

Social Justice and Social Security Committee

32nd Meeting, 2022 (Session 6), Thursday, 24 November

Scottish Statutory Instrument (SSI) Cover Note

Title of Instrument: [The Scottish Child Payment \(Ancillary Provision\) Regulations 2022](#) (SSI 2022/326)

Laid Date: 8 November 2022

Reporting deadline: 12 December 2022

Type of instrument: Negative

Parliamentary procedure

1. Under [Rule 10.4](#) of Standing Orders, the Parliament has 40 days to consider a motion to annul a negative instrument from the date the instrument was laid. No motion to annul has been laid, so the Committee is asked to agree on whether it has concluded its consideration of this instrument. Further information on the negative procedure can be found on the [Parliament's website](#).

Background and Purpose

1. These Regulations make additional provisions in connection with the amendments made by the Social Security (Miscellaneous Amendment and Transitional Provision) (Scotland) Regulations 2022 (“the amending Regulations”) to the Scottish Child Payment Regulations 2020 (“the Scottish Child Payment Regulations”). These Regulations came into force on 14 November 2022.
2. These provisions are required to come into force on the same day as the amending Regulations to ensure that:
 - existing clients’ ongoing entitlement is extended so that it can continue until their child turns 16, rather than 6;
 - new clients can be awarded Scottish Child Payment with an ongoing entitlement until their child turns 16; and
 - for clients who were told before 14 November 2022 that their award of Scottish Child Payment prior to 14th November, due to no longer being in receipt of a qualifying benefit or being responsible for the child, the 12 week period during which their claim can be restarted will continue to run from the

date they were informed their entitlement ended, rather than the date their circumstances changed.

3. Further information is contained in the [Policy Note](#) and [Explanatory Note](#) (also available in Annexe A).

Committee consideration

4. The Committee considered [the Social Security \(Miscellaneous Amendment and Transitional Provision\) \(Scotland\) Regulations 2022](#) at its meeting [on 27 October 2022](#) and [reported](#) it recommended the instrument should be approved.
5. On 26 October 2022, in advance of this consideration, the Committee received [a letter from the Minister for Social Security and Local Government](#) explaining why it laid a standalone savings instrument under section 95 of the Social Security (Scotland) Act 2018. At its [meeting on 10 November 2022](#), the Committee considered that additional negative instrument, [the Scottish Child Payment \(Saving Provisions\) Regulations 2022](#), which was required to come into force on the same day as the amending Regulations. All Members were content to note the instrument.
6. On 8 November 2022, the Scottish Government [sent a letter to the Committee](#) to inform Members it had to lay a further negative instrument, the Scottish Child Payment (Ancillary Provision) Regulations 2022, after reviewing all procedural aspects of transition for existing clients. This instrument also does not comply with the 28 day rule in order to ensure that the required provisions came into force at the same time as the substantive provisions.

Delegated Powers and Law Reform Committee consideration

7. The Delegated Powers and Law Reform (DPLR) Committee considered the instrument at its [meeting on 15 November 2022](#). [In its report](#), the Committee drew the instrument to the attention of the Parliament for failure to comply with the laying requirements in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.
8. The Committee added that while it welcomed the Scottish Government's apology for this breach, it nevertheless considers it to be unsatisfactory that this is the second instrument breaching the 28-day rule required in this area. It also called on the Scottish Government to ensure that its quality assurance processes are sufficient to ensure that subordinate legislation laid before the Parliament is fit for purpose.

For decision

9. The Committee is invited to consider if it wishes to raise any issues regarding this instrument.

Annexe A

POLICY NOTE
THE SCOTTISH CHILD PAYMENT (ANCILLARY PROVISION)
REGULATIONS 2022
SSI 2022/326

The above instrument was made in exercise of the powers conferred by section 95 of the Social Security (Scotland) Act 2018 and all other powers enabling Scottish Ministers to do so.

The instrument is subject to negative procedure.

These Regulations make ancillary provisions in connection with the amendments made by the Social Security (Miscellaneous Amendment and Transitional Provision) (Scotland) Regulations 2022 (“the amending Regulations”) to the Scottish Child Payment Regulations 2020 (“the Scottish Child Payment Regulations”). These Regulations come into force on 14 November 2022.

These provisions are required to come into force on the same day as the amending Regulations to ensure that existing clients’ ongoing entitlement is extended so that it can continue until their child turns 16, rather than 6; new clients can be awarded Scottish Child Payment with an ongoing entitlement until their child turns 16; and for clients who were told before 14 November 2022 that their award of Scottish Child Payment prior to 14th November, due to no longer being in receipt of a qualifying benefit or being responsible for the child, the 12 week period during which their claim can be restarted will continue to run from the date they were informed their entitlement ended, rather than the date their circumstances changed.

Policy Objectives

The Scottish Government has identified that these provisions will be required to ensure that the Social Security (Miscellaneous Amendment and Transitional Provision) (Scotland) Regulations 2022 operate correctly. In line with the original policy intentions, these provisions will ensure that:

1. For existing clients, their ongoing entitlement is extended so that it can continue until their child turns 16, rather than automatically ending when their child turns 6;
2. For new clients, they can be awarded Scottish Child Payment (SCP) with an ongoing entitlement until their child turns 16; and
3. For clients who were told before 14 November 2022 that their entitlement to SCP had ended because they no longer had a qualifying benefit or were responsible for the child, the 12 week period during which a client’s SCP claim can be restarted will continue to run from the date they were informed that their SCP entitlement had ended, rather than from the date when their circumstances changed.

Consultation

The Scottish Commission on Social Security (SCoSS) carried out a period of scrutiny in relation to the Social Security (Miscellaneous Amendment and Transitional Provision) (Scotland) Regulations 2022. The Scottish Government response to their scrutiny report was laid in the Scottish Parliament alongside the Social Security (Miscellaneous Amendment and Transitional Provision) (Scotland) Regulations 2022 on 20 September 2022.

Ahead of drafting the Social Security (Miscellaneous Amendment and Transitional Provision) (Scotland) Regulations 2022 we consulted with members of the Five Family Payments Reference Group, which comprises third sector, NHS and local government representation.

There is no requirement to consult SCoSS on the Scottish Child Payment (Ancillary Provision) Regulations 2022, however the Scottish Government has made SCoSS aware of its intention to make these Regulations, and that they have been informed by feedback from SCoSS on the issue of clients potentially losing entitlement when children on their claim turn 6.

Impact Assessments

These provisions align the legislation with the policy intent which has been impacted when we prepared a full set of impact assessments to accompany the Social Security (Miscellaneous Amendment and Transitional Provision) (Scotland) Regulations 2022. No further assessments have been carried out to accompany this instrument. The following impact assessments were completed:

- A Children's Rights and Wellbeing Impact Assessment
- An Equalities Impact Assessment
- A Business and Regulatory Impact Assessment
- An Islands Screening Assessment
- A Fairer Scotland Duty Impact Assessment
- A Data Protection Impact Assessment

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed for the Social Security (Miscellaneous Amendment and Transitional Provision) (Scotland) Regulations 2022. The impact of this policy on business is limited and no quantifiable financial effects have been identified.

These Regulations do not have further impact on business and so a separate BRIA is not necessary. The Cabinet Secretary for Social Justice, Housing and Local Government confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

**Scottish Government
Social Security Directorate
8 November 2022**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make ancillary provision in connection with the amendments made by the Social Security (Miscellaneous Amendment and Transitional Provision) (Scotland) Regulations 2022 (“the principal Regulations”) to the Scottish Child Payment Regulations 2020 (“the 2020 Regulations”). These Regulations come into force on 14 November 2022, on the same date as the principal Regulations.

Regulation 2 amends regulation 19 (ongoing entitlement) of the 2020 Regulations in consequence of the provision made by regulation 4(4) of the principal Regulations. Regulation 3 makes saving provision so that in certain circumstances paragraph 12 of the schedule of the 2020 Regulations continues to have effect on and after 14 November as it applied immediately before that date.

Regulation 4 makes transitional provision so that Scottish Ministers must make a determination of an individual’s entitlement where, on 14 November 2022, the individual has ongoing entitlement in accordance with regulation 19(1) of the 2020 Regulations until the age of 6. The determination is to be made on the assumption that the individual continues to be entitled to Scottish Child Payment and has an ongoing entitlement until age 16 on the basis described by regulation 19(2) of the 2020 Regulations, as amended by these Regulations.