

## Introduction to the Child Disability Payment Decision-Making Guidance

This chapter covers:

- Introduction
- The Decision-Making Guidance
- Definitions
- Key terminology

### Introduction

1. This introductory chapter will set out the purpose of the Decision-Making Guidance and will provide definitions of key terminology.

### The Decision-Making Guidance

2. The Decision-Making Guidance provides an interpretation on how to:

- use the powers in the Social Security (Scotland) Act 2018
- apply the rules set out in the Disability Assistance for Children and Young People (Scotland) Regulations 2021
- apply the rules set out in the Disability Assistance for Children and Young People (Scotland) Amendment Regulations 2021.

3. The interpretation of the legislation will support case managers employed by Social Security Scotland during the decision-making process regarding disability benefits so that:

- determinations are made lawfully
- the decision-making process is consistent with legislation
- individuals are treated fairly in accordance with the rules of the benefit.

4. The main audience for the Decision-Making Guidance are case managers within Social Security Scotland who will be using the document to make decisions on new and existing Child Disability Payment (CDP) cases.

5. The Decision-Making Guidance, along with training provided to case managers, provides an official interpretation of legislation for Social Security Scotland staff to make decisions about entitlement to CDP. Case managers should note that approved guidance **must** be followed when applying the law to the facts of the case. However, a case manager may request advice from the Decision Support Team on the application or clarification of the Decision-Making Guidance where there is any doubt or in complex cases.

6. The Decision-Making Guidance uses examples to support the interpretations and explanations of the legislation. These examples are not decision-making criteria in themselves but are merely illustrating how the criteria set out in the chapters should be applied.

7. Case managers should refer to the Operational Guidance for information on the operational steps needed to make and record a decision [LINK].

8. For further information on how individuals might be affected by their health conditions or disability, case managers should refer to the medical guidance [LINK].

## Definitions

9. In the Decision-Making Guidance:

- “the 2018 Act” refers to the Social Security (Scotland) Act 2018.
- “the 2020 Act” refers to the Social Security Administration and Tribunal Membership (Scotland) Act 2020.
- “the Child Disability Payment Regulations” refer to the Disability Assistance for Children and Young People (Scotland) Regulations 2021.
- “the Child Disability Payment Amendment Regulations” refer to the Disability Assistance for Children and Young People (Scotland) Amendment Regulations 2021.
- “Child Disability Payment” means disability assistance for children and young people given in accordance with section 31 and schedule 5 of the 2018 Act with specific rules set out in regulations 1 to 41 and Parts 2 and 3 of the schedule of the Child Disability Payment Regulations.
- “short-term assistance” means assistance given to children and young people given in accordance with section 36 and schedule 10 of the 2018 Act with specific rules set out in regulation 42 and Part 1 of the schedule of the Child Disability Payment Regulations 2021.

## Key terminology

10. The 2018 Act and the CDP regulations state that determinations on applications are made by Scottish Ministers. Scottish Ministers do not personally make these determinations. Instead, officials employed by Social Security Scotland act on behalf of Scottish Ministers. This is known as the Carltona<sup>1</sup> principle.

*1 Carltona Ltd v Commissions of Works [1943] 2 All ER 560 (CA)*

11. The Carltona principle states that:

In the administration of government in this country the functions which are given to ministers (and constitutionally properly given to ministers because

they are constitutionally responsible) are functions so multifarious that no minister could ever personally attend to them...The duties imposed upon ministers and the powers given to ministers are normally exercised under the authority of ministers by responsible officials of the department. Public business could not be carried on if that were not the case.

12. This piece of guidance will therefore refer to Social Security Scotland or officials employed by Social Security Scotland, rather than to Scottish Ministers.

13. For simplicity, the Decision-Making Guidance refers to any officials employed by Social Security Scotland as case managers. This includes case managers, client experience officers, and others.

14. Many individuals applying for, or receiving, CDP will not be interacting with Social Security Scotland themselves. Instead, their parents or guardians will do so on their behalf. Some individuals might have appointees or third-party representatives. The Decision-Making Guidance uses the term “individuals” when referring to

- children and young people applying for, or in receipt of, CDP. This covers both individuals whose CDP application or award is managed by someone else on their behalf and individuals aged over 16 years old who are managing their own benefits.
- the parent, guardian, appointee or other representative who is managing the benefits for the child or young person.

15. Case managers should be aware of this even though the guidance does not explicitly refer to appointees and other representatives in all chapters. For more details on appointees and third-party representatives, case managers should refer to the Operational Guidance and the Appointee Guidance [LINK].