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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2021 No.**

**SOCIAL SECURITY**

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

<i>Made</i>	- - - -	<i>2021</i>
<i>Coming into force</i>	- -	<i>2021</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 51, 79 and 95 of the Social Security (Scotland) Act 2018<sup>(1)</sup> and all other powers enabling them to do so.

In accordance with section 96(2) of that Act, a draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament.

In accordance with section 97(2) of that Act, the Scottish Ministers have informed the Scottish Commission on Social Security of their proposals, notified the Scottish Parliament that they have done so and made their proposals publicly available by such means as they consider appropriate.

**Citation and commencement**

These Regulations may be cited as the Suspension of Assistance (Disability Assistance for Children and Young People) (Scottish Child Payment) (Scotland) Regulations 2021 and come into force on 21 November 2021.

**Amendment of the Disability Assistance for Children and Young People (Scotland) Regulations 2021**

—a) The Disability Assistance for Children and Young People (Scotland) Regulations 2021<sup>(2)</sup> are amended in accordance with paragraphs (2) and (3).

In regulation 26 (continuing eligibility) after “(4)” insert “and regulations 26A to 26F (suspension of entitlement)”.

After regulation 26 (continuing eligibility) insert—

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<sup>(1)</sup> 2018 asp 9 (“the 2018 Act”). Section 51 of the 2018 Act was amended by section 12 of the Social Security Administration and Tribunal Membership (Scotland) Act 2020 (asp 18). The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) and these Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

<sup>(2)</sup> S.S.I. 2021/174.

**“Having regard to financial circumstances and circumstances in which assistance may be suspended**

**26A.**—(1) The Scottish Ministers must have regard to an individual’s financial circumstances prior to making a decision to suspend entitlement to one component or both components of Child Disability Payment.

(2) An individual’s payment of Child Disability Payment may be suspended in the circumstances where—

- (a) section 54(1A) of the 2018 Act applies,
- (b) the Scottish Ministers have made arrangements (whether under 85A of the 2018 Act, 85B of the 2018 Act or otherwise) for a person to receive the Child Disability Payment on the individual’s behalf, and the Scottish Ministers consider that it is necessary to suspend the Child Disability Payment—
  - (i) in order to protect the individual from the risk of financial abuse, or
  - (ii) because the person with whom the Scottish Ministers have made arrangements is unable to continue to receive the Child Disability Payment,
- (c) the individual has requested that the Scottish Ministers temporarily stop giving the Child Disability Payment and is yet to request that they resume doing so.

**Right to review suspension**

**26B.**—(1) An individual whose Child Disability Payment has been suspended in accordance with regulation 26A may require the Scottish Ministers to review their decision to suspend that individual’s Child Disability Payment.

(2) The Scottish Ministers must complete a review mentioned in paragraph (1) within [31] days beginning with the day when the individual required them to review their decision.

**Information to be given following suspension**

**26C.**—(1) Having made a decision to suspend an individual’s Child Disability Payment, the Scottish Ministers must inform the individual of—

- (a) their decision to suspend the individual’s Child Disability Payment,
- (b) the reasons for their decision,
- (c) any steps which might be taken by the individual in order for the Scottish Ministers to consider ending the suspension, and
- (d) the individual’s right under regulation 26B to require the Scottish Ministers to review their decision to suspend the individual’s Child Disability Payment.

(2) The Scottish Ministers must fulfil their duty under paragraph (1) in a way that leaves the individual with a record of the information which the individual can show to, or otherwise share with, others.

**Ending a suspension**

**26D.** The Scottish Ministers are to -make a decision to end a suspension where—

- (a) the individual provides the information mentioned in regulation 26A(2)(a) and the Scottish Ministers consider that they do not require to make a determination without application,
- (b) regulation 26A(2)(a) applies and the Scottish Ministers make a determination without application under regulation 30 (consideration of entitlement after specified period), 31 (determination following change of circumstances, etc.), 32 (determination following official error – underpayments), 33 (determination following error – overpayments) or 34 (determination to effect a deduction decision),
- (c) the Scottish Ministers make a determination under section 54(2) of the 2018 Act,

- (d) the circumstances mentioned in regulation 26A(2)(b) or (c) no longer apply, or
- (e) the Scottish Ministers consider it appropriate in the circumstances, including having regard to the financial circumstances of the individual.

### **Effect of suspension ending**

**26E.** When—

- (a) the suspension of an individual's Child Disability Payment ends, and
- (b) under the latest determination of the individual's entitlement to Child Disability Payment the individual would have become entitled to be given Child Disability Payment during the period of the suspension,

the individual is immediately to be given the Child Disability Payment that the individual would have become entitled to be given under the determination during that period.

### **Specified period**

**26F.** The period specified under section 54(1) or (1B) is a period of at least 14 days from the date the request for information was sent to the individual.”

### **Amendment of the Scottish Child Payment Regulations 2020**

—b) The Scottish Child Payment Regulations 2020(3) are amended in accordance with paragraphs (2) to (4).

In regulation 19(1) (ongoing entitlement) insert at the beginning “Subject to regulations 19A to 19F (suspension of entitlement),”.

After regulation 19 insert—

#### **“ Having regard to financial circumstances and circumstances in which assistance may be suspended**

**19A.**—(1) The Scottish Ministers must have regard to an individual's financial circumstances prior to making a decision to suspend entitlement to some or all of a Scottish child payment.

(2) An individual's payment of Scottish child payment may be suspended where—

- (a) paragraph 25(2) applies,
- (b) the Scottish Ministers have made arrangements (whether under section 85A, 85B or otherwise) for a person to receive the Scottish child payment on the individual's behalf, and the Scottish Ministers consider that it is necessary to suspend the Scottish child payment —
  - (i) in order to protect the individual from the risk of financial abuse, or
  - (ii) because the person with whom the Scottish Ministers have made arrangements is unable to continue to receive the Scottish child payment,
- (c) the individual has requested that the Scottish Ministers temporarily stop giving the Scottish child payment and is yet to request that they resume doing so.

#### **Right to review suspension**

**19B.**—(1) An individual whose Scottish child payment has been suspended in accordance with regulation 19A may require the Scottish Ministers to review their decision to suspend that individual's Scottish child payment.

(2) The Scottish Ministers must complete a review mentioned in paragraph (1) within [31] days beginning with the day when the individual required them to review their decision.

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<sup>(3)</sup> S.S.I. 2020/351, amended by S.S.I. 2021/16.

### **Information to be given following suspension**

**19C.**—(1) Having made a decision to suspend an individual’s Scottish child payment, the Scottish Ministers must inform the individual of—

- (a) their decision to suspend the individual’s Scottish child payment,
- (b) the reasons for their decision,
- (c) any steps which might be taken by the individual in order for the Scottish Ministers to consider ending the suspension, and
- (d) the individual’s right under regulation 19B to require the Scottish Ministers to review their decision to suspend the individual’s Scottish child payment.

(2) The Scottish Ministers must fulfil their duty under paragraph (1) in a way that leaves the individual with a record of the information which the individual can show to, or otherwise share with, others.

### **Ending a suspension**

**19D.** The Scottish Ministers are to make a decision to end a suspension where—

- (a) the individual provides the information mentioned in regulation 19A(2)(a) and the Scottish Ministers consider that they do not require to make a determination without application,
- (b) regulation 19A(2)(a) applies and the Scottish Ministers make a determination without application under paragraph 6 (determination following official error resulting in underpayment), 7 (determination following error resulting in overpayment), 8 (determination following backdated award of assistance), 10 (determination following change of circumstances, etc.), 11 (determination following award of a Scottish child payment in respect of another child), 12 (determination following cessation of award of a Scottish child payment) or 13 (determination to effect a deduction decision),
- (c) the Scottish Ministers make a determination under paragraph 25(4) of the schedule, or
- (d) the circumstances mentioned in regulation 19A(2)(b) or (c) no longer apply, or
- (e) the Scottish Ministers consider it appropriate in the circumstances, including having regard to the financial circumstances of the individual.

### **Effect of suspension ending**

**19E.** When—

- (a) the suspension of an individual’s Scottish child payment ends, and
- (b) under the latest determination of the individual’s entitlement to Scottish child payment the individual would have become entitled to be given Scottish child payment during the period of the suspension,

the individual is immediately to be given the Scottish child payment that the individual would have become entitled to be given under the determination during that period.

### **Interpretation: regulations 19A to 19D**

**19F.** In regulations 19A to 19D—

- (a) references to an individual’s Scottish child payment being suspended are to an individual not becoming entitled to be given some or all of the Scottish child payment in respect of a period that the individual otherwise would at the time, or times, prescribed by regulation 19 (ongoing entitlement), and
- (b) “financial abuse” includes—
  - (i) having money or other property stolen,
  - (ii) being defrauded,
  - (iii) being put under pressure in relation to money or other property,

(iv) having money or other property misused.”.

For paragraph 25 of the schedule (obtaining information to make determination) substitute—

**“Obtaining information to make determination**

**25.—**(1) Where—

(a) the Scottish Ministers are either—

(i) determining an individual’s entitlement to a Scottish child payment, or

(ii) considering whether paragraph 6, 7, 8, 10, 11, 12 or 13 requires them to make a determination of an individual’s entitlement to a Scottish child payment (without receiving an application), and

(b) they require further information in order to satisfy themselves about any matter material to the making of the determination of entitlement or (as the case may be) to their consideration of whether they are required to make a determination without receiving an application,

they may request that the individual provide them with the information within a period of at least 14 days.

(2) If—

(a) the Scottish Ministers are either—

(i) determining the individual’s entitlement to a Scottish child payment, or

(ii) considering whether paragraph 6, 7, 8, 10, 11, 12 or 13 requires them to make a determination of an individual’s entitlement to a Scottish child payment (without receiving an application),

(b) the individual fails to provide the requested information within the period specified under sub-paragraph (1), and

(c) it is the first time that the individual has failed to provide the Scottish Ministers with the requested information within a specified period since they began making the determination or considering the matter mentioned in head (a)(ii),

the Scottish Ministers may issue a decision to suspend the Scottish child payment to the individual in accordance with regulations 19A to 19E (suspension of entitlement).

(3) Where the Scottish Ministers issue such a decision, they must, at the same time, request that the individual provide them with the information within a further period of at least 14 days.(4) If the individual fails to provide information requested under sub-paragraph (1) within the period specified under sub-paragraph (1) or (3) the Scottish Ministers may, without further consideration, proceed to make the determination on the basis that the individual does not satisfy the eligibility rules in regulation 18, or (as the case may be) that the individual has no ongoing entitlement under regulation 19.”.

Authorised to sign by the Scottish Ministers

St Andrew’s House,  
Edinburgh  
Date

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These regulations amend the Disability Assistance for Children and Young People (Scotland) Regulations 2021 (the 2021 Regulations) and the Scottish Child Payment Regulations 2020 (the 2020 Regulations).

The 2021 Regulations provide for Child Disability Payment to be made on the basis of ongoing entitlement. Regulation 2 inserts new regulations 26A to 26D to make provision to suspend entitlement to Child Disability Payment in specified circumstances.

The 2020 Regulations provides for Scottish child payment to be made on the basis of ongoing entitlement. Regulation 3 inserts new paragraphs 19A to 19E in the schedule to make provision to suspend entitlement to Scottish child payment in specified circumstances and substitutes a new paragraph 25 (obtaining information to make determination).

No business and regulatory impact assessment has been prepared for these Regulations as no impact upon businesses, charities or voluntary bodies is foreseen.