

POLICY NOTE

THE DISABILITY ASSISTANCE FOR CHILDREN AND YOUNG PEOPLE AND SCOTTISH CHILD PAYMENT (SUSPENSIONS) AMENDMENT (SCOTLAND) REGULATIONS 2021

SSI 20XX/XXX

The above instrument was made in exercise of the powers conferred by sections 51, 79 and 95 of the Social Security (Scotland) Act 2018¹. The instrument is subject to affirmative procedure. In accordance with section 97(2) of that Act, the Scottish Ministers have informed the Scottish Commission on Social Security of their proposals to make regulations under section 79, notified the Scottish Parliament that they have done so and made their proposals publicly available by such means as they consider appropriate.

The purpose of this instrument is to insert provision into the Disability Assistance for Children and Young People (Scotland) Regulations 2021 and the Scottish Child Payment Regulations 2020 in order to allow the Scottish Ministers to suspend ongoing payments of Child Disability Payment and Scottish Child Payment in prescribed circumstances.

Policy Objectives

The policy objectives are:

- ensuring that vulnerable individuals are protected from the risks of economic and financial abuse, either by an appointee or by someone who is able to coercively control the individual's finances;
- ensuring that an individual's entitlement to assistance does not prematurely come to an end because a person appointed to act on their behalf is unwilling or unsuitable to continue to act on their behalf;
- 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 an opportunity to engage; and
- protecting individuals against the risk of overpayment if their circumstances have changed, but they have failed to engage with Social Security Scotland as part of a review of their entitlement.

Consultation

The regulation-making power to suspend assistance in accordance with regulations made under section 51 was inserted into the Social Security (Scotland) Act 2018 ('the 2018 Act') by section 12 of the Social Security Administration and Tribunal Membership (Scotland) Act 2020² ('the 2020 Act').

The Scottish Government has also undertaken an informal, 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.

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

² <https://www.legislation.gov.uk/asp/2020/18/contents/enacted>

On 25 June 2020, a group of stakeholders wrote to the Cabinet Secretary for Social Security and Older People advising that they supported the Scottish Ministers suspending assistance where an individual has failed to provide information that is material to a determination of entitlement. The group were not in favour of Ministers immediately ending an individual's entitlement to assistance if the individual fails to provide information. The individual signatories to the letter were:

Citizens Advice Scotland
Child Poverty Action Group (CPAG) in Scotland
Health and Social Care Alliance Scotland (The ALLIANCE)
Inclusion Scotland
Carers Trust Scotland
Coalition of Care and Support Providers in Scotland (CCPS)
MS Society Scotland
The Poverty Alliance
Scottish Independent Advocacy Alliance (SIAA)
National Association of Welfare Rights Advisors (NAWRA) Scotland
Advocard
The Action Group.

Most stakeholders were supportive in principle of allowing individuals to request that their assistance is temporarily suspended in circumstances where they have been forced to leave their home due to domestic violence. Stakeholders were also supportive of the suspension of assistance to protect individuals from the risk of financial abuse: public authorities who investigate matters of financial abuse routinely ask the Department for Work and Pensions to suspend assistance in this circumstance.

As a result of this consultation with stakeholders, the amendments made by the 2020 Act stipulate a number of requirements that any regulations made under section 51 must contain:

- Ministers may only suspend assistance in narrowly defined circumstances,
- the individual has a right to require the Scottish Ministers to review the decision to suspend
- the time within which Scottish Ministers should review upon the decision to suspend when required to do so by the individual,
- Scottish Ministers have a duty to have regard to an individual's financial circumstances before deciding to suspend assistance;
- provision about 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 must take in order for the Scottish Ministers to consider ending the suspension; and

the right to request a review of the decision.

Impact Assessments

The following impact assessments were completed on the draft regulations and accompany this policy note:

- Equality Impact Assessment,
- Child Rights and Wellbeing Impact Assessment,

- Fairer Scotland Duty Assessment,
- Island Communities Impact Assessment and
- Business and Regulatory Impact Assessment

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and accompanies this note. It is not considered that the proposals in relation to the power to suspend will have any impact on Scottish business. It is not anticipated that exercising the power to suspend will materially result in additional ongoing administration costs to the Scottish Ministers beyond the resource already identified for the processing of applications and ongoing entitlements. 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.

Scottish Government
Social Security Directorate

[date]