

## **Business and Regulatory Impact Assessment**

### **Title of proposal**

The Scottish Child Payment Regulations 2020 and the Disability Assistance for Children and Young People (Scotland) Regulations 2021 (Miscellaneous Amendments) Regulations 2022

### **Purpose and Intended Effects**

1. 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:
  - 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.
  
2. 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:
  - 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 they are 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.

3. The draft Regulations provide safeguards in relation to the operation of suspension of assistance, including:
- provision that assistance may only be suspended in precise circumstances;
  - provision on when Ministers must end a suspension;
  - the right of the individual to require Ministers to review a decision to suspend;
  - requirement on Ministers have regard to an individual's financial circumstances before deciding to suspend;
  - 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.

## **Background**

4. The Social Security (Scotland) Act 2018 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](#).
5. 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 social security assistance in Scotland, in addition to making provision for operational functions such as managing overpayments, fraud, error and appeals.

## **Redeterminations**

6. 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.

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

7. The regulations seek to disapply the Habitual Residence Test, usually requiring 1-3 months residence to establish eligibility, for individuals who have been awarded UK refugee status. This has the effect of ensuring that individuals with refugee status can establish eligibility for Child Disability Payment straight away, without having to have lived in the Common Travel Area for 1-3 months.

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

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

### **Pre-emptive Applications**

9. 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.

### **Suspension of Ongoing Payments**

10. 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 of comments made by the Scottish Commission on Social Security (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*<sup>1</sup>.”

11. 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 use this term. SCoSS were using the term to refer to the act of 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 monies due from the back-dated period whilst their award was

<sup>1</sup> [FINAL+SCoSS+Report+on+the+draft+DACYP+%28S%29+Regs+2020.pdf \(www.gov.scot\)](#)  
See recommendation 22.

suspended. 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.

12. During the passage of the Social Security Administration and Tribunal Membership (Scotland) Bill<sup>2</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.
13. 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 ability to suspend assistance interferes with an individual’s 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.

## Consultation

4. This BRIA 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.
5. 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>3</sup>.
6. 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>4</sup>.
7. 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>5</sup>.

<sup>2</sup> <https://www.parliament.scot/bills-and-laws/bills/social-security-administration-and-tribunal-membership-scotland-bill>

<sup>3</sup> Scottish Government (2017) [Analysis of Written Responses to the Consultation on Social Security in Scotland](#)

<sup>4</sup> Scottish Government (2017) [Social Security Experience Panels - About Your Benefits and You: quantitative research findings](#)

<sup>5</sup> Scottish Government (2019) [Disability assistance in Scotland: analysis of consultation responses](#)

8. The Scottish Government has also undertaken managed 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.

9. 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.

## **Rationale for Government Intervention**

10. The regulatory sphere within which the Government is seeking to intervene goes no wider than the framework set up by the Social Security (Scotland) Act 2018. The rationale for making further interventions is explained fully in the policy note that accompanies these Regulations.

11.

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

12. 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.

13. As part of the Scottish Government's commitment to a safe and secure transition of delivery of 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**

14. 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 is not yet an appropriate arrangement in place for paying assistance to, or for the 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.

15. The regulation making power which Ministers are using 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.

16. 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:

- other forms of disability assistance (replacing Disability Living Allowance (DLA), 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
- other forms of top-up assistance.

*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*

17. 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.

18. This is necessary as, according to a recent report, across the UK roughly 39% of adults have experienced economic abuse.<sup>6</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>7</sup> This will allow clients experiencing financial abuse to have their payments protected while the situation is investigated.

19. 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 to a parent, to which a child is entitled, is the parental rights for the child. Parental rights only apply until the child is 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.

20. 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.

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

21. 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

<sup>6</sup> [8.7 million people report experiencing economic abuse - Refuge Charity - Domestic Violence Help](#)

<sup>7</sup> [Controlling money, controlling lives - Citizens Advice](#)

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.

22. 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.

23. 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*

24. 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.

25. 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.

26. 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.

27. 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.

28. 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

29. 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 period when the suspension was in place.

30. 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

31. 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

32. 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.

33. 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.

## Options

34. When developing the provisions within the regulations, the Scottish Government gave consideration to the following options:

- Option 1 - Do not bring forward legislation on these issues;
- Option 2 - Bring forward secondary legislation to address these issues to ensure the continued effective implementation of the 2018 Act.

## Costs

35. The Scottish Government is not aware of any indirect impacts, for example administrative burdens, on local government, private businesses or third sector organisations as a result of the provisions.

### Re-determinations

36. In respect of the amendments which apply to the situation where the First-Tier Tribunal has found that Ministers were wrong to refuse an individual's request for a re-determination it is not considered that there will be any substantive financial impact.

### Refugees

37. The regulations which disapply the habitual residence test for refugees will have the effect of making otherwise eligible individuals entitled to receive payment from 1-3 months earlier than would have been the case. Because delivery processes already exist which can manage applications from this client group, we expect that any additional demand-led expenditure would be negligible. The overall impact will be incorporated into future Scottish Fiscal Commission forecasts of social security expenditure, and we would anticipate increased funding from UK Government through Block Grant Adjustments given that the change mirrors DWP policy and practice.

### Pre-emptive applications for Child Disability Payment

38. The provision removing the ability to make a pre-emptive application for Child Disability Payment in circumstances where the individual is in receipt of a UK Government administered disability benefit is considered to have a cost neutral impact.

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

39. It is not considered that there will be any substantive financial impact resulting from the provisions which seek to clarify the level of costs which are to be met by a local authority, when determining if the individual is being

looked after by a local authority and is in alternative accommodation outside the United Kingdom.

### Suspension of assistance

39. The costs for developing the processes to manage suspensions has been built into the total Social Security implementation programme forecast costs as set out in the Social Security Business Case. It is not anticipated that exercising the power to suspend will materially result in additional ongoing administration costs to Social Security Scotland beyond the resource already identified for the processing of applications and entitlements.

40. Furthermore, allowing for suspension of assistance will not adversely impact on total benefit spend forecasts. The change broadly aligns with the current DWP rules and therefore the impact is built into the funding which the Scottish Government will receive from the UK Government through the Block Grant Adjustment for the relevant benefits.

41. It is not considered that the proposals in relation to the power to suspend will have any impact on Scottish business.

## **Benefits**

42. 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.

43. The potential positive impacts include:

- clarifying the timescales for Social Security Scotland to complete a re-determination of entitlement to Scottish Child Payment where the First-tier Tribunal find that Ministers were wrong to refuse the individual's request for a re-determination of entitlement to Scottish Child Payment;
- ensuring that the devolved provisions reflect UK practice in respect of refugees by providing that refugees are eligible for Child Disability Payment from the date they are awarded refugee status;
- addressing potential inequity and confusion over the transfer of individuals from receiving a UK Government administered disability benefit to a Scottish Government disability benefit;
- bringing clarity to the rules of entitlement to Child Disability Payment when an individual is in alternative accommodation;
- requiring Ministers to determine entitlement to short-term assistance without receiving an application where the individual is expected to be entitled to it (on account of the First-tier tribunal finding that Ministers were wrong to refuse the individual's request for a re-determination of entitlement to Child Disability Payment);

- safeguarding the individual's entitlement to assistance where Ministers have arranged for a person to receive assistance on behalf of an entitled individual and this arrangement is placing the individual at risk of financial abuse;
- safeguarded the individual's entitlement to assistance in circumstances where Ministers have arranged for a person to receive assistance on behalf of an individual and the person whom Ministers have made arrangements with can no longer continue in this role;
- managing 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 (on account of the individual now being an adult);
- providing 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.

### **Scottish Firms Impact Test**

44. As set out above, it is not considered that the proposal will have any impact on Scottish business.

### **Competition Assessment**

45. The Scottish Government does not believe that the provisions in the Regulations will have an adverse impact on the competitiveness of Scottish companies or the third sector within Scotland, the UK, or elsewhere in Europe or the rest of the world. Additionally, the Scottish Government does not expect there to be any significant impact on the operational business of local authorities or health boards as a result of introducing these provisions. The provisions within the Regulations in relation to suspension in particular have been developed in careful collaboration with stakeholders, and the right to request a review of a decision to suspend is already provided for in the regulations.

### **Legal Aid Impact Test**

46. Impact on legal aid budgets must be assessed in a BRIA for each new assistance provided for under the 2018 Act. These Regulations are not providing for a new type of assistance and the Scottish Government does not anticipate significant impacts on the legal aid budget as a result of the introduction of these Regulations.

47. The right to request a review of a decision to suspend is provided for in the Regulations.

### **Enforcement, sanctions and monitoring**

48. There are anticipated to be no additional burdens for businesses, local government or the third sector generated by these provisions.

49. On-going stakeholder engagement with key organisations – such as the Child Poverty Action Group, Rights Advice Scotland, Young Scot, Disability and Carer Benefits Expert Advisory Group, 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.

50. The Communities Analysis Division within the Scottish Government will also run a comprehensive evaluation programme to consider the impact of the changes made by social security regulations, with a full suite of equalities data for new applicants.

51. 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.

52. 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.

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

## Summary and Recommendation

54. Of the 2 identified options, the Scottish Government proposes to implement option 2 (Bring forward secondary legislation). The Scottish Government does not anticipate significant business or regulatory impacts arising from the introduction of these Regulations.

Option	Total benefit per annum: Economic, environmental, social, policy and administrative	Total cost per annum: Economic, environmental, social, policy and administrative
1	Selection of this option would bring no significant benefit and a number of drawbacks in relation to the operation of social security policy.	<p>Not providing for the suspension of ongoing payments would result in Ministers paying assistance to persons who are not using it for the benefit of the entitled individual.</p> <p>There is also the social and policy cost of allowing individuals to make a pre-emptive application for Child Disability Payment in circumstances where they intend on relinquishing</p>

		<p>their entitlement to a UK Government administered disability benefit.</p> <p>The rules on entitlement to Scottish Child Payment and short-term assistance (while an award of Child Disability Payment is under review) would be unclear if the technical amendments were not made.</p>
2	This option will contribute towards the delivery of the national outcomes outlined.	While it is not possible to estimate the exact cost per annum of the provisions within the Regulations, it is not expected that these costs will be significant. The Scottish Government considers that these potential costs are outweighed by the benefits of introducing the Regulations.

### Declaration and publication

55. The Cabinet Secretary or Minister responsible for the policy (or the Chief Executive of non- departmental public bodies and other agencies if appropriate) is required to sign off all BRIAs prior to publication.

### Sign-off for Partial BRIAs:

56. I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: Ben Macpherson

Date: 24<sup>th</sup> November 2021

Minister's name: Ben Macpherson

Minister's title: Minister for Social Security and Local Government

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