

# **Amendments to The National Assistance (Assessment of Resources) Regulations 1992 in respect of the Infected Blood Financial Support Payment Schemes in the UK**

**Equality Impact Assessment**

**April 2022**



**Scottish Government**  
Riaghaltas na h-Alba  
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## Equality Impact Assessment Record

<b>Title of policy/ practice/ strategy/ legislation etc.</b>	Amendments to The National Assistance (Assessment of Resources) Regulations 1992 in respect of the Infected Blood Financial Support Payment Schemes in the UK	
<b>Minister</b>	Minister for Mental Wellbeing and Social Care	
<b>Lead official</b>	Deirdre Henderson, Adult Social Care Charging	
<b>Officials involved in the EQIA</b>	<b>Name</b>	<b>Team</b>
	Neil Grant	Social Care Analytical Unit
<b>Directorate: Division: Team</b>	Social Care and NCS Development Directorate, Improving Standards and Quality Division	
<b>Is this new policy or revision to an existing policy?</b>	Revision of existing legislation	

### Screening

1. The Scottish Government is mindful of its obligations under the Equality Act 2010 and the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012. Section 149 of the Equality Act 2010 places a general duty (known as the Public Sector Equality Duty (PSED)) on public authorities to have due regard to: eliminating unlawful discrimination, harassment and victimisation; advancing equality of opportunity between people who share a Protected Characteristic and those who do not; and fostering good relations between people who share a Protected Characteristic and those who do not. The Scottish Government recognises that while the amendment may positively impact on one or more of the Protected Characteristic groups, the introduction of the amendment may also have a negative impact on one or more of the Protected Characteristic groups. Where any negative impacts are identified, we aim to mitigate/eliminate these. We are also mindful that the equality duty is not just about negating or mitigating negative impacts, as we also have a positive duty to promote equality. We aim to do this through provisions contained in the Regulations, as amended, or by current support and guidance available.
2. For the purposes of this document the following screening questions were considered.

Will the amendment:

- eliminate unlawful discrimination, harassment and victimisation?

- advance equality of opportunity?
  - foster good relations?
3. While data is not available for the people applying to all the UK Infected Blood Financial Support Payment Schemes, it would seem likely that the amendment would impact the equality experience for people impacted by infected blood in the designated time period.

### **Amendment Aim**

4. Financial support payment schemes have been set up across the UK for people affected by HIV/Hepatitis C blood infection through NHS treatments.
5. In England, on 1 November 2017, the National Health Service Business Services Authority became directed by the Secretary of State for Health and Social Care to administer the England Infected Blood Scheme. The scheme is delivered on behalf of the Department of Health and Social Care<sup>1</sup>. The scheme is replicated across the rest of the UK nations for applicants who were infected before September 1991.
6. Financial support payments awarded to applicants will be exempt from social care support means tests for those now living in Scotland. This will ensure that people with infected blood, contracted through NHS treatments, and who need residential care can retain the full value of these payments.
7. This contributes to the National Performance Framework outcome to respect, protect and fulfil human rights and enable people to live free from discrimination.

### **Who will it affect?**

8. The National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 1992 concern the assessment of the ability of a person to pay for certain accommodation arranged by local authorities, including care homes. They include details of income to be disregarded from the assessment of a resident's liability. An amendment made to specifically include the disregard of payments from the infected blood financial support payment schemes would benefit recipients who are living in or plan to move into care homes, and who are subject to financial assessments for care charges.
9. The Scottish scheme provides support to people who were infected, as well as their immediate family members. The scheme provides support

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<sup>1</sup> [England Infected Blood Support Scheme Annual Report 2020/21](#)

to widows, widowers or partners of a deceased beneficiary. People can apply for the scheme if they:

- are resident in Scotland
- were infected with Hepatitis C and/or HIV via NHS blood, blood products or tissues
- This includes people who were infected elsewhere in the UK

10. Anyone who received the infection from someone who falls into the above groups may also be eligible, if:

- they are, or were, the spouse or civil partner of the person from whom the virus was transmitted
- they are, or were, living with the person from whom the virus was transmitted as partners in a long-term relationship
- they are the child of an infected mother<sup>2</sup>

11. Financial support ranges from £544 to £130,000, some of which are one off lump sums, while some are annual payments<sup>3</sup>.

12. The England Infected Blood Support Scheme supports people historically infected with Hepatitis C and/or HIV from blood or blood products. It also helps families, civil or long-term partners after the death of someone infected.

13. Support is available for:

- people historically infected with Hepatitis C and/or HIV from NHS blood or blood products
- families, civil or long-term partners after the death of someone infected

14. Who can apply to join the scheme:

- people infected with Hepatitis C - stage 1 payments
- special Category Mechanism (SCM) payment for Hepatitis C stage 1
- people infected with Hepatitis C - stage 2 payments
- people infected with HIV
- partners of a deceased beneficiary
- estates of people who died before joining the scheme<sup>4</sup>

15. To be eligible to apply to the Wales Infected Blood Support Scheme a person needs to have received treatment / been infected in Wales. They must have been infected with Hepatitis C and / or HIV, through NHS treatment with infected blood, blood products or tissue in the UK.

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<sup>2</sup> [Guide to the Scottish Infected Blood Support Scheme](#)

<sup>3</sup> [Scottish Infected Blood Support Scheme 2017\(amended 2021\)](#)

<sup>4</sup> [England Infected Blood Support Scheme](#)

16. Applicants to the scheme include:

- people infected with Chronic Hepatitis C – Stage 1
- people infected with Hepatitis C – Stage 2
- people infected with HIV
- those co-infected with Hepatitis C and HIV
- partners/spouse of a deceased beneficiary
- the Estate of individuals who died before joining the scheme

17. In addition, applicants are supported who contracted the infection from someone who falls into the above categories under one of the following circumstances:

- they are, or were, the spouse or civil partner of the person from whom the virus was transmitted
- they are, or were, living with the person from whom the virus was transmitted as partners in a long-term relationship
- they are the child of an infected mother<sup>5</sup>

18. In Northern Ireland, the Infected Blood Payment Scheme is a payment scheme to provide support for individuals and their families, who have been infected with, or otherwise affected by HIV, Hepatitis C, or both, following treatment with NHS-supplied blood or blood products. Financial support ranges from £544 to £130,000, some of which are one off lump sums, some are annual payments<sup>6</sup>.

19. To be eligible, an applicant must be infected with HIV and / or Hepatitis C as a result of contaminated blood, or blood products during NHS treatment in Northern Ireland. If the applicant now lives in another country, they are still eligible if the treatment took place in Northern Ireland.

20. An applicant is also eligible if they became infected by someone (for example, their spouse, civil partner, partner or parent) whose HIV and / or Hepatitis C is from receiving contaminated blood, or blood products during NHS treatment in Northern Ireland. Bereaved spouses, civil partners and long-term partners of those infected with HIV or Hepatitis C as a result of treatment with NHS blood or blood products, who themselves were not infected, may also be eligible for support if they were co-habiting at the time of death.

21. The scheme offers various types of financial support, including:

- lump sum payments
- regular monthly or quarterly payments
- discretionary one-off grant payments
- annual winter fuel payments

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<sup>5</sup> [Wales Infected Blood Support Scheme - Apply to the Scheme](#)

<sup>6</sup> [Infected Blood Payment Scheme for NI](#)

- What you are entitled to will depend on your circumstances
22. Payments include increased lump sums for those who became infected with Hepatitis C and HIV as a result of treatment with NHS-supplied contaminated blood, as well as improved annual financial support for bereaved spouses and partners<sup>7</sup>.
  23. The Penrose Inquiry in 2015 found that the search for reliable data for the numbers of patients treated by the NHS in Scotland with blood, blood components or blood products and thereby exposed to risks of transmission of HCV and HIV, and of the numbers who were infected, has proved for the most part to be extremely difficult. The records, whether of patients exposed to risk or of the incidence of infection, were either not maintained at all, or have become over time incomplete and unreliable. For much of the period it would not have been possible to maintain contemporaneous records of transmission of infection, given the dates when the viruses responsible for the diseases were first identified. This is particularly the case in respect of patients infected with HCV as a result of transfusion. The picture is clearer in the case of HIV infection where reports of infection arose over a relatively short and well-defined period of time<sup>8</sup>.
  24. It was estimated in 2015 that 2,978 people may have been infected with Hepatitis C in Scotland with a very limited availability of data to track people, and a high expectancy of mortality, it is maybe not surprising that only 497 people benefitted from the scheme in Scotland by August 2017. 60 of those with a bleeding disorder who were infected with Hepatitis C were also infected with HIV. Of those, 22 people were still alive and receiving financial support in 2017<sup>9</sup>.
  25. Current data from the Scottish Infected Blood Support Scheme is split by age and sex, and by the primary and secondary infected people. Primary infectees directly received the infected blood, while secondary infectees received the infection through being the sexual partner of a primary infectee, or being their child. Primary infectees were more often male, while secondary infectees were more often female or younger. This is most probably due to secondary infectees being the partners of primary infectees, or their children.
  26. Of the 544 applicants currently identified by the Scottish Infected Blood Support Scheme, by far, the biggest number of infected people are aged over 50, with 308 people being over 60. This not surprising as the infection must have occurred by 1991. Given the ongoing health conditions that the infected people will be experiencing it is likely that they may need to live in a care home setting earlier than other people in the general population. It is highly likely that almost all the applicants

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<sup>7</sup> [Northern Ireland Infected Blood Payment Scheme](#)

<sup>8</sup> [Penrose Inquiry Report](#)

<sup>9</sup> [Joint Position Paper - UK Contaminated Blood Inquiry](#)

may be classed as disabled due to their ongoing health conditions from the infected blood.

27. The scheme is expected to have a particularly positive effect on older people, disabled people, men who received the initial infection, and women and children who received a secondary infection from their partners or parents. Disregarding the payments from this scheme will have a positive financial effect which could advance equality of opportunity. It could foster good relations by vindicating the lived experience of people who may have been stigmatised for having a blood infection that can lead to social exclusion.
28. It is also possible that some applicants will have or had intersectional Protected Characteristics, and may therefore have multiple impacts, which have not been able to be recorded.
29. In Scotland, On 31 March 2021, there were 40,632 registered places in adult care homes, of which there were an estimated 29,317 long stay residents in care homes for older people (65 and over)<sup>10</sup>.
30. While the figures presented are for applicants in Scotland, it would be very difficult to equate figures for people impacted moving to Scotland from other parts of the UK. There is also no reason to assume that other parts of the UK have a noticeable difference in their equivalent numbers of applicants. Taking into account all the above factors, the population size that this amendment might impact would be quite small in comparison to the general population.

### **What might prevent the desired outcomes being achieved?**

31. If legislation within The National Assistance (Assessment of Resources) Regulations 1992 is not amended to ensure payments by the Infected blood compensation schemes are disregarded, it may prevent local authorities disregarding any payments made by the infected blood payment schemes when making financial assessments in relation to an individual's residential social care support charges.

### **Stage 1: Framing**

#### **Summary of findings**

32. This legislative change will allow an amendment to the annual Charging for Residential Accommodation Guidance (CRAG) updates that will take effect from April 2022, as agreed with the Scottish Government's CRAG Working Group on 23 September 2021 to disregard this payment, exempting it from social care support means tested financial assessments for those wishing to or residing in residential care. This aligns the CRAG with other parts of the UK, and

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<sup>10</sup> [Care home census for adults in Scotland Statistics for 2011 to 2021](#)

with similar schemes to provide financial support to survivors of NHS blood infections.

33. Based on the information available it would appear that this amendment will have a positive impact on equality considerations for a small number of people.

**Extent/Level of EQIA required**

34. This document has based its analysis on the data from:

- [The Final Report of the Penrose Inquiry](#)
- [Joint Position Paper - UK Contaminated Blood Inquiry](#)
- Scottish Infected Blood Support Scheme

35. Below is the evidence gathered and assessed in relation to the Protected Characteristics of the Equality Act 2010. Given the small numbers of people potentially impacted in Scotland, and the universal access to the application process, no other impact assessments are planned.



## Stage 2: Data and evidence gathering, involvement and consultation

Include here the results of your evidence gathering (including framing exercise), including qualitative and quantitative data and the source of that information, whether national statistics, surveys or consultations with relevant equality groups.

Characteristic <sup>11</sup>	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and action taken
<p><b>Age</b></p>	<p>The overwhelming majority of individuals were infected before 1991, with the exception of a small number of people who have been secondarily infected.</p> <p>In Scotland: The age ranges of infected people are from 20 – 100, with the majority in the 60+ age group (308 people).</p> <p>Primary Infected People By Age</p> <p>31-40 24 people 41-50 47 people 51-60 146 people 61-70 120 people 71-80 76 people 81+ 25 people</p> <p>Secondary Infected People By Age (inc widower / widow, civil partner, or child)</p> <p>20-30 2 people 31-40 2 people 41-50 7 people 51-60 8 people 61-70 34 people 71-80 36 people 81+ 17 people</p> <p>In Scotland, On 31 March 2021, there were 40,632 registered places in adult care homes, of which there were an estimated 29,317 long stay residents in care</p>	<p>All UK Infected Blood Schemes</p> <p>Scottish Infected Blood Support Scheme as at Feb 2022</p> <p>Care home census for adults in Scotland Statistics for 2011 to 2021</p>	<p>The age ranges for the data are for Scotland only, but it is unlikely that large numbers of infected people will move to Scotland from other parts of the UK.</p>

<sup>11</sup> Refer to Definitions of Protected Characteristics document for information on the characteristics

	homes for older people (65 and over).		
<b>Disability</b>	<p>No information is available on the number of disabled people likely to be affected by the amendment.</p> <p>It is likely that most people receiving a payment will be experiencing a permanent impairment due to the infected blood that they received. This will mean that they are likely classed as disabled.</p> <p>In Scotland between 2017-20, the poverty rate after housing costs for people in households with a disabled person was 23% (500,000 people each year). This compares with 17% (540,000 people) in a household without disabled household members.</p>	<p>Infected Blood Compensation Schemes</p> <p>Poverty and Income Inequality in Scotland 2017-20</p>	<p>No specific data on being disabled are available, however, related data is available that assumptions can be made from.</p>
<b>Sex</b>	<p>The difference in the numbers of men and women who are receiving payments suggests that men were more often the primary infected person and women the secondary infected person.</p> <p>Primary Infected Men</p> <p>31-40 20 men  41-50 37 men  51-60 91 men  61-70 59 men  71-80 34 men  81+ 9 men</p> <p>Primary Infected Women</p> <p>31-40 4 women  41-50 10 women  51-60 55 women  61-70 61 women  71-80 42 women  81+ 16 women</p>	<p>Scottish Infected Blood Support Scheme</p>	

	<p>Secondary Infected Men (inc widower, civil partner, or child)</p> <p>31-40 1 man 41-50 2 men 51-60 1 man 61-70 1 man 71-80 12 men 81+ 8 men</p> <p>Secondary Infected Women (inc widow or civil partner, or child)</p> <p>20-30 2 women 31-40 1 woman 41-50 5 women 51-60 7 women 61-70 33 women 71-80 24 women 81+ 9 women</p>		
<b>Pregnancy and Maternity</b>	No information is available on the pregnancy or maternity of people likely to be affected by the amendment.		No specific data on the pregnancy and maternity status of applicants is available.
<b>Gender Reassignment</b>	No information is available on the gender reassignment status of people likely to be affected by the amendment.		No specific data on the gender reassignment status of applicants is available.
<b>Sexual Orientation</b>	No information is available on the sexual orientation of people likely to be affected by the amendment.		No specific data on the sexual orientation of applicants is available.
<b>Race</b>	No information is available on the race of people likely to be affected by the amendment.		No specific data on the race of applicants is available, however, related data is available that assumptions can be made from.
<b>Religion or Belief</b>	No information is available on the religion or belief of people likely to be affected by the amendment.		No specific data on the religion or beliefs of applicants is available, however, related data is available that

			assumptions can be made from.
<b>Marriage and Civil Partnership</b> (the Scottish Government does not require assessment against this protected characteristic unless the policy or practice relates to work, for example HR policies and practices - refer to Definitions of Protected Characteristics document for details)	This Protected Characteristic is not relevant to this assessment.		This Protected Characteristic is not relevant to this assessment.

### Stage 3: Assessing the impacts and identifying opportunities to promote equality

Having considered the data and evidence you have gathered, this section requires you to consider the potential impacts – negative and positive – that your policy might have on each of the protected characteristics. It is important to remember the duty is also a positive one – that we must explore whether the policy offers the opportunity to promote equality and/or foster good relations.

#### Do you think that the policy impacts on people because of their age?

Age	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation	X			This amendment may benefit older age group categories more than younger age group categories as the majority of people with infected blood are likely to be older people. For many applicants it will vindicate their lived experience of receiving infected blood through the NHS rather than another route, which may have previously not been believed.
Advancing equality of opportunity	X			The amendment proposed will ensure that people will retain the full value of any payment made via the infected blood compensation schemes if subject to charging for residential care and support. This will ensure equality of opportunity with those receiving payments who plan to live in residential care.
Promoting good relations among and between different age groups	X			Although, it is likely to benefit older people more, individuals of all age groups have been able to apply to the infected blood compensation schemes.  Younger family members may feel a stronger connection to their older loved ones who experienced the difficulty of proving that they had received infected blood through the NHS, or if they themselves have grown up living with infected blood through a secondary infection.

#### Do you think that the policy impacts disabled people?

Disability	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation	X			This amendment may benefit disabled people more than non-disabled people as it is more likely that a person using a care home has an impairment or long term health condition. For many applicants it will vindicate their lived experience of the impacts of receiving infected blood, which

				may have made them disabled, and which may have previously not been believed.
Advancing equality of opportunity	X			<p>The amendment proposed will ensure that people will retain the full value of any payment made via the infected blood compensation schemes if subject to charging for residential care and support. This will ensure equality of opportunity with those receiving payments who plan to live in residential care.</p> <p>As families with a disabled person are more likely to experience poverty, ensuring that the financial payment paid to a disabled applicant is disregarded will enable them to retain more of their income. This may be more pertinent if a person is disabled due to the infected blood, and as a result, has been financially disadvantaged in life.</p>
Promoting good relations among and between disabled and non-disabled people	X			Both disabled and non-disabled people have been able to apply to the infected blood compensation schemes.

**Do you think that the policy impacts on men and women in different ways?**

<b>Sex</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination, harassment and victimisation	X			This amendment may benefit men slightly more than women, as it appears that more men than women have applied to the Scottish infected blood compensation scheme.
Advancing equality of opportunity	X			As a larger number of men have applied to the Scottish scheme it may address any social expectations where applicants have felt that men should be the financial provider for their families, when the infection has reduced their capacity to work.
Promoting good relations between men and women	X			Individuals of both sexes are able to apply to the infected blood compensation schemes.

**Do you think that the policy impacts on women because of pregnancy and maternity?**

<b>Pregnancy and</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
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<b>Maternity</b>				
Eliminating unlawful discrimination, harassment and victimisation			X	The evidence is not available to make any analysis.
Advancing equality of opportunity			X	The evidence is not available to make any analysis.
Promoting good relations			X	The evidence is not available to make any analysis.

**Do you think your policy impacts on transsexual people?**

<b>Gender reassignment</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination, harassment and victimisation			X	The evidence is not available to make any analysis.
Advancing equality of opportunity			X	The evidence is not available to make any analysis.
Promoting good relations			X	The evidence is not available to make any analysis.

**Do you think that the policy impacts on people because of their sexual orientation?**

<b>Sexual Orientation</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination, harassment and victimisation			X	The evidence is not available to make any analysis.
Advancing equality of opportunity			X	The evidence is not available to make any analysis.
Promoting good relations			X	The evidence is not available to make any analysis.

**Do you think the policy impacts on people on the grounds of their race?**

<b>Race</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination, harassment and victimisation			X	The evidence is not available to make any analysis.

Advancing equality of opportunity			X	The evidence is not available to make any analysis.
Promoting good race relations			X	The evidence is not available to make any analysis.

**Do you think the policy impacts on people because of their religion or belief?**

<b>Religion or belief</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination, harassment and victimisation			X	The evidence is not available to make any analysis.
Advancing equality of opportunity			X	The evidence is not available to make any analysis.
Promoting good relations			X	The evidence is not available to make any analysis.

**Do you think the policy impacts on people because of their marriage or civil partnership?**

<b>Marriage and Civil Partnership<sup>12</sup></b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination			X	This Protected Characteristic is not relevant to this assessment.

<sup>12</sup> In respect of this protected characteristic, a body subject to the Public Sector Equality Duty (which includes Scottish Government) only needs to comply with the first need of the duty (to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010) and only in relation to work. This is because the parts of the Act covering services and public functions, premises, education etc. do not apply to that protected characteristic. Equality impact assessment within the Scottish Government does not require assessment against the protected characteristic of Marriage and Civil Partnership unless the policy or practice relates to work, for example HR policies and practices.



## Stage 4: Decision making and monitoring

### Identifying and establishing any required mitigating action

Have positive or negative impacts been identified for any of the equality groups?	Yes - positive
Is the policy directly or indirectly discriminatory under the Equality Act 2010 <sup>13</sup> ?	No.
If the policy is indirectly discriminatory, how is it justified under the relevant legislation?	N/A
If not justified, what mitigating action will be undertaken?	N/A

### Describing how Equality Impact analysis has shaped the policy making process

No equality issues have been raised that will require changes to the framing of the legislation.

### Monitoring and Review

Any monitoring and review of the disregard of the Infected Blood Financial Support Payment Schemes in the UK will be undertaken by SG officials in the Improving Standards and Quality Division of the Social Care and National Care Service Development Directorate.

### Stage 5 - Authorisation of EQIA

Please confirm that:

- ◆ This Equality Impact Assessment has informed the development of this policy:

Yes  No

- ◆ Opportunities to promote equality in respect of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation have been considered, i.e.:

- Eliminating unlawful discrimination, harassment, victimisation;

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<sup>13</sup> See EQIA – Setting the Scene for further information on the legislation.

- Removing or minimising any barriers and/or disadvantages;
- Taking steps which assist with promoting equality and meeting people's different needs;
- Encouraging participation (e.g. in public life)
- Fostering good relations, tackling prejudice and promoting understanding.

Yes  No

- ◆ If the Marriage and Civil Partnership protected characteristic applies to this policy, the Equality Impact Assessment has also assessed against the duty to eliminate unlawful discrimination, harassment and victimisation in respect of this protected characteristic:

Yes  No  Not applicable

### **Declaration**

I am satisfied with the equality impact assessment that has been undertaken for The National Assistance (Assessment of Resources) Regulations 1992 and give my authorisation for the results of this assessment to be published on the Scottish Government's website.

Name: Dr ST Cuthbert-Kerr

Position: Deputy Director for Improving Standards and Quality Division, Directorate for Social Care and National Care Service Development

Authorisation date: 11 February 2022



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Any enquiries regarding this publication should be sent to us at

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

ISBN: 978-1-80435-378-3 (web only)

Published by The Scottish Government, April 2022

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA  
PPDAS1074682 (04/22)

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