

Draft Fairer Scotland Duty Assessment

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

July 2021



Scottish Government
Riaghaltas na h-Alba
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Draft Fairer Scotland Duty Assessment

<p>Title of Policy, Strategy, Programme etc.</p>	<p>The Disability Assistance for Children and Young People and Scottish Child Payment (Suspensions) Amendment (Scotland) Regulations 2021</p>
<p>Summary of aims and expected outcomes of policy</p>	<p>The draft Regulations provide a framework for how Scottish Ministers will exercise the power to suspend awards of ongoing assistance under the Social Security (Scotland) Act 2018 in order to:</p> <ul style="list-style-type: none"> • 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 if 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. <p>Under the 2018 Act (as originally enacted), there was no mechanism to allow for the temporary suspension of payments of on-going assistance whilst the individual remained entitled to the assistance in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.</p> <p>During the passage of the Social Security Administration and Tribunal Membership (Scotland) Bill¹, 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.</p> <p>The ability to suspend assistance was introduced at Stage 2 of the passing of the Social Security Administration and Tribunal Membership (Scotland) Bill 2020 which amended the 2018 Act. Section 12 of the 2020 Act does this by:</p>

¹ <https://www.parliament.scot/bills-and-laws/bills/social-security-administration-and-tribunal-membership-scotland-bill>

	<ul style="list-style-type: none"> • adding a power to make regulations on when an individual’s ongoing entitlement to assistance can be suspended; • adding Schedule 11 which makes provision about the exercise of the power to make regulations on suspension of assistance; and • providing that Scottish Ministers can suspend assistance in accordance with these regulations if an individual does not provide information on request. <p>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.</p> <p>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 mentioned in the public sector equality duty. However, we believe that utilising suspensions in the manner expressed in the regulations provides for use in limited circumstances and contains adequate safeguards which will allow suspensions to be used in such a way as to be beneficial to clients, including clients with protected characteristics.</p>
<p>Summary of evidence</p>	<p>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 respondents².</p> <p>In 2017 the Scottish Government set up Social Security Experience Panels, with over 2,400 people with lived experience across Scotland registering as panel members³.</p> <p>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 individuals⁴.</p>

² Scottish Government (2017) [Analysis of Written Responses to the Consultation on Social Security in Scotland](#)

³ Scottish Government (2017) [Social Security Experience Panels - About Your Benefits and You: quantitative research findings](#)

⁴ Scottish Government (2019) [Disability assistance in Scotland: analysis of consultation responses](#)

The Scottish Government has also undertaken managed consultation with stakeholders through the Ill Health and Disability Benefits Stakeholder Reference Group, with a managed consultation with several stakeholder organisations, including Child Poverty Action Group in Scotland, Citizens Advice Scotland, Inclusion Scotland, Support in Mind Scotland and SAMH to inform the high-level policy principles for suspensions.

Stakeholders also helpfully set out their views on the use of suspensions as part of a letter to the former 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.

The link between poverty and disability

Research has shown that poverty disproportionately affects those having a disability, with disabled people experiencing higher poverty rates than the rest of the population⁵. UK-wide, disabled people make up 28% of people in poverty and a further 20% of people in poverty live in a household with a disabled person. This statistic is largely replicated in Scotland where around 410,000 households in poverty (42% of all households in poverty) include a disabled person or are disabled themselves⁶.

Scotland-wide, there are higher levels of child material deprivation in households containing a disabled person, at 20% compared to households without a disabled person (at 8%). There are higher rates of food insecurity among disabled people (18%) compared to non-disabled people (5%). There is a higher likelihood of living in relative poverty after housing costs with a disabled person in the household (24% of families with a disabled person compared to 17% of families with no disabled members). If disability benefits are not counted towards household income, this raises to 30%. 'Family' in these circumstances referred to the core family in a household, comprising one or two adults and children, if any.

Disability and unemployment/under-employment are positively correlated. 14% of 'workless families' (defined as families where parents are predominately out of work or have little connection to the labour market; who live in social rented accommodation and are reliant on benefits for their income) have one or more children with a disability or long-term illness.

⁵ <https://www2.le.ac.uk/departments/law/research/cces/documents/the-energy-penalty-disability-and-fuel-poverty-pdf>

⁶ https://www.npi.org.uk/files/3414/7087/2429/Disability_and_poverty_MAIN_REPORT_FINAL.pdf

Summary of assessment findings

Conferring powers on Ministers to suspend payments of assistance or the Scottish Child Payment, if not implemented carefully, has the potential to deepen inequalities of outcome felt by disabled persons and low-income households with young children. This is because while assistance is suspended, the individual entitled to it cannot be paid it.

However the Scottish Government is implementing this policy in such a way as to aim to reduce these inequalities of outcome. The draft regulations allow for assistance to be suspended in a narrow range of circumstances, as set out above, while safeguarding against the risk that Ministers could suspend assistance in a disproportionate manner. A suspension would be disproportionate if the hardship caused by the temporary suspension outweighs the aim of suspension under each circumstance.

The regulations provide that assistance can only be suspended in the following circumstances:

- 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,
- 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, or
- 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.

This approach avoids conferring a blanket power upon Scottish Ministers to suspend assistance; instead the Scottish Government has listened carefully to the views of stakeholder organisations in defining the limited range of circumstances in which payment of devolved assistance can be suspended.

The Scottish Government's approach has also been informed by the principle that suspension of assistance is not to be used in a punitive manner. This will be supported by clear operational and decision-making guidance for staff in order to make robust, fair and rational decisions.

The draft regulations also 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.

Reviewing the decision to suspend assistance

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.

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.

Giving individuals an immediate right to have a suspension terminated would not protect the individual from potentially being liable to repay overpayments. Ministers can avoid making such overpayments by maintaining the suspension until Ministers are in a position to make a determination without application.

In particular, it would not protect the individual from overpayments in situations where Ministers are close to being ready to make a determination, and Ministers believe that the client has been being overpaid under the last determination of entitlement.

Having regard to a client's financial circumstances

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.

Provision on when suspension must end

The Regulations specify the circumstances in which a suspension must come to an end, so as to provide certainty for clients and their advisers. This also ensures that Social Security Scotland staff can be provided with clear guidance about when the suspension should be lifted.

Notification of suspension

Clients will be informed in writing:

- 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.

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.

The Scottish Government considers that these measures are reasonable and proportionate in ensuring that clients are protected from the risk of financial or economic abuse, and from the risk of overpayments. The safeguards as set out will mitigate the potential for causing hardship, particularly amongst the children, women, carers, disabled people and families on a low income.

The alternative approach of ending a client's entitlement to assistance in each of these cases is likely to be considerably more harmful, when considered against a temporary suspension of payments.

Monitoring and review

On-going stakeholder engagement with key organisations – such as the Child Poverty Action Group, Rights Advice Scotland, Young Scot, DACBEAG, 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.

	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.
Sign off	Ian Davidson Deputy Director Social Security Policy Division 23 June 2021



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