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Dear Dr Witcher,

I understand that my officials have been in contact regarding the need for Scottish Ministers to make further changes to the Disability Assistance for Children and Young People (Scotland) Regulations 2021; the draft Disability Assistance for Working Age People (Scotland) Regulations 2022 and the Scottish Child Payment Regulations 2020. I'm very grateful for the continued willingness that you and Commission Members have shown to work with us in this complex and challenging landscape.

These further changes are set out in the accompanying draft instrument and are to be made using the regulation making power in section 31(2) of the Social Security Scotland Act 2018 ("the 2018 Act").

Pre-emptive applications

Under current and draft provisions respectively, an individual who is in receipt of one of a number of specified reserved benefits or forms of assistance will be eligible for Child Disability Payment or Adult Disability Payment if they can demonstrate that within 13 weeks of the Scottish Ministers receiving the application, their entitlement to that other benefit will end. Such applications can be made under regulation 24(2) of the Disability Assistance for Children and Young People (Scotland) Regulations 2021, currently in force, and regulation 35(2) of the draft Disability Assistance for Working Age People (Scotland) Regulations 2022 (due to be laid in draft in December 2021).

However, serious concerns have been raised about the operation of these provisions, as they present a significant risk to delivery, undermine the policy intent relating to case transfer, and could result in a poor client journey and risk payment continuity. The full implications of regulation 24(2) were not appreciated when the Child Disability Payment pilot began and so action has been taken to ensure applications made by clients in receipt of Disability Living Allowance for Children are being appropriately handled. The recommended long term solution is to amend the regulations so as clients are not able to make an application for Child or Adult Disability Payment, while in receipt of the comparable reserved benefit.

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It is important to note that removing this provision will not prevent clients in receipt of either Disability Living Allowance for Children or Personal Independence Payment from requesting their entitlement is brought to an end with the Department for Work and Pensions in order to make an application for disability assistance, if they wish to do so. Rather, the amendment will ensure that Social Security Scotland will not facilitate and, therefore, potentially be seen to encourage, a process which undermines the case transfer process and represents a very poor client experience.

Habitual residence test

As part of your initial discussions with policy officials relating to the Social Security (Residence Requirements) (Afghanistan) (Scotland) Regulations 2021 you highlighted an area for further investigation in relation to clients with refugee status. As a result of these discussions we are proposing that these draft amendments also update both the Disability Assistance for Children and Young People (Scotland) Regulations 2021; and the draft Disability Assistance for Working Age People (Scotland) Regulations 2022 to make clear that refugees do not require to be habitually resident in order to establish eligibility. As refugees are already exempt from the past presence test, requiring 25 of the last 52 weeks presence in the Common Travel Area, this amendment will have the effect of making clear that we intend to support refugees from the day their refugee status is awarded.

As the Disability Assistance for Working Age People (Scotland) Regulations 2022 are still in draft, we are proposing that the required changes can be made before they are laid in Parliament in December 2021.

Re-determination timer start after First-tier Tribunal decide request validly made

As part of the work undertaken on the Child Disability Payment Amendment regulations it was identified that provision was needed in all regulations to confirm when the timer runs for re-determination in the situation where the First-tier Tribunal decide that a request for re-determination has been made in such form as Scottish Ministers require.

We are proposing that these draft amendments update the Scottish Child Payment Regulations 2020 to make explicitly clear that the timer for re-determination begins on the day that it is decided by the First-tier Tribunal that the request for a re-determination has been made in such form as Scottish Ministers require.

We are seeking to make the required amendments to the Disability Assistance for Children and Young People (Scotland) Regulations 2021 in *The Disability Assistance for Children and Young People (Scotland) Regulations 2021 and the Scottish Child Payment Regulations 2020 (Miscellaneous Amendments) Regulations 2022*.

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I recognise SCoSS' vital role in scrutinising our proposals thus far and I thank you for your continued co-operation and support. It continues to be key in ensuring that we achieve our aim of delivering a social security system in Scotland that meets our values of treating people with dignity, fairness and respect.

Yours sincerely,



BEN MACPHERSON

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