care component of DACYP is a new form of assistance that will provide an annual £200 payment to contribute towards heating costs.

86. **Regulation 17** sets out the entitlement rules for WHA for children and young people in receipt of DACYP.

87. Paragraph (1) sets out that a determination of entitlement to WHA will be made for individuals in receipt of either the highest rate of care component of DACYP or of DLA on at least one day of the qualifying week. (1)(b) describes how, where a client was not entitled to WHA on one day of the qualifying week but a further determination has been made that their entitlement to the higher rate care component started prior to, or on one day of the qualifying week, they will be entitled to WHA for that year.

88. Paragraph (2) sets out the rate of £200 that will be paid as a one-off annual payment to individuals who are in receipt of the highest rate care component on one day of the qualifying week.

89. Paragraph (3) defines 'qualifying week' for the purpose of this regulation as being the week starting from the third Monday in September in any given year. This qualifying week aligns with existing winter and cold weather benefits.

90. Paragraph (4) sets out an exception in relation to payment of Winter Heating Assistance where the individual has died before the qualifying week.

91. Paragraph (5) sets out that payment of WHA is made separately of any deductions taken from the principle DACYP assistance in relation to an overpayment.

## **Part 7: Short-Term Assistance**

### **Entitlement to short-term assistance**

92. The 2018 Act introduced provision for Short-Term Assistance, a new form of assistance that will be paid to clients who have their principle form of assistance reduced or stopped and are undergoing either a redetermination or appeal of that decision. Short-Term Assistance will pay individuals the difference between their previous benefit award and their current entitlement, whilst a challenge is undertaken. This assistance will be non-recoverable, regardless of the final outcome of their redetermination or appeal.

93. **Regulations 18, 19 and 20** set out how Short-Term Assistance will operate in relation to determinations made on entitlement to DACYP.

94. **Regulation 18**, Paragraph (1) sets out the entitlement rules for Short-Term Assistance where an application is received from a client:

- where a determination of entitlement in respect of the individual has been superseded by a subsequent determination which has the effect that the individual is no longer entitled to DACYP or is entitled to less of either component of DACYP; and
- the superseding determination is under review either by a redetermination or an appeal; and
- the individual continues to meet residence and presence requirements or has transferred to another part of the United Kingdom and is currently in receipt of DACYP as part of a cross-border payment having moved not more than 3 months prior from Scotland to the rest of the United Kingdom.

95. Paragraph (2) sets out that an individual is not entitled to short-term assistance where they are no longer entitled to CDP as a result of a determination that was made either:

- in relation to a change of entitlement relating to a determination made on the balance of probability, fraudulently; or
- following a client being accommodated in a care home, residential establishment or legal custody.

96. Paragraph (3) sets out that entitlement to short-term assistance begins on the earlier of the following dates:

- the day that a request for a redetermination is made;

- the day a notice of appeal is accepted;
- the day a decision of the Scottish Ministers is made not to accept a request for a redetermination is set aside; or
- the day that a request is made for permission to appeal.

## **Value and Form**

97. **Regulation 19** sets out that value of Short-Term Assistance as being the difference between the level of assistance paid under the earlier determination and the level paid under the determination which is superseded. The reference to 'level,' refers to the total sum of both mobility and care components, rather than individual components.

98. Paragraph (2) provides for deductions to be made from a payment of Short-Term Assistance where a deduction was being made to meet a liability, at the same rate as was applied to the payment of DACYP.

## **End of Entitlement**

99. **Regulation 20** sets out that entitlement to short-term assistance ends on the day a redetermination is concluded, on the day the First-Tier Tribunal for Scotland concludes an appeal of the determination or on the day that the First-Tier Tribunal for Scotland makes a decision to refuse permission to bring an appeal.

100. **Regulation 21** sets out that where a further determination is made that increases the level of assistance the person receives, in relation to a period in which the client received Short-Term Assistance, the backpayment made relating to this assistance will be reduced by the amount of Short-Term Assistance they have already received.

## **Part 8: Making of applications and payments and duration of eligibility**

### **Age Criteria**

101. **Regulation 21** sets out that, other than for exceptions for clients applying under terminal illness rules and clients undergoing dialysis, DACYP may be paid to individuals aged 3 months to 18 years.

102. Paragraph (2) sets out that where an individual's entitlement to DAWAP is yet to be determined the person may continue to receive CDP until either:

- their award of DAWAP is determined or;
- their 19<sup>th</sup> birthday.

103. Paragraph (3) sets out that the age limit of 19 in the previous paragraph does not apply where the client receives assistance under SRTI rules.

104. Paragraph (4) sets out that DACYP may only be paid in respect of an individual who is under the age of 16 on the day on which entitlement is taken to have begun.

## **Making Payments**

105. **Regulation 23** sets out rules relating to the making of payments.

106. Paragraph (1) sets out that where CDP is paid in respect of a client under 16, it is to be paid to the person specified in the application, to be used for the benefit of the client.

107. Paragraph (2) sets out that where CDP is paid in respect of a client who is over 16 years old, and the payment is made to another person, it is to be used for the benefit of the client.

108. Paragraph (3) provides for the removal of payment where it is considered no longer appropriate for the person to receive it on the client's behalf.

## **When an application is to be treated as made and beginning of entitlement to assistance**

109. **Regulation 24** sets out that Scottish Ministers may take an application to have been made on a date that is different to the date it was actually submitted or completed. This regulation ensures that in specified situations, the day of entitlement is different from the day when the application was completed.

110. This is important to ensure that, for instance, claims in advance of meeting certain criteria are determined with an entitlement date set on the date those criteria are met, rather than making a determination that the client is not entitled and requiring them to provide a new application for assistance at a later date.

111. Paragraph (2) sets out that where an application is made from a client who does not meet the qualifying period that they must have had the relevant needs for a period of 3 months, a determination may be made on the basis that entitlement begins from the date when the qualifying period criteria would be met.

112. Paragraph (4) sets out that the day of entitlement will begin from the initial registration online, or over the phone, to make an application, where the application is made within 6 weeks of that date.

113. Paragraph (5) sets out that where an application is made outwith the 6 week period above, the application is taken to be made on the day it is received.

114. Paragraph (6) provides discretion to extend the 6 week period described above in cases where there is good cause for making the application later than the 6 week period.

115. The 2018 Act sets out the framework for assistance as paid to individuals in respect of either an event or a period. For DACYP, applications are made in respect of a period, paragraph (7) defines this.

116. Paragraph (8) allows for further information to be requested in relation to an application within 4 weeks of the request being made.

117. Paragraph (9) sets out that a client who has not provided the requested information may have good cause either due to their health or due to a disability.

### **Time of Payment**

118. **Regulation 25** sets out that DACYP will be paid 4-weekly in arrears or, for clients applying under special rules for terminal illness, weekly in advance.

### **Continuing Eligibility**

119. **Regulation 26** sets out that entitlement to DACYP is made on the basis that the individual has ongoing entitlement to assistance, subject to reviews on, or around, the date set out in regulation 26.

### **Period stated in determination**

120. **Regulation 27** sets out that the entitlement rules are taken to be satisfied up to the review date set out on the determination notice provided to the client.

121. **Regulation 28** sets out that where a child or young person who is in receipt of CDP dies, the payment will be continued to be made at the same rate for 8 weeks from the date of their death.

### **Qualifications and experience necessary to determine entitlement**

122. **Regulation 29** describes the requirements for specified staff administering the application and decision making process for DACYP.

123. Paragraph (1) defines staff making decisions on behalf of Scottish Ministers in relation to DACYP, to be known as 'Case Managers.'

124. Paragraph (2) sets out that Case Managers must undertake training as required by Scottish Ministers.

125. Paragraph (3) sets out that this training must include materials relating to mental health conditions and learning disabilities.

126. Paragraph (4) sets out that 'Specialist Advisers' will assist Case Managers in making determinations for DACYP.

127. Paragraph (5) sets out that a person may only be appointed as a Specialist Adviser if they have been employed for at least 2 years in the direct provision to individuals of health care and social care services.

128. Paragraph (6) sets out that a proportion of Specialist Advisers, to be determined, must have been employed for at least 2 years in the direct provision to individuals with mental health conditions or learning disabilities of health care and social care services.

129. Paragraph (7) states that Specialist Advisers must undertake such training as required by Scottish Ministers.

130. Paragraph (8) sets out that this training must include material relating to mental health conditions and learning disabilities.

131. Paragraph (9) defines 'health care services' and 'social care services'

### **Part 9: Re-consideration of entitlement to DACYP: determination without application**

132. **Section 52** of The 2018 Act provides Scottish Ministers with powers to prescribe in regulations situations where they may make a determination of entitlement without having received an application. This function allows determinations to be made in a number of situations including:

- as part of the review process;
- where a client notifies a change of circumstances;
- where an earlier determination should be superseded; or
- where a client wishes to voluntarily relinquish their award.

### **Consideration of entitlement after specified period**

133. **Regulation 30** describes the review process for DACYP. It is intended that clients will be provided with a review date with each determination but that their entitlement is taken to be indefinite, subject to meeting the eligibility criteria on an ongoing basis. If a review identifies a change in entitlement, a determination without application will be used to effect the change.

134. Paragraph (1) sets out the duty on Scottish Ministers to make a determination of entitlement on the review date provided to the client in the initial statement of determination.

135. Paragraph (2) sets out that Scottish Ministers may request that supporting information is supplied to them by a specified date and may give notice that if information is not supplied by that date, they have discretion to make a determination that the client is no longer entitled to DACYP.

### **Other situations requiring a determination without an application**

136. **Regulation 31** sets out the situations in which a determination without application must be made in relation to an individual's assistance, as where Scottish Ministers become aware:

- of a change of circumstances likely to result in a change in the level of DACYP paid to the client;
- that the client has been admitted to a care home or residential educational establishment for more than 28 days;
- that the client has been detained in legal custody;
- that the earlier determination was made in ignorance of a material fact which existed when the earlier determination was made;



- that the individual has an overpayment liability due to assistance given in error;
- that after transferring from Disability Living Allowance to DACYP, the determination of the level of Disability Living Allowance the person received has been altered so that the level of DACYP they were provided at the point of case transfer should have been different;
- that a client from another part of the United Kingdom, in receipt of Disability Living Allowance, is moving to Scotland;
- that a client from Scotland, in receipt of DACYP, is moving to another part of the United Kingdom;
- they consider, on the balance of probability, that the person's determination for assistance was made or has continued as a result of fraud or failing to notify a relevant change of circumstances;
- that entitlement should be altered as a result of a change in the entitlement criteria for DACYP;
- that the individual has turned 16 and has not provided their bank details;
- that an application is received that is not in the required form, as set out in guidance; or
- that the client notifies that they wish for their assistance to stop being paid.

137. Paragraph (2) sets out the information that may be used to make a determination in one of the situations above.

### **Determination following official error**

138. **Regulation 32** sets out that Scottish Ministers are to make a determination without application where it is established that the earlier determination was incorrect as a result of official error.

139. Paragraph (1) defines the situations where, as a result of official error an award was made incorrectly and a determination without application will be made to supersede the earlier, incorrect determination. The situations where this may occur are:

- where a client was not given an award of DACYP to which they should have been entitled;
- where a client was given a lower award of DACYP to which they should have been entitled;
- where a client was given an award of DACYP they should not have been entitled to; or
- where a client was given a higher award than they should have been entitled to.

140. Paragraph (1) also states that the determination without application can only be made where there is no outstanding request for re-determination and no appeal has been brought in relation to the relevant determination.

### **When changes of entitlement take effect**

141. **Regulation 33** describes the point in time at which determinations made as a result of a determination without application are applied in a range of scenarios.

142. Paragraph (1) sets out that where a determination without application is made:

- as a result of a change in the law, the change of entitlement takes effect from the date the relevant provisions are in force;
- in the case of an increase in the level of award of Disability Living Allowance that the individual received at the point of transferring to Scotland as part of a cross-border move, using the date of the individual's first determination to assistance as part of that transfer; and
- in the case of an earlier incorrect determination as a result of official error or made in ignorance of material fact, using the date of the earlier determination.

143. Paragraph (3) sets out that regulation 31 is subject to regulation 32 that relates to when clients are expected to notify a change of circumstances.

### **Timing of notification of change in circumstances**

144. **Regulation 34** sets out the date of the change in entitlement where a client doesn't notify a change of circumstances as at the point the change takes effect.

145. Paragraph (1) sets out that where it is a change that increases the level of entitlement, the determination is made on the date that the client notified the change. Where a change decreases the level of entitlement, or results in entitlement ceasing, the date of determination will be the date that Scottish Ministers consider that notification would have been received if the client had notified at the point the change took effect.

146. Paragraph (2) provides discretion for both scenarios above, where the date of determination should be different to those specified because the client had good cause for not notifying at the point the changes took effect.

## **Part 10: Procedural Matters**

### **Periods in respect of a re-determination request**

147. **Regulation 35** prescribes the period for requesting a re-determination of entitlement as 42 days. It prescribes the period for Scottish Ministers to make a re-determination of entitlement as 56 days.

### **Awards in anticipation of 16<sup>th</sup> birthday**

148. **Regulation 36** sets out a significant change from the existing Disability Living Allowance benefit where entitlement ceases at age 16. Clients in receipt of DACYP prior to their 16<sup>th</sup> birthday will be provided with an extension of their award to age 18, subject to meeting other relevant entitlement criteria for that period. This change will ensure that, at a time when many children and young people are managing the stressful process of transitioning between child and adult services, their disability assistance will continue to be paid.

149. Paragraph (1) sets out that, prior to their 16<sup>th</sup> birthday, a determination of entitlement will be made for clients, running to the day before their 18<sup>th</sup> birthday.

150. Paragraph (2) excludes clients who have applied under special rules for terminal illness because they may continue to receive DACYP beyond the age of 18.

151. Paragraph (3) excludes clients aged 16 or 17 in receipt of DACYP from entitlement for DAWAP.

152. Paragraph (4) provides for clients with a leap year birthday, in relation to the date on which they turn 16.

## **Part 11: Assistance to be given**

### **Amount and form of DACYP**

153. **Regulation 38** provides the component rates and levels for DACYP as well as for payment to be made on a daily basis where a client is temporarily on leave from a care home or residential educational establishment.

## **Part 12: Provision of vehicles**

### **Payment of mobility component to authorised providers of vehicles for individuals with disabilities**

154. The Scottish Government has introduced the Accessible Vehicle and Equipment Scheme (AVE) an accreditation framework that allows accredited providers of accessible cars, scooters and powered wheelchairs to receive the direct transfer of the mobility component of DACYP. Where clients enter into lease agreements for accessibility vehicles, the mobility component of their DACYP award will be transferred directly to the provider to pay for the vehicle lease. These leases will be zero-rated for VAT purposes, will be at significantly lower rates than the mainstream market, and no clients will be required to undergo a credit check to access credit.

155. **Regulation 39** allows for the higher rate mobility component of DACYP to be paid to an accredited provider where the client has entered into an agreement for the hire of an accessible vehicle.

156. Paragraph (2) sets out that the transfer of the mobility component should stop if the lease agreement is brought to an end.

157. Paragraph (3) defines an 'authorised provider of vehicles' as a supplier of vehicles for disabled people accredited as part of the Scottish Government's AVE framework.

## **Part 13: Transfer of claims between Scotland and the rest of the United Kingdom**

## **Individuals in respect of whom Disability Living Allowance is paid in another part of the United Kingdom immediately before transferring to Scotland**

158. **Regulation 40** allows for a determination to be made to equivalent levels and components where a client with an existing DLA award transfers from another part of the United Kingdom to Scotland.

## **Individuals in respect of whom DACYP is paid at the time of transferring to another part of the United Kingdom**

159. **Regulation 41** provides for a 13 week 'run on' of DACYP from the date that a client moves from Scotland to another part of the United Kingdom. The intent is to ensure that, as far as possible, disabled people can move across borders within the United Kingdom without experiencing a break in their disability assistance.

160. The 13-week period is set to ensure that clients have sufficient time to make an application for Disability Living Allowance and receive a determination so that, when the period expires, they will begin receiving Disability Living Allowance, if they have met the entitlement criteria.

161. Paragraph (3) ensures that where a client notifies they are to move to another part of the United Kingdom but subsequently notifies that they are no longer due to move, the earlier notification is treated as not being made.

## **Part 14: Liability for over payment**

162. **Regulation 42** sets out the rules relating to recovery of overpayments.

163. Paragraph (2) sets out that a determination may be made to make deductions at a reasonable level for a period from payments of CDP.

164. Paragraph (3) sets out that this applies where the individual has agreed to the deductions and the amount to be deducted, or where they have unreasonably refused to agree to the amount to be deducted.

165. Paragraph (4) sets out that a determination without application may be made to:

- increase or decrease the amount of a deduction;
- amend the length of the period that deductions are to apply; or
- to stop making deductions.

166. Paragraph (5) sets out that a client may:

- withdraw their agreement to deductions;
- request to increase the amount deducted;
- request to decrease the amount deducted; or
- request to amend the length of the period the deductions are to apply.

167. Paragraph (6) sets out that where a request is made under paragraph (5), a determination must be made.

168. Paragraph (7) sets out that a determination made in relation to deductions must set out the details of the payment that the individual is to make to Scottish Ministers.

## **Part 15: Consequential Amendment**

### **Consequential Amendment**

169. **Regulation 43** contains a consequential amendment to the Social Security Contributions and Benefits Act 1992 to amend entitlement rules for Carer's Allowance, for Scottish clients. Responsibility for carer benefits is devolved to Scottish Ministers.

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