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8 November 2022

Dear Chair,

I am writing to thank you for highlighting an issue in relation to the Social Security (Miscellaneous Amendment and Transitional Provision) (Scotland) Regulations 2022 (the “draft affirmative instrument”) which the Scottish Government laid on 20 September 2022, and to let you know what action we have taken.

On 27 October, your secretariat contacted my officials with two queries:

1. *Could you explain in more detail why the standalone savings instrument was introduced under the negative procedure rather than the affirmative procedure?*
2. *There is no amendment to reg 19(2)(b) of the Scottish Child Payment Regulations, essentially to prompt the end of an award when a child turns six. If not amended, would the consequences be that parents would need to reapply for Scottish Child Payment at age 6?*

In answer to the first point above, the Scottish Child Payment (Saving Provisions) Regulations 2022 were made under section 95 of the Social Security (Scotland) Act 2018 (the “2018 Act”), which gives Scottish Ministers the power to make regulations to make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purpose of, or in connection with, or for giving full effect to the 2018 Act or any provision made under it.

Section 96(4) provides that regulations made under section 95 are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act (including the 2018 Act), but otherwise are subject to the negative procedure. The Scottish Child Payment (Saving Provisions) Regulations 2022 do not add to, replace, or omit any part of the text of an Act, so are subject to the negative procedure.

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In response to the second point, I thank you for identifying this issue. We agree provision should be made to avoid the need for clients to re-apply, and have further reviewed all procedural aspects of transition for existing clients to identify any other provision that might be required. This work has identified a need to introduce further ancillary provision, by negative instrument to come into force on the same day as the draft affirmative instrument to ensure that:

- a. for existing clients, their ongoing entitlement is extended so that it can continue until their child turns 16, rather than 6;
- b. for new clients, they can be awarded Scottish Child Payment with an ongoing entitlement until their child turns 16; and
- c. for clients who were told before 14 November that their entitlement to Scottish Child Payment had ended because they no longer had a child responsibility benefit or a qualifying benefit, the 12 week period during which a client's Scottish Child Payment claim can be restarted will continue to run from the date they were informed that their Scottish Child Payment entitlement had ended, rather than from the date when their circumstances changed.

I have set out the rationale for this approach in detail in a letter to the Social Justice and Social Security Committee. I have copied that to you, so I do not intend to repeat that here, but I do want to emphasise that my officials will take action to learn lessons and strengthen procedures to avoid such a situation happening again.

Thank you for your scrutiny and very helpful feedback. It is much appreciated.

Yours sincerely,



BEN MACPHERSON

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