



Scottish  
Commission  
on Social  
Security

**Scottish Commission on Social Security**

**Scrutiny report on draft regulations:**

**Scottish Child Payment Draft  
Regulations 2020**

**Submitted to Scottish Ministers and the Scottish Parliament on 21  
January 2020.**

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## Summary of recommendations

**Recommendation 1:** The Scottish Government should explore whether there is any deliverable way of ensuring continuity of SCP support to those families who meet the criteria, avoiding loss of entitlement when a child turns six between the launch of the SCP and its extension to older children.

**Recommendation 2:** If and when it can be operationally delivered, the Scottish Government should give claimants a choice of more frequent payments of SCP. The Scottish Government should consider the desirability and feasibility of aligning SCP payments with universal credit in the future, including a choice between monthly or twice-monthly payments.

**Recommendation 3:** In view of the specific poverty reduction objective for the SCP, the Scottish Government should consider a 'double lock' approach to uprating the SCP, so that payments increase annually by the higher of CPI inflation or growth in median income.

**Recommendation 4:** The Scottish Government should continually review its approach to promoting take-up of the SCP with input from stakeholders, claimants and potential claimants. The Scottish Government should work proactively with the DWP with a view to making automatic awards of SCP in the future.

**Recommendation 5:** The Scottish Government should consider the desirability and feasibility of a tapered withdrawal of the SCP, as non-social security income approaches the upper limit for eligibility for the qualifying benefit. This would avoid the risk of a small increase in earnings resulting in a larger loss of benefit income.

**Recommendation 6:** The Scottish Government/Social Security Scotland should publish the clearest possible guidance on when recovery of overpayments will or will not be pursued. The Scottish Government should also make provision for an independent review of any decision to recover an overpayment.

**Recommendation 7:** The Scottish Government should consider amending the Schedule to the draft Regulations, or part 2 of the Act, to clarify whether a redetermination or appeal should take account of changes of circumstances subsequent to the initial application.

**Recommendation 8:** The Scottish Government should extend the 14-day period during which a decision maker can take account of post-application changes of circumstances so as to allow simultaneous applications for universal credit and the SCP.

**Recommendation 9:** In light of the different terms used in the Act and draft Regulations, the Scottish Government should publish guidance explaining that an award of the qualifying reserved benefit is required to confer eligibility to the SCP, or any other top-up under section 79.

**Recommendation 10:** The Scottish Government should clarify the circumstances in which a nil award of a qualifying benefit can confer entitlement to the SCP, ideally in the Regulations but, failing that, in Decision Maker Guidance.

**Recommendation 11:** The Scottish Government should ensure the Regulations and guidance are clear on how competing applications will be resolved, including any right of appeal that the unsuccessful applicant might have, taking into account the fact that one applicant might not be aware of the other application.

**Recommendation 12:** The Scottish Government's proposed review of the SCP should explore issues raised in the Commission's report and actively involve prospective recipients including parents of older children and other relevant stakeholders. If feasible, the review should be undertaken before the extension of SCP to older children.

**Recommendation 13:** When developing new Regulations, the Scottish Government should routinely review whether there is scope to increase consistency and coherence across Regulations, unless there is good reason for differences between them.

**Recommendation 14:** Subject to clarification on detriment to the UK Government for the purposes of the fiscal framework, the Scottish Government should seek to maximise take-up of reserved benefits that confer eligibility to the SCP, through initiatives led by the Scottish Government or, if possible, in partnership with the DWP.

**Recommendation 15:** Issues and learning around the future use of the section 79 top-up power more generally should form part of any future review of the SCP.

## 1. Introduction

The Scottish Commission on Social Security (SCoSS) is pleased to present its report on the Scottish Government's draft Scottish Child Payment (SCP) regulations. The report has been completed in accordance with the Commission's pre-legislative scrutiny function, set out in sections 22 and 97 of the Social Security (Scotland) Act 2018. Section 97 requires us to carry out this role with regard to the Scottish social security principles<sup>1</sup> and any relevant provisions of human rights law.

The Commission welcomes the Scottish Government's proposal for a Scottish Child Payment as a progressive measure with potential to contribute to the realisation of various social security principles, human rights goals and the targets in the Child Poverty (Scotland) Act 2017.

The Scottish Child Payment has potential to:

- Act as an investment in low income households (principle a)
- Contribute to the fulfilment of human rights objectives (principle b)
- Help households with children secure a dignified standard of living (principle d)<sup>2</sup>
- Reduce levels of poverty and depth of poverty among households including children (principle e)
- Improve the Scottish social security system in a way that benefits recipients of assistance, by doing the above (principle g).

To a large extent, the recommendations and observations presented focus on the need to ensure that the potential of the SCP in these areas is fulfilled.

### 1.1 Approach to scrutiny

The Commission's interaction with the Scottish Government on the SCP has been a dynamic, iterative process. The draft Regulations have continued to evolve since the first version was referred to us on 4 October 2019 by the Cabinet Secretary for Social Security and Older People.<sup>3</sup> This report focuses on the draft Regulations subsequently

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<sup>1</sup> Social Security (Scotland) Act 2018 asp 9 s1

<sup>2</sup> <https://www.equalityhumanrights.com/en/publication-download/social-security-systems-based-dignity-and-respect>

<sup>3</sup> <https://www.gov.scot/publications/scottish-commission-on-social-security-letters-scottish-child-payment-2019/>

referred to the Commission by the Cabinet Secretary on 19 December 2019<sup>4</sup> (‘the second draft Regulations’), although we also considered the earlier version (‘the first draft Regulations’). Scrutiny was guided by our draft scrutiny framework.<sup>5</sup> We are pleased that a number of important issues that we raised during the scrutiny process have already been responded to positively by the Scottish Government in advance of the publication of this report.

The Commission feels the proactive approach to early engagement with us, as adopted by the Scottish Government, will result in improved Regulations being referred to the Social Security Committee. It has also allowed us to seek and obtain clarification from officials on numerous points in advance of producing this report, during the scrutiny process, whereas our first report on the Young Carer Grant<sup>6</sup> contained multiple requests for clarification and further information. The Cabinet Secretary has highlighted in her letter to the Committee (see Annex A)<sup>7</sup> some of the ways in which the Regulations have evolved as a direct result of the Commission’s earlier input

While we welcome the opportunity to comment on early drafts, there are challenges associated with scrutinising an evolving set of Regulations, particularly when the policy is being driven at considerable pace. We understand the Scottish Government’s desire to introduce the SCP as quickly (and securely) as possible but this has reduced the amount of time available for our scrutiny of the second draft Regulations. Although section 97(5) of the Act in principle gives the Commission scope to decide how much time it deems ‘appropriate’ for scrutiny, the reality is that the Scottish Government has a legislative timetable with limited flexibility. Our report would, unavoidably, have considerably less potential impact if it were not ready in time to be laid in the Parliament with the Regulations.

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<sup>4</sup><https://www.gov.scot/binaries/content/documents/govscot/publications/correspondence/2019/12/scottish-commission-on-social-security-letters-scottish-child-payment-2019/documents/revise-scottish-child-payment-draft-regulations-2020---december-2019/revise-scottish-child-payment-draft-regulations-2020---december-2019/govscot%3Adocument/Revised%2BScottish%2BChild%2BPayment%2Bdraft%2Bregulations%2B2020%2B-%2BDecember%2B2019.pdf>

<sup>5</sup> <https://www.gov.scot/publications/scottish-commission-on-social-security-draft-scrutiny-framework/>

<sup>6</sup> <https://www.gov.scot/binaries/content/documents/govscot/publications/independent-report/2019/05/young-carer-grants-scotland-draft-regulations-2019-scrutiny-report/documents/carers-assistance-young-carer-grants-scotland-draft-regulations-2019-scrutiny-report/govscot%3Adocument/SCoSS%2527%2Bscrutiny%2Breport%2Bon%2Bdraft%2BYoung%2BCarer%2BGrant%2Bregulations%2BPDF.pdf>

<sup>7</sup>[https://www.parliament.scot/S5\\_Social\\_Security/General%20Documents/20191220\\_CabSecSSOP\\_to\\_Convener\\_revised\\_Scottish\\_Child\\_Payment\\_Regulations.pdf](https://www.parliament.scot/S5_Social_Security/General%20Documents/20191220_CabSecSSOP_to_Convener_revised_Scottish_Child_Payment_Regulations.pdf)

A particular challenge is that timing constraints meant we were unable to seek stakeholders' views on the second draft Regulations. We have also been asked to produce a supplementary report on issues that the Scottish Government was not able to include in the second draft Regulations. These have still to be referred to us but we expect aspects of the application process will feature prominently in this supplementary report.<sup>8</sup> Depending on the extent of additions or changes, some parts of this report may also require amendment.

The Commission is committed to improving its scrutiny processes as our experience grows, and we will discuss with the Scottish Government how lessons learned from consideration of the SCP could be applied to future draft Regulations. This includes the usefulness of our having sight of impact assessments as early as possible. We are encouraged that the Scottish Government is similarly committed to a process of continuous improvement; we have already had productive discussions about a draft protocol that is designed to improve scrutiny processes.

The drafting of our report was informed by briefings provided by Scottish Government officials on SCP policy/versions of the draft regulations at successive board meetings. Officials also provided written responses to our questions and various other relevant information, including details of feedback from stakeholders they had consulted. A timeline of our scrutiny is contained in Annex B.

## **1.2 Consultation, engagement and evidence base**

Social security principle (f) states that “the Scottish social security system is to be designed with the people of Scotland on the basis of evidence.” In the case of the SCP, this principle is reinforced by article 12 of the Convention on the Rights of the Child, which requires that children be given the opportunity to express their views on matters affecting them. Through the experience panels project, the Scottish Government has prioritised the voice of people with lived experience of social security in the development of the new devolved system. The Commission commended this approach, while suggesting some areas for improvement, in its first report.<sup>9</sup>

In the case of the SCP, a strong evidence base exists in terms of the effect of different levels of payment and the choice of different qualifying benefits on child poverty rates, depths of poverty, simplicity, take-up and

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<sup>8</sup> See <https://news.gov.scot/news/170-000-children-eligible-for-new-benefit>

<sup>9</sup> [The Carer's Assistance \(Young Carer Grants\) \(Scotland\) Regulations 2019](#)

work incentives.<sup>10</sup> The Scottish Government also provided the Commission with reports of its discussions with stakeholders. However, the kind of structured engagement with potential recipients that the experience panels embody was absent and there was no formal public consultation. While some user research has been carried out, the report received by the Commission appears to indicate that this focused largely on the application process.

Logically, it seems unlikely that claimants of means-tested benefits with dependent children would object to the headline objective of increasing their incomes by £10 per child per week. However, it is possible that a fuller coproduction process would have produced valuable evidence of prospective claimants' views on some of the issues relating to the operational delivery of the SCP that this report highlights, such as payment frequency. The Scottish Government has prioritised expediting the legislative process for the SCP in order to achieve reductions in child poverty as soon as possible. This is arguably in keeping with social security principle (e),<sup>11</sup> but on this occasion has come at the expense of principle (f)<sup>12</sup>. It is preferable that the voice of the user is heard and in-depth impact assessments undertaken before any new form of social security assistance is introduced, and worth noting that prospective recipients of devolved benefits do not always prioritise speed of delivery<sup>13</sup>. As roll-out proceeds, recipients should be involved in the ongoing search for opportunities for improvement that puts their needs first, in accordance with principle (g). These may include, but need not be limited to, the issues highlighted in this report, particularly in our recommendation below for a review of the SCP. While the involvement of children under six years old would present challenges, caregivers and (in anticipation of the extension of the SCP to children aged six to 16) older children could have useful insights to offer.

In part because the Scottish Government had not undertaken a formal public consultation on the SCP (although it has had extensive discussions with key stakeholders) we decided to hold a stakeholder event on the first draft SCP Regulations to inform our scrutiny. This was held on 18 November. It was attended by 25 participants, including parents with lived experience of the benefits system and other stakeholders with key roles in the social security system, including

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<sup>10</sup> <https://www.gov.scot/publications/analysis-options-income-supplement/>

<sup>11</sup> The Scottish social security system is to contribute to reducing poverty in Scotland.

<sup>12</sup> Opportunities are to be sought to continuously improve the Scottish social security system in ways which (i) put the needs of those who require assistance first, and (ii) advance equality and non-discrimination,

<sup>13</sup> <https://www.gov.scot/publications/social-security-experience-panels-case-transfer-survey-findings/>

Scottish Government officials and MSPs on the Social Security Committee. This event included an open discussion on a synopsis of the first draft Regulations. While timescales and resources prevented us from exploring in depth all aspects of the Scottish Government's approach, SCoSS members and participants found the event to be particularly valuable in allowing us to identify key issues of concern from a wide variety of perspectives, including, importantly, that of lived experience.

We are thankful to all those who helped inform our scrutiny and the drafting of this report. A summary note of our SCP event is provided in Annex C.

A final issue relating to the speed of developments at devolved level is that, as a top-up to a reserved benefit, the introduction of the SCP will be dependent in part on the amendment of UK legislation under s104 of the Scotland Act 1998. This creates an inherent vulnerability in that meeting the envisaged launch date is dependent on action by the UK Government and Parliament, the timing of which will be outside the control of the Scottish Government.

## **2. The rights of the child**

Social security principle (b) highlights that social security is both a human right in itself and a contributor to the realisation of various other rights. While the Commission's remit is to scrutinise draft Regulations, these exist to implement a policy objective and we cannot seriously discuss human rights implications without looking at the policy. Regulations will only advance human rights if the policy intent is to do so. However, we make clear in places that there are political choices to be made that lie outwith our remit.

It is apt that the Commission has been asked to consider draft Regulations that it is bound to conclude will have a positive impact on children's enjoyment of social and economic rights as the Scottish Government moves towards incorporation of the Convention on the Rights of the Child (UNCRC) into domestic law.<sup>14</sup> The UNCRC confers a wide range of civil, political, economic, social and cultural rights upon children. Four of these appear particularly relevant to the SCP.

- **Article 2(1):** Protection from discrimination

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<sup>14</sup> <https://news.gov.scot/news/strengthening-childrens-rights>

- **Article 3(1):** The best interests of the child
- **Article 26:** The right to benefit from social security
- **Article 27:** The right to an adequate standard of living.

We look at the particular implications of these articles in turn below.

## 2.1 Equality and non-discrimination

In accordance with Article 2(1), the SCP will help protect children in low-income families from poverty and as such can be viewed as a positive measure contributing to protection from disadvantage. It is likely that female-headed households would disproportionately benefit from any increase in child-related assistance. Such households have been disproportionately among the ‘losers’ following recent UK-level reforms.<sup>15</sup> The equality impact assessment highlights other household types that are more likely to experience low income and therefore more likely to benefit from the SCP, such as households including a young mother or a disabled child. However, the way in which the SCP is implemented will have an important role to play in ensuring it makes the maximum contribution to tackling inequality while avoiding the creation of new examples of discrimination. Points made below on promoting awareness and take-up will be relevant here.

At present, the clearest example of unequal treatment – and one of the main limitations on the likely positive effects on children’s rights – flowing from the SCP is the fact that the initial roll-out is only to children under six years old. International law allows states to work towards the progressive realisation of social and economic rights, and this kind of incremental progress can be seen in the intention to extend the SCP to older children at a later date. However, the phased approach does create differential treatment between children of different ages.

During the Commission’s engagement with stakeholders, particular concern was expressed about those children who will be eligible for the SCP for a short period, then lose eligibility because their sixth birthday falls before the next phase of roll-out. This could mean a drop in household income at a point when UK-wide research indicates a jump in school-related costs is likely to occur and as food costs increase.<sup>16</sup> The Scottish Government has told us that around 50,000 children may be

<sup>15</sup>[https://www.childrenssociety.org.uk/sites/default/files/tcs/u56/single\\_parents\\_and\\_universal\\_credit\\_singled\\_out\\_final\\_0.pdf](https://www.childrenssociety.org.uk/sites/default/files/tcs/u56/single_parents_and_universal_credit_singled_out_final_0.pdf)

<sup>16</sup> [https://cpag.org.uk/sites/default/files/files/policypost/CostofaChild2019\\_web.pdf](https://cpag.org.uk/sites/default/files/files/policypost/CostofaChild2019_web.pdf); <https://www.jrf.org.uk/report/delivering-income-supplement-scotland>

affected, and that this results from difficulty accessing the administrative data necessary to assess the eligibility of older children. Logically, since the data on existing children will be already held by Social Security Scotland, there might be scope for a transition plan that would aim to ensure that those children who have received the SCP for a period, whose sixth birthday has passed, but whose household still receives a qualifying benefit, and who still meet the criteria, continue to be paid SCP. The responsible adult could be asked, periodically if necessary, to provide evidence of ongoing responsibility for the child in order to continue to receive the SCP, or simply be required to report any subsequent change in circumstances to Social Security Scotland.

**Recommendation 1: The Scottish Government should explore whether there is any deliverable way of ensuring continuity of SCP support to those families who meet the criteria, avoiding loss of entitlement when a child turns six between the launch of the SCP and its extension to older children.**

## **2.2 The best interests of the child**

Article 3(1) requires public authorities to treat the best interests of affected children as a primary consideration – although not necessarily as *the* primary consideration – in any actions affecting children’s welfare. The UK courts have found that social security reforms that reduced the incomes of households including children – the benefit cap and the two-child limit on tax credit and universal credit entitlement – failed to treat the best interests of the child as a primary consideration.<sup>17</sup> By directing additional resources to low-income households including children, it is all but certain that the SCP would be regarded as being in the interests of the 170,000 children who are projected to benefit from its introduction. The Commission notes that the view was expressed in some of the Scottish Government’s stakeholder engagement that the SCP should not be regarded as a measure to mitigate the impact of UK level reforms. In practice, though, there is no doubt that it will go some way towards doing so for households affected by the benefit cap and two-child limit, as well as the recent freeze on working age benefits.

## **2.3 Adequacy and the right to benefit from social security**

It is not necessary to consider the right to benefit from social security (Article 26) in detail here. Any measure that uses social security

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<sup>17</sup> R (on the application of SG) v Secretary of State for Work and Pensions [2015] UKSC 16; SC v Secretary of State for Work and Pensions [2019] EWCA Civ 615

assistance to help households with children enjoy an adequate standard of living (Article 27) can be viewed as a step towards the realisation of the child's right to benefit from social security. What constitutes an adequate standard of living is not clearly defined in international law. It can be argued that, in setting targets for the near-elimination of child poverty according to four definitions<sup>18</sup>, the Scottish Parliament has established its own benchmark for an adequate standard of living for households including children. If the SCP delivers the policy objective of a three percentage point reduction in relative poverty among children following full roll-out, it will contribute to the realisation of this right. It is not currently clear how great a reduction of poverty is likely to flow from the initial introduction of the SCP for children aged under six, but some reduction can be anticipated given that families with young children are disproportionately likely to be poor.<sup>19</sup>

A higher payment of the SCP than the £10 per child per week envisaged by draft Regulation 18 would be likely to lift more children out of poverty and would certainly decrease depth of poverty by a greater extent, making further progress towards the realisation of the right to an adequate standard of living. Here, the Scottish Government must strike a balance between (to use the language of the social security principles) poverty reduction and value for money, or (to use human rights language) the advancement of social rights and the available resources. This can only be a political calculation. As with the choice of qualifying benefits, it is clear that this issue has been considered in some detail in the development of the SCP,<sup>20</sup> but as with other aspects of the payment its adequacy is something that might be explored in the future in partnership with recipients.

However, adequacy of income is not simply a matter of the amount received. For people on a low income, the gap between payments can have a significant impact on ability to successfully budget.<sup>21</sup> This is why universal credit claimants in Scotland have been given the option of

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<sup>18</sup> Relative poverty: equivalised net income less than 60% of median equivalised net household income for the year.

Absolute poverty: net income less than 60% of median equivalised net household income for the financial year beginning with 1 April 2010, adjusted to take account of changes in the value of money since that financial year.

Combined low income and material deprivation: equivalised net income is less than 70% of median equivalised net household income for the year, and children experience material deprivation.

Persistent poverty: relative poverty in three of the last four years.

<sup>19</sup> <https://cpag.org.uk/news-blogs/news-listings/new-face-child-poverty>

<sup>20</sup> Analysis of options for the income supplement: <https://www.gov.scot/publications/analysis-options-income-supplement/>

<sup>21</sup> <https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/welfare-policy-research-surveys-and-consultation-responses/welfare-policy-research/managing-money-on-universal-credit/>

requesting twice-monthly rather than monthly payment. There appears to be a case for offering a choice of more frequent SCP payments than the four-weekly cycle currently envisaged by draft Regulation 18. The Commission understands that this may not be possible at present due to Social Security Scotland's workload pressures, but the matter should be kept under review. Given that SCP entitlement is calculated on a weekly basis, it does not currently make sense to align payment patterns with universal credit, but this could be considered in the future if the decision were taken to move to monthly calculation.

**Recommendation 2: If and when it can be operationally delivered, the Scottish Government should give claimants a choice of more frequent payments of SCP. The Scottish Government should consider the desirability and feasibility of aligning SCP payments with universal credit in the future, including a choice between monthly or twice-monthly payments.**

## 2.4 Uprating

A sustained impact on child poverty and living standards – and therefore to meeting human rights commitments – will depend on the SCP maintaining its real value over time. In accordance with draft Regulation 19 and section 77 of the Act, the SCP is to be uprated in line with inflation. The Commission has previously endorsed the Consumer Price Index (CPI) measure of inflation as the basis for uprating devolved social security assistance, at least in the medium term.<sup>22</sup> However, a case can be made that the SCP is different to other forms of devolved assistance due to the specific policy intent of reducing relative child poverty by three percentage points. Relative poverty rates are calculated by comparing household incomes. This means that if CPI inflation were used to uprate the SCP, but the median income increased faster than the CPI, the impact of the SCP on relative poverty would be reduced. Conversely, if income growth were chosen as the basis for uprating, then in years when prices rose faster than incomes the SCP would have less of an impact on absolute child poverty. The Joseph Rowntree Foundation and Institute for Public Policy Research have argued for the adoption of a 'double lock' approach to uprating, based on the higher of CPI inflation and income growth each year.<sup>23</sup> This would be the most effective way of ensuring the SCP remains an effective means of reducing child poverty.

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<sup>22</sup> <https://www.gov.scot/publications/scottish-commission-on-social-security-uprating-report-2019/>

<sup>23</sup> <https://www.jrf.org.uk/report/making-most-scottish-child-payment>

**Recommendation 3: In view of the specific poverty reduction objective for the SCP, the Scottish Government should consider a ‘double lock’ approach to uprating the SCP, so that payments increase annually by the higher of CPI inflation or growth in median income.**

## **2.5 Take-up**

In order for the SCP to make the maximum possible progress towards human rights, the fulfilment of social security principles and child poverty reduction goals, it goes without saying that the greatest possible number of eligible households need to receive the payment. This applies to any form of social security assistance – hence the Social Security Committee’s ongoing inquiry on take-up<sup>24</sup> – but specific considerations apply to the SCP due to its payment as a top-up to a qualifying UK benefit. Claimants of the qualifying reserved benefits need to know about the SCP and face as few barriers as possible in the application process. The Scottish Government also needs to consider the underlying fact that significant numbers of potentially eligible households do not claim the qualifying benefits that can be ‘topped up’ by the SCP. Any contribution it could make to improving take-up of these benefits would make an even bigger impact on income for these families following the introduction of the SCP.

The Commission welcomes the Scottish Government’s intentions to encourage take-up of the SCP, following on work completed for the previously-published *Benefit take-up strategy*.<sup>25</sup> We were pleased to learn that work on how to minimise barriers to access is underway, including the aspiration to automate payment if this is possible in the future. Initiatives to maximise take-up would benefit from ongoing monitoring in partnership with actual or potential SCP claimants, including the development of inclusive communications, the accessibility of the various application channels envisaged and efforts to eliminate stigma. The crucial contribution of the voluntary and community sectors to raising awareness and driving take-up is recognised by the Scottish Government, backed up with a promise of extra funding, and reflects the view of contributors to the Commission’s stakeholder event.

A recurring theme was the lack of trust in statutory agencies among certain social groups, a point also made in the early publications

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<sup>24</sup> <https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/112818.aspx>

<sup>25</sup> <https://www.gov.scot/publications/social-security-scotland-act-2019-benefit-take-up-strategy-october-2019/>

emerging from the social security experience panels,<sup>26</sup> and the need for trusted individuals and organisations to promote the SCP. While the Scottish Government has referred to the provision of information at hospitals along with birth registration cards, stakeholders felt midwives and health visitors also had a role to play, so that reliance was not solely placed on paper communication. People who assume care of their grandchildren at an age when such professionals are no longer involved were identified by stakeholders as a possible harder-to-reach group that might require more creative and targeted interventions, for example, involving social landlords in communicating information to tenants who may be eligible. Automatic payments to eligible households are clearly desirable. In the event that this is not achievable in the near future, stakeholders suggested that an automatic pop-up during universal credit applications from Scottish addresses – which would require cooperation from DWP – or measures to identify specific households with an unclaimed entitlement should be considered.

**Recommendation 4: The Scottish Government should continually review its approach to promoting take-up of the SCP with input from stakeholders, claimants and potential claimants. The Scottish Government should work proactively with the DWP with a view to making automatic awards of SCP in the future.**

### **3. Payment issues**

Entitlement to the Scottish Child Payment will be calculated on a weekly basis, with payments made four-weekly in arrears, to households in receipt of one of the qualifying reserved benefits. In time, universal credit will become the qualifying benefit for the vast majority of SCP recipients. The need to demonstrate entitlement to universal credit for at least one day per week in order to receive the SCP in respect of that week, means that some aspects of the payment arrangements cannot change. Elsewhere, there may be more flexibility. Recommendations in this section concern issues relating to the payment of the benefit where there might be scope to explore whether alternative arrangements would benefit SCP recipients. These concern the cliff-edge withdrawal of the SCP for people whose incomes exceed the maximum for receipt of the qualifying benefit, the potentially linked issue of overpayments of SCP and the handling of post-application changes of circumstances so as to minimise any delay to commencement of SCP payments.

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<sup>26</sup> <https://www.gov.scot/publications/social-security-experience-panels-benefits-qualitative-research-findings/>

### 3.1 Withdrawal of entitlement as income increases

As currently envisaged, entitlement to the SCP is strictly tied to the qualifying benefit. A payment of £10 per child is made if *any* qualifying benefit is received – the minimum universal credit payment is one penny in a month – and no payment is made if no qualifying benefit is received. This would typically happen if income from other sources is too high. In contrast, the main UK working age benefits are withdrawn more gradually as income increases. Universal credit entitlement reduces at a rate of 63 pence per pound of earned income and one pound per pound of income from other sources. Legacy benefits, like income support or jobseeker’s allowance, are typically reduced on a pound-for-pound basis. Increasing earnings should not leave the claimant worse off, and in the case of universal credit should normally leave the claimant slightly better off. In the case of the Scottish Child Payment, there is a threshold at which a small increase in earnings could result in a substantial loss of income overall, particularly in households with multiple children under six. The Resolution Foundation calculates that a £1 pay rise could result in the loss of £1,600 in SCP over the course of a year.<sup>27</sup> Given the prevalence of recurrent poverty and fluctuating incomes in low-income households, it is likely that more families will dip in and out of entitlement from month to month than experience this extreme scenario.<sup>28</sup> It is therefore welcome that, further to comments from the Commission, draft Regulation 16(5) provides for a 12-week ‘linking period’ when a claim for a qualifying benefit is temporarily interrupted, during which the SCP can be restored without a new application.

Using the top-up power to deliver the SCP offers advantages in terms of speed of delivery and ease of establishing eligibility. Stakeholders have also suggested that payment of the SCP at a fixed rate brings welcome certainty to a part of a family’s income, when earnings and universal credit payments can be volatile.<sup>29</sup> However, there is tension between the core objectives of the SCP and universal credit: reducing child poverty and incentivising paid work respectively. Depending on how in-work conditionality operates in the future, there is potential for some individuals to be pushed into a Catch-22 situation in which their claimant commitment for universal credit requires that they seek to increase earnings or risk financial sanction, while the potential loss of the SCP

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<sup>27</sup> <https://www.resolutionfoundation.org/comment/a-welcome-boost-for-just-about-managing-families-in-scotland/>

<sup>28</sup> <https://www.jrf.org.uk/report/low-pay-no-pay-cycle-understanding-recurrent-poverty>

<sup>29</sup> <https://www.jrf.org.uk/report/making-most-scottish-child-payment>

discourages them from doing so. Whichever course of action is taken, there is the potential for financial loss. Tapered withdrawal of the SCP as earnings approach the maximum for receipt of the qualifying benefit might mitigate this risk or make the cliff edge less stark, but this would come at the cost of greater complexity. The impossibility of paying the SCP in the absence of an entitlement to a qualifying reserved benefit means any taper would probably have to reach zero at the same point as that for the qualifying benefit. Whether such a step is seen as desirable might be influenced in part by how many households are projected to be affected by the potential cliff edge.

**Recommendation 5: The Scottish Government should consider the desirability and feasibility of a tapered withdrawal of the SCP, as non-social security income approaches the upper limit for eligibility for the qualifying benefit. This would avoid the risk of a small increase in earnings resulting in a larger loss of benefit income.**

### **3.2 Managing overpayments**

People move in and out of entitlement to universal credit, for example, because of insecure work, fluctuating hours of paid work or mismatches in payment cycles. As universal credit entitlement ends, so does SCP entitlement. During the Commission's engagement with stakeholders, there was concern about the impact on individuals of repaying overpayments and a call for the Scottish Government to be clear how the legal powers on liability would be exercised. The Commission understands that the Scottish Government is working on processes to avoid unnecessary overpayments. For example, there will be automatic notification the day after universal credit ends. Where overpayments do arise, the individual has no right to a redetermination or appeal about whether they are liable to repay the money – this is a feature of Scottish social security generally. Instead, the Commission has been told that there is to be an informal non-statutory review. It would be in keeping with social security principles to also offer an independent review or appeal stage. It would also be desirable for future decision maker guidance to offer clear examples of circumstances in which an overpayment would be regarded as not being the recipient's fault, so recovery would not be pursued in accordance with section 64 of the Act.

**Recommendation 6: The Scottish Government/Social Security Scotland should publish the clearest possible guidance on when recovery of overpayments will or will not be pursued. The Scottish**

**Government should also make provision for an independent review of any decision to recover an overpayment.**

### **3.3 Changes of circumstances**

Regulations do not specify whether Social Security Scotland, when carrying out a redetermination, or a tribunal considering an appeal should only consider eligibility on the date of the initial application or take into account any subsequent changes of circumstances. People waiting for a redetermination or appeal need to know whether a new application is needed if their situation changes. If a new application were required, this would mean a longer wait before SCP payments could begin.

**Recommendation 7: The Scottish Government should consider amending the Schedule to the draft Regulations, or part 2 of the Act, to clarify whether a redetermination or appeal should take account of changes of circumstances subsequent to the initial application.**

Draft paragraph 1(4) allows the initial decision maker to take into account changes of circumstances in the 14 days following application, but this is shorter than the assessment period for universal credit. Extending this 14-day period so as to allow simultaneous applications for universal credit and the SCP could be advantageous to applicants and advice services.

**Recommendation 8: The Scottish Government should extend the 14-day period during which a decision maker can take account of post-application changes of circumstances so as to allow simultaneous applications for universal credit and the SCP.**

## **4. Areas for clarification**

The Commission considers that there are a number of areas in which the draft Regulations, or differences of wording between the draft Regulations and the Act, create ambiguity regarding the position of an applicant or recipient. There is an opportunity to clarify, although this need not always require amendment of the Regulations.

### **4.1 ‘Entitled’ versus ‘awarded’**

One possible source of confusion emerged during the Commission’s stakeholder event in that the language used in the first draft Regulations

to describe the relationship between the qualifying reserved benefit and the SCP differs from that used in s79 of the Act. Whereas the Act refers to the payment of financial assistance to a person who is **entitled** to a reserved benefit, mirroring the wording of the Scotland Act 1998,<sup>30</sup> the Regulations limit eligibility to someone who has been **awarded** one of the specified benefits. Some stakeholders questioned whether being entitled to a reserved benefit might cover a wider range of people than those who have been awarded the benefit. UK law states that in most circumstances there is no entitlement to benefit in the absence of a claim in the prescribed form, regardless of whether other criteria are met.<sup>31</sup> The wording of the Regulation therefore appears to be consistent with the DWP's interpretation of entitlement. However, the fact that stakeholders saw the rules as a matter for debate points to a need for clear guidance and communication about what is required.

**Recommendation 9: In light of the different terms used in the Act and draft Regulations, the Scottish Government should publish guidance explaining that an award of the qualifying reserved benefit is required to confer eligibility to the SCP, or any other top-up under section 79.**

## **4.2 Nil awards**

Draft Regulation 14 is clear that a person has a live claim for a qualifying benefit even if their award is reduced to zero as a result of a sanction. The draft Regulations do not specify whether someone with a nil award for another reason, but who technically has an open claim for a qualifying benefit, would be treated similarly, or whether a decision to retrospectively reduce an award of tax credits to zero would result in SCP received during the same period being treated as an overpayment. Equally, there is a lack of clarity about the implications for an SCP claim if payment of the qualifying benefit is suspended while the DWP investigates the claimant's continuing entitlement. Either the Regulations or the Decision Maker Guidance should clarify these matters.

**Recommendation 10: The Scottish Government should clarify the circumstances in which a nil award of a qualifying benefit can confer entitlement to the SCP, ideally in the Regulations but, failing that, in Decision Maker Guidance.**

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<sup>30</sup> Scotland Act 1998 c5 sch 5, Head F, Exception 5

<sup>31</sup> Social Security Administration Act 1992 c5 s1(1)

### 4.3 Competing claims including a determination without application

In accordance with draft paragraph 3 of the Schedule, it appears that where two individuals apply for the SCP on behalf of the same child, and both are otherwise equally entitled to receive the payment, the first application will prevail. It is not currently clear who would receive the payment in the event that one person is determined to meet the criteria following an application, while another is determined to meet the criteria *without* application. It can take time to resolve who receives what social security awards following parental separation<sup>32</sup> and the SCP introduces a further layer of complexity.

**Recommendation 11: The Scottish Government should ensure the Regulations and guidance are clear on how competing applications will be resolved, including any right of appeal that the unsuccessful applicant might have, taking into account the fact that one applicant might not be aware of the other application.**

## 5. Areas for Review

In accordance with social security principle (g)<sup>33</sup>, the Scottish Government has already indicated that it plans to undertake a review of the Scottish Child Payment, linked to a wider review of the Tackling Child Poverty Delivery Plan. This section explores issues for consideration in a future review, and the conduct and the timing of the review.

### 5.1 Review of the SCP

The Scottish Government has understandably been eager to launch the SCP as soon as possible. To implement some of the recommendations in this report from the launch of the payment might require a pause in the process that runs contrary to this aspiration. However, it is worth considering at the first opportunity whether the payment in its initial form will be fit for purpose in the long term. The Scottish Government has indicated that it plans to conduct a review following full roll-out to children under 16. The Commission observes that there might be

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<sup>32</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/841036/ssac-ocasional-paper-22-separated-parents-and-the-social-security-system.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/841036/ssac-ocasional-paper-22-separated-parents-and-the-social-security-system.pdf)

<sup>33</sup> Requiring opportunities to be sought to continuously improve the Scottish social security system in ways which put the needs of those who require assistance first, and advance equality and non-discrimination.

important lessons to be learned from early experiences of the SCP *before* eligibility extends to children aged six to 16, even if a full evaluation has to wait until later.

The review should consider key issues raised in the Commission's report, including:

- The impact on child poverty of the initial introduction of the SCP for children under six
- Whether a three percentage point reduction in child poverty is likely to be achieved following extension to older children
- The merits of the chosen approach to uprating
- The merits of the chosen payment pattern
- The long-term appropriateness of the use of the top-up power for the SCP or other ongoing social security payments
- The desirability and feasibility of a tapered withdrawal of the SCP
- Any other opportunities for improvement of the SCP.

This review should actively involve SCP recipients, prospective recipients, including parents of older children, and other relevant stakeholders.

**Recommendation 12: The Scottish Government's proposed review of the SCP should explore issues raised in the Commission's report and actively involve prospective recipients including parents of older children and other relevant stakeholders. If feasible, the review should be undertaken before the extension of SCP to older children.**

## **5.2 Consistency and coherence**

An overarching issue, potentially of relevance to all devolved social security legislation, emerged during the latter stages of the Commission's scrutiny of the SCP Regulations. At this time we were simultaneously commencing scrutiny of the draft Disability Assistance for Children and Young People Regulations. Both sets of draft Regulations contained provisions relating to things like residence rules and circumstances in which a determination can be made without application. Comparable provisions can be expected to appear in future Regulations. In the interests of simplicity – for Social Security Scotland, claimants and the advice sector alike – it would be desirable for these, and the definitions of words, to be the same across forms of social security assistance unless there is a good reason why not. For instance,

some forms of devolved assistance may require consistency with reserved benefits, while others may not. A similar level of cohesion to the decision maker guidance on when recovery of overpayments should be sought would also be useful.

The Scottish Government provided the Commission with the Equality Impact Assessment on the SCP during the scrutiny process, and this was very useful in our consideration of the contribution of the payment to the realisation of certain rights. Other impact assessments were not received, and with hindsight it would be very welcome if these could be provided during scrutiny of future draft Regulations. For example, the Business and Regulatory Impact Assessment might have shed further light on the capacity of the voluntary sector to promote take-up. The Child Rights and Wellbeing Impact Assessment may also have been informative during our consideration of the impact of the draft Regulations on children's rights.

**Recommendation 13: When developing new Regulations, the Scottish Government should routinely review whether there is scope to increase consistency and coherence across Regulations, unless there is good reason for differences between them.**

### 5.3 'No detriment'

Take-up of the SCP by potentially eligible families will ultimately be capped in line with the take-up rate for the qualifying reserved benefits. Take-up of some of these benefits is low, with an estimated one in four eligible households across Great Britain failing to claim pension credit in 2016-17 and a similar level of non-take-up of income based jobseeker's allowance in the previous year.<sup>34</sup> One of the stated aims of universal credit has been to improve take-up rates.<sup>35</sup> Whether this proves to be the case will only become clear as roll-out progresses, but modelling of options for the SCP assumed that take-up for universal credit will at least match the 83% rate for child tax credits.<sup>36</sup> Even this figure represents a significant level of unclaimed entitlement. Based on UK-wide take-up estimates the Commission calculates that 58,000 families in Scotland

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<sup>34</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/757268/income-related-benefits-estimates-of-take-up-2016-17.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/757268/income-related-benefits-estimates-of-take-up-2016-17.pdf);  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/645577/income-related-benefits-estimates-of-take-up-2015-16.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/645577/income-related-benefits-estimates-of-take-up-2015-16.pdf) (JSA has been removed from the take-up stats from 2016-17)

<sup>35</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/48897/universal-credit-full-document.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/48897/universal-credit-full-document.pdf)

<sup>36</sup> <https://www.gov.scot/publications/analysis-options-income-supplement/>

could have missed out on child tax credits during 2017-18,<sup>37</sup> although it would be useful if data could be provided for each country within the UK in the future.

Any Scottish Government take up strategy for the SCP must consider what might be done at devolved level to promote take-up of qualifying reserved benefits. Strictly speaking, the Scottish Ministers' duty to promote take-up under section 3 of the Act only covers devolved forms of assistance, but the use of the top-up power means take-up of the SCP is inseparable from take-up of the qualifying benefits, chiefly universal credit. *Our Charter* requires Social Security Scotland to alert individuals if they appear to have an unclaimed entitlement to a benefit not delivered by Social Security Scotland,<sup>38</sup> which might include reserved benefits. It is not too great a leap to suggest that the Scottish Government ought to encourage the public at large to take up any entitlements they might have. The current reliance on the voluntary sector to lead take-up campaigns may not go far enough.

During the Commission's engagement with the Scottish Government, we detected some caution about active promotion of reserved benefits on the basis that if additional take-up were driven by action at devolved level, this might count as a 'detriment', or extra cost, to the UK Government under the fiscal framework, for which the Scottish Government would be liable. The Commission would be disappointed if this were the case. One of the stated objectives of universal credit is to reduce poverty by improving take-up rates compared to the legacy benefits,<sup>39</sup> so it could equally be argued that any take-up campaign by the Scottish Government would be using devolved resources in pursuit of UK Government policy objectives. In any event, it would be extremely difficult to be sure how many additional universal credit applications were submitted as a result of either the introduction of the SCP or any associated take-up campaign, and therefore what detriment occurred to the UK budget.<sup>40</sup> Some reassurance – as well as a possible model from which to learn – can be found in Northern Ireland, where the annual 'Make the Call' campaign was reported to have resulted in 4,810 people

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<sup>37</sup> Based on presumed take-up rate of 83% and 284,000 families in receipt of CTC in Scotland – [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/821747/CWTC\\_Main\\_commentary\\_2017-2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/821747/CWTC_Main_commentary_2017-2018.pdf)

<sup>38</sup> <https://www.gov.scot/publications/charter/>

<sup>39</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/48897/universal-credit-full-document.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/48897/universal-credit-full-document.pdf)

<sup>40</sup> Eiser, David (2019) The funding of the Scottish Parliament's new social security responsibilities : how will it work and what are the risks? 21 key questions (and answers). Fraser of Allander Economic Commentary, 43 (4) <https://strathprints.strath.ac.uk/70920/>

claiming £21 million of additional benefits in 2016-17 alone.<sup>41</sup> The Commission is not aware that the Treasury has ever sought to deduct money from the Northern Ireland block grant as a result of increased take-up.<sup>42</sup>

Ultimately, clarity on this point can only be achieved by agreement between the two Governments. It may be worth addressing this issue in the context of the proposed review of the fiscal framework in 2021. If it is confirmed that no detriment would apply, the feasibility of amending the duty to promote take-up in section 3 of the Act to cover reserved benefits that confer entitlement to a top-up under section 79 might then be explored.

**Recommendation 14: Subject to clarification on detriment to the UK Government for the purposes of the fiscal framework, the Scottish Government should seek to maximise take-up of reserved benefits that confer eligibility to the SCP, through initiatives led by the Scottish Government or, if possible, in partnership with the DWP.**

#### **5.4 Use of top-up power**

The SCP would be the first form of social security assistance to be created using the power in section 79 of the Act to ‘top up’ benefits paid under UK legislation. Payment of the SCP will be linked to the payment of relevant reserved benefits, meaning that there will unavoidably be various new, and potentially contentious and complex, interactions between the Scottish and the UK social security systems. As a result, there will be wider lessons to be learned about the circumstances in which the use of the top-up power might or might not be desirable, and how it can be used to the best effect.

The top-up power was not the only possible vehicle for the delivery of a new income supplement for families with children. Devolved powers extend to the provision of “assistance for social security purposes [which] are not connected with reserved matters.”<sup>43</sup> This power has potential advantages. The SCP could be paid according to whatever criteria the Scottish Parliament approved and would not be limited to recipients of a reserved benefit. There would be greater scope to do

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<sup>41</sup> <https://www.communities-ni.gov.uk/news/ps21million-uptake-success-people-entitled-benefit-support>

<sup>42</sup> The two situations are not identical since social security is wholly devolved in Northern Ireland, but in common with Scotland policy changes in Northern Ireland that result in additional expenditure must be paid for from devolved resources.

<sup>43</sup> Scotland Act 1998 c5 sch 5, Head F, Exception 10

things like paying the SCP in advance, rather than in arrears, and during periods when universal credit or a legacy benefit was not being received, or to allow a longer period after the termination of the qualifying benefit before SCP eligibility lapses. Each of these was identified as desirable by participants in our stakeholder event and previously highlighted through an independent consultation compiled by the Joseph Rowntree Foundation<sup>44</sup>. Dependence on data from an external organisation (DWP) would be reduced. There are also disadvantages. Primary legislation would be required, delaying introduction of the payment, and Social Security Scotland might have to collect much more information on applicants to assess eligibility (although this risk could be mitigated if a reserved benefit continued to be used in some way to signify entitlement, as with the Best Start Grant).

In adopting the top-up approach, the Scottish Government has concluded that the expediency of doing so outweighs the possible disadvantages. Nonetheless, this decision merits further assessment and scrutiny as the SCP is rolled out. There will be important lessons for both the future extension of the SCP to children aged between six and 16 years and subsequent use of the top-up power. These include the suitability of the top-up power for this purpose, but also whether the power is being used in the most appropriate way – especially given the aim of reducing poverty. For example, in the development of the SCP the Scottish Government observed that the use of child benefit as the qualifying benefit would require higher expenditure to achieve the desired impact on child poverty,<sup>45</sup> but topping up child benefit would also have advantages due to its higher levels of take-up. Consideration might also be given to whether it would be more efficient to have the Department for Work and Pensions administer the SCP top-up alongside the qualifying benefit.

**Recommendation 15: Issues and learning around the future use of the section 79 top-up power more generally should form part of any future review of the SCP.**

## **6. Concluding remarks**

One of the most important comments the Commission received during the scrutiny process came from a parent with lived experience of the social security system, and a prospective recipient of the SCP. Speaking

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<sup>44</sup> <https://www.jrf.org.uk/report/making-most-scottish-child-payment>

<sup>45</sup> Analysis of options for the income supplement.

at our stakeholder event, this individual observed that the success or failure of the SCP will ultimately be judged according to the impact that it has on the day-to-day lives of individual children who benefit. That will be the ultimate test.

As we stated in the introduction, the SCP has clear potential to improve living standards for children who receive it, and in doing so to contribute to the realisation of several of the social security principles. Our key recommendations invite the Scottish Government to do what it can to ensure this potential is fulfilled by eliminating barriers to take-up, maintaining the real value of the SCP and considering whether there is scope to remove cliff-edges at six years old and when household income increases. The introduction of the SCP is particularly significant as it is the first time the power to top up a reserved benefit has been used. This is one of a number of reasons why the aspiration to continuous improvement of the devolved system requires a thorough, open-minded review of the SCP, drawing on the expertise of actual and prospective recipients.

## **Annex A: Extract from [letter](#) from Cabinet Secretary, demonstrating SCoSS-inspired changes to draft regulations**

### “Part 3: Eligibility and assistance to be provided

- Further to comments from SCoSS, removal of exclusion to claim for children in residential care.

### Schedule: Part 4 Determination without application

#### **Determination following backdated award of assistance**

- Further to comments from SCoSS, removal of reference to the backdated award resulting from appeal.
- Further to comments from SCoSS, inclusion of provision relating to backdated award of child responsibility benefit.

#### **Determination following award of Scottish Child Payment in respect of another child**

- Further to comments from SCoSS, we have included provision which means that clients do not have to submit a further application in relation to additional children.

#### **Determination following cessation of award of Scottish Child Payment**

- Further to comments from SCoSS, this new section sets out a 12 week linking period, during which the client would not have to reapply for the Scottish Child Payment if they came off the qualifying benefit or child responsibility benefit and were subsequently reawarded within this time period.”

## **Annex B: Timeline of SCoSS's scrutiny of the Scottish Child Payment Draft Regulations**

- 11 July 2019: SCoSS Board Meeting to receive early briefing on SCP.
- 4 October 2019: First draft regulations referred to SCoSS by Cabinet Secretary for Social Security and Older People
- 22 October 2019: SCoSS Board Meeting to discuss first draft regulations
- 18 November 2019: SCoSS Stakeholder Event to consider first draft regulations
- 18 November 2019: SCoSS Board Meeting to discuss key issues arising from SCP event
- 13 December 2019: SCoSS Board Meeting to consider issues that may appear in future draft regulations and to consider draft report
- 19 December 2019: Second draft regulations referred to SCoSS by Cabinet Secretary
- 14 January 2020: Informal SCoSS meeting to consider draft report

## **Annex C: Summary note of SCP event**

This annexe summarises, under broad headings, the main points made at the SCoSS's event on the initial SCP draft regulations. The event was held on 18 November 2019. Participants were informed in advance that any comments they made would not be attributable. A list of participants is provided below.

### **Qualifying benefits**

- There was a suggestion that SCP should be a new Scottish benefit, not a top up, with its own eligibility criteria. Some considered that the UK Government's approach is to 'nudge people off benefits', so there may be a clash between two systems with a different ethos. SCP should therefore be 'future proofed' so that eligibility does not just rest on receipt of UK benefits
- SCP eligibility is based on receipt of, rather than eligibility for, qualifying benefits. Some considered that, in future, SCP should be provided on the basis of eligibility.
- It was suggested that the current qualifying benefits could be expanded.

### **Paying SCP in arrears**

- Attendees questioned why the SCP is automatically to be paid in arrears, and whether it could instead be paid in advance. Doing so may avoid people having to get an 'advance payment' i.e. a loan.
- People want to choose the frequency of their payments; some saw the decision to pay 4 weekly simply as protecting the workload of Social Security Scotland staff.

### **Continuity of payment**

- The Scottish Government should try to devise a means of ensuring that eligibility does not stop at the child's 6<sup>th</sup> birthday. Not doing so could undermine the policy intention of the draft regulations and result in some people with low incomes not receiving the SCP for up to 2 years.
- Suggestion that where a child turns six and as a result misses out on SCP for a period, provision should be made to pay in arrears when eligibility is extended to older children.

- Some attendees recommended that there should be at least a 3 month guarantee of receipt of SCP when eligibility is established.
- SCP stops the week after the qualifying benefit stops, meaning there are a few days in which people are not in receipt of a benefit. It was suggested that if SCP stopped the following month rather than week, this would provide a measure of continuity while staying within competence.
- Some thought there should be an easy way to re-start SCP after a gap in the qualifying benefit.

### **Overpayment**

- The circumstances in which SCP overpayments should be recovered or not should be clarified, including how the Scottish Government will take account of people's ability to repay.
- The possible interaction between SCP and UK benefits was raised, for example, it may be difficult to know how to advise people who are being overpaid tax credits if this means they are also receiving additional money through SCP.

### **Take up strategy**

- It was suggested that there was a danger of the policy failing to make its mark given the low take up of best start grant.
- In terms of the best ways to focus awareness-raising of SCP, attendees suggested DWP staff (although they may not do it), midwives and other health professionals (it was suggested that there would be more of a relationship of trust with health professionals than with a work coach). They also suggested explicitly targeting households that are eligible but with low take up.
- There is a potential gap in take up where a child is being cared for by grandparents, and a specific concern that focusing on health professionals who deal with babies and children would miss out grandparents
- Automation of payment to households with appropriate-aged children and in receipt of a qualifying reserved benefit, removing the need for a specific application for SCP, was seen as a possible means of maximising take-up.
- There was some confusion about whether receipt of SCP would have an impact on other benefits, and agreement that people need to be

assured there is *not* as any such perception would be a potential deterrent to take-up.

### **Claiming SCP**

- There is a knotty issue about shared care and household relationships: the benefit system doesn't really cope where there are protracted disputes between parents in split households about who should get a benefit.
- The rationale for initially limiting eligibility to children under 6 years old was questioned, with some participants suggesting older children add more to household expenses.
- In general terms, attendees noted anecdotal evidence that some people have voluntarily withdrawn from the benefits system because they hear about difficulties with making claims and therefore just do without money to which they are entitled.

### **Determination following backdated award of assistance**

- Specific concerns were raised about Part 4 11(1)(b)(ii) – it was felt that the term 'following an appeal' was restrictive and may not cover other situations where someone's circumstances have changed. Lots of people might not get to appeal – they might not appeal or ask for redetermination, but wording is so narrow that it could be interpreted as having to be following an appeal

### **Work incentives**

- Concern expressed that SCP claimants who increase their earned income, whether by increasing working hours or by other means, could face a considerable cliff edge in benefit entitlement. One hour's increase in working hours, if it takes the claimant out of eligibility for universal credit, would result in the loss of £10 per child, which might be compounded in some cases by loss of free school meals. A taper was advocated so as to remove or limit any disincentive to increase earnings.

**List of attendees:**

1. Child Poverty Action Group, Jon Shaw, Welfare Rights Worker
2. Citizens Advice Scotland, Rob Gowans, Senior Policy Officer (Social Justice)
3. Enable Scotland, Steven Mcavoy, Welfare Rights adviser
4. FAIR (Family Advice Information Resource), Pauline MacFarlane
5. Hillhead Housing Association, Moira Escreet, Welfare Rights Officer
6. Institute for Public Policy Research (IPPR), Rachel Statham, Economic Analyst
7. Link Housing Association Ltd, Graeme Mitchell, Advice Service Leader
8. MS Society, Keith Robson, Policy, Public affairs and Campaigns (Scotland) Manager
9. National association of welfare rights adviser, Craig Samuel, NAWRA representative Scotland
10. One Parent Family Scotland, Anne Baldock, Financial Inclusion Programme Coordinator
11. Poverty Alliance, Neil Cowan, Policy and Parliamentary Officer
12. Poverty and Inequality Commission, Professor Morag Treanor, Commissioner
13. Poverty Truth Community, David Milligan, Research Development Worker
14. Poverty Truth Community, Brian Scott, Parent and Member of the Poverty Truth Community
15. Scottish Council For Voluntary Organisations (SCVO), Rachel Le Noan, Policy Officer
16. Scottish Fiscal Commission, Lewis Smith, Analyst
17. Scottish Government, Hannah Graham, Child Benefits and State Pension Policy Team Leader
18. Scottish Government, Philip Whyte, Income Supplement and Child Benefits Policy Lead
19. Scottish Parliament Information Centre (SPICe), Camilla Kidner, Researcher
20. Snook service design agency, Anne Dhir, Project Director and Service Designer
21. Social Security Committee, Michelle Ballantyne MSP, Member of the Scottish Parliament for South Scotland
22. Social Security Committee, Alison Johnstone MSP, Member of the Scottish Parliament for the Lothian region.
23. Wise Group, Donna Ward, Community Justice Mentor
24. Wise Group, Terry Shields, Community Justice Mentor
25. Social Security Committee, David Millett, Committee clerking team