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5 February 2020

Dear Dr Witcher,

I was grateful to receive the Scottish Commission on Social Security's (SCoSS) report and recommendations on the Scottish Child Payment regulations on 21 January. I will consider the recommendations carefully and the Scottish Government will provide a full response when the regulations are laid in the Scottish Parliament in Spring.

I wanted to thank you again for agreeing to a slightly elongated scrutiny process in relation to the Scottish Child Payment. I am aware that SCoSS is being asked to do a lot in a policy environment which is fast paced and frequently changing, and this impacts on the time available for scrutiny.

When I wrote to you in December I indicated that the drafting on the commencement provisions was underway and this legal text would be shared with SCoSS following publication of your final report. This is set out as an annexe to this letter as part of the "super-affirmative" procedure outlined in section 97 of the Social Security (Scotland) Act. The text is in accordance with the policy note that we sent to SCoSS on 9 December and subsequently published as position paper on 16 January 2020. I understand that the Commission was also keen to see updated text on the effective dates of change for determinations without application, which is also set out in the annexe. I appreciate the Commission's flexibility in agreeing to look at these specific provisions at a later date and to submit a supplementary note to your final report to cover it.

Finally, I have also written today to the Convener of the Social Security Committee enclosing a copy of the updated legal text. I look forward to your further consideration in due course.

Yours Sincerely,

**SHIRLEY-ANNE SOMERVILLE**

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## Scottish Child Payment – New proposed legal text

### 1. Arrangements for roll-out of benefit in the initial period

New provisions for insertion in draft Regulations:

#### ***Insertion into Part 2 (Interpretation)***

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**Meaning of “application date”**

**X** “Application date” refers to the date on which an application is received by the Scottish Ministers or, if different, the date on which an application is treated as having been made by virtue of regulation 22 or the schedule.

#### ***Insertions into Part 3 (Eligibility and assistance to be provided)***

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**Duty to give assistance**

**X** The Scottish Ministers must give an individual whatever assistance the individual is entitled to be given under a determination of the individual’s entitlement to Scottish child payment.

**Time of payment**

**X** (1) Following a determination that an individual is entitled to a Scottish child payment, payments are to be made to entitled individuals in accordance with paragraph (2).

(2) Payments are to be made in respect of periods of four weeks, in arrears, so that –

(a) the first payment is made to the individual in the last week of the period of four weeks beginning with the application date (the individual’s first payment period), and

(b) subsequent payments are made in the last week of each successive period of four weeks in which the individual continues to be eligible for at least one week by virtue of regulation X (continuing eligibility).

#### ***Insertions into Part 4 (Consequential and transitional provision)***

##### **Applications for assistance – arrangements for initial period**

**X** (1) Regulation X1 applies in respect of the initial application period and the initial payment period.

(2) For the purposes of this regulation and regulation X1 –

(a) the “initial application period” means the period beginning with the day on which these regulations come into force and ending on the day which falls three months after that day,

(b) the “initial payment period” means the period beginning with the day immediately after the end of the initial application period and ending on the day which falls four weeks after that day.

**X1** (1) Any application for a Scottish child payment which is received by the Scottish Ministers during the initial application period is to be treated for the purposes of these Regulations as having been made on the day immediately after the expiry of that period.

(2) Where an individual’s first payment period (see regulation X (time of payment)) would fall wholly or partly in the initial payment period, regulation X(2) does not apply and instead –

(a) the first payment to the individual is to be made in arrears on such date within the initial payment period as the Scottish Ministers consider appropriate,

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(b) subsequent payments to the individual are to be made four-weekly in the last week of each successive period of four weeks in which the individual continues to be eligible for at least one week by virtue of regulation X (continuing eligibility).

## **2. Effective date of change**

### ***Amendments to the schedule***

#### ***Determination following change of circumstances etc. (new sub-paragraph (2))***

##### **Determination following change of circumstances etc.**

**X** (1) The Scottish Ministers are to make a determination of an individual's entitlement to a Scottish child payment in respect of a child (without receiving an application) where they—

(a) consider that a change in circumstances is likely to mean that an individual is no longer entitled to such a payment, (b) wish to alter the amount that an individual will be paid to introduce, alter or remove a deduction under regulation 18,

(c) wish to make an award of a Scottish child payment in relation to that child to a different person following a determination that that other person is to be entitled to the payment in respect of the child (see paragraph 3), or

(d) consider, as a result of information they have received since making the determination that the individual was entitled to a Scottish child payment, that the determination was made incorrectly.

(a) Where sub-paragraph (1)(a) applies, references in these Regulations to the day on which the application is made are to be read as references to the day on which the change in circumstances occurred or, if that is not known, the day on which the Scottish Ministers became aware of the change in circumstances.

(b) Where sub-paragraph (1)(b) applies, references in these Regulations to the day on which the application is made are to be read as references to the day on which the Scottish Ministers make their determination in respect of the deduction in question.

(c) Where sub-paragraph (1)(c) applies, references in these Regulations to the day on which the application is made are to be read as references to the day on which the Scottish Ministers determine the entitlement of the other person referred to in that sub-paragraph.

(d) Where sub-paragraph (1)(d) applies, references in these Regulations to the day on which the application is made are to be read as references to the day on which the determination referred to in that sub-paragraph was made.

(3) In sub-paragraph (1)(a), "a change in circumstances" means a change in the circumstances of the individual in relation to any of the matters listed in regulation 17.

#### ***Determination following award of Scottish child payment in respect of another child (amendment to sub-paragraph (1)(b) and insertion of new sub-paragraph (3))***

##### **Determination following award of Scottish child payment in respect of another child**

**X** (1) The Scottish Ministers are to make a determination of an individual's entitlement to a Scottish child payment in respect of a child (without receiving an application) where—

the individual has been properly awarded a Scottish child payment in respect of another child and continues to be eligible for that payment (see regulation X (continuing eligibility)),

the individual notifies the Scottish Ministers that the individual has responsibility for the child, and

it appears to the Scottish Ministers that, unless there is a change in circumstances, the individual is likely to be entitled to a Scottish child payment in respect of the child.

(2) In making a determination required by sub-paragraph (1), the Scottish Ministers may use such of the information they have obtained in connection with the award referred to in sub-paragraph (1)(a) as appears to them to be relevant.

Where a determination is to be made by virtue of this paragraph, references in these Regulations to the day the application is made are to be read as references to –

(a) the day on which notification is given under sub-paragraph (1)(b), or

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(b) such earlier day not more than four weeks before the day mentioned in paragraph (a) on which the child was recognised to be a child for whom the individual has responsibility in terms of an award of assistance mentioned in regulation X(2)(a) (meaning of “dependant”).

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