

The Disability Assistance for Children and Young People and Scottish Child Payment (Suspensions) Amendment (Scotland) Regulations 2021

**Draft Business and Regulatory
Impact Assessment**

July 2021



Scottish Government
Riaghaltas na h-Alba
gov.scot

Draft Business and Regulatory Impact Assessment

Title of proposal

The Disability Assistance for Children and Young People and Scottish Child Payment (Suspensions) Amendment (Scotland) Regulations 2021

Purpose and Intended Effects

1. The purpose of the draft Regulations is to:
 - ensure that vulnerable individuals are protected from the risks of economic and financial abuse, either by an appointee or by someone who is able to coercively control the individual's finances;
 - ensure that an individual's entitlement to assistance does not prematurely come to an end because a person appointed to act on their behalf is unwilling or unsuitable to continue to act on their behalf;
 - mitigate the potential risks of an individual's entitlement to assistance terminating as a result of a failure to provide information to Social Security Scotland, by providing an opportunity to engage; and
 - protect individuals against the risk of overpayment if their circumstances have changed, but they have failed to engage with Social Security Scotland as part of a review of their entitlement.

2. The regulations therefore provide that payment of assistance may be suspended where:
 - the Scottish Ministers have made arrangements for a person to receive the assistance on the individual's behalf, and the Scottish Ministers consider that it is necessary to suspend the assistance-
 - because the person with whom the Scottish Ministers have made arrangements is unable to continue to receive the assistance,
 - in order to protect the individual from the risk of financial abuse;
 - the individual has requested that the Scottish Ministers temporarily stop giving the assistance in question and is yet to request that they resume doing so; and
 - under section 54(1A) of the 2018 Act, the Scottish Ministers have issued a decision to suspend assistance to the individual due to a failure to provide information which the individual is yet to provide,

3. The regulations contain the following safeguards:
 - a right to require the Scottish Ministers to review the decision to suspend;
 - a duty on the Scottish Ministers to have regard to an individual's financial circumstances before deciding to suspend assistance and when reviewing a decision to suspend assistance;
 - provision on when suspension must end; and
 - the right to be notified about:
 - a decision to suspend;

- the reasons for the decision;
- any steps that the individual might take in order for the Scottish Ministers to consider ending the suspension; and
- the right to request a review of the decision.

Background

4. The Social Security (Scotland) Act 2018¹ received Royal Assent on 01 June 2018. The Equality Impact Assessment for the Social Security (Scotland) Bill was published on 20 June 2017 and is available [here](#).
5. The 2018 Act transposed eleven existing benefits onto a Scottish legislative platform, allowing the Scottish Ministers to shape a new and distinctly Scottish benefits system, with dignity and respect being core to its approach. The Act sets out an overarching legislative framework for the administration of these forms of social security assistance in Scotland, in addition to making provision for operational functions such as managing overpayments, fraud, error and appeals.
6. Under the 2018 Act (as originally enacted), there was no mechanism to allow for the temporary suspension of payments of on-going assistance whilst the individual remained entitled to the assistance in question – an individual was simply entitled to be paid, or they were not.
7. During the passage of the Social Security Administration and Tribunal Membership (Scotland) Bill², several stakeholders (including CAS, CPAG and the Alliance) indicated that implementing social security without any powers to suspend assistance may have a negative impact on individual clients, potentially requiring them to repay overpaid assistance, as well as putting them at risk of financial abuse.
8. The former Cabinet Secretary for Social Security indicated to the Committee that the necessary amendments for this would be brought forward at Stage 2, subject to robust stakeholder support, that introduced a power to suspend payment of forms of assistance payable under the 2018 Act in prescribed circumstances.
9. The Scottish Government has been clear that the use of the power to suspend should not be punitive – it should be used to protect clients from the risk of overpayments, from financial abuse, and to give clients the opportunity to re-engage with Social Security Scotland if they fail to provide information where requested.
10. It should be acknowledged that the ability to suspend assistance interferes in an individuals' right to that assistance. Being able to suspend in broad circumstances would not be showing due regard to the needs or best interests of individual clients. We believe that utilising suspensions in the manner expressed in the regulations provides for use in limited circumstances and contains

1. _____

¹ <https://www.legislation.gov.uk/asp/2018/9/contents/enacted>

² <https://www.parliament.scot/bills-and-laws/bills/social-security-administration-and-tribunal-membership-scotland-bill>

adequate safeguards which will allow suspensions to be used in such a way as to be beneficial to clients, including clients with protected characteristics.

Consultation

11. This BRIA has been informed by extensive engagement with a range of external stakeholders as well as the wider public on a range of matters in relation to social security over a significant period of time.
12. In July 2016 the Scottish Government launched a public consultation to support the development of a framework that would become the Social Security (Scotland) Bill. 521 formal written responses were submitted, of which 241 were from organisations and 280 from individual respondents³.
13. In 2017 the Scottish Government set up Social Security Experience Panels, with over 2,400 people with lived experience across Scotland registering as panel members⁴.
14. The 'Disability Assistance in Scotland' Consultation launched in March 2019. This sought the views of the people of Scotland on the three proposed disability assistance benefits. The consultation received 263 replies, of which 74 were from stakeholder organisations and 189 were from individuals⁵.
15. The Scottish Government has also undertaken managed consultation with stakeholders through the Ill Health and Disability Benefits Stakeholder Reference Group, with input from Child Poverty Action Group in Scotland, Citizens Advice Scotland, Inclusion Scotland, Support in Mind Scotland and SAMH informing the high-level policy principles for suspensions.
16. A range of key stakeholders also helpfully set out their views on the use of suspensions as part of a letter to the Cabinet Secretary for Social Security in June 2020, helping to further refine our policy approach to both the application of suspensions and the safeguards associated with them.

Rationale for Government Intervention

17. The regulatory sphere which the Government is seeking to intervene in goes no wider than the framework set up by the Social Security (Scotland) Act 2018. The rationale for making further interventions is explained fully in the policy note that accompanies these Regulations.
18. This policy affects clients entitled to the following forms of ongoing assistance covered by the Social Security (Scotland) Act 2018. These are:

1. _____

³ Scottish Government (2017) [Analysis of Written Responses to the Consultation on Social Security in Scotland](#)

⁴ Scottish Government (2017) [Social Security Experience Panels - About Your Benefits and You: quantitative research findings](#)

⁵ Scottish Government (2019) [Disability assistance in Scotland: analysis of consultation responses](#)

- Disability Assistance (replacing Disability Living Allowance for children (DLAC), Personal Independence Payment (PIP) and Attendance Allowance (AA));
- Carer's Assistance (replacing Carer's Allowance);
- housing assistance;
- Employment Injury Assistance (replacing Industrial Injuries Disablement Benefit); and
- top-up assistance (such as the Scottish Child Payment).

19. It is not intended that these provisions be used in a punitive manner. Suspending assistance will only be used in situations where it is beneficial to temporarily stop payment of assistance; for example, to protect the client from potential overpayments or where it is not appropriate to continue paying assistance to someone on a client's behalf.

Ground 1: An individual receiving assistance on a client's behalf is unable to do so anymore or there is the possibility of financial abuse

20. The regulations will allow for suspension where the Scottish Ministers have made arrangements for a person to receive assistance on a client's behalf and suspension is considered necessary because either the person with whom the Scottish Ministers have made arrangements is unable to continue to receive assistance, or in order to protect the client from financial abuse.

21. This is necessary as, according to a recent report, across the UK roughly 39% of adults have experienced economic abuse.⁶ A report by the Citizens Advice Bureau (CAB) also found that roughly half of respondents were involved in cases where someone controlled or interfered with their benefits.⁷ This will allow clients experiencing financial abuse to have their payments protected while the situation is investigated.

22. Additionally, there may be circumstances where someone is receiving assistance on another's behalf where they are no longer legally able to do so. Because Social Security Scotland would be unable to legally continue paying this person on the client's behalf, suspending assistance will allow the client to retain underlying entitlement while a new person is appointed to receive the assistance on their behalf.

23. The Scottish Ministers will be required to end the suspension when it is no longer necessary for either of these reasons. The client would then receive a backdated amount.

24. The policy intention is for the Scottish Ministers to consider suspending assistance if Ministers have been notified of a risk of financial abuse by a public authority responsible for investigating such matters. If the Scottish Ministers independently have grounds to believe that a client is at risk of financial abuse, then, instead of suspending assistance in the first instance, Ministers would look

1. _____

⁶ [8.7 million people report experiencing economic abuse - Refuge Charity - Domestic Violence Help](#)

⁷ [Controlling money, controlling lives - Citizens Advice](#)

to share these concerns with a public authority whose function is to investigate such matters. This would be done in accordance with an established public protection policy. The Scottish Ministers would then await advice from the public authority on whether to suspend assistance.

Ground 2: Suspending assistance at the request of the client

25. The regulations state that the Scottish Ministers may suspend assistance if a client requests that it temporarily stop and has yet to request that it resume. They will only do this when the reason for the request is in line with the policy intention of suspensions: to protect client's payments. For example, a client may want their assistance suspended if another person has control of the bank account into which assistance is paid. This could occur if the client is experiencing domestic abuse and has to leave the family home.
26. The regulations will require the Scottish Ministers to end the suspension if the client asks for payment of their assistance to resume. The client will then be entitled to a backdated amount.

Ground 3: Failure to provide information

27. The Scottish Ministers can request information if it is needed to determine entitlement. A client's award may be suspended if they do not provide the information within a specified period. The Scottish Ministers will be required to have regard to the client's financial circumstances before deciding to suspend assistance. At the point when the Scottish Ministers request information from the client, the client will be asked to tell Social Security Scotland if the suspension would cause hardship.
28. If assistance is suspended and the client provides the requested information, the Scottish Ministers will be required under the regulations to immediately consider if they are under a duty to make a determination without application. Such a duty would exist if, for example, the requested information confirms that there has been a change of circumstances that would possibly result in an alteration to the clients level of award.
29. This will protect clients from potential overpayments while not removing underlying entitlement. It will also giving the client additional time to provide the necessary information.
30. The suspension must immediately end if the Scottish Ministers are not required to make a determination without application.
31. If the client requests a review of a decision to suspend, the Scottish Ministers will be required within a prescribed period to either:
 - review the decision,
 - or make a determination of entitlement (if Ministers are under a duty to do so), at which point the suspension must also end.

Safeguards

Having regard to a client's financial circumstances

32. The Scottish Ministers will trust what clients tell them about their circumstances and will not suspend assistance if it will cause financial hardship. If the Scottish Ministers decide not to suspend assistance, they will clearly communicate to the client the risk of continuing to receive assistance which they may become liable to repay at a later date.

Reviewing the decision to suspend assistance

33. A review of a decision to suspend assistance will be a two-part decision. First, the Scottish Ministers will decide if they are required under the regulations to end the suspension. In which case, the suspension must be immediately ended and the client will receive a backdated amount of assistance, under the latest determination of entitlement, in respect of the past-period when the suspension was in place.
34. If the Scottish Ministers decide that they are not required to end the suspension, they will then decide, at their discretion, whether or not to maintain the suspension, having regard to the individual's financial circumstances.

Notification of suspension

35. Clients will be informed in writing and through their preferred communication channel:
- of the decision to suspend assistance;
 - the reasons for the decision;
 - of any steps that could be taken to end the suspension; and
 - of their right to request a review of the decision.
36. Clients will also be informed in writing:
- when the suspension ends and how much they are immediately entitled to under the latest determination of entitlement as a result of the suspension ending; and
 - the outcome of any review of the decision to suspend.
37. The Scottish Ministers may make an arrangement for a person who is not the client's legal representative to receive assistance on the client's behalf. Under the regulations, the Scottish Ministers will be able to notify this person about the same information that the client must be notified about. However, the person receiving assistance will not have a right to request a review of the suspension. Before exercising this power in individual cases, the Scottish Ministers will consider carefully whether notifying the person is in the interests of the client.

Options

38. When developing the provisions within the Suspension of Assistance (Social Security) (Scotland) Regulations 2021, the Scottish Government gave consideration to the following options:

- Option 1 - Do not bring forward legislation on these issues;
- Option 2 - Bring forward secondary legislation to address these issues to ensure the continued effective implementation of the 2018 Act.

39. The Scottish Government considered that option 2 should be selected because It will also protect public funds through the creation of a system of suspension where an individual fails to engage with Social Security Scotland, or where an individual is at risk of economic or financial abuse.
40. It will ensure that the risk of an individual's right to assistance under the 2018 Act does not prematurely come to an end, but instead gives them a chance to re-engage with Social Security Scotland.

Costs

41. The Scottish Government is now aware of any indirect impacts, for example administrative burdens, on local government, private businesses or third sector organisations as a result of the provisions on suspension of assistance.

Suspension of assistance

42. The costs for developing the processes to manage suspensions has been built into the total Social Security implementation programme forecast costs as set out in the Social Security Business Case. It is not anticipated that exercising the power to suspend will materially result in additional ongoing administration costs to Social Security Scotland beyond the resource already identified for the processing of applications and entitlements.
43. Furthermore, allowing for suspension of assistance will not adversely impact on total benefit spend forecasts. The change broadly aligns with the current DWP rules and therefore the impact is built into the funding which the Scottish Government will receive from the UK Government through the Block Grant Adjustment for the relevant benefits.
44. It is not considered that the proposals in relation to the power to suspend will have any impact on Scottish business.

Safeguards

45. No significant costs to business are associated with the safeguards associated with the implementation of a system of suspension of assistance under the 2018 Act.

Benefits

46. The provisions in the regulations contribute to the following National Outcomes:

- We respect, protect and fulfil human rights and live free from discrimination; and
- We tackle poverty by sharing opportunities, wealth and power more equally.

47. The potential positive impacts include:

- mitigating the potential risks of an individual's entitlement to assistance terminating as a result of a failure to provide information to Social Security Scotland, by providing an opportunity to engage;
- ensuring that vulnerable individuals are protected from the risks of economic and financial abuse, either by an appointee or by someone who is able to coercively control the individual's finances; and
- ensuring that an individual's entitlement to assistance does not prematurely come to an end because a person appointed to act on their behalf is unwilling or unsuitable to continue to act on their behalf.

Scottish Firms Impact Test

48. As set out above, it is not considered that the proposal will have any impact on Scottish business.

Competition Assessment

49. The Scottish Government does not believe that the provisions in the Regulations will have an adverse impact on the competitiveness of Scottish companies or the third sector within Scotland, the UK, or elsewhere in Europe or the rest of the world. Additionally, the Scottish Government does not expect there to be any significant impact on the operational business of local authorities or health boards as a result of introducing these provisions. The provisions within the Regulations in relation to suspension have been developed in careful collaboration with stakeholders, and the right to request a review of a decision to suspend is already provided for in the regulations.

Legal Aid Impact Test

50. Impact on legal aid budgets must be assessed in a BRIA for each new assistance provided for under the 2018 Act. These Regulations are not providing for a new type of assistance and the Scottish Government does not anticipate significant impacts on the legal aid budget as a result of the introduction of the Suspension of Assistance (Social Security) (Scotland) Regulations 2021.

51. The right to request a review of a decision to suspend is provided for in the Regulations.

Enforcement, sanctions and monitoring

52. There are anticipated to be no additional burdens for businesses, local government or the third sector generated by these provisions.

53. On-going stakeholder engagement with key organisations – such as the Child Poverty Action Group, Rights Advice Scotland, Young Scot, Disability and Carer Benefits Expert Advisory Group, and our Ill Health and Disability Benefit Stakeholder Reference Group – will provide the Scottish Government with an opportunity to monitor the impact of the changes made by these regulations.
54. The Communities Analysis Division within the Scottish Government will also run a comprehensive evaluation programme to consider the impact of the changes made by these regulations, with a full suite of equalities data for new applicants.
55. The Scottish Ministers have also committed to engaging with, and reporting regular progress to, the Islands Strategic Group to ensure that those representing the interests of island communities and others with experience of the current system, are fairly represented in the development and delivery of the Scottish social security system.
56. The 2018 Act places a duty on the Scottish Ministers to publish an annual report on the performance of the Scottish social security system. On-going engagement with key stakeholders will also provide the Scottish Government with an opportunity to monitor the impact of the policy.
57. Audit Scotland will monitor and report on the delivery of the social security system, including Social Security Scotland.

Summary and Recommendation

58. Of the 2 identified options, the Scottish Government proposes to implement option 2 (Bring forward primary legislation). The Scottish Government does not anticipate significant business or regulatory impacts arising from the introduction of the Suspension of Assistance (Social Security) (Scotland) Regulations 2021.

Option	Total benefit per annum: Economic, environmental, social, policy and administrative	Total cost per annum: Economic, environmental, social, policy and administrative
1	Selection of this option would bring no significant benefit.	Selection of this option would bring no significant benefit. However, there are indirect costs in relation to not suspending assistance where an individual has failed to engage with Social Security Scotland, or where they are at risk of financial abuse.
2	<p>This option will contribute towards the delivery of a number of national outcomes. It will also protect public funds through the creation of a system of suspension where an individual fails to engage with Social Security Scotland, or where an individual is at risk of economic or financial abuse.</p> <p>It will ensure that the risk of an individual's right to assistance under the 2018 Act does not prematurely come to an end, but instead gives them a chance to re-engage with Social Security Scotland.</p>	While it is not possible to estimate the exact cost per annum of the provisions within the Regulations, it is not expected that these costs will be significant. The Scottish Government considers that these potential costs are outweighed by the benefits of introducing the Regulations.

Declaration and publication

59. The Cabinet Secretary or Minister responsible for the policy (or the Chief Executive of non- departmental public bodies and other agencies if appropriate) is required to sign off all BRIAs prior to publication.

Sign-off for Partial BRIAs:

60. I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the

likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: []

Date: []

Minister's name: Ben Macpherson

Minister's title: Minister for Social Security and Local Government

Scottish Government Contact point: Niall Wilson

Social Security Directorate: niall.wilson@gov.scot



Scottish Government
Riaghaltas na h-Alba
gov.scot

© Crown copyright 2021

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80201-142-5

Published by The Scottish Government, July 2021

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS898627 (07/21)

W W W . g o v . s c o t