



Scottish
Commission
on Social
Security

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Supplementary scrutiny report on draft regulations:

**Scottish Child Payment
Regulations 2020**

Submitted to the Scottish Government and the Scottish
Parliament's Social Security Committee on 25 February 2020.

Summary of recommendations

Recommendation 1: The Scottish Government should develop effective means of promoting both take-up and awareness of how early applications will be treated during the initial application period.

Recommendation 2: The Scottish Government should carry out a review of the effectiveness of the initial application and payment arrangements, whether as part of any wider review of the SCP or separately. This review could then inform decisions on whether to adopt an initial application phase during the roll out of future forms of social security assistance.

Recommendation 3: The Scottish Government should clarify how it will identify post-application changes of circumstances during the initial application period, including whether, or in what circumstances, applicants will be expected to report any changes of circumstances to Social Security Scotland. The Scottish Government should also clarify how it will deal with over- or underpayments that result from errors in this process.

Recommendation 4: The Scottish Government should consider amending the Regulations to include a method of differentiating between multiple SCP applications in respect of the same child during the initial application period, where draft Regulation 3 does not already do so. How competing applications will be treated in this period should be made clear to applicants and advice providers.

Recommendation 5: The Scottish Government should consider setting a date for the automatic repeal of Regulations relating to the transitional provisions.

1. Introduction

The Scottish Commission on Social Security (SCoSS) is pleased to present its supplementary report on additional and revised provisions of the Scottish Government's draft Scottish Child Payment (SCP) Regulations. It complements the Commission's earlier report on the draft SCP Regulations, which the Cabinet Secretary for Social Security and Older People referred to SCoSS in December 2019 and on which we reported in January 2020¹. As noted in that report, the Regulations referred to us in December had a number of provisions missing, and it is on these provisions that the supplementary report focuses.

On 6 February 2020 the Cabinet Secretary formally requested SCoSS's views² on some additional draft SCP Regulations. These cover commencement provisions for the SCP, essentially the arrangements for its initial roll out. They also include updated text on provisions concerning the effective dates of change for determinations without application. Clearly, no doubt from everyone's perspective, it would have been preferable for the full draft SCP Regulations to have been referred to SCoSS in one go. This would have enabled us to produce a single report, focusing on SCP and its roll-out in the round, and ultimately saved time. It would also have allowed us to seek stakeholders' views on the complete draft SCP regulations.

This supplementary 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 principles³ and any relevant provisions of human rights law.

Our scrutiny of the additional provisions was informed by a briefing provided by officials, at our December 2019 board meeting, on the Scottish Government's intended approach to the initial roll out of the SCP. The Scottish Government subsequently published an updated

¹ <https://www.gov.scot/publications/the-scottish-child-payment-regulations-2020-scrutiny-report-on-draft-regulations/>

² <https://www.gov.scot/binaries/content/documents/govscot/publications/correspondence/2019/12/scottish-commission-on-social-security-letters-scottish-child-payment-2019/documents/cabinet-secretary-letter-on-scottish-child-payment-draft-regulations-2020-5-february-2020/cabinet-secretary-letter-on-scottish-child-payment-draft-regulations-2020-5-february-2020/govscot%3Adocument/Cabinet%2BSecretary%2Bletter%2Bon%2BScottish%2BChild%2BPayment%2Bdraft%2Bregulations%2B2020-%2B5%2Bfebruary%2B2020.pdf>

³ Social Security (Scotland) Act 2018 asp 9 s1

policy position paper on the SCP in January 2020, which describes the arrangements for its launch⁴.

2. Arrangements for launch

2.1 Initial application and payment periods

There is evidence that initial teething problems can seriously undermine public confidence in new social security benefits⁵. It is particularly critical that the launch of the Scottish Child Payment goes as smoothly as possible. As the first high-volume, recurrent payment that Social Security Scotland will deliver, perceptions of the introduction of SCP could influence perceptions of the emerging devolved social security system more generally. The Scottish Government has identified the likely rush to apply for the SCP on its launch as a key operational challenge. It therefore proposes special arrangements for handling the first wave of applications, consisting of a three-month 'initial application period' prior to the commencement of the first set of awards, followed by an 'initial payment period'. Regulations specify that any application received during the initial application period will be treated as having been made on the official application date - the day following the end of the initial application period - which will ensure no one loses out financially even if applications take longer than anticipated to process.

This seems a sensible attempt to manage the influx and give Social Security Scotland space to ensure decisions are right first time, and payments are made on time and in the right amount, in line with commitments in 'Our Charter'⁶. It may also improve the agency's ability to "handle your applications ... as quickly as we can"⁷ after the initial application period has ended if the aim of encouraging applications at a more manageable rate is achieved. However, putting transitional arrangements into the Regulations does not in itself eliminate the risk of teething problems. The success or failure of the arrangements will depend on various behavioural, operational and public awareness factors. In particular, it is possible that a high proportion of early

⁴ <https://www.gov.scot/publications/scottish-child-payment-updated-policy-position-paper-january-2020>

⁵ <https://www.nao.org.uk/report/rolling-out-universal-credit/>

⁶ 'A people's service' 7 and 9, https://dgxmvz0tqkndr.cloudfront.net/production/images/general/Our-Charter_1.pdf

⁷ 'Processes that work' 2, https://dgxmvz0tqkndr.cloudfront.net/production/images/general/Our-Charter_1.pdf

applicants will submit their applications close to the end of the three-month window. In this scenario, people who apply late in or shortly after the initial application period could become caught up in exactly the kind of backlog the provision aims to avoid. When people apply is not within the control of Social Security Scotland. However, the Scottish Government has committed to a public awareness campaign as a means of promoting take-up of the SCP⁸ and this could also be used to encourage people to apply early. If there does prove to be a backlog – perhaps even in anticipation of a possible backlog – it would be useful if the Scottish Government and Social Security Scotland could reassure applicants that any delay in processing will not result in their missing out on payments.

The Scottish Government's updated policy position paper states that first payments to successful early applicants will be made in tranches of between one and four weeks following the official application date to enable Social Security Scotland to manage the volume of payments. This may well be necessary, but again there will be a need to maximise applicant awareness of this approach in order to ensure confidence in the system. Risks here include (1) applicants budgeting on the assumption that they will receive a payment sooner than proves to be the case or (2) the perception that those whose payments commence earlier are receiving more money overall. Risk (1) could be reduced if Social Security Scotland informs applicants as early as possible which payment tranche they will fall into.

Recommendation 1: The Scottish Government should develop effective means of promoting both take-up and awareness of how early applications will be treated during the initial application period.

Recommendation 2: The Scottish Government should carry out a review of the effectiveness of the initial application and payment arrangements, whether as part of any wider review of the SCP or separately. This review could then inform decisions on whether to adopt an initial application phase during the roll out of future forms of social security assistance.

⁸ <https://www.gov.scot/publications/scottish-child-payment-updated-policy-position-paper-january-2020/>

2.2 Impact on delivery

From an operational point of view, Social Security Scotland will need to have the necessary staff and systems in place to process a high volume of claims, issue correct decisions and deal with subsequent requests for redetermination, appeals and possible overpayments. Electronic handling of applications clearly has potential to assist with the anticipated high volume, although past experience at both UK and devolved levels shows that ambitious IT projects can bring their own problems⁹. The Commission will not be in a position to assess whether operational and system development is proceeding as necessary ahead of the launch of the SCP, but we may want to consider the matter retrospectively in future reporting on whether the expectations of ‘Our Charter’ are being fulfilled, in accordance with section 22(1)(d) of the Act. For example, well-functioning systems will be necessary if Social Security Scotland is to “handle... applications and enquiries as quickly as we can” (once the initial application period has ended)¹⁰ and ultimately “pay [the SCP] on time and in the right amount.”¹¹

2.3 Changes of circumstance

One potential issue discussed with the Scottish Government during the scrutiny process is the position of applicants whose circumstances change between the point of application (during the initial application period) and their official application date (the day after the initial application period closes). Where incomes fluctuate, children’s care arrangements are fluid or there are issues affecting entitlement to the qualifying reserved benefit, there could be potential for households to move in and out of eligibility for the SCP. Ultimately, it is on the official application date that the applicant must have an entitlement. The Scottish Government has advised the Commission that such changes of circumstance will be picked up through the process. This is to be hoped, but there will be a need for careful monitoring to ensure that moves in and out of eligibility are in fact identified. The Government’s intention appears to be that there should be no need for applicants to report changes of circumstances during the initial application period, but clarification of this – and of how Social Security Scotland will pick up changes – would be welcome. If changes of circumstances in the initial application period are not successfully identified, there is a risk that

⁹ https://www.audit-scotland.gov.uk/uploads/docs/report/2017/briefing_170511_digital_future.pdf

¹⁰ ‘Processes that work’ commitment 2: “recognise that your time is precious and handle your application and enquiries as quickly as we can”.

¹¹ ‘A people’s service’ commitment 9: “pay you on time in the right amount”.

applicants who move out of eligibility will receive overpayments, while those who move into eligibility will have to request redeterminations. This would increase the administrative burden on Social Security Scotland, rather than support the aim of reducing it, while causing applicants inconvenience, stress and possibly budgeting problems.

Recommendation 3: The Scottish Government should clarify how it will identify post-application changes of circumstances during the initial application period, including whether, or in what circumstances, applicants will be expected to report any changes of circumstances to Social Security Scotland. The Scottish Government should also clarify how it will deal with over-or underpayments that result from errors in this process.

2.4 Competing claims

It is possible that competing claims will be made during the initial applications period, at different times, in respect of the same child. When the hierarchy of qualifying benefits – under which low-income benefits confer entitlement to the SCP in preference to child benefit – does not point to which application should prevail, the last-resort method in draft Regulation 3(4)(d) is to give priority to “the individual whose application is to be determined first.” Applications received during the initial period are all due to be determined on the same date, so this method will presumably not offer a solution.

Recommendation 4: The Scottish Government should consider amending the Regulations to include a method of differentiating between multiple SCP applications in respect of the same child during the initial application period, where draft Regulation 3 does not already do so. How competing applications will be treated in this period should be made clear to applicants and advice providers.

3. Technical and drafting issues

3.1 Repeal of transitional provisions

The transitional provisions contain language that, without very careful reading, is confusing due to the similarity of some terms – ‘initial application period’, ‘initial payment period’ and ‘first payment period’. They will become unnecessary once the initial payment period has been

completed. As a tidying-up exercise, the Scottish Government might include a 'sunset clause' so that the provisions are automatically repealed a fixed period after coming into force.

Recommendation 5: The Scottish Government should consider setting a date for the automatic repeal of Regulations relating to the transitional provisions.

4. Concluding comments

The Commission's first report on the Scottish Child Payment observed that its introduction has potential to contribute to the realisation of various objectives within the social security principles and human rights law. As with the Regulations under consideration then, the challenge is to put in place secondary legislation that ensures the policy intent is delivered without creating any unjustified inequalities of treatment or any avoidable administrative obstacles, which could undermine confidence. Some unforeseen teething problems are perhaps inevitable, but the additional provisions considered here at least show that where the Scottish Government has anticipated potential problems, there has been some creative thinking about how to reduce risks to the successful launch of the SCP. However, the additional provisions do not eliminate all risks and, as discussed in this report, may generate some additional ones which it will be necessary to mitigate, if the potential benefits of SCP are to be realised, and be seen to be realised.