

# Social Justice and Social Security Committee

**9<sup>th</sup> Meeting, 2024 (Session 6), Thursday 21  
March 2024**

## Subordinate Legislation Cover Note

**Title of Instrument:** [The Discretionary Financial Assistance \(Scotland\)  
Revocation Regulations 2024](#)

**Laid Date:** 22 February 2024

**Reporting deadline:** 15 April 2024

**Type of instrument:** Negative

### Purpose of the regulations

1. According to the [Policy Note](#) and [Explanatory Note](#) (available in the Annexe), the regulations revoke the Discretionary Financial Assistance Regulations 2001, insofar as they relate to Scotland. This is one of two SSIs to bring the discretionary housing payments (DHP) scheme under the control of Scottish Ministers. Doing so will allow Scottish Ministers to issue Scotland-specific statutory DHP guidance, thereby allowing the scheme to be reframed for a Scottish context.
2. The Policy Note explains that responsibility for the Discretionary Housing Payment (DHP) scheme was devolved to the Scottish Ministers in 2017.
3. It further explains that local authorities can consult a DWP-issued guidance manual. Further instructions are provided in an interim guidance note setting out the Scottish Government's policies with regard to mitigation of the removal of the spare room subsidy, and benefit cap as far as is possible under the Discretionary Financial Assistance Regulations.
4. This instrument will be laid in tandem with an instrument to fully commence the DHP provisions in the 2018 Act, thereby allowing Scottish Ministers to issue a statutory Scottish DHP guidance manual.

## Parliamentary procedure

5. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament. If that is also agreed to, Scottish Ministers must revoke the instrument.
6. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.
7. Members should note that it is not always possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.

## Delegated Powers and Law Reform Committee consideration

8. The DPLR Committee considered the instrument at its meeting on [5 March 2024](#) and no points were raised in relation to it. The Official Report for the meeting is available [here](#).

## Decision

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

**Clerks to the Committee  
18 March 2024**

# Annexe

## POLICY NOTE

### THE DISCRETIONARY FINANCIAL ASSISTANCE (SCOTLAND) REVOCATION REGULATIONS 2024

#### SSI 2024/58

The above instrument was made in exercise of the powers conferred by section 69(1) to (5) of the Child Support, Pensions and Social Security Act 2000, section 189(4) to (6) of the Social Security Administration Act 1992, and all other powers enabling them to do so. The instrument is subject to negative procedure.

#### Summary

These regulations are necessary to revoke the Discretionary Financial Assistance Regulations 2001, insofar as they relate to Scotland. This is one of two SSIs to bring the discretionary housing payments (DHP) scheme under the control of Scottish Ministers. Doing so will allow Scottish Ministers to issue Scotland-specific statutory DHP guidance, thereby allowing the scheme to be reframed for a Scottish context.

#### Policy Objectives

##### *Background*

Responsibility for the Discretionary Housing Payment (DHP) scheme was devolved to the Scottish Ministers in 2017. Section 91 of Part 5 of the Social Security (Scotland) 2018 Act (the “2018 Act”) was partially commenced on 1<sup>st</sup> April 2020 by regulation 2(2) of S.S.I. 2020/75 to allow consultation on a Scottish DHP Guidance manual.

At present local authorities can consult a DWP-issued guidance manual with further instructions provided in an interim guidance note setting out the Scottish Government’s policies with regard to mitigation of the removal of the spare room subsidy (bedroom tax), and benefit cap as far as is possible under the Discretionary Financial Assistance Regulations 2001/1167 (the “DFA Regulations”).

This instrument will be laid in tandem with an instrument to fully commence the DHP provisions in the 2018 Act, thereby allowing Scottish Ministers to issue a statutory Scottish DHP guidance manual.

#### EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

### **Consultation**

In developing the policy, the following have been invited to input: Child Poverty, Violence Against Women and Girls, Homelessness, Social Security, Analysts and Economists.

The DHP guidance document has been actively developed in partnership with the Convention of Scottish Local Authorities (COSLA). COSLA convened a group of social-security advisers (drawn from local authorities) with knowledge of the DHP scheme to provide detailed advice and feedback on the operation of the scheme, and on the impacts of changing the legislative basis of the scheme.

To comply with section 176(1)(aa) of the Social Security Administration Act 1992, which requires consultation with organisations appearing to the Scottish Ministers to be representative of the authorities concerned when making regulations under section 69 of the Child Support, Pensions and Social Security Act 2000, the Scottish Ministers performed a formal consultation with COSLA. The consultation provided feedback on the statutory guidance document and accepted the requirement to revoke the DFA Regulations.

### **Impact Assessments**

An Equalities Impact Assessment and a Stage 1 and 2 Children's Rights and Welfare Impact Assessment have been completed.

A Data Protection Impact Assessment was not carried out because no personally identifiable data, or unique identifiers, will be collected by the Scottish Government. It was also considered that the policy will have no impact on the environment and will not have a significantly different effect on any island communities.

### **Financial Effects**

The Scottish Fiscal Commission's view is that these regulations, combined with the accompanying commencement regulations and new statutory guidance, are likely to have only a negligible effect on Scottish Government spending on Discretionary Housing Payments.

A Business and Regulatory Impact Assessment (BRIA) has been completed. The Scottish Government is satisfied that the Bill has no significant impact on businesses and other non- public bodies.

Scottish Government  
Directorate for Local Government and Housing  
*February 2024*

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations revoke the Discretionary Financial Assistance Regulations 2001 (“the 2001 Regulations”), as they apply in Scotland. These Regulations do not affect the operation of the 2001 Regulations in England and Wales. The 2001 Regulations provide relevant authorities with a power to make discretionary housing payments by way of financial assistance and regulate the amount, manner, and procedure of this assistance.

Regulation 2 revokes the 2001 Regulations with effect from 1 April 2024. Relevant authorities will make discretionary housing payments in Scotland on and after 1 April 2024 by virtue of Part 5 of the Social Security (Scotland) Act 2018, which is to be commenced on that date by the Social Security (Scotland) Act 2018 (Commencement No. 10 and Transitional Provision) Regulations 2024.