



Scottish  
Commission  
on Social  
Security

## **Scottish Commission on Social Security**

**Scrutiny report on draft regulations:**

**Best Start Foods, Best Start Grants and  
Scottish Child Payment (Miscellaneous  
Amendments) Regulations 2022**

**Submitted to the Scottish Government and the Scottish  
Parliament's Social Security Committee on 22 June 2022.**

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## Summary of recommendations and observations

**Recommendation 1:** To promote take up of Scottish Child Payment as it rolls out to under 16s, Social Security Scotland should continue to be proactive in writing directly to families on Universal Credit and Tax Credits inviting them to apply.

**Recommendation 2:** The Scottish Government is invited to explain how it will make sure that the processes and staffing levels will be in place when Scottish Child Payment opens to children under 16 to manage the anticipated spike in claims in a way that puts the needs of people first – such as clear communications, simple application process and enough staff to process manual payments accurately and on time.

**Recommendation 3:** Guided by *Our Charter* expectations on improving take up and making processes simple, the Scottish Government should develop a simple, effective way to re-start Scottish Child Payment so that families with a short gap in entitlement between their child turning 6 and the roll out for under 16s do not miss out on entitlement.

**Recommendation 4:** The Scottish Government's review of Scottish Child Payment must take into account the lived experience of people, and any disproportionate impact there may be on particular groups such as lone parents or disabled people, in relation to how they understand and manage the loss of income from Scottish Child Payment when entitlement ends as they move into work or increase hours or earnings and thus lose entitlement to Universal Credit.

**Recommendation 5:** Following the promise in *Our Charter* to help improve people's wellbeing and financial circumstances, Social Security Scotland should proactively refer people to money, debt and welfare rights advice when Scottish Child Payment stops due to changes in household income.

**Recommendation 6:** The Scottish Government should consider what else it can do to actively help families transition from Scottish Child Payment to an Education Maintenance Allowance at age 16.

**Recommendation 7:** In line with the Social Security Charter expectation that assistance will be paid 'on time in the right amount', once Social Security Scotland is able to assess the time reasonably needed to make quality decisions, it should communicate this to people who are making

Scottish Child Payment claims and, in individual cases where exceeded, explain the reasons why.

**Recommendation 8:** The Scottish Government reconsiders the proposal to restrict the 12 week re-start period and instead finds an alternative way to make any necessary checks to fill gaps in up-to-date information while undertaking a determination without application, so that families who might struggle with the application process do not miss out on entitlement.

**Recommendation 9:** In its review of Scottish Child Payment, the Scottish Government should look for ways to make eligibility rules fairer by offering the same amount of support to all families whose child dies.

**Recommendation 10:** The Scottish Government should maintain an urgent focus on take up of Scottish Child Payment to ensure that families also get the early learning and school age payments they are entitled to, realising the potential of auto-awards to increase take up.

**Recommendation 11:** The Scottish Government should explain how the regulations give Social Security Scotland the discretion to defer or waive making an auto award of Best Start Grant where the claimant requests this or where circumstances suggest that another person may be eligible to apply during the application window.

**Recommendation 12:** The Scottish Government should ensure that the regulation to pay the higher level of pregnancy and baby payment matches the policy intention with regard to refugees.

**Recommendation 13:** The Scottish Government should widen the definition of 'domestic abuse' to include abusive behaviour by the individual's ex-partner.

**Observation 1:** SCoSS and stakeholders warmly welcome the support for children and families through Scottish Child Payment, making good on *Our Charter's* promise to deliver a better future by using social security powers to contribute to tackling poverty.

**Observation 2:** There may be cross-border agreements such as special guardianship arrangements, which could apply to a child who moves from England to live with a kinship carer in Scotland. The Scottish Government could explore whether these should be added to

the definition of 'kinship care' to ensure no kinship carer misses out on entitlement to the five Scottish family payments.

# 1. Introduction

The Scottish Commission on Social Security (SCoSS) is pleased to present its report on the draft Best Start Foods, Best Start Grants and Scottish Child Payment (Miscellaneous Amendments) Regulations 2022 (the 'draft Regulations') to the Scottish Government and Scottish Parliament. This report has been completed in accordance with SCoSS's pre-legislative scrutiny function, conferred by sections 22(1)(a) and 97 of the Social Security (Scotland) Act 2018.

Scottish Child Payment is a top-up payment to families. It is being introduced in two phases. Phase One began paying families with children under age 6 from February 2021.<sup>1</sup> Phase Two is due to start paying families with children under 16 from November 2022. Scottish Child Payment is central to achieving the Scottish Government's child poverty reduction targets. The draft Regulations provide for the roll out of Scottish Child Payment to children under 16 years old. They also amend regulations to:

- increase the rate of Scottish Child Payment to £25 a week for all eligible children;
- introduce a lump sum payment of up to 12 weeks of Scottish Child Payment on the death of a child;
- remove the time limit for Social Security Scotland to start paying Scottish Child Payment four weeks after the application;
- allow older children to be added to a family's existing Scottish Child Payment award without the need for a new application;
- shorten the length of time allowed after the end of entitlement to Scottish Child Payment for it to re-start without the need for a new application;
- amend a reference in the COVID-related relaxation of deadlines in Scottish Child Payment;
- clarify a provision about the start date for Scottish Child Payment entitlement;
- allow Social Security Scotland to award Best Start Grant early learning payment and school age payment automatically to people who get Scottish Child Payment, removing the need to apply;

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<sup>1</sup> [The Scottish Child Payment Regulations 2020: scrutiny report on draft regulations](#), [The Scottish Child Payment Regulations 2020: supplementary scrutiny report on draft regulations](#), [Scottish Child Payment Regulations: response to report](#) and [Scottish Child Payment Regulations: response to recommendations](#).

- pay the higher rate of the Pregnancy and Baby Payment where an individual is responsible for more than one child to provide more support to refugees, kinship carers and people who have to leave home because of domestic abuse;
- remove the exclusion from Best Start Grant for a child who is looked after and accommodated by a local authority;
- widen and align the definition of ‘kinship carer’ in Best Start Grant, Best Start Foods and Scottish Child Payment;
- update references to having a child through a surrogacy arrangement in Best Start Grant, Best Start Foods and Scottish Child Payment.

## **2. Approach to Scrutiny**

The draft Regulations were referred to SCoSS on 22 March 2022<sup>2</sup> and an amended version referred on 12 April 2022 which added, for example, the increase of Scottish Child Payment to £25. This report refers to the amended version.<sup>3</sup> Our timeline for scrutiny is in Annex 1 at the end of this report.

SCoSS scrutinises regulations made under powers contained in the Social Security (Scotland) Act 2018. Best Start Foods is not a type of social security included in the Act and is not within SCoSS’s remit. However, the two amendments to Best Start Foods duplicate those in Best Start Grants and Scottish Child Payment. Our comments on these apply equally to Best Starts Foods.

We asked external stakeholders (see Annex 2) for their views on the draft Regulations. We also welcomed the views of stakeholders’ clients in their lived experience with Best Start Grant and Scottish Child Payment. SCoSS would like to thank all those who took the time to give their views. Contributions have been most insightful and have informed our report.

We are also pleased to have had the opportunity to learn more about the delivery perspective during our regular meetings with Social Security Scotland.

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<sup>2</sup> [Minister for Social Security and Local Government \(www.gov.scot\)](http://www.gov.scot)

<sup>3</sup> [SI/SR Template \(www.gov.scot\)](http://www.gov.scot)

In preparing the report, SCoSS has had regard to, and comments on human rights, the social security principles and *Our Charter*.

### **3. Scottish Child Payment**

Scottish Child Payment was developed as a new Scottish benefit with the aim of making a substantial contribution towards reducing child poverty. It is designed as a top-up to benefits such as Universal Credit and Tax Credits. The Scottish Government is implementing it in two phases. Phase One introduced payments of £10 a week for children under age 6 from February 2021. Phase Two is introduced by these draft Regulations and will make payments of £25 a week for children aged 6 up to age 16 by the end of 2022.

#### **3.1 Impact on child poverty targets**

This report has been developed with regard to the Scottish social security principles and any relevant provisions of human rights law. In our report on the Scottish Child Payment Draft Regulations 2020<sup>4</sup> we noted the potential of Scottish Child Payment to align with several of the principles, most notably principle e to “contribute to reducing poverty in Scotland”, in particular for families with children.

The Child Poverty (Scotland) Act 2017<sup>5</sup> has four targets to reduce child poverty in Scotland, one of which relates to ‘relative poverty’ (low income relative to the rest of society). Table 1 below from the Family Resources Survey<sup>6</sup> demonstrates relative poverty in the years 1994 to 2020 with projections against interim targets set for 2023/24 and 2030/33.

Relative poverty is described as the proportion of children in households with income below 60% of the median UK income.

In 1994/95 relative poverty was noted at 30% according to this measure with the trajectory of the graph dropping to a low in the years surrounding 2010 before rising again for a projected increase to 26% in 2019/20.

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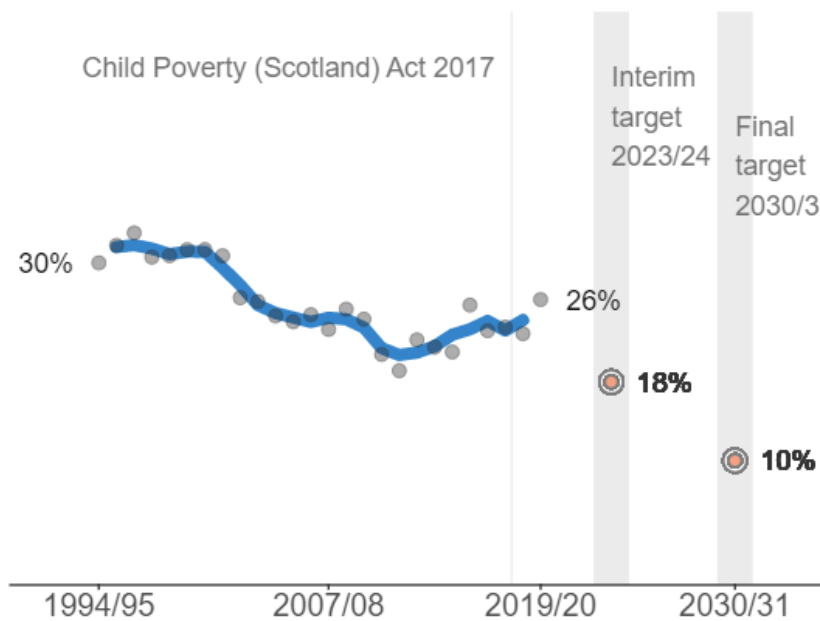
<sup>4</sup> [The Scottish Child Payment Regulations 2020: scrutiny report on draft regulations - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/scottish-child-payment-regulations-2020/scrutiny-report-on-draft-regulations-2020/pages/12.aspx)

<sup>5</sup> [Child Poverty \(Scotland\) Act 2017 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2017/11/section/1)

<sup>6</sup> [Family Resources Survey: financial year 2019 to 2020 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/family-resources-survey-2019-to-2020)



The interim target 2023/24 depicted in the graph is a reduction of poverty to 18% mid-way through the 2020s with a final target of poverty reduction to 10% by 2030/33.



Source: Family Resources Survey

**Table 1** Relative poverty – proportion of children in households with income below 60% of the median (middle) UK income

Children have rights to benefit from social security (as set out in Article 26 of the UNCRC<sup>7</sup>) and to an adequate standard of living (as set out in Article 27 of the UNCRC). SCoSS has previously noted that what constitutes an adequate standard of living is not defined in law. We suggested that in setting targets for the near elimination of child poverty, the Scottish Parliament has in effect established its own benchmark for an adequate standard of living for households including children. Delivering on the policy objective of a reduction in relative poverty through social security will contribute to the realisation of children’s rights to benefit from social security and to an adequate standard of living.

Two measures in these draft Regulations mark important milestones towards achieving these goals – the roll out to children under 16, and the further increase to £25 a week per child. The Scottish Government

<sup>7</sup> [Convention on the Rights of the Child | OHCHR](#)

estimates that together with a range of other measures, this will lift 60 000 children out of poverty by 2023/24 compared to 2017 and reduce relative child poverty by 9 percentage points, meeting the interim target.<sup>8</sup> Estimates could be significantly affected by hard to predict consequences of the cost of living crisis.

Scottish Child Payment has already doubled in value this year, from £10 to £20 a week. In the future, setting and increasing the rate of Scottish Child Payment to deliver a reduction in relative poverty does not necessarily reflect an improvement in overall living standards. For example, with the cost of living going up rapidly (9% in the 12 months to April 2022 when most UK benefits were updated by just 3.1%), families can buy less with the same amount of benefit income. Setting an in-year increase in the rate of Scottish Child Payment from £20 in April 2022 to £25 by the end of 2022 helps to address this decline in buying power. Obviously it is open to the Scottish Government to continue to use Scottish Child Payment as a primary vehicle to reduce child poverty by further stepped increases. As a minimum, Scottish Child Payment must by law be updated each year at least by inflation according to the Consumer Price Index.

Clearly Scottish Child Payment can only help lift children out of poverty if their families claim the support they are entitled to. Take up of Scottish Child Payment is estimated to be 77% for under 6s.<sup>9</sup> The Scottish Fiscal Commission estimate this will go up to 82% by 2022/23, and for take up for children age 6 to 15 to start at 75%, rising to 77% over the first two years.<sup>10</sup> While this could be seen as a reasonable start for a new benefit, it leaves a lot of families missing out on money. SCoSS has previously recommended moving towards making automatic awards of Scottish Child Payment, something that could become feasible once legacy benefits are replaced by Universal Credit. In response, the Scottish Government said it planned to review feasibility as part of its wider review of SCP when it is fully rolled out.<sup>11</sup> Automatic entitlement would be most likely to increase take up. For now, take up work with

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<sup>8</sup> [Tackling child poverty delivery plan 2022-2026 - annex 4: cumulative impact assessment - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/tackling-child-poverty-delivery-plan-2022-2026-annex-4-cumulative-impact-assessment/pages/9/)

<sup>9</sup> Rate estimated at June 2021, <https://www.gov.scot/publications/social-security-scotland-act-2018-benefit-take-up-strategy-october-2021/pages/9/>

<sup>10</sup> [Scotland's Economic and Fiscal Forecasts, Scottish Fiscal Commission, December 2021, Supplementary Table S5.6](#)

<sup>11</sup> [Scottish Child Payment Regulations: response to report - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/scottish-child-payment-regulations-response-to-report/pages/9/)

stakeholders and most importantly, directly with eligible families should be as comprehensive as possible.

**Observation 1: SCoSS and stakeholders warmly welcome the support for children and families through Scottish Child Payment, making good on *Our Charter's* promise to deliver a better future by using social security powers to contribute to tackling poverty.<sup>12</sup>**

**Recommendation 1: To promote take up of Scottish Child Payment as it rolls out to under 16s, Social Security Scotland should continue to be proactive in writing directly to families on Universal Credit and Tax Credits inviting them to apply.**

### **3.2 Delivery of the roll out to under 16s**

During Phase One of the introduction of Scottish Child Payment, Social Security Scotland opened the application process for households with children under the age of six in November 2020. This gave people three months to submit applications before benefit payments were due to start in February 2021. This extended initial application window was designed to allow Social Security Scotland to better plan for and manage the anticipated peak in applications at the start of the benefit launch.

Following an internal review of the launch, the Scottish Government has indicated to Audit Scotland<sup>13</sup> that this approach will not be repeated for the extension of Scottish Child Payment for children under 16. Instead, from day one, all households will be able to apply.

To manage the spike in applications, automated 'straight-through processing' will be used. The system will process new applications from submission to payment without manual intervention from staff provided all eligibility checks are passed. However, the Scottish Government has noted that this will not be possible where further evidence is required from clients or where clients are applying to add a child to an existing award. These applications will go into a work queue to be processed by Social Security Scotland staff. People will receive notifications to update them on the progress of their application. SCoSS is reassured that

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<sup>12</sup> As per principle (e) of the Social Security Charter [Our-Charter\\_1.pdf \(socialsecurity.gov.scot\)](#)

<sup>13</sup> [Social security: Progress on implementing the devolved benefits | Audit Scotland \(audit-scotland.gov.uk\)](#)

straight-through processing will not result in a claim being refused without being reviewed by a claims handler.

This new approach is a welcome example of the system learning and improving. Social security principles and *Our Charter* place a high priority on continuous improvement in ways which put the needs of people first.<sup>14</sup> Delivering improvement through technology is likely to make the system more efficient and better value for money – social security principle (h).

It is likely that the spike in applications will be high as an estimated 200,000 more children are expected to qualify.<sup>15</sup> Alongside the roll out of Adult Disability Payment, this will lead to a significant delivery challenge placed on Social Security Scotland. Success will be heavily dependent on the new IT processes working well from the start and on accurate estimates of how many claims will need manual processing. The overall message from Audit Scotland is that the Scottish Government is preparing well for the roll out.<sup>16</sup> However, estimating how much manual processing is needed is difficult making it challenging for Social Security Scotland to plan how many staff it needs with certainty.

To improve delivery systems in a way that puts the needs of people first, processes and modelling assumptions of how many staff are needed should give the highest priority to what is best for claimants – for example that communications are clear, the application process is simple and that there are enough staff to process manual payments accurately and on time.

**Recommendation 2: The Scottish Government is invited to explain how it will make sure that the processes and staffing levels will be in place when Scottish Child Payment opens to children under 16 to manage the anticipated spike in claims in a way that puts the needs of people first – such as clear communications, simple application process and enough staff to process manual payments accurately and on time.**

### **3.3 Children turning six before the roll out to under 16s**

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<sup>14</sup> [Social Security \(Scotland\) Act 2018 section 1\(g\); Our Charter, A Better Future, para 14](#)

<sup>15</sup> [Social security: Progress on implementing the devolved benefits, Audit Scotland](#), May 2022, para 40

<sup>16</sup> [Social security: Progress on implementing the devolved benefits, Audit Scotland](#), May 2022, paras 33 and 38

Stakeholders told SCoSS that, despite initial teething problems, families have mostly found the application process simple. However, some thought that families with children turning six before the roll out (who would lose their Scottish Child Payment award) were not clear about whether they would have to reapply. Regulations do require an application for a child over six if there is no existing award no matter how short the gap in entitlement. For example, a family could have their Scottish Child Payment award stopped for a child whose sixth birthday is in October 2022 and have to reapply In November despite Social Security Scotland already holding all the necessary information. This could prove confusing for families.

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“There is worry about what currently happens when a child turns 6. Families are not aware of the planned roll out, current bridging payments are not understood, and some parents think that the two-child limit applies to Scottish Child Payment so aren’t clear/don’t claim full entitlement.”

Save the Children

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There is a case to include a temporary provision in regulations to help bridge this gap. Regulations could be introduced to allow Social Security Scotland to make a ‘determination without application’ for a family with a short gap in entitlement since their child turned six. Alternatively, Social Security Scotland could identify through its own records families in this situation, and offer a simplified tick box application, to ensure nobody misses out on entitlement.

**Recommendation 3: Guided by *Our Charter* expectations on improving take up and making processes simple, the Scottish Government should develop a simple, effective way to re-start Scottish Child Payment so that families with a short gap in entitlement between their child turning 6 and the roll out for under 16s do not miss out on entitlement.**

### **3.4 Income and awards – the cliff edge**

Universal Credit, a qualifying benefit for Scottish Child Payment, is designed to taper away as family income goes up. Each additional Pound earned reduces Universal Credit by 55 pence. In contrast, Scottish Child Payment which is a top-up to Universal Credit, is an all or nothing benefit. Scottish Child Payment is paid in full until the universal

Credit award reaches zero, at which point there is an immediate loss of £25 a week per child.

A small increase in income e.g. through a pay increase or working more hours may not be enough to compensate for the loss of Universal Credit and Scottish Child Payment. Benefit entitlement stopping can also destabilise rent and utilities payment arrangements, which are often paid directly from benefit, and exacerbate debt problems.

The 'cliff edge' created when a small rise in earnings leads to a drop in overall income is more significant as Scottish Child Payment rates go up and form a larger part of family income. The loss is greater for larger families, and as the Poverty and Inequality Commission pointed out, could have a particular impact on women.

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If this cliff edge is not addressed it could make it difficult for parents to take advantage of opportunities to increase their hours and progress in work. This may have a particular impact on women who are more likely to be the lower earner in a couple household and are already more likely to take time out of the labour market to look after children. More time out of the labour market is likely to result in lower wages and pensions and increase women's risk of poverty.

Poverty and Inequality Commission

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One stakeholder told SCoSS that many parents they asked spoke of the cliff edge experienced when returning to work. A stable income is important to families on low incomes managing on tight budgets. If families believe they could be worse off, they may not risk working more hours or seeking better paid work.

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Families whose income rises above the income thresholds feel that they are still struggling when they are no longer eligible for Universal Credit and the Scottish Child Payment. Many families are managing a very precarious income and cycling in and out of eligibility/poverty.

Save the Children

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In our January 2020 report SCoSS recommended that the Scottish Government should consider the desirability and feasibility of a tapered withdrawal of the Scottish Child Payment in order to avoid the risk of a small increase in earnings resulting in a larger loss of benefit income.

The Scottish Government's subsequent response partially accepted our recommendation, noting that:

*“There is a case for tapering the Scottish Child Payment as it would allow the payment to be withdrawn gradually and avoid situations when a household does not gain from increasing hours or earnings. However, the advantages of tapering should be viewed in context of the size of payment and the ease of designing and implementing a taper. There are advantages in having simple and easily understandable rules to give households certainty about their entitlement, which may be more difficult to achieve with some of the more complex means-testing approaches.”*

SCoSS agrees that certainty about entitlement is very important and acknowledges that redesigning Scottish Child Payment as a completely means-tested, standalone benefit is likely to be too complex and would probably reduce take up. Stakeholders all expressed concern to SCoSS about the impact of the cliff edge on families, however, views differ about how to address it. Options from stakeholders include: tapering Scottish Child Payment, adding a run on of Scottish Child Payment and making payments universal like those of child benefit.

The Scottish Government has indicated that a review<sup>17</sup> of Scottish Child Payment will be undertaken once the benefit is fully rolled out. This allows for the design of Scottish Child Payment to reflect the lived experiences of clients in the coming years. We would encourage the Scottish Government to ensure that the causes and consequences of the cliff edge are investigated and better understood to inform this review.

Some options for change would require new primary legislation to provide for Scottish Child Payment as a type of assistance in its own right rather than a top of benefit as it is now. This is not a short-term solution. In the meantime, Social Security Scotland could offer practical help by proactively referring families to advice when benefit ends.

**Recommendation 4: The Scottish Government's review of Scottish Child Payment must take into account the lived experience of people, and any disproportionate impact there may be on particular groups such as lone parents or disabled people, in relation to how they understand and manage the loss of income from Scottish**

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<sup>17</sup> [Social security: Progress on implementing the devolved benefits \(audit-scotland.gov.uk\)](https://www.audit-scotland.gov.uk/social-security-progress-on-implementing-the-devolved-benefits)

**Child Payment when entitlement ends as they move into work or increase hours or earnings and thus lose entitlement to Universal Credit.**

**Recommendation 5: Following the promise in *Our Charter* to help improve people’s wellbeing and financial circumstances, Social Security Scotland should proactively refer people to money, debt and welfare rights advice when Scottish Child Payment stops due to changes in household income.**

### **3.5 After age 16**

Scottish Child Payment ends at a child’s 16<sup>th</sup> birthday. At this age, young people are usually still at school or college and financially dependent on their family. Families on low incomes will likely find it hard to budget for the £25 a week drop in income when Scottish Child Payment stops.

As an incentive and support to stay on at school or college, from school leaving age, young people from low-income households can apply for a £30 a week Education Maintenance Allowance (EMA). EMA could become a follow-on payment to Scottish Child Payment and an important addition to household income.

We encourage the Scottish Government in its plan to ensure relevant signposting to the EMA, and in their work with schools to ensure that EMA is promoted alongside Scottish Child Payment. Additionally, end of award letters should include information and encouragement to claim EMA.

The number of young people receiving an EMA has been declining and take up, at least amongst college students, has been low.<sup>18</sup> Pressure on families to meet basic needs could divert use of the EMA away from its purpose as a support for young people to overcome financial barriers to participating and succeeding in education. SCoSS notes that the £30 value of the EMA has not increased since its introduction in 2004. A review of the EMA, its value, its use and its alignment as a potential follow-on payment to Scottish Child Payment may be timely.

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<sup>18</sup> [Education maintenance allowances: 2017 to 2018](#)



## **Recommendation 6: The Scottish Government should consider what else it can do to actively help families transition from Scottish Child Payment to an Education Maintenance Allowance at age 16.**

### **3.6 Time from application to first payment**

The draft regulations remove the existing four week deadline for making the first payment of Scottish Child Payment after receiving an application. Scottish Child Payment will be brought into line with the approach taken for other Scottish social security benefits which have no time limit in regulations and instead allow Social Security Scotland to notify the date of first payment in the decision letter.

The Scottish Government has noted that while the original policy intent was to “*signal the intention that we wanted to ensure new claims were processed quickly*” in practice this has resulted in some individuals being paid “*out with the scope of the regulations.*”<sup>19</sup>

Stakeholders noted the additional pressures for families and children while waiting for benefit payment.

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“Payment of arrears in a lump sum is no substitute for prompt payment of what is due. Families trying to manage on a low income tend to incur debts, the repayment of which can leave them with less than they need to live on for lengthy periods of time.”

Inclusion Scotland

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Stakeholders recognise the challenges that Social Security Scotland is tackling as it deals with higher claim volumes but are clear that the focus must continue to be providing families with much needed money as quickly as possible. Under the *Our Charter* obligations, Social Security Scotland is obliged to “pay you on time in the right amount”.<sup>20</sup> With no deadline in law or guidance SCoSS is concerned that it will be difficult or impossible to determine whether this commitment is being fulfilled.

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<sup>19</sup> Answer received by SCoSS from Scottish Government officials 1<sup>st</sup> June 2022.

<sup>20</sup> [Our Charter, A People's Service](#)

Applications are not currently processed or paid within the four week deadline. 68% of applications take longer than four weeks to process. The average processing time showed a steady improvement in the early months of Scottish Child Payment, reaching rates of 8 to 10 working days – well within the legal time limit. However, this has not been sustained, with claims taking on average 31 working days to process in March 2022.<sup>21</sup>

More use of technology, as planned for the roll out to under 16s, to automate processing should lead to faster payments for the majority of applications. However, where there is manual intervention, the Scottish Government has indicated that this creates problems in practice in adhering to the 4 week payment deadline. Clearly everyone should be paid on time including people whose awards are processed manually.

The Scottish Government should investigate why some awards take longer to decide in order to inform improvement of manual processes. Social Security Scotland should make sure that they are communicating clearly to people what they can expect and how their application is progressing.

**Recommendation 7: In line with the Social Security Charter expectation that assistance will be paid ‘on time in the right amount’, once Social Security Scotland is able to assess the time reasonably needed to make quality decisions, it should communicate this to people who are making Scottish Child Payment claims and, in individual cases where exceeded, explain the reasons why.**

### **3.7 12 week re-start period**

Scottish Child Payment regulations provide for a 12 week period after entitlement ends for it to re-start without the need for an application. Currently, the period begins on the date that the determination is made to end entitlement. Because it can take some time for a change in circumstances, such as the loss of a qualifying benefit, to be reported or acted upon, in fact the re-start period could be considerably longer than 12 weeks from the date on which entitlement to Scottish Child Payment

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<sup>21</sup> [Scottish Child Payment: high level statistics on applications to 30 June 2021](#)

ended. Draft Regulations ensure that the 12 week period begins on the earlier date on which the change of circumstances occurred.

The policy intention is “to ensure proper checks are carried out ... after a long period of ineligibility”.<sup>22</sup> The Scottish Government has explained that Social Security Scotland continues to have access to the data on eligibility for 12 weeks after a qualifying benefit ends, allowing an accurate up-to-date determination. Beyond this, they believe there to be a greater risk of fraud and error. In practice, the majority of cases involve fluctuations in Universal Credit over a month, so this change will not change automatic reinstatement of Scottish Child Payment for those families.

SCoSS is not convinced that changing this provision is necessary. The ‘determination without application’ process is a useful way of Social Security Scotland taking the initiative. Requiring an application may mean some families who might struggle to manage the application process missing out on entitlement. It would presumably be possible to make additional checks where there are gaps in up-to-date information. We are aware that this is likely to mean more manual processing at least in the short term.

**Recommendation 8: The Scottish Government reconsiders the proposal to restrict the 12 week re-start period and instead finds an alternative way to make any necessary checks to fill gaps in up-to-date information while undertaking a determination without application, so that families who might struggle with the application process do not miss out on entitlement.**

### **3.8 Payment on the death of a child**

The draft Regulations introduce a lump-sum payment of Scottish Child Payment when a child dies. The intention is to provide a more compassionate and dignified system in the event of the death of a child. Both Child Benefit and Universal Credit have a run on of 8 weeks and two monthly assessment periods respectively when a child dies.

The Scottish Child Payment lump sum is equivalent to up to 12 weeks payment. The amount is arrived at by doubling the award given in the 12 weeks before the death. Deriving the lump sum amount this way means

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<sup>22</sup> The Best Start Foods, Best Start Grants and Scottish Child Payment (Miscellaneous Amendments) Regulations 2022 Equality Impact Assessment

that families in the same traumatic circumstances will receive varying amounts, with the most being paid to those with a continuous award of Scottish Child Payment in the 12 weeks before the child died, and less to those whose award began during that period. For example, a family whose child is born and dies a week later could receive just one week's extra payment.

This additional support for families is welcome. In the longer term, in line with *Our Charter* promise to “look for ways to make eligibility rules fairer”,<sup>23</sup> the Scottish Government should consider giving the same amount to all families whose child dies. This should be considered as part of the review of Scottish Child Payment.

**Recommendation 9: In its review of Scottish Child Payment, the Scottish Government should look for ways to make eligibility rules fairer by offering the same amount of support to all families whose child dies.**

### **3.9 Extending deadlines during the pandemic**

Scottish Child Payment regulations continue to give people more time to apply for Scottish Child Payment or ask for a re-determination, or appeal when the delay is related to coronavirus. Scottish Child Payment regulations currently define ‘coronavirus’ by reference to the definition in the Coronavirus (Scotland) Act 2020.<sup>24</sup> The Act is due to expire in September 2022. The draft Regulations insert the definition of ‘coronavirus’ directly in the Scottish Child Payment regulations.

## **4. Best Start Grant**

### **4.1 Automatic awards of early learning payment and school age payment**

Best Start Grant consists of three payments made to families at different stages from pregnancy to starting school – a pregnancy and baby payment (to help buy clothes, pram and other costs of having a new child); an early learning payment (to help with trips, toys, clothes or other

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<sup>23</sup> [Our Charter, A Better Future](#)

<sup>24</sup> [Coronavirus \(Scotland\) Act 2020 \(legislation.gov.uk\)](#)

costs to support development of a two or three-year-old); and a school age payment (to help with the costs of starting school).

Draft regulation 2(3) introduces automatic awards of two of these payments – early learning and school age – to people in receipt of Scottish Child Payment. The Scottish Government’s intention is that by Social Security Scotland taking the initiative to identify and pay awards without the need for an application, this will increase take up.

Families who receive Scottish Child Payment for a child are likely to be eligible for Best Start Grant. Eligibility rules about being responsible for a child and being in receipt of a qualifying benefit such as Universal Credit are similar for both Scottish Child Payment and Best Start Grant although not identical. There is sufficient alignment already to enable joint applications for all three family payments – Best Start Grants, Best Start Foods and Scottish Child Payment.

Taking the next step and actively determining entitlement without the need for an application is welcome and reflects SCoSS’s previous recommendation to “increase consistency and coherence across Regulations”.<sup>25</sup> It could make it easier for groups who are put off claiming through stigma, language barriers or other difficulties, to access entitlement. Some people gaining could well have ‘protected characteristics’ because of their age, pregnancy or maternity, disability, race or religion, which affords rights under human rights legislation and the Equality Act<sup>26</sup> not to be discriminated against.

The lack of an auto-award in itself is unlikely to constitute discrimination but its use could help level the playing field and so be a step towards advancing equality as set out in social security principle 1(g)(ii).<sup>27</sup> However, not all barriers are removed. Auto-awards rely on people having applied for Scottish Child Payment which in turn relies on people having applied for a qualifying benefit such as Universal Credit.

Auto-awards have the potential to increase take up. Take up of Carer’s Allowance Supplement – a fully automatic payment to people who get Carer’s Allowance – is 100 per cent by definition. However, this is not a good reflection of the reality that not all carers who are eligible for

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<sup>25</sup> [The Scottish Child Payment Regulations 2020: scrutiny report on draft regulations - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/scotss-scrutiny-reports-2020-21/documents/default.asp?lang=en&id=136847)

<sup>26</sup> [Equality Act 2010 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2010/151/section/1)

<sup>27</sup> Section 1, [Social Security \(Scotland\) Act 2018](https://www.legislation.gov.uk/uksssi/2018/1)

Carer's Allowance actually get it and so also miss out on Carer's Allowance Supplement. Similarly, not all families who are eligible for Scottish Child Payment actually get it. Recent estimates show that take up of Scottish Child Payment is *lower* than take up of Best Start Grant early learning and school age payment.

### **Take up rates<sup>28</sup>**

Best Start Grant pregnancy and baby payment	79%
Best Start Grant early learning payment	84%
Best Start Grant school age payment	81%
Best Start Foods	77%
Scottish Child Payment	77%

The Scottish Government will need to maintain an urgent focus on take up of Scottish Child Payment to ensure that families also get the early learning and school age payments they are entitled to. Presumably, Social Security Scotland is aware of families who get Scottish Child Payment, but not early learning or school age payments. If this were not the case, there would be a risk that auto-awards could lead to fewer people getting these payments. There is a risk that families will perceive that these awards are now made automatically therefore they do not need to apply.

If there are any families eligible for Best Start Grant early learning payment or school age payment who do not get Scottish Child Payment and so are not paid automatically, it is important to make sure that they do not miss out. The Scottish Government has explained that anyone who does not get Scottish Child Payment will still be able to apply for an early learning payment and school age payment in the way they can now.

However, misperceptions about eligibility can lead to lower take up. Identifying groups or circumstances where a manual claim will still be required would help Social Security Scotland communicate directly with

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<sup>28</sup> [9. Measuring take-up - Social Security \(Scotland\) Act 2018: benefit take-up strategy - October 2021 - gov.scot \(www.gov.scot\)](#)

people to invite a claim where possible, and make sure that relevant stakeholders understand when a claim might be necessary.

Stakeholders' highlighted the importance of paying the right person when families are in crisis or transition, for example, through domestic abuse or moving in and out of kinship care.<sup>29</sup> Information held by the system may not be able to distinguish such situations. Before making an auto-award, the Agency will contact clients to advise them of the process, explaining that they can contact the Agency to ask to be removed from the process if they wish and will be able to apply for a Best Start Grant at a time that suits them.

While this ability to opt out is not specified in the regulations, the Scottish Government's view is that this is an operational matter and will not run counter to the provisions on Best Start Grant auto-awards in the regulations.

However, it seems to SCoSS that the draft Regulations do not clearly give Social Security Scotland the discretion they would need to deliver this operationally. The regulation is phrased so that the Agency "*are to make a determination*" without receiving an application if the client is likely to be entitled.<sup>30</sup> This imposes an obligation to do so. To pay the right person, it is important that Social Security Scotland has the legal power to defer or waive making an auto award.

**Recommendation 10: The Scottish Government should maintain an urgent focus on take up of Scottish Child Payment to ensure that families also get the early learning and school age payments they are entitled to, realising the potential of auto-awards to increase take up.**

**Recommendation 11: The Scottish Government should explain how the Regulations give Social Security Scotland the discretion to defer or waive making an auto award of Best Start Grant where the claimant requests this or where circumstances suggest that another person may be eligible to apply during the application window.**

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<sup>29</sup> [Fairer Scotland Duty Summary](#), page 6

<sup>30</sup> New draft paragraph 5A to Schedule 1 of The Best Start Grant Regulations, inserted by regulation 2(3) of the draft Regulations. This regulation is made within the power conferred by section 52 of the Social Security (Scotland) Act 2018 which constrains the drafting.

## 4.2 Refugees, kinship carers and people escaping domestic abuse

Draft regulation 2(5) provides for the higher rate of the pregnancy and baby payment in new situations in order to provide more support to refugees, kinship carers and people who have to leave home because of domestic abuse.

Normally the higher rate is paid for the first child born and the lower rate for other children. The payment is intended to help parents with the costs of having a child. The expectation is that families will have more clothes and equipment to buy for a first child so a lower rate is paid for other children.

The amendment was prompted by a UK Upper Tribunal case in relation to Sure Start Maternity Grant which Best Start Grant replaced.<sup>31</sup> The Upper Tribunal decided that two groups were discriminated against, contrary to the European Convention on Human Rights, and should have access to a Sure Start Maternity Grant despite already having an older child. The two groups were refugees having a baby in the UK who came to the UK with an older child, and people who have their first child when they are already responsible for a child who came into their care after 12 months old. In each case, they were highly unlikely to have baby items.

Changing the rules in response to this UK case is an advance in non-discrimination in the Scottish system (a promise in *Our Charter, A Better Future* based on principle 1(g)(ii)) and is welcomed by SCoSS and stakeholders.

The intention is to pay the higher amount to refugees who have a child from before they arrived in the UK.<sup>32</sup> As drafted, the rule does not just apply when an older child was born outside the UK or came to the UK with the refugee claimant, it would also apply when an older child was born in the UK e.g. to a new partner. If this is not the policy intention, the draft regulation may need to be clarified.

The Scottish Government has chosen also to give the higher rate of pregnancy and baby payment to families who have to leave home

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<sup>31</sup> [SK and LL v Secretary of State for Work and Pensions \(IS\): \[2020\] UKUT 145 \(AAC\)](#)

<sup>32</sup> [Policy Note](#), page 2



because of domestic abuse, a situation which was noted by the tribunal as similar to the cases on appeal and also potentially discriminatory.

‘Domestic abuse’ is defined in the draft regulation by reference to the Domestic Abuse (Protection) (Scotland) Act 2021. However, whereas that Act includes abuse by an ex-partner, the draft regulation restricts it to abuse ‘by the individual’s partner’. Scottish Women’s Aid explained how this would not reflect women and children’s lived experience.

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The law recognises that domestic abuse does not stop when a woman ends a relationship with an abusive partner, in reality domestic abuse intensifies post separation and women and children are most at risk in this period. .... Women are often forced to move multiple times to try and escape an abusive ex-partner.

Scottish Women’s Aid

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**Recommendation 12: The Scottish Government should ensure that the regulation to pay the higher level of pregnancy and baby payment matches the policy intention with regard to refugees.**

**Recommendation 13: The Scottish Government should widen the definition of ‘domestic abuse’ to include abusive behaviour by the individual’s ex-partner.**

### 4.3 Payments to surrogate parents

People who have a child through an arrangement with a surrogate mother are eligible for Best Start Grant and Best Start Foods. Draft regulations 2(2)(a) and 3(3) update the meaning of ‘surrogacy’ in line with changes to the Human Fertilisation and Embryology Act 2008 which allow single people as well as couples to apply for a parental order. A parental order transfers responsibility for the child from the surrogate mother. Originally, the Act only allowed couples to apply for a parental order. Following a court ruling<sup>33</sup> that this was incompatible with the European Convention on Human Rights (ECHR), the law was changed in 2019.<sup>34</sup>

The Scottish social security system should advance equality and non-discrimination (principle (g)). There is no doubt that this change does so although it is likely to affect few people. People who have a child through

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<sup>33</sup> [Children: surrogacy – single people and parental orders \(UK\) - House of Commons Library \(parliament.uk\)](https://www.parliament.uk/library/research-and-briefings/2019/children-surrogacy-single-people-and-parental-orders-uk/)

<sup>34</sup> [In the matter of Z \(A Child\) \(No 2\), \[2016\] EWHC 1191 \(Fam\), 20 May 2016.](https://www.ejrb.org/cases/2016/1191/)

a surrogacy arrangement applying for Best Start Grant and Best Start Foods can also show they are 'responsible for a child' through getting Child Benefit, which may well be in place before a parental order.

#### **4.4 Children in the care system**

Draft regulations 2(4), 2(6) and 2(7) remove the exclusion from Best Start Grant for a child who is looked after and accommodated by a local authority. This aligns Best Start Grant with Scottish Child Payment and means that a parent or carer is still eligible for a grant while their child is living in care as long as they are still responsible for the child.

When a child becomes 'looked after', child benefit stops after 8 weeks, at which point the parent is no longer regarded as responsible for the child for Best Start Grant. This amendment, therefore, opens up an 8 week period after a child goes into care where it is possible to apply for Best Start Grant. We would not expect there to be many people able to take advantage of this wider window to claim. However, when families are in crisis, financial support is particularly important. This change could make a small contribution towards keeping children safely with their families and be in the best interests of the child (Article 3(1) UNCRC).<sup>35</sup>

## **5. Payments to kinship carers**

Kinship carers applying for Best Start Grant, Best Start Foods and Scottish Child Payment can show they are responsible for a child through getting Child Benefit, Universal Credit or Child Tax Credit for the child. However, not all kinship carers can get these benefits for the child. For example, kinship carers caring for a child who is looked after by the local authority are not eligible for the child element of Universal Credit.

So that they do not as a consequence miss out on entitlement to Best Start Grant, Best Start Foods and Scottish Child Payment, there is another way of showing responsibility for the child – through being a 'kinship carer' as defined in the rules. Draft regulations 2(2)(b), 3(2) and 4(3) extend the 'kinship care' definition to include kinship carers who are

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<sup>35</sup> [Convention on the Rights of the Child | OHCHR](#)

not related to the child, a category recognised in the Looked After Children (Scotland) Regulations 2009.<sup>36</sup>

It is right to be as inclusive as possible to ensure no kinship carer is inadvertently left unable to access this support. There are an estimated 12 630 children in Scotland who are raised by kinship carers.<sup>37</sup> In taking on this responsibility they are creating considerable savings for the state. A kinship care role can often result in financial, practical and emotional challenges for the individual with consequences for the kinship carer's wellbeing and their ability to stay in or return to work.<sup>38</sup> The Scottish Government has told SCoSS that it continues to consider whether there are other formal kinship care agreements not yet included.

**Observation 2: There may be cross-border agreements such as special guardianship arrangements,<sup>39</sup> which could apply to a child who moves from England to live with a kinship carer in Scotland. The Scottish Government could explore whether these should be added to the definition of 'kinship care' to ensure no kinship carer misses out on entitlement to the five Scottish family payments.**

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<sup>36</sup> [The Looked After Children \(Scotland\) Regulations 2009 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

<sup>37</sup> [Wijedasa, D \(2017\) Children growing up in the care of relatives in the UK, Bristol: University of Bristol.](#)

<sup>38</sup> [Kinship Carers and Employment: Barriers and Opportunities Final Report 20 April 2016](#)

<sup>39</sup> [Become a special guardian: What is a special guardian - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

## Annex 1 - Scrutiny timeline

22 March 2022	Draft Regulations formally referred to SCoSS by the Minister for Social Security and Local Government.
29 March 2022	Secretariat meeting with SG officials to discuss the scrutiny arrangements.
12 April 2022	Amended draft regulations received alongside Keeling Schedules.
13 April 2022	SCoSS ad-hoc Board meeting attended by SG officials.
14 April 2022	Questions sent to Social Security Scotland officials.
28 April 2022	SCoSS ad-hoc Board meeting discussion on Scottish Child Payment.
5 May 2022	Questions sent to Social Security Scotland officials.
6 May 2022	SCoSS meeting with CPAG welfare rights expert on kinship care.
May/June 2022	External stakeholders' consultation.
10 June 2022	External stakeholder views received. (Annex 2)
15 June 2022	SCoSS draft recommendations and observations released to Scottish Government officials.
22 June 2022	SCoSS report signed off and laid.
5 September 2022	Regulations laid in Parliament for Parliamentary scrutiny. (TBC)
14 November 2022	Regulations into force. (TBC)

## Annex 2 - Stakeholders who submitted views

COSLA

CPAG

Inclusion Scotland

Poverty Alliance

Poverty and Inequality Commission

Save the Children

Scottish Poverty and Inequality Research Unit

Women's Aid



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