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12 February 2020

Dear Sally

Thank you for your scrutiny report of 17 December 2020 on the Disability Assistance for Children and Young People (Scotland) Regulations 2021. I would like to extend my sincere thanks to the Commission for considering these Regulations, set against challenging timescales and unprecedented circumstances.

As you will be aware, my plan is to begin accepting new applications for Child Disability Payment (CDP) from summer 2021 in three Scottish local authority areas: Perth and Kinross, Dundee City and the Western Isles. This will help us to ensure that everything we do works for disabled children and young people, and their families. My intention is to begin accepting new applications from clients in the remaining Scottish local authority areas from autumn 2021.

I am also delighted to confirm that we will begin the process of transferring clients who are receiving Disability Living Allowance for Children (DLAC) from DWP to Social Security Scotland from autumn 2021. The Regulations also now make provision to effect the transfer of individuals on DLAC to CDP, which will mark a considerable milestone in the devolution of social security in Scotland.

I am confident that the changes we have made in response to SCoSS' recommendations, both in respect of the most recent scrutiny report and that of 9 March 2020 will clarify our policy intentions. I believe that the changes demonstrate that we are listening and that our decisions are informed by evidence of what is right for clients.

Please find attached a copy of the Scottish Government's response to SCoSS' recommendations both in respect of your previous scrutiny reports of 9 March 2020 (set out in the accompanying annex). I have issued copies to the Convener of the Social Security Committee.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

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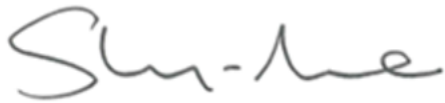
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Thank you once again for your continued co-operation and support. I am grateful to Members for the way in which they have engaged so constructively with officials, and in helping to shape the Regulations.

Yours sincerely



**SHIRLEY-ANNE SOMERVILLE**

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## Response to Scrutiny Report of 9 March 2020

SCoSS Recommendation	Accept/ Partially accept/ Reject	Scottish Government Response
1. The Scottish Government should investigate and risk assess the many different aspects of the interface between devolved and reserved benefits, and the implications of divergence for people receiving assistance, to ensure these are identified before further policy changes are implemented.	Accept	<b>Scottish Government response:</b> The Scottish Government has engaged constructively with DWP in exploring areas of policy divergence to understand the likely risks of any divergence having an impact on passported benefits and entitlements, and is a fundamental aspect of the policy development process for each form of assistance in the devolved system.
2. In drafting Disability Assistance regulations, the Scottish Government should remove the more out-dated language, in keeping with the principles of dignity and respect.	Accept	<p><b>Scottish Government response:</b> We agree that Scottish legislation should reflect our principles of dignity and respect wherever possible, balancing this with a need to ensure consistency with the terms used in relation to Disability Living Allowance, to avoid unintentional divergence, which could have the effect of excluding some individuals from entitlement.</p> <p>Two changes have been made to accommodate this feedback:</p> <ul style="list-style-type: none"> <li>• removal of the use of the word ‘suffering’; and</li> <li>• removal of references to physical restraint.</li> </ul>
3. The Scottish Government should consider what more can be done in the medium term to ensure that human rights and social security principles are embedded in disability assistance policy and practice, including that children themselves are appropriately involved in policy development.	Accept	<b>Scottish Government response:</b> Work is being undertaken by the Scottish Government in relation to the design of the policy evaluation process. This will influence how user engagement and research is undertaken once disability assistance commences to inform future decisions on any policy changes.

SCoSS Recommendation	Accept/ Partially accept/ Reject	Scottish Government Response
<p>4. The Scottish Government should take the necessary action to ensure that its own administrative systems protect terminally ill children, young people and their carers from experiencing the complexity arising from diverging systems in Scotland and the rest of the UK, and work with the DWP to create a seamless interface.</p>	<p>Accept</p>	<p><b>Scottish Government response:</b> Officials are continuing work with UK counterparts to ensure that, as far as possible, the delivery of social security in both the reserved and devolved systems is developed in such a way that ensures that administrative processes and the complexity arising from the policy divergence in Scotland does not negatively impact on clients.</p> <p>There are aspects of this commitment that are not within the control of the Scottish Government including decisions that DWP might take in relation to the Scottish definition of terminal illness and how it fits within the reserved system.</p>
<p>5. To ensure the system is robust, the Scottish Government should make sure that processes for getting a second opinion from another doctor about whether a child or young person meets the definition of ‘terminal illness’ for entitlement under the special rules are clearly explained and accessible in accordance with the expectations in the Charter.</p>	<p>Accept</p>	<p><b>Scottish Government response:</b> Publicly available guidance will set out information about making an application under the Special Rules on Terminal Illness (SRTI). This will include information on how to get a diagnosis and the guidance will be provided in a range of accessible formats in accordance with the Charter, including how a second opinion may be sought on whether someone meets the definition of terminal illness for disability assistance purposes.</p> <p>Our guidance for clinicians will also provide that an individual can ask for a second opinion from a clinician who is able to confirm that a child or young person has a terminal illness for the purposes of entitlement under special rules, and where possible, that request should be met. This guidance will publically available and accessible.</p>
<p>6. Monitoring and evaluation of how the system supports terminally ill people should be joined up across Social Security Scotland, the NHS and the DWP, and take account of the need for quick, effective action to address any problems.</p>	<p>Accept</p>	<p><b>Scottish Government response:</b> The Scottish Government has set up a National Implementation Group to oversee the introduction of the CMO’s Guidance on terminal illness. The Group will be involved in monitoring and evaluating how the new system supports terminally ill individuals including seeking the views of those in the NHS. Similarly we will engage with DWP to understand impacts of the new system in relation to</p>

SCoSS Recommendation	Accept/ Partially accept/ Reject	Scottish Government Response
		<p>reserved social security. We accept there may be a need for quick, effective action to address any problems identified.</p> <p>There are aspects of this commitment that are not fully within the control of the Scottish Government including monitoring and evaluation of how terminally ill people are treated with regard to reserved benefits.</p>
<p>7. The Scottish Government should attend to the technical issues noted in relation to terminal illness regulations:</p> <ul style="list-style-type: none"> <li>• to include a mobility component qualifying period exemption for terminal illness;</li> <li>• to replace in regulations the term ‘claim’ with the term ‘application’;</li> <li>• to clarify in regulations or guidance whether it is intended that there is no requirement for a terminally ill child to be present in the UK for entitlement to CDP;</li> <li>• to clarify in regulations or guidance how the special rules operate when children reach age 16.</li> </ul>	<p>Accept</p>	<p><b>Scottish Government response:</b> In relation to the first bullet point, the relevant provisions have been removed because they were considered superfluous and were covered implicitly in another regulation;</p> <p>In relation to the second bullet, references to ‘claim’ have been amended and now refer correctly to ‘application’ to ensure consistency with the terminology used in the Social Security (Scotland) Act 2018.</p> <p>In relation to the third bullet, we believe that the existing provisions are sufficiently clear on this point but will consider whether to set out further detail in guidance to ensure stakeholders understand how to interpret this regulation; and</p> <p>On the fourth bullet, we believe that the existing provisions are sufficiently clear although further detail will be provided in guidance.</p>
<p>8. Regulations should be framed in such a way as to:</p> <ul style="list-style-type: none"> <li>• provide young people a choice of which benefit to claim from age 16;</li> <li>• prevent a short break in a care home or a stay in a residential school from triggering a need to apply for DAWAP;</li> </ul>	<p>Partially Accept</p>	<p><b>Scottish Government response:</b> In relation to providing a choice of benefits to apply for at age 16, this might involve considerable complexity for clients. It could be difficult to provide meaningful advice about which form of assistance would be more or less advantageous to the client in the absence of an application. We will consider in the longer term the interactions between the age criteria for individual benefits.</p>

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<ul style="list-style-type: none"> <li>protect people from the consequences of applying for the wrong type of assistance, for example, by treating an application for DAWAP as one for CDP and vice versa.</li> </ul>		<p>In relation to the second bullet, as a result of changes made by the Social Security Administration and Tribunal Membership (Scotland) Act 2020, Scottish Ministers now have the power to pay an amount of nil in certain circumstances. This would typically be where someone is resident in a care home or residential educational establishment, and avoids entitlement coming to an end. We have amended the regulations to ensure that a short break in a care home or residential educational establishment does not trigger a need to apply for DAWAP (now Adult Disability Payment).</p> <p>In relation to the third bullet, we will consider the best way of ensuring that individuals apply for the correct type of assistance, including how best to quickly accept an application made for the wrong type as the correct type in a way that is transparent and fair to clients.</p>
<p>9. The Scottish Government should:</p> <ul style="list-style-type: none"> <li>assess the likely behavioural impacts of Short-term Assistance and knock-on effects (including on timeliness and standards of decision making), and ensure that Social Security Scotland and the Scottish Courts and Tribunals Service are prepared with the capacity to handle the estimated number of redeterminations and appeals;</li> <li>monitor the extent to which the appeals system, with the availability of Short-term Assistance, enables people to overcome barriers to challenging decisions, or results in unintended consequences</li> </ul>	Accept	<p><b>Scottish Government response:</b> As part of the commitment to continuous improvement, the Scottish Government will monitor the behavioural impacts of STA and the extent to which availability will allow individuals to overcome barriers to decisions. We will work with Social Security Scotland and the Scottish Courts and Tribunal Services to ensure there is appropriate capacity to handle re-determination and appeal volumes, using feedback gained from the Tribunals Service to inform and improve decision making.</p>

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<ul style="list-style-type: none"> <li>• build in learning from the Tribunals Service, for example, about reasons for overturning decisions which can point to ways to improve decision making at an earlier stage.</li> </ul>		
<p>10. The Scottish Government should attend to the technical issues noted in relation to Short-term Assistance:</p> <ul style="list-style-type: none"> <li>• to consider whether regulations should allow STA to be paid in full when an application is late;</li> <li>• to clarify in regulations what deductions for an overpayment would be made from STA when someone has continued entitlement to CDP;</li> <li>• to redraft regulation 18(2) to achieve the policy intention;</li> <li>• to clarify the regulations with regard to fraud, and to moving from Scotland to another part of the UK.</li> </ul>	Accept	<p><b>Scottish Government response:</b> The Scottish Government fully accepts the recommendations in relation to the technical issues in relation to Short-term Assistance, and the provisions have been revised to ensure that they meet the desired policy intention.</p>
<p>11. The Scottish Government should attend to the technical issues noted in relation to Child Winter Heating Allowance:</p> <ul style="list-style-type: none"> <li>• To amend the draft regulations to clarify that children who get DLA and live outside Scotland cannot access Winter Heating Assistance;</li> <li>• To consider adding a provision allowing access to Winter Heating Assistance when DLA is awarded following a revision, supersession or appeal;</li> </ul>	-	<p><b>Scottish Government response:</b> The provisions relating to Child Winter Heating Assistance have been removed and were provided as part of the Winter Heating Assistance for Children and Young People (Scotland) Regulations 2020.</p> <p>The Scottish Government has publically responded to SCoSS' recommendations on those provisions under separate cover and the response is available on the <a href="#">Scottish Government website</a>.</p>

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SCoSS Recommendation	Accept/ Partially accept/ Reject	Scottish Government Response
<ul style="list-style-type: none"> <li>To consider adding a provision to allow access to Winter Heating Assistance when CDP is awarded to correct an official error;</li> <li>To clarify in regulations whether there is one £200 payment per child or per household.</li> </ul>		
<p>12. The Scottish Government should undertake a thorough review of case law and how it is incorporated into CDP legislation. This review should be in time to inform drafting of the very similar legislation for Disability Assistance for Older People.</p>	Accept	<p><b>Scottish Government response:</b> The Scottish Government has considered leading case law regarding the interpretation of key terms within the law applicable to DLA in developing the regulations, with a view to avoiding unintentional divergence between DLA and CDP. We will use learning from this process in our development of drafting for Pension Age Disability Payment (formerly Disability Assistance for Older People), which shares a considerable degree of overlap with the care component of CDP.</p>
<p>13. The Scottish Government should make clearer the distinction between ‘attention’ and ‘supervision’ in the draft regulations.</p>	Accept	<p><b>Scottish Government response:</b> The regulations have been re-drafted to make the distinction clearer between ‘attention’ and ‘supervision’ for the purposes of the care component of Child Disability Payment.</p>
<p>14. The Scottish Government should amend the draft regulations to ensure that the provisions on residence and presence are clear and align with the policy intention.</p>	Accept	<p><b>Scottish Government response:</b> The provisions relating to temporary absences, and to whether or not the individual has a continuing duty to satisfy residency criteria have been addressed in the regulations to align with the policy intention.</p>
<p>15. The comparison tests of the care and mobility needs of children with those of children of the same age should be consistent across the care and mobility components.</p>	Accept	<p><b>Scottish Government response:</b> This relates to the test that is applied to children aged under 16, and considers whether their needs are substantially in excess of those of a non-disabled child, given that all children will need some form of assistance with either care or mobility needs. The Scottish Government has amended these provisions to ensure greater consistency.</p>
<p>16. The regulation for lower rate mobility component should relate the need for guidance or supervision to a physical or mental impairment.</p>	Accept	<p><b>Scottish Government response:</b> The Social Security (Scotland) Act 2018 requires that entitlement to disability assistance requires that the individual has a physical or mental disability. We have re-drafted this provision to make this clearer.</p>

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SCoSS Recommendation	Accept/ Partially accept/ Reject	Scottish Government Response
17. The Scottish Government should amend the draft regulations to align with the policy intention regarding children who are blind or visually impaired.	Accept	<b>Scottish Government response:</b> This is about the entitlement criteria relating to the mobility component for children who are defined as blind and deaf. The policy intention is to ensure that entitlement rules on this aspect of CDP do not diverge from the existing DLA provisions and prevent some individuals from being entitled to assistance. The previous draft had been based on provisions in the Social Security (Disability Living Allowance) Regulations 1991 and was split across two sub-paragraphs which could have had the effect of unintended divergence from the existing rules. The provision has been revised so that the requirement to be blind and deaf should be read conjunctively.
18. The Scottish Government should review the eligibility criteria and evidence required for children who are blind or visually impaired to ensure they are in line with current best practice in Scotland.	Accept	<b>Scottish Government response:</b> The Scottish Government has revised the definition of visual impairment in line with the definition provided by the Visual Impairment Network for Children and Young People (VINCYP). The VINCYP considered this revised definition of 'severe visual impairment' and how that should sit within the framework of the mobility component for Child Disability Payment.  Decision making guidance will set out how case managers will interpret this definition in relation to children and young people.
19. The reference in the regulations (regulation 7(8)(b)) to damage to property should be removed. In producing guidance for case managers, the Scottish Government should consider wider concerns and policy about the use of physical restraint.	Accept	<b>Scottish Government response:</b> The regulations have been redrafted to remove the reference to damage to property in light of emerging policy around physical restraint.  The Scottish Government will ensure that Positive Behavioural Support plans, the accepted best practice framework within health, social care and educational services relating to interventions to reduce and prevent challenging behaviour, will be referred to in guidance to support case managers in considering the effect of this provision.

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20. The Scottish Government should produce clear guidance on factors that case managers will take into account in deciding eligibility for the highest rate of the mobility component under the ‘severe mental impairment’ test, and consider whether the formulation ‘significantly impaired capacity for judgement’ in the draft regulations adequately reflects the case law.	Accept	<p><b>Scottish Government response:</b> The Scottish Government accepts that the provision as previously drafted departed from the terminology of the Social Security (Disability Living Allowance) Regulations 1991, which could unintentionally create divergence in how the rules apply in relation to children with a significant mental disability.</p> <p>We have re-drafted this provision to preserve consistency with the equivalent DLA provisions..</p>
21. Draft regulation 7(2)(e) should be amended so that the need to use walking aids does not disqualify a child with prosthetic legs.	Accept	<p><b>Scottish Government response:</b> Although the previous drafting of the regulations already set out this effect, we have redrafted the provision to ensure that this is more explicit.</p>
22. The Scottish Government should ensure that the simple processes, passported exemptions and entitlements, and certainty of award currently available to people entering or leaving a care home are not lost to those getting CDP. One route to achieving this is to consider amending the Act to enable entitlement to remain while payment is suspended.	Accept	<p><b>Scottish Government response:</b> The Social Security Administration and Tribunal Membership (Scotland) Act 2020 that allows Scottish Ministers to pay an amount of ‘nil’ when an individual is:</p> <ul style="list-style-type: none"> <li>• resident in a care home,</li> <li>• in a residential educational establishment, or</li> <li>• in legal detention.</li> </ul> <p>The relevant provisions within the regulations have been amended to ensure that entitlement to CDP continues whilst payment may temporarily stop whilst resident in one of those places.</p>
23. The Scottish Government should amend the draft regulations so that they align with the policy intention with regard to applications made while in a care home or residential school.	Accept	<p><b>Scottish Government response:</b> The previous draft of the provision set out the rules relating to entitlement for individuals making an application whilst resident in a care home or residential school. The provision has been revised to make clear that entitlement may begin whilst resident in such a place, but payment may begin at a later date.</p>

SCoSS Recommendation	Accept/ Partially accept/ Reject	Scottish Government Response
<p>24. To help people with Motability vehicles, the Scottish Government should consider options to provide better continuity through the appeals process, including utilising Short-term Assistance, and through transitions between Scottish disability assistance and DLA or PIP.</p>	<p>Accept</p>	<p><b>Scottish Government response:</b> The policy intention is that Short-Term Assistance, where paid to an individual previously in receipt of the higher rate mobility component, continues to enable access to the AVE Scheme. The regulations have been revised to ensure that this is explicit.</p> <p>Engagement with Motability in relation to cross-border transfers is ongoing and the assumption from officials and Motability, as well as DWP, is that individuals’ accessible vehicle leases will not be affected by moving from either the rest of UK to Scotland or vice versa.</p>
<p>25. The Scottish Government should clarify the regulation relating to provision of vehicles, to clearly distinguish between the child with the CDP award and the person who is liable for the vehicle agreement.</p>	<p>Accept</p>	<p><b>Scottish Government response:</b> Regulation 39 sets out that the mobility component of CDP may be transferred to an accredited provider of the Accessible Vehicle and Equipment (AVE) Scheme to meet the individual’s liability under that agreement. The Scottish Government has made a revision to make explicit that this transfer is permitted regardless of whether the individual receiving assistance has entered into the agreement, or another person on their behalf.</p>
<p>26. The Scottish Government should attend to the technical issues noted:</p> <ul style="list-style-type: none"> <li>• To amend regulation 43 to correctly make middle or higher rate care component of CDP the qualifying benefit for carer’s allowance.</li> <li>• To clarify the difference between a temporary absence from Scotland and a move elsewhere in the UK that changes ordinary residence, for example by considering adding to regulations a temporary absence from Scotland provision for absences within the UK.</li> </ul>	<p>Partially accept</p>	<p><b>Scottish Government response:</b> In relation to the first bullet point, the provision has been redrafted to clarify the policy intention as regards to what rate of the care component will act as a qualifying benefit for carer’s allowance.</p> <p>With regards to the second point, we have amended provisions to allow for temporary absences within the UK, and will work with DWP colleagues to understand how feasible it would be to implement such a provision.</p>
<p>27. The Scottish Government should make clear, ideally in the regulations, that the least possible information will be required to start an application.</p>	<p>Accept</p>	<p><b>Scottish Government response:</b> The revised regulations will set out the minimum details (i.e. name and date of birth) that are required to start an application.</p>

SCoSS Recommendation	Accept/ Partially accept/ Reject	Scottish Government Response
		More detail will be set out in guidance as to the requirements for the provision of information to register an application date.
28. The best interests of the child should be the primary consideration in designing processes and guidance about appointing parents and others to act for children and young people. Processes and guidance should be designed to ensure that children can properly exercise their right to express their views.	Accept	<p><b>Scottish Government response:</b> The Social Security Administration and Tribunal Membership (Scotland) Act 2020 allows Scottish Ministers to appoint someone to act on behalf of a child where there is no one:</p> <ul style="list-style-type: none"> <li>• who has parental rights and responsibilities,</li> <li>• lives with and has care of the child, and</li> <li>• is willing and practicably able to act on their behalf.</li> </ul> <p>The processes and guidance that will underpin this are being developed with consideration to the UN Charter on Rights of the Child, ensuring that children’s rights are protected.</p>
29. Social Security Scotland should keep under review the optimum time limit for requesting a redetermination, for example, by monitoring appeals about process decisions.	Accept	<p><b>Scottish Government response:</b> A full policy evaluation will be carried out considering how the delivery of CDP meets both the policy intent and the needs of the individuals it has been designed to support. This evaluation process will consider whether the timescales for redeterminations meet the needs of clients.</p>
30. Social Security Scotland should keep under review the optimum time limit for making a redetermination, and ensure that processes are designed so that nobody drops out of the system simply because the agency has not determined their case in time.	Accept	<p><b>Scottish Government response:</b> A full policy evaluation will be carried out considering how the delivery of CDP meets both the policy intent and the needs of the individuals it has been designed to support. This evaluation process will consider whether the timescales for Social Security Scotland to undertake redeterminations meet the needs of clients.</p>
31. To fully meet Charter expectations, the Scottish Government should ensure that regulations and processes always contain appeal rights, for example, where the Agency disagrees with a parent who believes her child’s needs have increased.	Partially accept	<p><b>Scottish Government response:</b></p> <p>The regulations have been amended to lower the threshold at which a case manager must make a new determination of entitlement when a client reports a change of circumstances (such as an increase or change in the client’s disability).</p>

SCoSS Recommendation	Accept/ Partially accept/ Reject	Scottish Government Response
		This amendment has changed the level at which a change of circumstances must be considered from where it was 'likely' to be the case to where it was 'probably' the case. This offers clients increased protection against a refusal to carry out a change of circumstances.
<p>32. The Scottish Government should consider the technical issues raised about 'determination without application':</p> <ul style="list-style-type: none"> <li>• to clarify that Social Security Scotland has the necessary powers to remove an award where a person is no longer eligible;</li> <li>• to ensure the regulations achieve the policy intention with regard to backdating payments when new facts come to light;</li> <li>• to clarify in regulations that an award can still be corrected if an official error comes to light after an appeal has concluded;</li> <li>• to provide for how changes in circumstances are dealt with while a redetermination or appeal is underway.</li> </ul>	Accept	<p><b>Scottish Government response:</b> The Scottish Government believes that the points raised have been sufficiently addressed in the regulations, with further detail to be set out in guidance.</p>
<p>33. The Scottish Government should improve consistency and coherence across regulations with regard to time limits for re-determinations.</p>	Accept	<p><b>Scottish Government response:</b> The time limits for re-determinations across Wave 1 and Wave 2 forms of assistance are different because the eligibility criteria for Wave 2 forms of assistance are typically more complex, and additional time is also required to gather supporting information about a client's disability from other organisations or people.</p> <p>Across each form of disability assistance, the Scottish Government aims to ensure consistency in the time limits for re-determinations.</p>

<b>SCoSS Recommendation</b>	<b>Accept/ Partially accept/ Reject</b>	<b>Scottish Government Response</b>
34. In view of their complexity, length and speed of development, the Scottish Government should continue to review the draft regulations before and after CDP is launched to identify and rectify any immediate issues arising and to ensure a robust basis for developing future Disability Assistance regulations.	Accept	<b>Scottish Government response:</b> As part of the commitment to continuous improvement and the ‘test and learn’ approach, once delivery of CDP commences, consideration will be given as to whether further revisions to the regulations are required to best meet the needs of clients.

Response to Scrutiny Report of 17 December 2020

SCoSS Recommendation	Accept/ Partially accept/ Reject	Scottish Government Response
<p>1. In evaluating the delivery of CDP, the Scottish Government should assess whether the timescales to apply for re-determinations meet applicants' needs. Social Security Scotland should gather and publish information on reasons and outcomes where re-determination requests are received outside the time limit.</p>	<p>Accept</p>	<p><b>Scottish Government response:</b> The Scottish Government will keep the time limit for applying for and carrying out re-determinations under review as part of our monitoring of the effectiveness of delivery of CDP and whether these continue to meet the needs of applicants. Social Security Scotland will gather and publish information on reasons and outcomes where re-determination requests are received outside of the time limits.</p>
<p>2. The Scottish Government should amend the definition of 'severe visual impairment' in regulation 7(4) to remove the mobilising requirement. Further, it should provide detailed guidance on the VINCYP assessment and the types of supporting information that will evidence severe visual impairment.</p>	<p>Accept</p>	<p><b>Scottish Government response:</b> Having considered stakeholders' views carefully and through further engagement with the Visual Impairment Network for Children and Young People, we have removed the mobilising requirement from regulation 7(4) as recommended by SCoSS.</p> <p>We will set out in guidance for Social Security Scotland case managers what types of information will support an application from someone with a severe visual disability, and this guidance will be published before we begin accepting applications for CDP. We will also update our application forms to reflect the revised provision.</p>
<p>3. As part of its take-up strategy for CDP working with organisations and services, the Scottish Government should work with VINCYP networks to promote take-up among children with visual impairments.</p>	<p>Accept</p>	<p><b>Scottish Government response:</b> The Scottish Government's second Benefit Take-up Strategy will be published by 21 October 2021.</p> <p>In fulfilment of the duty to prepare a series of take-up strategies, we will consult with persons who work with or represent individuals living in households whose income is adversely affected, or whose expenditure is increased, because a member of the household has one or more protected characteristics within the meaning of section 4 of the Equality Act 2010. As part of this consultation, we will undertake to engage widely</p>

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		<p>with stakeholders in relation to a number of disabilities, which will include children with visual disabilities.</p> <p>In addition to the Benefit Take-up Strategy, the Scottish Government have also provided funding to support third sector organisations to engage with seldom heard groups, and work has continued to ensure projects remain viable despite the impact of Covid-19.</p>
<p>4. The Scottish Government should amend the regulations to clarify the policy intention that interventions in a positive behavioural support plan are evidence but having such a plan is not required for a child to be accepted as having ‘severe behavioural difficulties’.</p>	<p>Accept</p>	<p><b>Scottish Government response:</b> We recognise that it is likely that a small number of children may not yet have such a plan (for example, if they are awaiting a referral to paediatric services).</p> <p>To clarify the policy intention, we have revised the provision to describe a need for ‘an intervention to prevent injury to the child’ when considering whether a child has severe behavioural difficulties.</p> <p>Guidance for Social Security Scotland case managers will be drafted to reflect that a positive behavioural support plan is one of a range of factors to consider in whether the child meets the criteria, but is not essential or required.</p>
<p>5. The Scottish Government should ensure that regulation 7(3) is explicit about which routes to qualifying for higher rate mobility are affected by a child’s ability to walk using an artificial limb or artificial aid.</p>	<p>Accept</p>	<p><b>Scottish Government response:</b> We have redrafted the provision to make it explicit that consideration of the ability to walk using an artificial limb or aid will be applicable only to considering whether a child is unable, or virtually unable to walk.</p>
<p>6. The Scottish Government should ensure that the policy intention relating to a child’s ability to walk out of doors is clear in regulations and guidance.</p>	<p>Accept</p>	<p><b>Scottish Government response:</b> We have clarified within the regulations that the test considers the child or young person’s ability to walk outdoors. Guidance for Social Security Scotland case managers will also make this explicit.</p>
<p>7. The Scottish Government should amend regulation 14 to allow a nil amount to be paid when entitlement</p>	<p>Accept</p>	<p><b>Scottish Government response:</b> We have revised the provision to allow a nil amount to be paid when entitlement begins whilst a child or young</p>

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SCoSS Recommendation	Accept/ Partially accept/ Reject	Scottish Government Response
begins while a child is resident in a care home or residential educational establishment.		person is resident in a care home or residential educational establishment.
8. The Scottish Government should clarify whether the policy intention is not to pay CDP care component arrears if a child or young person is released from legal detention without charge or sentenced to a non-custodial prison sentence.	Accept	<p><b>Scottish Government response:</b> The provision of care by the Scottish Prison Service concurrently with payment of CDP could potentially lead to duplication of public funds. There could also be a risk of treating children and young people in legal custody more favourably than those in care homes or alternative accommodation, where payment of the care component stops after 28 days.</p> <p>Children and young people who are released without charge, or sentenced to a non-custodial sentence will not be paid any arrears of the care component in respect of a period of more than 28 days in legal custody.</p>
<p>9. The Scottish Government should:</p> <ul style="list-style-type: none"> <li>• clarify in the regulations the circumstances in which an advance application can be made, with a view to a broad flexibility;</li> <li>• clarify in the regulations that the qualifying period for the lower rate mobility component can be served before a child's 5<sup>th</sup> birthday;</li> <li>• attend to the technical issues noted in relation to start dates for entitlement.</li> </ul>	Accept	<p><b>Scottish Government response:</b> The provisions on advance applications have been clarified to allow an application to be made up to 13 weeks in advance of satisfying any of the conditions of entitlement.</p> <p>The provisions relating to the lower rate of the mobility component have been amended to reflect the policy intention that the qualifying period can be served in advance of a child's fifth birthday.</p> <p>As regards the start dates of entitlement, the regulations have been amended so that Scottish Ministers will treat the application as being made on the first day that the individual will meet the qualifying period in the future.</p>
10. The Scottish Government should amend the regulations so that the general rule is that a child has a right to receive their correct entitlement fully backdated when an official error has caused an underpayment.	Accept	<p><b>Scottish Government response:</b> In re-drafting the previous regulations, we had sought to align provisions on managing underpayments where official error has occurred with other forms of devolved assistance. Whilst the drafting broadly achieved this, it would mean that if Social Security Scotland has made an error resulting in an underpayment, the arrears a</p>

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SCoSS Recommendation	Accept/ Partially accept/ Reject	Scottish Government Response
		<p>client would be entitled to would be limited to the date that Social Security Scotland became aware of the error.</p> <p>This would be inconsistent with both the Charter and our public position of making the right payment, at the right time. The provisions have been amended so that Social Security Scotland can correct an underpayment and ensure that the client receives full arrears.</p>
<p>11. The Scottish Government should:</p> <ul style="list-style-type: none"> <li>ensure that the policy intention on flexible payment methods for young people is fully realised in the regulations;</li> <li>ensure that regulation 30(6) achieves the policy intention of paying the equivalent of 8 more weeks CDP if a child dies.</li> </ul>	<p>Accept</p>	<p><b>Scottish Government response:</b> The policy intention is that where an individual who is entitled to CDP reaches age 16, the individual is entitled to have CDP paid directly to them. This is consistent with the principle that the young person has reached the age of majority, and CDP should only be paid to someone else in the event that the young person is legally deemed to lack capacity to manage their own affairs and therefore require an appointee.</p> <p>We will bring forward separate legislation to allow for the temporary suspension of entitlement where a parent, guardian or appointee fails to provide us with a young person’s payment details in advance of their 16th birthday (or that the young person may need an appointee after age 16). In the meantime, we have removed the provision that would otherwise cause entitlement to come to an end in such a situation.</p> <p>We will continue to prioritise activity to ensure that CDP can be paid directly to a young person upon reaching age 16, or to make an appointment if one is required.</p> <p>SCoSS have highlighted that the drafting of reg. 30(6) linked the level of this payment to the amount a client was actually paid in the week ending on death, rather than the weekly rate that is applicable. The provision has been amended in order to achieve the policy intention.</p>

SCoSS Recommendation	Accept/ Partially accept/ Reject	Scottish Government Response
<p>12. The Scottish Government should consider how to amend the past presence test for CDP to ensure that it complies with human rights legislation.</p>	<p>Accept</p>	<p><b>Scottish Government response:</b> The ‘past presence test’ applied by DWP to individuals making applications for disability requires individuals over the age of 3 to have been present in Great Britain (GB) for 104 of the past 156 weeks; essentially, 2 of the last 3 years in aggregate. This test modified the previous requirement to be present in GB for 26 weeks of the past 52 weeks.</p> <p>The Upper Tribunal has recently ruled that DWP’s approach to the past presence is unlawful. This has implications for how the past presence test for CDP would apply and we have amended the past presence test for CDP to align with the previous past presence test (i.e. 26 weeks out of the past 52 must have been spent in the Common Travel Area).</p> <p>For very young children (under the age of 6 months), we will require a child to have been resident in the Common Travel Area for a period of 13 weeks, or periods in aggregate of 13 weeks.</p>

**Observations**

<p>1. Generally, where there is a significant change in policy as regulations are developed, it would be good practice to consider any consequential impacts and update equality and other impact assessments as needed. To ensure any potential impacts are identified regarding children with visual impairments, the Scottish Government should monitor how many children qualify for CDP under the new definition of severe visual impairment.</p>	<p>The impact assessments provided to SCoSS were noted as being in draft format and provided to enhance SCoSS’ scrutiny of the regulations. We have undertaken a review of the impact assessments to ensure that all changes are fully captured and reflected. The Scottish Government will record and monitor the conditions or disabilities resulting in awards of CDP.</p>
<p>2. We note that further adjustments to drafting of regulations are needed to ensure that the route to qualifying for higher rate mobility for a child with a ‘severe mental impairment’ who also has</p>	<p>The policy intention is that an individual may qualify for the higher rate mobility component if they have a ‘severe mental impairment’ and</p>

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<p>'severe behavioural difficulties' is set out in regulations in a manner consistent with the policy intention of it being a single test where both parts must be satisfied.</p>	<p>experience 'severe behavioural difficulties'. The provision has been redrafted to ensure that the test should be read conjunctively.</p>
<p>3. We note that further adjustments to drafting of the regulation for lower rate mobility component may be needed to explicitly relate the need for guidance or supervision to a physical or mental impairment. Should the Scottish Government consider the draft regulations to be sufficient as they are, it should explain how they are consistent with the Social Security (Scotland) Act.</p>	<p>The Social Security (Scotland) Act 2018 provides that regulations may make an individual's eligibility depend on the nature and extent of the individual's impairment.</p> <p>The regulations have been amended to make this link explicit.</p>
<p>4. We would welcome further information on how the Scottish Government plans to ensure that young people do not experience a gap in payments as they transition from CDP to an adult disability benefit.</p>	<p>The Scottish Government will set out plans in due course regarding the transition for CDP to ADP. Our overriding priority is to ensure that individuals who are entitled to CDP should experience a smooth transition to ADP upon reaching age 18.</p>