



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# **Social Justice and Social Security Committee**

**Thursday 20 January 2022**

**Session 6**



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**SOCIAL JUSTICE AND SOCIAL SECURITY COMMITTEE**

**2<sup>nd</sup> Meeting 2022, Session 6**

**CONVENER**

\*Neil Gray (Airdrie and Shotts) (SNP)

**DEPUTY CONVENER**

\*Natalie Don (Renfrewshire North and West) (SNP)

**COMMITTEE MEMBERS**

- \*Jeremy Balfour (Lothian) (Con)
- \*Miles Briggs (Lothian) (Con)
- \*Foyso Choudhury (Lothian) (Lab)
- \*Pam Duncan-Glancy (Glasgow) (Lab)
- \*Marie McNair (Clydebank and Milngavie) (SNP)
- \*Emma Roddick (Highlands and Islands) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Ben Macpherson (Minister for Social Security and Local Government)  
Kirsten Simonnet-Lefevre (Scottish Government)  
Niall Wilson (Scottish Government)

**CLERK TO THE COMMITTEE**

Claire Menzies

**LOCATION**

Virtual Meeting



## Scottish Parliament

### Social Justice and Social Security Committee

Thursday 20 January 2022

*[The Convener opened the meeting at 09:00]*

#### Decision on Taking Business in Private

**The Convener (Neil Gray):** Good morning, and welcome to the second meeting in 2022 of the Social Justice and Social Security Committee. Our first item of business is a decision on whether to take item 4 in private. Do members agree to do so? I am just looking around my virtual room to make sure that all colleagues agree.

**Members indicated agreement.**

## Subordinate Legislation

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

09:00

**The Convener:** Under item 2, the committee will take evidence on the draft Scottish Child Payment Regulations 2020 and the Disability Assistance for Children and Young People (Scotland) Regulations 2021 (Miscellaneous Amendments) Regulations 2022. I welcome to the meeting Ben Macpherson, the Minister for Social Security and Local Government, and, from the Scottish Government, Niall Wilson, disability benefits policy manager, and Kirsten Simonnet-Lefevre, principal legal officer.

I invite the minister to make an opening statement.

**The Minister for Social Security and Local Government (Ben Macpherson):** Thank you, convener, and good morning, members. As this is the first committee meeting that I have attended in 2022, I wish you all a happy new year, and—*[Inaudible.]*—Ms Don, too.

Colleagues, I am grateful for the opportunity to discuss with the committee the regulations, which reflect our continuing commitment to make improvements and to listen closely to stakeholders in order to provide a system that meets people's needs.

The committee is aware of the Scottish Government's strong commitment to promoting benefit take-up. The regulations are important in addressing the rare occasions when suspending assistance is beneficial for the individual involved and/or for the integrity of Scotland's social security system. The Scottish Government is seeking to introduce the power to suspend assistance in a narrow set of circumstances in which doing so is vital to protect people who rely on our payments. Furthermore, the power is vital to ensure an efficient social security system for Scotland. The power to suspend assistance in a narrow set of circumstances will help to avoid unnecessary overpayments and will protect vulnerable individuals from the risk of abuse. Putting the measures in place is also part of being a responsible Government.

For clarity, I note that the regulations apply only to child disability payment and the Scottish child payment. We are seeking to introduce powers to suspend the adult disability payment in a narrow

set of circumstances as part of the main regulations for that form of assistance, which we will be discussing next week.

It is important to recognise that we are not seeking or planning to take the same approach as the Department for Work and Pensions is taking on suspensions. Let me be very clear: the regulations are not intended to have a punitive effect or to make clients worse off. We have consistently chosen to limit the circumstances in which we can suspend assistance.

The regulations enable us to suspend payments if an individual fails to provide, within a reasonable and appropriate time period, the information that we need in order to decide whether they should get child disability payment or the Scottish child payment. In accordance with social security guidance, individuals will have a minimum of 28 days to provide information. Moreover, when we request information, we will encourage individuals to ask for more time to provide information if they need it.

Stakeholders including the Child Poverty Action Group, Citizens Advice Scotland and Inclusion Scotland told us of the importance of suspending payments in the circumstances that are covered by the regulations, because some vulnerable individuals might not take action until they see that their payments—[Inaudible]. However, suspending payment, rather than ending assistance, ensures that individuals have a better opportunity to engage with Social Security Scotland and do not immediately lose their entitlement.

The regulations also allow for suspension of payment in cases in which ministers pay assistance to a third party. That could be done to protect someone from the risk of financial abuse or of the third party being unable to continue receiving payments. Child disability payment may also be suspended when a third party receives payment but is not engaging with Social Security Scotland when the child turns 16 and becomes responsible for managing their own entitlement.

The regulations introduce a number of key safeguards, including the right to request a review of the decision to suspend payment. Our case managers must also consider the individual's financial circumstances before deciding to suspend payment. That is essential to avoid unnecessary hardship.

In addition to the provisions on suspension of assistance, we have taken the opportunity to make minor miscellaneous amendments to the child disability payment and the Scottish child payment regulations in order to give full effect to the original policy intent.

I welcome the opportunity to assist the committee with its consideration of the regulations, and I look forward to answering any questions that members might have.

**The Convener:** Thank you very much for that helpful introduction. We now move to questions from colleagues.

**Marie McNair (Clydebank and Milngavie) (SNP):** Good morning, minister. The introduction of the suspension option is a welcome move away from the DWP's position, as you have said. The DWP's approach often leads to benefit entitlement being completely stopped and a new claim being required; universal credit is notorious in that regard. How confident are you that claimants, particularly those who are vulnerable, will provide adequate assistance in responding to the need for further information?

**Ben Macpherson:** There has been significant consideration of that issue as the regulations have been developed and in response to the Scottish Commission on Social Security's recommendations. The member will be aware that, in our response to SCOSS, we extended the position and committed to providing a minimum of 28 days for people to respond to requests for information. I stress that that is a minimum. As I said in my opening statement, we will encourage individuals to ask for more time if that is required. Social Security Scotland will have regard to the individual's circumstances, so it will extend that period when it is reasonable to do so.

We will also withdraw requests for information if they no longer appear to be reasonable. For example, an individual might have told Social Security Scotland that they do not have the requested information. We will explain clearly to individuals what information is being requested and why. As I said, individuals will be encouraged to contact Social Security Scotland if they think they will have trouble in providing the requested information within the requested time and, importantly, if it is likely that a suspension would cause hardship.

**Marie McNair:** What efforts will be made by Social Security Scotland to make support networks aware of the suspension provision and what to look out for when supporting people to respond?

**Ben Macpherson:** We are engaged with the relevant stakeholders on that matter; on-going consideration is being given to it. Guidance will be made public, and the advocacy service that we are providing will be there to support people. That support will include ensuring that people are aware of how long they have to respond and that they are encouraged to contact Social Security

Scotland if they are having any difficulties in responding.

**Miles Briggs (Lothian) (Con):** Good morning. I thank the minister and his officials for joining us. What are the Government's plans on overpayments, which could build up as a result of continuing to pay the benefits? What are the advantages and disadvantages of self-assessment?

**Ben Macpherson:** That is an important area, and it relates to why we are introducing the regulations. We want to avoid overpayments as much as possible and to ensure that there is engagement with individuals. Through the regulations, we want to encourage contact and engagement in order to avoid overpayments building up.

Miles Briggs asked about self-assessment rather than an objective test. That issue has been considered with SCOSS and was considered a number of years ago during the passage of the bill that became the Social Security Administration and Tribunal Membership (Scotland) Act 2020. At that time, as members will be aware, almost all stakeholders expressed the view that there must be consideration of hardship when a decision is made to suspend assistance. We, of course, agreed with that. If an individual self-assesses that suspending payment would cause them hardship, stakeholders strongly believe—rightly, in our view—that ministers should not suspend assistance when requested information is not provided.

All that considered, the benefit of the self-assessment approach is that suspension decisions will be straightforward for Social Security Scotland to process and should result in very few requests for a review of the decision to suspend. We are not convinced that a proportionate approach would be for Social Security Scotland to objectively assess hardship, given the added complexity that that would introduce. Assessing hardship would take longer, and that delay could lead to more overpayments accruing in some cases. That links back to Miles Briggs's important question.

As I said, an objective test would be more onerous on individuals and would be less satisfactory for them as clients. Compared with the self-assessment approach, an objective test would also be more administratively complex for Social Security Scotland.

All that considered, we believe that objectively assessing hardship would cause delays, which would lead to overpayments accruing. Therefore, the self-assessment approach is the best one to take on such matters.

**Miles Briggs:** I have two further questions. If someone fails to engage with a review of their disability benefit, at what point in the new system would the failure to provide information result in a benefit potentially being stopped?

**Ben Macpherson:** There are a number of variables in how an individual responds to the request for information. If they respond within 28 days stating that assistance being suspended would place them in hardship or that they are not able to provide the information, that would of course initiate a further process of engagement with the individual on their circumstances.

To be clear, suspension will be used as a last resort by Social Security Scotland and it will be used only when an individual fails to engage for a minimum period of 28 days. When assistance is suspended, Social Security Scotland will issue the individual with a notice explaining that their entitlement to assistance might be ended if the requested information is not provided within 28 days of the notice. As I said, ending an individual's benefit will be a last resort and will be done only if all alternative means of obtaining the requested information, which is needed to accurately determine entitlement, have been exhausted.

**Miles Briggs:** Will the minister update the committee on the workforce, which we have discussed at length as a committee and, during a visit, with Social Security Scotland? At what stage is the recruitment of the professionals who will be tasked with undertaking this work? I have raised the following question with the minister before. What discussions have taken place with general practice on payments for the provision of information and the expectation for general practice to provide it?

09:15

**Ben Macpherson:** Those are two important questions, which I will touch on briefly just now. It might also be helpful for Mr Briggs if I get a response from Social Security Scotland as to our current position.

I have regular calls with senior members of Social Security Scotland staff and, from a very recent call, I can say that recruitment is going well—we are pleased with progress. Part of the recruitment is of health and social care staff and that has been progressing successfully. Wider engagement with health boards is also in a positive place. If it would be helpful for Mr Briggs and the committee more widely, I will elaborate on that further in an update in writing over and above what I have just said.

**The Convener:** That would be helpful, in particular on the point around compensation or whatever arrangements might be in place for

medical professionals providing supporting information for people's claims. That was a point of interest when we met Social Security Scotland and it was the thrust of Mr Briggs's question, so that would be incredibly helpful.

**Natalie Don (Renfrewshire North and West) (SNP):** If we get to the point at which an applicant's payment is suspended, I believe that, legally, they would have to complete the review within 31 days. That is an extremely long period for someone to go without their income when they might be entitled to it. To clarify, if they give the information earlier in that time period, would that start the process of getting their payments back or would they have to wait for 31 days? If it is the latter, would it be possible to shorten that time?

**Ben Macpherson:** I will bring in Niall Wilson in a moment. The intention is to obtain the information as quickly as possible from the individual in order to assist them. Of course, the individual's circumstances will be considered by the staff in Social Security Scotland who are making judgments on those matters. Niall, please will you provide further clarity?

**Niall Wilson (Scottish Government):** Yes. The information would be requested because it is material to carrying out the review, so the review would be carried out once we had the information. Once we have made the determination of entitlement, the suspension must be ended.

**Natalie Don:** I have one further question, which has sort of been raised already. When will the guidance around the suspension and ending of benefits be publicly available? Will it be in an easy-read format so that everyone can understand it? It must not be full of jargon and it should be in a user-friendly form; otherwise, it could just lead to more uncertainty. Will the minister consider ensuring that the guidance that is available to the public will be in an easily readable format, and will be clear and, as far as reasonably practicable, easy to understand?

**Ben Macpherson:** I fully sympathise with that—those are important points. We have a wider commitment to external communications being inclusive and easy to understand for the people who access the service and the public more widely. I confirm that the guidance will be in that style and form so that people can easily understand it.

The detailed decision-making guidance has been prepared, but it is being quality reviewed and it is going through various processes to ensure that it is as it needs to be. As I said, it will be published publicly once it is finalised. To be as expedient as possible in keeping the committee up to speed, I am happy to commit to officials updating the committee as soon as a publication

date is set and then to be forthcoming in providing an appropriate copy and a link to where the guidance is found in the public domain.

**The Convener:** I believe that that covers Natalie Don's questions. I will bring in Pam Duncan-Glancy next.

**Pam Duncan-Glancy (Glasgow) (Lab):** I thank the minister and other panel members for joining us. I have a few questions on benefit suspension. My first question is slightly less to do with the specifics of that and more about the time that SCOSS has available to it for scrutiny. You will be aware that SCOSS has raised concern about the timescales in the regulations. Before I move on to my other questions, will the minister briefly update the committee on current plans for additional resources for SCOSS?

**Ben Macpherson:** Since I last updated the committee on this, work has been on-going and we have continued our engagement with SCOSS. I cannot say enough how grateful we are for the work that SCOSS does and its input towards our collective determination to build a social security system that is as effective as possible and shaped as it should be in order to serve the people who we wish to assist.

As I have discussed before with the committee, the Government has made and will be fulfilling commitments around helping SCOSS with extra secretariat resource and practical support in order to undertake its important work.

One of the challenges of 2021 was the pressure on SCOSS because of the number of regulations that it had to consider, not just those within the programme but additional regulations that emerged through circumstance and events—for example, the regulations on people from Afghanistan settling in Scotland. There is an ambition to ensure that SCOSS has adequate resource and time to assess regulations, but we are subject to not only our programme but events.

I can confirm and reassure the committee that the resource to support SCOSS is in progress. As part of the formal follow-up to which I have already committed, I would be happy to provide a little more information on that, if that would be helpful for Pam Duncan-Glancy and the committee more widely.

**Pam Duncan-Glancy:** I would very much appreciate follow-up information, including on what the resource will be, when it is expected to be in place and how many more additional staff or how much time will be bought by the resource. It would be excellent if the minister were able to provide that sooner rather than later.

Like other members, I welcome the provisions in the regulations on suspending payments, and I



welcome that they will not be punitive. There is no doubt that that approach will be significantly better for people in Scotland than what has gone before. It will be much more beneficial.

I have a couple of specific questions. The longer time of 28 days for people to provide information, which my colleague Natalie Don spoke about a moment ago, is welcome. However, CPAG said in its evidence last week or the week before—I am losing track of time—that, in some cases, people would probably need eight weeks. Notwithstanding the impact that that would have on their finances, as highlighted by Natalie, what has the Government taken into consideration for the timescale within which people will be asked to provide information? How did it come to the conclusion that 28 days was the time period to choose, as opposed to eight weeks as suggested by CPAG?

**Ben Macpherson:** I will bring in Niall Wilson in a moment, but first I will reemphasise what I have laid out this morning in my opening statement and onwards. The period of 28 days is a minimum, and it will be important for staff who engage with cases to take into consideration an individual's circumstances. For example, if the individual says that they do not have the information or that they cannot provide it within the time period, that will be taken in good faith, which will ensure that adequate time is applied for the individual to provide the information that is required and for other work to be undertaken to help the individual to acquire what Social Security Scotland needs to make the decision.

I will now bring in Niall Wilson because he has considered the issue throughout the process of the regulations and since the passing of the Social Security (Scotland) Act 2018.

**Niall Wilson:** It is in the interest of the client and Social Security Scotland to have the determination resolved as soon as possible, but we must build in a reasonable amount of time for the individual to provide the information. Four weeks was seen as reasonable for a minimum period, as it would allow time for the individual to seek independent advice, if required. As the minister has said, it is a minimum period and we will absolutely take individual circumstances into account.

**Pam Duncan-Glancy:** That is helpful. The point about it being a minimum period is useful. I know that people will appreciate that, so thank you for setting that out.

My next question is around the fact that there is no advocacy provision at the point of suspension. Judith Robertson from the Scottish Human Rights Commission said in her evidence that people with mental ill health might find it difficult to engage in the suspension process or during the review of

their entitlement. Can you set out what the Government will do specifically to ensure that the system of suspension does not negatively impact on some groups? Can you also set out your thinking around advocacy and why a legal right to advocacy does not extend to suspension?

**Ben Macpherson:** I want to reassure the committee that advocacy will be available to all clients who self-certify as having a disability, including individuals who are applying for, or are in receipt of, the Scottish child payment. The advocacy position is strong. Kirsten Simonnet-Lefevre will say a bit more about that.

**Kirsten Simonnet-Lefevre (Scottish Government):** The right to advocacy is enshrined in the 2018 act and is in connection with the determination on the individual's entitlement to assistance. That means any type of assistance. It is mainly in connection with making applications that a person might need assistance, but they would be able to receive advocacy in relation to any type of determination, if the determination was about working out how much assistance they were entitled to. Advocacy can be used in a couple of situations, but it is not necessarily used at the point when a suspension happens, because a suspension does not actually take entitlement away from the person; it simply stops payments until information is gathered to ensure that they are on the right level of assistance. Advocacy is used in relation to entitlement to assistance rather than to other parts of the process.

**Pam Duncan-Glancy:** Thank you both for your answers. I am still not 100 per cent clear—forgive me—whether a person would be able to access advocacy at that point. I take the point that advocacy can be about entitlement, but suspension is also very much about entitlement. I understand that the rules on suspension will not be in play if the award is to be increased, but only when the decision is on whether an award is to be stopped or continued. Advocacy will be crucial at that point, so I urge the Government to make it clear that advocacy would be available to people at that point.

**Ben Macpherson:** Kirsten—are you able to give some clarity from a legal position, please?

**Kirsten Simonnet-Lefevre:** Yes. The right to advocacy continues when a decision has been made on a person's entitlement to assistance. At the point when a decision is being made as to whether the person is entitled to more, less or no assistance, advocacy would be available.

09:30

**Pam Duncan-Glancy:** That is helpful. I have no further questions on that.

**The Convener:** I would now like to bring in Jeremy Balfour, who I believe has a follow-up to a previous question.

**Jeremy Balfour (Lothian) (Con):** Good morning, minister, to you and your team.

I will ask more—I suspect that you might want to write to us, rather than answer us today—about the medical reports that you will get from consultants, GPs and other medical professionals. We received a letter from Social Security Scotland a few weeks ago, from which it is unclear to me whether there is a legal obligation or a contract for medical professionals for when people write to get medical evidence. How much will that cost either the individual or Social Security Scotland and is there a set fee? My experience is that it has sometimes been very difficult to get medical evidence because of the pressure that medical professionals are under. Could you give us a wee bit more information—either today or in writing—on whether a legal obligation has been set up for doctors, nurses and other medical professionals to provide information, and on what happens if a GP says that they will not provide that information, for whatever reason?

**Ben Macpherson:** I appreciate that that question is relevant in this regard, but it is also, of course, relevant to the adult disability payment, which we will discuss next week. In the interests of time, and given that wider perspective, if Jeremy Balfour agrees, I would like to take that away and either update the committee on it next week or provide an answer in writing—whichever is preferable to the member and/or the committee. I will say, just for reassurance, that formal arrangements are, of course, in place on all those matters. I can elaborate on that either in writing or at a future meeting.

**Jeremy Balfour:** I am grateful to the minister for that. I will be interested because our understanding is that there is not something set up, so it will be helpful to get more information.

I have a final question on suspension. Obviously, if, in the end, the agency takes away a person's benefit, there is a right of appeal. Appeal can take a number of weeks, if not months. Can the minister reassure me that, if a person is successful in appeal, all the payments will be backdated? Is there a mechanism to fast track appeals so that people are not left in financial crisis?

**Ben Macpherson:** I will bring officials in to clarify this absolutely, but I note that during that period the individual would receive short-term assistance—which, of course, is innovative and is provided here in Scotland but not in the DWP system. Niall Wilson will elaborate on that, briefly.

**Niall Wilson:** People will not receive a backdated amount because—exactly as the minister said—they will receive short-term assistance throughout the period of review so that they would be no worse off.

**Ben Macpherson:** On Mr Balfour's last question, I say just for clarity, convener, that the arrangements are in place, as stated. I will set out the nature of the arrangements between the agency, practitioners and health boards. Mr Balfour asked about the formal position; I want to make sure that I am clear in elaborating on the wider circumstances of engagement with practitioners and health boards, which I will do as a follow-up.

**The Convener:** Before I bring in Emma Roddick, are there any further questions from you, Mr Balfour?

**Jeremy Balfour:** No, thank you, convener. I am done.

**Emma Roddick (Highlands and Islands) (SNP):** I will not be the only person who is already getting casework from people with active disability living allowance claims who are confused about whether they should be applying for CDP and are hoping to end their DLA claim as soon as possible. How does the minister plan to communicate to current DLA claimants the potential dangers around stopping a current claim to move to the CDP faster? Do you have any guidance on how long people can expect to wait to be moved across?

**Ben Macpherson:** With the CDP, we are seeking that cases be transferred as quickly as possible. When we launched the child disability payment—similar is happening as we move towards launching adult disability payment—our strong advice is that people should wait to be transferred because that will be a better experience for them. It will be done seamlessly and Social Security Scotland will manage the process. We are very keen to stress to people that they should wait until case transfer is undertaken.

Choosing to end a DLA or personal independence payment claim in order to claim CDP or ADP is always an individual's choice. Our concern, however, is that, in doing so, people will expose themselves to unnecessary risk that a carefully managed case transfer programme avoids. For example, if someone bypasses the case transfer process, they will be required to make a new application and to provide information and evidence on their care and mobility again, which might cause undue stress or anxiety. Of course, there is no guarantee that the person will be awarded CDP or ADP—although it would be more likely than not that they would—or that it

would be paid at the same rate. There would be no guarantee of that.

For all those reasons, we think that it is much better if people wait until our case transfer process takes place in order to ensure that they have the best experience when moving from the DWP to Social Security Scotland. I am grateful to the third sector, parliamentarians and other stakeholders who are helping to emphasise to people that it is much better for them to let us manage the process of transferring their entitlement to Social Security Scotland, and that that will be done seamlessly.

**Emma Roddick:** I thank the minister for all the detail in that response. What criteria are being used to prioritise moves from DLA to CDP? Is there anything that people can do to speed up the process themselves?

**Ben Macpherson:** I would be grateful if Emma Roddick could elaborate slightly on that, so that I am absolutely clear.

**Emma Roddick:** Which DLA claimants are being moved first?

**Ben Macpherson:** Are you asking about the case transfer process to the child disability payment?

**Emma Roddick:** Yes.

**Ben Macpherson:** There is a detailed process of engagement between the DWP and Social Security Scotland on the batches of cases that are being done. It is being done in a way that is coherent and professional. In terms of prioritisation being based on need or any considerations around that, that is not a relevant factor. The position is that transfer of people who are in receipt of disability living allowance for children to child disability payment transfer is being done in a practical and systematic way in order to meet our aspiration for completion in spring 2023 for that Scottish benefit.

**Pam Duncan-Glancy:** My question is an extension of my colleague Emma Roddick's questions on the process for people applying.

We heard last month from SAMH—the Scottish Association for Mental Health—that about 141,000 people in Scotland are still on PIP or will enter the PIP system who would otherwise have been eligible for adult disability payment, and the number will be higher if we include child disability payment. Around 55,000 of them will possibly have a mental health problem, which means they will have a bit more difficulty in the PIP face-to-face system than they would with child disability payment or adult disability payment. I can fully understand why people might want to stop their existing claim and try to get on to a system that we are promoting in Scotland that should be kinder in that respect.

SAMH asked us whether the Government would commit to the rapid transfer of people to child disability payment and adult disability payment from PIP who successfully made a claim during the year in which the full roll-out was delayed as a result of the coronavirus. Is that something that the Government would consider? It is my view that that might mitigate some of the concerns that you have highlighted well about the risks of stopping a current award in order to claim child disability payment or adult disability payment. Would you consider prioritising those people, particularly given that the Government also said that no one would have to go through a review process once the roll-out started and that people would be reviewed under ADP or CDP, not PIP?

**Ben Macpherson:** Thanks to Pam Duncan-Glancy for those questions. I think that that is a question that is broader than the set of regulations before us today and is particularly relevant to the adult disability payment regulations that we are considering next week. If it is appropriate and if it is agreeable to you and the committee, I would be happy to touch on case transfer when we consider the adult disability payment regulations next week. Also, if it would be helpful for the committee, I would be happy at a future juncture beyond 27 January to come to the committee to discuss case transfer as a topic in general beyond the consideration of specific regulations. The process and the assistance from the officials that I will have with me next week means that I will be better placed to touch on these matters then.

**Pam Duncan-Glancy:** I take the point that the adult disability payment regulations will be coming to us next week. I raised the matter on the basis that, to try to prevent people pre-emptively stopping their claim and making a new claim within the Scottish system, as well as promoting it in the way that my colleague Emma Roddick pointed out, we could reassure people that there will be a system of prioritisation for those people who would otherwise have a guaranteed review. That is why I asked the question today in relation to these regulations.

Finally, how long do you expect case transfer to take?

**Ben Macpherson:** As I said in my answer to Emma Roddick, as far as I am aware there is no prioritisation within the case transfer process with regard to circumstance or condition, but there are, of course, case transfer considerations around, for example, natural case transfer for people who are approaching a review date on their DWP award. That is why I suggested that it might be helpful to the committee to discuss case transfer in the round at a future juncture. I should be clear that, as far as I am aware, there is no prioritisation in

the way that Pam Duncan-Glancy alluded to within the case transfer process as things stand.

09:45

As has been stated to Parliament on several occasions, we intend to have all case transfer completed in 2025. That is the—*[Inaudible.]*—from disability living allowance for children to child disability payment. We are working to complete that by spring 2023.

**Pam Duncan-Glancy:** Thank you, minister and convener. I have no further questions.

**The Convener:** I want to double check that there are no further questions from colleagues.

I wanted to seek some further clarity on the right to advocacy. SCOSS had said in its evidence that it believed that there was not a right. However, I take what has been said by Kirsten Simonnet-Lefevre in answer to previous questions. Perhaps this is something to follow up in writing in order to get absolute clarity, but my reading of what has been said is that, if there is a question or dubiety over entitlement, somebody has a right to advocacy. Could that be confirmed, please?

**Ben Macpherson:** Yes, we can confirm that today, convener. I will bring Kirsten Simonnet-Lefevre in to further clarify the position as well. In any circumstance where the individual's entitlement is being questioned, they will of course be entitled to advocacy, as it will be available to all clients across Scotland who are certified as having a disability. The position is clear. I think that the point of dubiety from the committee this morning has been about the period of suspension; as Kirsten Simonnet-Lefevre has said, there is not a requirement for advocacy at that juncture. It is only if it progresses to the position of their entitlement being questioned that, of course, the right to advocacy will kick in.

**Kirsten Simonnet-Lefevre:** We have some policy confirmation that the national advocacy service will provide advocacy to assist individuals in connection with a suspension decision if they identify as having a disability. It goes above and beyond the exact point when a determination in relation to entitlement is being decided. Although section 10 of the 2018 act says that it is in connection with a determination of entitlement, the advocacy service seems to be providing services at that point also. What we could do is write to the committee and confirm the exact points when advocacy is available to people and we can add that to the letter.

**The Convener:** That would be very helpful. I think that the points the minister and you have just made there have provided clarity, but anything that you can follow up in writing with about the points

and junctures would be most helpful. Thank you for that.

I believe that that takes us to the conclusion of our questions. Unless anybody else is looking to come in at this stage, we will move to item 3, which is the formal debate on the motion. I remind the committee that only members and the minister may take part in the formal debate. I invite the minister to move motion S6M-02786.

*Motion moved,*

That the Social Justice and Social Security Committee recommends that the Scottish Child Payment Regulations 2020 and the Disability Assistance for Children and Young People (Scotland) Regulations 2021 (Miscellaneous Amendments) Regulations 2022 [draft] be approved.—*[Ben Macpherson]*

*Motion agreed to.*

**The Convener:** I invite the committee to agree that the clerks and I will produce a short, factual report of the committee's decisions and arrange to have it published. Are colleagues content with that approach?

*Members indicated agreement.*

**The Convener:** Thank you very much to the minister and to Niall Wilson and Kirsten Simonnet-Lefevre for coming along this morning. Your evidence has been very helpful to us and we greatly appreciate your time, as always. I hope that you all have a lovely day.

That concludes the public part of this morning's meeting. At our next meeting on 27 January, as the minister has already alluded to, we will be welcoming him back for consideration of the adult disability payment regulations. I now suspend the meeting and move to private session. Members should follow the link to the private session, which should be in their calendars.

09:51

*Meeting continued in private until 10:00.*

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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