

## Equality Impact Assessment

<p><b>Title of policy</b></p>	<p>The Scottish Child Payment Regulations 2020 and the Disability Assistance for Children and Young People (Scotland) Regulations 2021 (Miscellaneous Amendments) Regulations 2022</p>
<p><b>Summary of aims and desired outcomes of Policy</b></p>	<p>The draft regulations make miscellaneous amendments to the Disability Assistance for Children and Young People (Scotland) Regulations 2021 and the Scottish Child Payment Regulations 2020 in order to:</p> <ul style="list-style-type: none"> <li>• confirm the date when the period for Ministers carrying out a re-determination of entitlement begins where the First-tier Tribunal set aside a decision by the Scottish Ministers not to accept a request for a re-determination of entitlement to Scottish Child Payment;</li> <li>• make it clear that individuals with refugee status are exempt from one of the residence conditions (the habitual residence test);</li> <li>• remove the ability for clients who are currently in receipt of Disability Living Allowance, Personal Independence Payment or Armed Forces Independence Payment to make a pre-emptive application for Child Disability Payment;</li> <li>• clarify that the costs of any qualifying services can be met wholly or in part by a local authority, when determining if the individual is being looked after by a local authority and is in a care home, or alternative accommodation outside the United Kingdom;</li> <li>• require Ministers to determine whether an individual is entitled to short-term assistance in circumstances where the First-tier Tribunal for Scotland set aside a decision by the Scottish Ministers not to accept a request for a re-determination of entitlement to Child Disability Payment.</li> </ul> <p>The draft regulations also provide a framework for how Scottish Ministers will exercise the power to suspend awards of ongoing assistance under the Social Security (Scotland) Act 2018 in order to:</p> <ul style="list-style-type: none"> <li>• safeguard an individual's entitlement to assistance where Ministers have arranged for a person to receive assistance on behalf of that individual and this arrangement is placing the individual at risk of financial abuse;</li> <li>• safeguard the individual's entitlement to assistance in circumstances where Ministers have arranged for a person to receive assistance on behalf of that individual and the person whom Ministers have made arrangements with can no longer continue in that role;</li> </ul>

	<ul style="list-style-type: none"> <li>• manage the situation where an individual who is entitled to Child Disability Payment has reached the age of 16 years and there is not yet an appropriate arrangement in place for paying assistance to, or for benefit of, that individual (since the is now an adult);</li> <li>• provide individuals with a better opportunity to provide information, which Ministers require in order to review entitlement to either Child Disability Payment or Scottish Child Payment, before Ministers will decide to end entitlement on account of the information not being provided.</li> </ul> <p>The draft Regulations provide safeguards in relation to the operation of suspension of assistance, including:</p> <ul style="list-style-type: none"> <li>• provision that assistance may only be suspended in precise circumstances;</li> <li>• provision on when Ministers must end a suspension;</li> <li>• the right of the individual to require Ministers to review a decision to suspend;</li> <li>• requirement on Ministers have regard to an individual's financial circumstances before deciding to suspend;</li> <li>• the right of the individual to notify the individual about the decision to suspend, the reasons for it, the right to request a review and any steps the individual can take in for the suspension to be ended.</li> </ul>
<b>Directorate:</b> <b>Division:</b> <b>Team:</b>	Social Security Directorate Social Security Policy Division Disability Benefits Policy Unit

## **Background**

1. The Social Security (Scotland) Act 2018<sup>1</sup> received Royal Assent on 01 June 2018. The Equality Impact Assessment for the Social Security (Scotland) Bill was published on 20 June 2017 and is available [here](#).
2. The 2018 Act transposed eleven existing benefits onto a Scottish legislative platform, allowing the Scottish Ministers to shape a new and distinctly Scottish benefits system, with dignity and respect being core to its approach. The Act sets out an overarching legislative framework for the administration of these forms of social security assistance in Scotland, in addition to making provision for operational functions such as managing overpayments, fraud, error and appeals.

## **Redeterminations**

3. The regulations make two similar and technical miscellaneous amendments to the Disability Assistance for Children and Young People (Scotland) Regulations 2021 and the Scottish Child Payment Regulations 2020. These amendments relate to the situation where the First-Tier Tribunal has found that Ministers were wrong to refuse an individual's request for a re-determination of entitlement to Child Disability Payment or Scottish Child Payment (as the case may be). These amendments also address comments made by SCoSS.

## **Refugees**

4. The regulations also seek to disapply the habitual residence for individuals who have been awarded refugee status. This mirrors UK policy and practice and addresses comments raised by SCoSS in its report on the draft Adult Disability Payment regulations, published in October 2021.

## **Pre-emptive Applications**

5. The regulations amend the Disability Assistance for Children and Young People (Scotland) Regulations 2021 to remove the ability for individuals entitled to Personal Independence Payment, Disability Living Allowance or Armed Forces Independence Payment to make a pre-emptive application for Child Disability Payment. The ability to do this undermines the carefully planned and negotiated process for transferring these individuals from receiving a UK Government administered disability benefit to a Scottish Government administered one.

## **Effect of time spent in care homes and legal detention**

6. The regulations amend the Disability Assistance for Children and Young People (Scotland) Regulations 2021 to clarify that the costs of any qualifying services can be met wholly or in part by a local authority, when determining if the individual is being looked after by a local authority and is in a care home, or alternative accommodation outside the United Kingdom. The Scottish Government considers that this change removes any ambiguity about when a

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<sup>1</sup> <https://www.legislation.gov.uk/asp/2018/9/contents/enacted>

child or young person is considered to be resident in alternative accommodation or is being looked after by a local authority.

## Suspension of ongoing payments

7. Under the 2018 Act (as originally enacted), there was no mechanism to allow for the temporary holding-back of payments of on-going assistance -an individual was simply entitled to assistance, or they were not. The Scottish Government consulted on this lack of mechanism as a result comments made by the Scottish Commission on Social Security when SCoSS. The comments were made when reviewing the policy position that individuals who reside in care homes, and other types of accommodation in which the individual's care needs are met at public expense, should not be entitled to the care component of Disability Assistance. As respects this position, SCoSS recommended that:

“the Scottish Government should ensure that the simple processes, passported exemptions and entitlements, and certainty of award currently available to people entering or leaving a care home are not lost to those getting CDP. One route to achieving this is to consider amending the Act to enable entitlement to remain while payment is *suspended*.”

The Scottish Government consulted stakeholders on this recommendation. The consultation revealed that SCoSS' use of the term 'suspended' in this context was different to how the DWP refer to this term. SCoSS were using the term to refer to the act of permanently stopping an individual's payments for a temporary period and then recommencing payments *without* awarding a back-dated amount of assistance in respect of the period of the suspension. The Scottish Government do not call this suspension but refer to it as making a nil-award or reducing the value of the award, or a component of it, to £0. The DWP refer to a suspension as when an individual's payments are temporarily held-back, but, as soon as the suspension ends, an individual immediately becomes entitled to back-dated period in respect of the period of suspension. The consultation revealed that there was a policy need to both have powers to make a nil award and to suspend assistance in the DWP sense of the term. These regulations provide for the suspension of payments in the DWP sense of the term.

8. During the passage of the Social Security Administration and Tribunal Membership (Scotland) Bill<sup>3</sup>, the Scottish Ministers brought forward an amendment at Stage 2 that introduced a power to suspend payment of forms of assistance payable under the 2018 Act in prescribed circumstances in accordance with regulations.
9. The Scottish Government has been clear that the use of the power to suspend should not be punitive – it should be used to protect clients entitlement to assistance, and to give clients the opportunity to re-engage with Social Security Scotland if they fail to provide information where requested. It should be acknowledged that the

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<sup>2</sup> [FINAL+SCoSS+Report+on+the+draft+DACYP+%28S%29+Regs+2020.pdf \(www.gov.scot\)](#) See recommendation 22.

<sup>3</sup> <https://www.parliament.scot/bills-and-laws/bills/social-security-administration-and-tribunal-membership-scotland-bill>

ability to suspend assistance interferes in an individuals' right to that assistance. Being able to suspend in broad circumstances would not be showing due regard to the needs mentioned in the public sector equality duty. However, we believe that utilising suspensions in the manner expressed in the regulations provides for use in limited circumstances and contains adequate safeguards which will allow suspensions to be used in such a way as to be beneficial to clients, including clients with protected characteristics.

10. The provisions in the regulations contribute to the following National Outcomes:
- We respect, protect and fulfil human rights and live free from discrimination; and
  - We tackle poverty by sharing opportunities, wealth and power more equally.

## **Policy aims**

11. The policy aims of the Regulations are to:

- confirm the date when the period for Ministers carrying out a re-determination of entitlement begins where the First-tier Tribunal set aside a decision by the Scottish Ministers not to accept a request for a re-determination of entitlement to Scottish Child Payment;
- make it clear that individuals with refugee status are exempt from one of the residence conditions (the habitual residence test);
- remove the ability for clients who are currently in receipt of Disability Living Allowance, Personal Independence Payment or armed forces independence payment to make a pre-emptive application for Child Disability Payment;
- clarify that the costs of any qualifying services can be met wholly or in part by a local authority, when determining if the individual is being looked after by a local authority and is in a care home, or alternative accommodation outside the United Kingdom;
- require Ministers to determine whether an individual is entitled to short-term assistance in circumstances where the First-tier Tribunal for Scotland set aside a decision by the Scottish Ministers not to accept a request for a re-determination of entitlement to Child Disability Payment;
- safeguard an individual's entitlement to assistance where Ministers have arranged for a person to receive assistance on behalf of that individual and this arrangement is placing the individual at risk of financial abuse;
- safeguard the individual's entitlement to assistance in circumstances where Ministers have arranged for a person to receive assistance on behalf of that individual and the person whom Ministers have made arrangements with can no longer continue in that role;
- manage the situation where an individual who is entitled to Child Disability Payment has reached the age of 16 years and there is not yet an appropriate arrangement in place for paying assistance to, or for benefit of, that individual (since the is now an adult);
- provide individuals with a better opportunity to provide information, which Ministers require in order to review entitlement to either Child Disability Payment or Scottish Child Payment, before Ministers will decide to end entitlement on account of the information not being provided.

### **Clarification on Re-determinations**

12. Provisions clarify timescales and short-term assistance arrangements, where the First-tier Tribunal find that Ministers were wrong to refuse an individual's request for a re-determination of entitlement to Scottish Child Payment and Child Disability payment.

### **Disapplication of the Habitual Residence Test for Refugees**

13. A separate provision seeks to disapply the Habitual Residence Test for individuals who have been awarded refugee status. This mirrors UK government policy and practice, despite UK legislation which states refugees are subject to this test. It emerged during conversations with DWP counterparts on a separate set of regulations which disapplied this test in devolved forms of assistance for individuals fleeing Afghanistan under specified immigration routes. In addition, the issue was raised by the Scottish Commission on Social Security in its report on the draft Adult Disability Payment regulations, published in October 2021.

### **Effect of time spent in care homes and legal detention**

14. The provisions will reduce the risk of any ambiguity in deciding entitlement to Child Disability Payment when a person is in alternative accommodation or being looked after by a local authority. These changes better reflect the policy intention, and brings more transparency to the rules of entitlement of Child Disability Payment, which in turn will help ensure people have a better understanding of the process.

### **Pre-emptive applications for Child Disability Payment**

15. The regulations remove the ability of clients who are currently in receipt of Disability Living Allowance, Personal Independence Payment or Armed Forces Independence payment to make a pre-emptive application for Child Disability Payment. A pre-emptive application would involve applying for Child Disability Payment and notifying Ministers that the applicant is, although not entitled to Child Disability Payment at the time of the application, expected to be entitled to it within 13 weeks because, within that time, they intend on relinquishing their entitlement to the UK Government administered disability benefit which they are currently in receipt of.

16. As part of the Scottish Government's commitment to a safe and secure transition of powers to administer disability benefits, Scottish Ministers have developed a process which, wherever possible will require no action on behalf of the individual, from transitioning from entitlement to Disability Living Allowance to Child Disability Payment. This process ensures that clients will continue to receive the right payment, at the right time, into the account that they would have previously received their Disability Living Allowance for Children. The ability to make this kind of pre-emptive application may undermine this planned case transfer process, and introduce perceived inequity if individuals are seen as being

able to choose when they wish to transfer. In the consultation on Disability Assistance in 2019, individuals told us that they worried about gaps or delays in their benefits, or that their payments would stop. Removing this option reduces the risk of this happening. If a client were to choose not to wait for their award to transfer automatically, there is no guarantee that they would be awarded Child Disability Payment, or that they would receive the same amount of benefit as they are currently receiving.

### **Suspension of payments**

17. The Regulations provide that Scottish Ministers may suspend assistance in the following circumstances:

- the Scottish Ministers have made arrangements for a person to receive the assistance on the individual's behalf, and the Scottish Ministers consider that it is necessary to suspend the assistance-
  - because the person with whom the Scottish Ministers have made arrangements is unable to continue to receive the assistance,
  - in order to protect the individual from the risk of financial abuse,
  - the individual is entitled to Child Disability Payment and has reached the age of 16 years and there not yet an appropriate arrangement in place for paying assistance to, or for benefit of, that individual (on account of the individual now being an adult),
- under section 54(1A) of the 2018 Act, the Scottish Ministers have issued a decision to suspend assistance to the individual due to a failure to provide information which the individual is yet to provide.

18. The regulation making power which Ministers are relying on allows Ministers to suspend assistance if an individual has requested it and is yet to request that they resume doing so. Ministers legislated to provide for suspension under this circumstance on the understanding that this could support individuals to keep their assistance out of reach of other persons who may have access to the bank account in which assistance is paid. It was thought that this provision could benefit victims of domestic abuse. After further consultation with stakeholders, Ministers have decided not to provide for suspension under this circumstance at this time. Stakeholders are not convinced that this provision would benefit women, and, on the contrary, have concerns that a third party could fraudulently take on the identity of the entitled individual and arrange for assistance to be suspended for the purpose maliciously depriving the individual of the assistance that they are entitled to. Stakeholders instead cite the ability to be able to transfer payments of Child Disability Payment or Scottish Child Payment from one person to another, where the person receiving payments is not using them for the benefit of the child, as an area of social security law which has more potential to make a positive difference to victims of domestic abuse.

19. Although the regulations only apply to individuals entitled to Child Disability Payment and the Scottish Child Payment, the Scottish Government's policy of suspension of assistance will in time apply to clients entitled to the following forms of ongoing assistance covered by the Social Security (Scotland) Act 2018. These are:

- disability assistance (replacing Disability Living Allowance for children (DLAC), Personal Independence Payment (PIP) and Attendance Allowance (AA));
- carer's assistance (replacing Carer's Allowance);
- housing assistance;
- employment injury assistance (replacing Industrial Injuries Disablement Benefit); and
- top-up assistance (such as the Scottish Child Payment).

*Suspension Ground 1 - An individual receiving assistance on a client's behalf is unable to do so anymore or there is the possibility of financial abuse*

19. The regulations will allow for suspension where the Scottish Ministers have made arrangements for a person to receive assistance on a client's behalf and suspension is considered necessary because either the person with whom the Scottish Ministers have made arrangements is unable to continue to receive assistance, or in order to protect the client from financial abuse.

20. This is necessary as, according to a recent report, across the UK roughly 39% of adults have experienced economic abuse.<sup>4</sup> A report by the Citizens Advice Bureau (CAB) also found that roughly half of respondents were involved in cases where someone controlled or interfered with their benefits.<sup>5</sup> This will allow clients experiencing financial abuse to have their payments protected while the situation is investigated.

21. A specific reason why it would no longer be appropriate to pay assistance to a person on behalf of an individual entitled to Child Disability Payment is if the individual has recently turned 16 and there is no arrangement in place for paying assistance to, or for benefit of, that individual (on account of the individual now being an adult). For example, the legal basis for paying assistance, which a child is entitled to, to a parent is because the parent has parental rights for the child. Parental rights only apply until the child turns 16 years old. Suspension of assistance in this circumstance until an appropriate arrangement is made upholds the individual's independence, dignity, independence and human right to exercise their own legal capacity on equal terms to individuals who do not have a disability. It could also prevent young adults from receiving financial abuse.

22. The policy intention is for the Scottish Ministers to consider suspending assistance if Ministers have been notified of a risk of financial abuse by a public authority responsible for investigating such matters. If the Scottish Ministers independently have grounds to believe that a client is at risk of financial abuse, then, instead of suspending assistance in the first instance, Ministers would look to share these concerns with a public authority whose public function is to investigate such matters. This would be done in accordance with an established public protection policy. The Scottish Ministers would then await advice from the public authority on whether to suspend assistance.

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<sup>4</sup> [8.7 million people report experiencing economic abuse - Refuge Charity - Domestic Violence Help](#)

<sup>5</sup> [Controlling money, controlling lives - Citizens Advice](#)



*Suspension ground 2 - Individual not providing information which is required to review entitlement to assistance*

23. The Scottish Ministers can request information if it is needed to determine entitlement or when considering whether a determination without application is necessary. A client's award may be suspended if they do not provide the information within a specified period. The Scottish Ministers will be required to have regard to the client's financial circumstances before deciding to suspend assistance. At the point when the Scottish Ministers request information from the client, the client will be asked to tell Social Security Scotland if the suspension would cause hardship.

24. If assistance is suspended and the client provides the requested information, the Scottish Ministers will be required under the regulations to immediately consider if they are under a duty to make a determination without application. Such a duty would exist if, for example, the requested information confirms that there has been a change of circumstances that would possibly result in an alteration to the clients level of award. Ministers will only suspend payments if the reason Ministers are reviewing entitlement relates to the possibility that the individual has been overpaid rather than underpaid. This will encourage clients to provide the information which in turn allows Ministers to complete the review without undue delay. This in protects the individuals from accruing further overpayments.

25. The suspension must immediately end if the Scottish Ministers are not required to make a determination without application.

*Safeguards against the disproportionate use of power to suspend payments*

26. In relation to safeguards, it is important that these are put in place and of sufficient ability to protect clients, particularly in cases where another person is receiving assistance on the client behalf. This is because failure to do so could indirectly discriminate against clients with disabilities as they are more likely to have a client representative than clients without a disability.

27. It should be acknowledged that, to support a system of suspensions, clear guidance will need to be provided to Social Security Scotland staff. It will also necessitate ensuring that adequate safeguards are in place so that a client's award is not suspended where it will be detrimental to the client (such as causing hardship) or disproportionate. For example, where an individual does not provide information but the reason for the individual's award being reviewed relates to a possible overpayment.

28. Almost all stakeholders expressed a view that there must be consideration of hardship when a decision is made to suspend assistance. The purpose of this is to balance the need to protect clients from overpayments (and, therefore, future deductions) and the financial needs of individuals who, if their assistance was suspended, may be placed into hardship.

29. One of the key issues raised with the current use of powers to suspend is that clients are not always clear what they must provide to have the suspension lifted or

how to challenge a suspension. There have been some cases documented where the only action that lifted a suspension was threatening a judicial review.

30. The Regulations therefore contain the following safeguards:
- a right to require the Scottish Ministers to review the decision to suspend;
  - a duty on the Scottish Ministers to have regard to an individual's financial circumstances before deciding to suspend assistance and when reviewing a decision to suspend assistance;
  - provision on when suspension must end; and
  - the right to be notified about:
    - a decision to suspend;
    - the reasons for the decision;
    - any steps that the individual might take in order for the Scottish Ministers to consider ending the suspension; and
    - the right to request a review of the decision.

#### Reviewing the decision to suspend assistance

31. A review of a decision to suspend assistance will be a two-part decision. First, the Scottish Ministers will decide if they are required under the regulations to end the suspension. In which case, the suspension must be immediately ended and the client will receive a backdated amount of assistance under the latest determination of entitlement in respect of the past-period when the suspension was in place.

32. If the Scottish Ministers decide that they are not required to end the suspension, they will then decide, at their discretion, whether or not to maintain the suspension, having regard to the individual's financial circumstances.

#### Having regard to a client's financial circumstances

33. The Scottish Ministers will trust what clients tell them about their circumstances and will not suspend assistance if it will cause financial hardship. If the Scottish Ministers decide not to suspend assistance, they will clearly communicate to the client the risk of continuing to receive assistance which they may become liable to repay at a later date. Clients will be told that, in the event that they are later found liable to repay assistance, Ministers may ask to see evidence of their financial circumstances when considering whether to recover that overpaid assistance.

#### Notification of suspension

34. Clients will be informed in writing:
- of the decision to suspend assistance;
  - the reasons for the decision;
  - of any steps that could be taken to end the suspension; and
  - of their right to request a review of the decision.
35. Clients will also be informed in writing:

- when the suspension ends and how much they are immediately entitled to under the latest determination of entitlement as a result of the suspension ending; and
- the outcome of any review of the decision to suspend.

### **The scope of the equality impact assessment**

35. The full EQIA process has been followed given the potential equality impacts related to the policy areas to which the regulations relate.
36. The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 places a duty on the Scottish Ministers to review policies and practices against the need to
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
35. The Equality Act 2010 covers the protected characteristics of: age, disability, gender reassignment, pregnancy or maternity, race, sex, sexual orientation and religion and belief. The impacts of the regulations have been assessed against the extent which it fulfils these needs.

### **Consultation**

36. This EQIA has been informed by extensive engagement with a range of external stakeholders as well as the wider public on a range of matters in relation to social security over a significant period of time.
37. In July 2016 the Scottish Government launched a public consultation to support the development of a framework that would become the Social Security (Scotland) Bill. 521 formal written responses were submitted, of which 241 were from organisations and 280 from individual respondents<sup>6</sup>.
38. In 2017 the Scottish Government set up Social Security Experience Panels, with over 2,400 people with lived experience across Scotland registering as panel members<sup>7</sup>.
39. The 'Disability Assistance in Scotland' Consultation launched in March 2019. This sought the views of the people of Scotland on the three proposed disability assistance benefits. The consultation received 263 replies, of which 74 were from stakeholder organisations and 189 were from individuals<sup>8</sup>.

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<sup>6</sup> Scottish Government (2017) [Analysis of Written Responses to the Consultation on Social Security in Scotland](#)

<sup>7</sup> Scottish Government (2017) [Social Security Experience Panels - About Your Benefits and You: quantitative research findings](#)

<sup>8</sup> Scottish Government (2019) [Disability assistance in Scotland: analysis of consultation responses](#)

40. The Scottish Government has also undertaken consultation with stakeholders through the Ill Health and Disability Benefits Stakeholder Reference Group, with input from Child Poverty Action Group in Scotland, Citizens Advice Scotland, Inclusion Scotland, Support in Mind Scotland and SAMH informing the high-level policy principles for suspensions.
41. Further information on consultation specifically with regards to suspensions is detailed in the Policy Note to these Regulations, including the range of key stakeholders who helpfully set out their views on the use of suspensions in June 2020, helping to further refine our policy approach to both the application of suspensions and the safeguards associated with them.

## Key findings

### Age

42. With specific regard to the use of suspensions powers to protect against financial abuse, the scale of this is difficult to accurately gauge, particularly in the case of older people, due to the under-reporting of said abuse due to lack of knowledge or fear of consequences.<sup>9</sup>
43. It is estimated that people over 65 may be more vulnerable to financial abuse. On average, the best estimate for the UK is that between 1-2% of people aged 65 or over have experienced (or are currently experiencing) financial abuse since turning 65.<sup>10</sup> The provision on suspension of ongoing payments is considered to measure positively against the positive duty to eliminate indirect discrimination on grounds of older people who are perhaps more susceptible to financial abuse. Individuals have equal right to actually benefit from their social security entitlement, and Ministers would be failing to uphold that right if they could not take effective action to safeguard individuals in circumstances where the client representative receiving payments may be committing financial abuse.
44. The suspension powers may also be used in relation to the provision of information. No evidence was identified to suggest that older or younger people would find it more difficult to provide Ministers with information that is needed to review their entitlement to assistance. The ability to suspend payments is considered in the client's interests as it is preferable to immediately ending entitlement on account of the information not being provided, as Ministers are currently empowered to do under section 54 of the 2018 Act.
45. The regulations make specific provision for individuals who have recently turned 16 and are entitled to Child Disability Payment. Before these individuals turned 16, an arrangement would have been in place for a person to receive assistance on the child's behalf. Once an individual turns 16 they acquire the right to receive their entitlement directly, but can choose to make an alternative arrangement. An alternative arrangement can also be made for them if they are deemed legally to

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<sup>9</sup> The Financial Abuse of Older People: a review of the literature (accessed 04/05/2021) [financialabuse240408\[1\].pdf \(cpa.org.uk\)](#)

<sup>10</sup> Financial Abuse evidence review (accessed 04/05/2021) [Financial Abuse Evidence Review \(ageuk.org.uk\)](#)

lack the capacity to manage their own entitlement to assistance. The provision allowing for the suspension of assistance where no alternative arrangement is in place should have a positive impact on eliminating discrimination and advancing equality of opportunity for young disabled adults.

46. No age related impacts were identified in relation to the other provisions in the Regulations.

## **Disability**

47. The Scottish Health Survey 2018 provides an accurate estimate of the number of disabled working age people in Scotland.<sup>11</sup> For young people aged 16-24, 24% of young people have a limiting longstanding illness. This number raises to 30% for individuals aged between 25-34, 32% between 35-44, 46% between 45-54 and, finally, 60% between 55-64.

48. According to DWP Stat Xplore:<sup>12</sup>

- As of August, 2020, there were 41,833 children entitled to Disability Living Allowance in Scotland. The largest proportion of individuals entitled to DLA for children are in the category of 'learning difficulties' (20,771), behavioural disorders (5,566), and hyperkinetic syndrome (4,207).
- As of August, 2020, 142,308 people were entitled to Attendance Allowance in Scotland. The largest proportion of individuals entitled to AA have Arthritis (40,074), dementia (15,421), then 'unknown' (12,838).
- As of January 2021, there were 281,788 individuals entitled to PIP in Scotland. The largest proportion of individuals entitled to PIP are categorised as having 'psychiatric disorders' (111,396). This includes mixed anxiety and depressive disorders (38,831), global learning disabilities (14,578), and mood disorders (11,489).

49. It is considered that the ability to suspend payments for failure to provide information is a positive step forward in remove disadvantage due to disability. This is because it will be a system of last resort, with Social Security Scotland's processes designed to seek information in other ways and to continue engaging with clients. Individuals with certain disabilities could find it harder or impossible to provide requested information compared to individuals who are not disabled. However the policy of requesting information from the individual and suspending assistance if it is not provided also has the potential to have a negative impact on the need to eliminate disability discrimination. Guidance on requesting information has already been prepared in draft form, and takes account of the potential for discrimination. The guidance provides that all requests for information should be reasonable, taking account of an individual's circumstances, and that requests for information should be withdrawn if the request can no longer be considered reasonable. The guidance stresses that individuals should always be provided enough time to carry out the request and granted more time if this is reasonable under the circumstances.

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<sup>11</sup> Scottish Health Survey (2018) <https://www.gov.scot/publications/scottish-health-survey-2018-supplementary-tables/>

<sup>12</sup> DWP Stat Xplore (accessed 05/05/2021): [Stat-Xplore - Log in \(dwp.gov.uk\)](https://statxplore.dwp.gov.uk/)

35. In relation to suspension due to risk of financial abuse, according to a study conducted in England, roughly one quarter of cases of financial abuse involved an individual who was legally defined as lacking capacity.<sup>13</sup> Data from the Office for National Statistics found that, between April 2019-March 2020, disabled people (14.3%) were more likely to experience domestic abuse (including financial abuse) than non-disabled people (5.1%).<sup>14</sup> The provision on suspension of ongoing payments is considered to measure positively against the duty to eliminate indirect discrimination on grounds of disability. Some disabilities make individuals more vulnerable to financial abuse and these same disabilities also make it more likely that an individual would be entitled to assistance and require a person to manage that entitlement on their behalf.
36. The provision in the Disability Assistance for Children and Young People (Scotland) Regulations 2021 which allows individuals entitled to Personal Independence Payment, Disability Living Allowance or armed forces independence payment to make a pre-emptive application for Child Disability Payment will have a neutral impact on how the Scottish Government complies with the public sector equality duty. This particular rule-change is within a social security scheme which positively addresses the inequality experienced by persons with a disability. The rule change does not place disabled individuals at a disadvantage relative to persons without this protected characteristic. Some households with disabled children in receipt of Disability Living Allowance may regret losing the ability to fast-track onto entitlement to Child Disability Payment by relinquishing entitlement to Disability Living Allowance. However there are strong operational and policy reasons for removing this option.
37. No disability related impacts were identified in relation to the other provisions in the Regulations.

## **Sex**

35. Particular considerations were made as to how the Regulations provide for suspensions due to financial abuse. According to a survey by Women's Aid,<sup>15</sup> two thirds of women who had experienced domestic abuse, had also experienced economic abuse. In 2018-2019 the clear majority of victims of domestic abuse recorded by the Police in Scotland were female (83%).<sup>16</sup>
36. A report by the Citizens Advice Bureau<sup>17</sup> looked at the impact of financial abuse and highlighted that, due to continued gender inequality, women are disproportionately more likely than men to experience domestic (including) financial abuse. This, in turn, makes it difficult for them to leave such situations as "Women can be economically disadvantaged through lower earnings, are less likely to be the main 'breadwinner', are more likely to experience a financial

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<sup>13</sup> [Researching the financial abuse of individuals lacking mental capacity \(core.ac.uk\)](#)

<sup>14</sup> [Disability and crime - Office for National Statistics \(ons.gov.uk\)](#)

<sup>15</sup> [Economics-of-Abuse-Report-2019.pdf \(womensaid.org.uk\)](#)

<sup>16</sup> [Domestic abuse: statistics 2018-2019 - gov.scot \(www.gov.scot\)](#)

<sup>17</sup> [Microsoft Word - controlling-money-controlling-lives \(1\).doc \(citizensadvice.org.uk\)](#)

penalty when becoming a parent, and are still overwhelmingly responsible for the unpaid work in the home (caring and household tasks).”<sup>18</sup>

37. Research has indicated that around one in five women and one in seven men experience financial abuse<sup>19</sup>.

38. We consider the impact of these regulations on how the Scottish Government fulfils the public sector equality duty towards persons with this protected characteristic to be neutral.

## **Gender reassignment and sexual orientation**

39. Particular considerations were again made as to how the Regulations provide for suspensions due to financial abuse. Lesbian women disclosed the highest levels of financial abuse, which was disproportionate compared to the number of bisexual people experiencing financial abuse (Galop, 2018).<sup>20</sup> Other research indicates that a higher proportion of gay men experience financial abuse than lesbian women (Refuge, 2016)<sup>21</sup>.

40. According to Galop (2018), ‘trans women disclosed disproportionately higher levels of physical, sexual and financial abuse compared to trans men, who disclosed higher levels of harassment/stalking and verbal and emotional abuse.’<sup>22</sup>

38. We consider the impact of these regulations on how the Scottish Government fulfils the public sector equality duty towards persons with this protected characteristic to be neutral.

## **Race**

41. Just under 4% of Scotland’s population belong to minority ethnic groups, and 7% of our total population communicate in home languages other than English.<sup>23</sup>

42. Experience Panel engagements with people who have English as a second language showed that there is often an assumption around the most commonly translated languages.<sup>24</sup> There is an expectation that Social Security Scotland will mirror provision by other public sector organisations, and speakers of less common languages have told us that they will generally opt for letters in English, on the assumption that there are no materials available in their first language. The issue of language presented a very real challenge for the Syrian refugees in our focus groups who could speak or understand very little English.

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<sup>18</sup> Lanning, T (2013) Great Expectations. Exploring the promises of gender equality. London IPPR

<sup>19</sup> Sharp-Jeffs, N (2016) Money matters: Research into the extent and nature of financial abuse within intimate relationships in the UK

<sup>20</sup> [Research: Domestic Abuse in LGBT Communities - KSS CRC](#)

<sup>21</sup> Sharp-Jeffs, N (2016) *ibid*.

<sup>22</sup> [LGBT+ People’s Experiences of Domestic Abuse – Galop](#)

<sup>23</sup> Scottish Census 2011

<sup>24</sup> [Social Security Experience Panels - ethnic minorities: report - gov.scot \(www.gov.scot\)](#)

43. The ethnic minority population also includes refugees. Scotland has resettled 3,180 people under the Vulnerable Persons Resettlement Scheme (VPRS) and Vulnerable Children Resettlement Scheme (VCRS) since Q1 of 2014.<sup>25</sup>
44. Just over 4,000 people in Scotland (0.1% of the population) identified their ethnic group as “White: Gypsy/Traveller”.<sup>26</sup> Generally, Gypsy/Traveller households were:
- more likely to contain dependent children (36% compared to 26% of the population as a whole) and
  - they were three times more likely to contain “three or more” dependent children.
45. A report looking at income inequality in Scotland found that:<sup>27</sup>
- In 2015-20, people from non-white minority ethnic groups were more likely to be in relative poverty after housing costs compared to those from the ‘White - British’ and ‘White - Other’ groups.
  - The poverty rate was 41% for the ‘Asian or Asian British’ ethnic groups (50,000 people each year), and 43% for ‘Mixed, Black or Black British and Other’ ethnic groups (no population estimate available due to the small sample).
  - The poverty rate amongst the ‘White - Other’ group was 24% (80,000 people) and that of the ‘White - British’ group was 18% (860,000 people).
46. The introduction of powers relating to the suspension of assistance for failure to supply information could potentially have a negative impact on individuals whose first language is not English, and who do not speak English fluently, which is a characteristic that individuals could consider part of their racial identity. Guidance on requesting information has already been prepared in draft form, and takes account of the potential for discrimination. The guidance provides that all requests for information should be reasonable, taking account of an individual’s circumstances.
47. Social Security Scotland has committed to communicating with clients in a way that meets their needs. Where clients have additional requirements linked to language, culture or understanding of services as a result of any protected characteristic, these need to be met effectively and all communications accessible.
48. In line with section 4 of the 2018 Act (recognition of importance of inclusive communication), all communications between Social Security Scotland and individuals must be accessible. Alongside the need for accessible communications required under section 4 of the 2018 Act, access to digital communications varies across differing age groups, with those aged 16 to 44 years using social networking sites significantly more than those aged 45 and

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<sup>25</sup> Home Office (2019) [Asylum and resettlement datasets, Immigration statistics data tables year ending June 2019, Resettlement by Local Authority](#)

<sup>26</sup> [Gypsy/Travellers in Scotland - A Comprehensive Analysis of the 2011 Census - gov.scot \(www.gov.scot\)](#)

<sup>27</sup> [Poverty and Income Inequality in Scotland 2017-20 \(data.gov.scot\)](#)



over. Therefore Social Security Scotland will have to take this into account when designing communications that inform individuals of their responsibilities.

49. We consider the impact of these regulations on how the Scottish Government fulfils the public sector equality duty towards persons with this protected characteristic to be neutral.

### **Religion or belief**

51. We consider the impact of these regulations on how the Scottish Government fulfils the public sector equality duty towards persons with this protected characteristic to be neutral.

### **Pregnancy and maternity**

51. While the Scottish Government's Pregnancy and Parenthood in Young People Strategy highlights that young mothers are considerably more reliant on social security assistance (including tax credits) than older mothers – a position that remains the case as the child ages, no concerns or impacts were identified in relation to the Regulations. We consider the impact of these regulations on how the Scottish Government fulfils the public sector equality duty towards persons with this protected characteristic to be neutral.

### **Marriage and civil partnership**

50. We consider the impact of these regulations on how the Scottish Government fulfils the public sector equality duty towards persons with this protected characteristic to be neutral

### **Monitoring and review**

51. On-going stakeholder engagement with key organisations – such as the Child Poverty Action Group, Rights Advice Scotland, Young Scot, DACBEAG, and our Ill Health and Disability Benefit Stakeholder Reference Group – will provide the Scottish Government with an opportunity to monitor the impact of the changes made by these regulations.
52. The Communities Analysis Division within the Scottish Government will also run a comprehensive evaluation programme to consider the impact of the changes made by these regulations, with a full suite of equalities data for new applicants.
53. The Scottish Ministers have also committed to engaging with, and reporting regular progress to, the Islands Strategic Group to ensure that those representing the interests of island communities and others with experience of the current system, are fairly represented in the development and delivery of the Scottish social security system.

54. The 2018 Act places a duty on the Scottish Ministers to publish an annual report on the performance of the Scottish social security system. On-going engagement with key stakeholders will also provide the Scottish Government with an opportunity to monitor the impact of the policy.

55. Audit Scotland will monitor and report on the delivery of the social security system, including Social Security Scotland.

## Conclusion

56. This EQIA process has identified that overall, the introduction of the power to suspend payment of assistance under the Social Security (Scotland) Act 2018 has the potential to have a positive impact for all clients, including in relation to protected characteristics.

57. The potential positive impacts include:

- ensuring the timescales for Social Security Scotland to complete a re-determination are clear in the situation where the First-tier Tribunal decide that an earlier decision to refuse the re-determination request was wrong.
- ensuring that individuals with refugee status are eligible for Child Disability Payment immediately upon refugee status being awarded.
- mitigating the potential risks of an individual's entitlement to assistance terminating as a result of a failure to provide information to Social Security Scotland by providing a better opportunity to engage.
- ensuring that vulnerable individuals' entitlement to assistance is safeguarded where Ministers have arranged for a person to receive assistance on behalf of an individual and there are concerns about financial abuse being committed or where the person cannot continue to receive payments and suspension is necessary while Ministers make an alternative arrangement.
- ensuring that persons who receive assistance on behalf of a child entitled to Child Disability Payment cannot continue to receive it once the child turns 16 without giving the individual an opportunity to exercise their legal capacity to their fullest ability as an adult.

## AUTHORISATION

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