



Scottish
Commission
on Social
Security

Scottish Commission on Social Security

Scrutiny report on draft Regulations:

**The Two Child Limit Payment
(Scotland) Regulations 2026**

**Submitted to the Scottish Government and the Scottish
Parliament's Social Security Committee on 1 September 2025.**

SCoSS/2025/09

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1. Introduction

1.1 About the Scottish Commission on Social Security

The Scottish Commission on Social Security plays an essential role in the development and delivery of a Scottish Social Security system based on fairness, dignity and respect by providing independent scrutiny of the Scottish social security system. Our full functions are set out in the Social Security (Scotland) Act 2018.¹

We are separate from the Scottish Government, and carry out our work independently of both Scottish Ministers and the Scottish Parliament.

For more information about the Scottish Commission on Social Security visit: <https://socialsecuritycommission.scot/>

1.2 Overview

We are pleased to present our report on the draft Two Child Limit Payment (Scotland) Regulations 2026 (referred to in this report as the 'draft regulations').

The draft regulations outline the rules for a new Two Child Limit Payment. This payment will top up the income of individuals who are in receipt of Universal Credit and who are not receiving the child element of Universal Credit for one or more children due to the two-child limit rules. The Scottish Government are using their powers under Section 79 of the 2018 Act allowing them to top up reserved benefits in certain circumstances. The Scottish Government note that the introduction of Two Child Limit Payment is to "mitigate the UK Government's two-child limit policy for Universal Credit". Payments are expected to begin in March 2026, and are projected to ensure that 20,000 fewer children live in relative poverty in 2026-27.²

Our scrutiny considered both the social security principles (**Annex A**) and relevant human rights provisions. Among these, we saw that two social security principles were particularly relevant:

- Principle (b) which recognises social security as a human right and as a means of enabling other rights; and
- Principle (e): which recognises social security's role in reducing poverty.

The UN Convention on the Rights of the Child was also relevant. In particular it requires that:

- children's best interests are prioritised (Article 3);
- governments ensure children's rights to social security (Article 26) and to an adequate standard of living (Article 27); and
- children have the right to express their views and participate in decisions that directly affect them (Article 12).

Throughout the scrutiny process, we worked closely with officials and are grateful for their detailed and prompt responses to our questions, and the draft impact assessments, which helped us better understand the policy behind the draft regulations and their anticipated impact. We engaged with stakeholders on the detail

¹ [Social Security \(Scotland\) Act 2018](#)

² [Draft Policy Note - The Two Child Limit Payment \(Scotland\) Regulations 2026](#)

of the draft regulations. They welcomed the move to address the two-child limit and recognised the balance to be struck between introducing a mitigation payment quickly and ensuring that everyone who is eligible receives it. Their comments are incorporated into this report.

In this report we examine the Scottish Government's legislative approach and its limitations, explore how mitigation of the two-child limit interacts with the exceptions³ available to some claimants, and we raise issues related to backdating. We also address several technical issues in the draft regulations.

2. Approach – Use of top-up powers and take-up

The Scottish Government is using its top-up powers to mitigate the two-child limit. An alternative approach would have been to create a type of 'childhood assistance' using the new power in the Social Security (Amendment) (Scotland) Act 2025.⁴ We understand that the top-up approach was chosen to deliver the policy quickly and note that many stakeholders support this approach. Using alternative powers could have allowed greater flexibility in the future, even if initially support was limited to those receiving Universal Credit.

The approach adopted is in keeping with principle (h) – particularly a system that is efficient - as it allows the benefit to go live as soon as possible. But it does not go as far as it might in delivering poverty reduction (principle (e)) because it limits the circumstance in which a Two Child Limit Payment can be made. Therefore, some families subject to the two-child limit will miss out on support.

CPAG estimates that 3,000 families in Scotland are not entitled to any Universal Credit, because of the two-child limit.⁵ These families cannot access the top-up payment, as individuals must first be entitled to Universal Credit for the Scottish Government to apply its powers.

The Scottish Government notes that, in February 2025, 1,500 families claiming Housing Benefit had more than three children. The two-child limit may reduce the amount of Housing Benefit these families receive. The draft Regulations do not contain any provision to mitigate the effect of the two-child limit on a Housing Benefit award because section 80 of the Social Security (Scotland) Act 2018 does not allow the top-up power to be used to make additions to housing-related benefits. Affected families can apply for a Discretionary Housing Payment from the local authority, but there is no guarantee that a Discretionary Housing Payment will be awarded as would be the case for mitigation of the benefit cap or 'bedroom tax'.

Recommendation 1: To meet the policy intent of mitigating the two-child limit, the Scottish Government should consider what policy instruments would best deliver comprehensive mitigation to all groups currently affected by the two-child limit, including those who are currently ineligible.

³ [Gov.uk, Universal Credit: support for a maximum of 2 children: information for claimant: special circumstances](#)

⁴ The childhood assistance powers in the Act are still to be commenced.

⁵ These families have an income too high to be eligible for Universal Credit, but if a child element for a third or subsequent child was included in their award, they would be entitled to Universal Credit.

The Scottish Government's policy is to mitigate the two-child limit "as far as possible".⁶ Achieving this requires ensuring that as many families as possible know about the available support and can claim it. In discussions with us, the Scottish Government noted that while signposting is feasible in some cases, they do not have the necessary ongoing data to contact all eligible families. They also lack sufficient data to automate applications for the Two Child Limit Payment.

Many factors can prevent eligible families from claiming. CPAG's Strengthening Social Security project found that some families do not claim Scottish Child Payment or Child Benefit for third and subsequent children because they mistakenly believe the two-child limit applies to these benefits.⁷

We are therefore concerned that a significant number of families may not know they are eligible for the Two Child Limit Payment. To maximise the policy's impact, it is important that as many eligible individuals as possible receive support. The existence of the Two Child Limit Payment could be made explicit in places where families are likely to read information or to make other social security claims, such as the five family payments.

Recommendation 2: Social Security Scotland should consider adding Two Child Limit Payment to the joint application form for the five family payments.

Recommendation 3: The Scottish Government should conduct detailed research to identify eligible individuals who have not applied, in order to develop an evidence-based take-up strategy that addresses any claimant gaps.

3. Exceptions vs. Two Child Limit Payment

There are exceptions to the two-child limit for some children. To qualify for some of these exceptions, an individual may need to disclose personal information and relive traumatic experiences. The non-consensual conception exception has been problematic in its definition, delivery and evidence requirements.⁸ Social Security Scotland and the Scottish Government should adopt processes and policy design which are sensitive to potential trauma which may be triggered by consideration of the choice of whether to apply for an exception or mitigation payment.

In almost all cases⁹ it seems that families are likely to be no worse off applying for an exception, and in some cases will be better off with an exception rather than a Two Child Limit Payment. However, some individuals may choose to claim the Two Child Limit Payment even if it results in a lower payment.

⁶ For example, the Fairer Scotland Duty Impact Assessment page 2, Equality Impact Assessment page 1, Better Regulation Impact Assessment page 1 .

⁷ CPAG in Scotland response to SCoSS written questions, received 31 July 2025

⁸ For example, Equality Impact Assessment page 32, CAS and Scottish Women's Aid responses to the Scottish Government consultation, also CPAG and CAS responses to our call for evidence

⁹ The only example stakeholders raised where someone may be better off claiming a Two Child Limit Payment rather than an exception to the two-child limit is where they are eligible for a transitional payment of Universal Credit. Someone could become impacted by the benefit cap if they apply for an exception rather than a Two Child Limit Payment but the benefit cap should also be mitigated so they should be no worse off by applying for an exception as long as they get a payment to mitigate the benefit cap.

We welcome the decision that individuals who could be eligible for either an exception or a Two Child Limit Payment are not required to apply for an exception if they prefer to claim the Two Child Limit Payment instead. We note that this may mean, in some cases, the Scottish Government could be making a mitigation payment in circumstances where an exception may be applied for. This would increase Scottish Government expenditure, which could be avoided. However, the numbers impacted are likely to be small¹⁰ and we feel that this approach is in line with principle (d) (respect for the dignity of individuals is to be at the heart of the Scottish social security system). We are therefore content, that on balance, this policy decision is in line with the principles.

Recommendation 4: Social Security Scotland should ensure all staff take a trauma-informed approach when working with individuals who are considering applying for either an exception under Universal Credit rules or the Two Child Limit Payment.

4. Backdating

Entitlement to the payment starts when Social Security Scotland receives the application. It cannot usually be backdated. This reflects the policy used by the Scottish Government for Best Start Grants, Best Start Foods and the Scottish Child Payment.

The Scottish Government¹¹ has noted that backdating “before the date of application would be a significant departure from the way existing systems were developed... would add complexity, increase error risk, and would require additional Social Security Scotland resource. All of these factors would result in a significant delay in getting money to families impacted by the two-child limit.” They also note that “Current data-sharing agreements only allow Social Security Scotland to obtain and verify UC entitlement from the date of application. Eligibility cannot be assessed for periods prior to the application date, but all successful awards will be backdated to the date of application.”

We understand the trade-off between added complexity and the need to make payments as quickly as possible, and we acknowledge that allowing backdating of the Two Child Limit Payment at the time of its initial launch is not feasible. However, we remain concerned that the absence of a backdating mechanism could leave some families without the support they need. The Scottish Government should consider this when it considers its obligations under principle (g) (opportunities are to be sought to continuously improve the Scottish social security system).

Some payments that support children do allow backdating. For example, Child Benefit has a 3 month claim window. Universal Credit does not automatically backdate the child element, but a claimant can apply for an extension of the time limit to report the change, up to 13 months if they have reasons why the change was reported late. However, the draft regulations do not allow backdating even where

¹⁰ In most cases the household is also likely to be impacted by the benefit cap, which the Scottish Government has committed to fully mitigate, so there would be no net impact on Scottish Government finance. There will be cases, such as where the claimant has an exception to both the two-child limit and the benefit cap where there could be an impact, but we think will be a small number of cases.

¹¹ Scottish Government response to SCoSS written question, received 4 August 2025

there are special circumstances. This means some families who need support could miss out.

The Scottish Government has noted in response to questions from us that “the Two Child Limit Payment application form makes clear that an individual can and should apply as soon as they have applied for Universal Credit; they don’t need to wait for an award to be made.” However, because a reported change of circumstance can be backdated for Universal Credit, even in this case - families may lose out.

Stakeholders noted that there may be reasons why applications might be slightly delayed. Certain groups, such as single parent families, may be more likely to be affected.

“Dealing with the fallout of various traumas – more likely around the time of childbirth – is also likely to impair [individuals] ability to make timely claims. For vulnerable clients this means missing out on significant sums of money at crucial junctures. Child Benefit can be backdated for up to 3 months. The same approach to the Two Child Limit Payment would be humane, and allow for a small degree of flexibility at a difficult moment. It would also offer some recognition that a new benefit might not be widely known about.”¹²

The following hypothetical example is based on real cases.

Example

Sarah is a lone parent who becomes ill after the birth of her third child. Two months after the birth, she is well enough to make claims. She applies for Child Benefit, reports the change of circumstances to Universal Credit, and submits an application for a Two Child Limit Payment.

Child Benefit is awarded and backdated to the child’s date of birth. Universal Credit also accepts that, given the circumstances, Sarah could not report the change on time. They extend the time limit to report the change and treat her as responsible for the child from birth. However, because she is subject to the two-child limit, she cannot receive the child element for her third child.

For the Two Child Limit Payment, the outcome is different. Because the draft regulations do not allow backdating, her entitlement only begins from the date she applied - two months after the birth - rather than from the date the two-child limit applied to her UC claim. No matter the circumstances that delayed her application, she cannot have this award backdated.

Some stakeholders told us they support a more general backdating provision. Additional research into the impact of current policy design on the effectiveness of the Two Child Limit Payment could help to provide evidence for the future development of social security policy in line with ‘Our Charter’¹³ and principle (f) (a system designed on the basis of evidence).

Recommendation 5: The Scottish Government should research the impact of not allowing backdating of the Two Child Limit Payment to understand who is

¹² Professor Charlotte O'Brien response to SCoSS written questions, received 31 July 2025

¹³ [Our Charter, Social Security Scotland: A Learning System, Commitment 4](#)

missing out, and by how much.

5. Technical issues

Determination following a change to a Universal Credit award

Paragraph 8 of Schedule 1 makes provision for the determination of entitlement if an individual makes a claim for a Two Child Limit Payment and this is refused. If Universal Credit is later backdated to before the date that the Two Child Limit Payment claim is made, Scottish Ministers can make a new determination that the individual is entitled to a Two Child Limit Payment from the date they claimed. Scottish Government officials have confirmed that this provision would also apply if there is a backdated decision by the DWP to include an additional child in a Universal Credit claim, even if this child is subject to the two-child limit. This is welcome, but we are concerned that the way paragraph 8 is currently drafted means that the legislation may not match this policy intent.

Recommendation 6: The Scottish Government should consider redrafting Paragraph 8 of Schedule 1 to better match the policy intent.

End of entitlement

Regulation 17(2)(a)(iii) ends an individual's award to a Two Child Limit Payment if the claimant receives the Universal Credit child element for that child. If the child element is backdated, it is not clear from the regulation if the award stops when payment of the backdated Universal Credit child element is received or the date when the child element is included in the Universal Credit claim

Recommendation 7: The Scottish Government should consider redrafting regulation 17 to clarify intent.

6. Future policy development

We welcome the draft impact assessments sent alongside the regulations, as these can help us to understand the regulations, their policy intent and potential impact.

These highlight limitations in the data. Where there is limited evidence, it is difficult to compare policy proposals and determine the impacts choices may have on particular claimant groups.

Under Principle (g), the Scottish Government must consider continuous improvement, both in respect of those who require assistance and to advance equality and non-discrimination. As the policy and delivery of the Two Child Limit Payment progresses, further evidence, engagement and impact assessment will be needed. We suggest that it would be helpful for particular attention to be given to three issues:

- Develop evidence about the impacts of the Two Child Limit Payment on current and future clients, broken down by protected characteristics.

- The data should be deployed to assess how the payment helps to meet each of the three aims of the Public Sector Equality Duty.
- As the Two Child Limit Payment affects children the engagement of stakeholders should be expanded to include participation of children and young people as per Article 12 of the United Nations Convention on the Rights of the Child.¹⁴

7. Approach to scrutiny

This report has been completed in accordance with the Commission's pre-legislative scrutiny function, set out in sections 22 and 97 of the Social Security (Scotland) Act 2018.¹⁵ Section 97 states that the Commission must report on draft regulations proposed to be made under any section in Sections 79 (1) or 95 of the Act. The draft regulations are made under powers conferred by sections within this part and chapter.

This report provides commentary in connection with human rights and the social security principles set out in Section 1 of the Social Security (Scotland) Act 2018,¹⁶ as operationalised via Our Charter.¹⁷

The Cabinet Secretary for Social Justice referred the draft regulations to us,¹⁸ along with a Policy Note,¹⁹ on 24 June 2025. We were given a deadline for reporting of 1 September 2025.

An amendment to the draft regulations was referred to us on 13 August 2025 adding additional provisions (5) and (6) to regulation 29 which allow Ministers to issue a new payment date for Two Child Limit Payment if the recipient has had their assessment period dates changed by the DWP.²⁰

We are grateful to the officials for keep us apprised of developments throughout the scrutiny period.

¹⁴ Article 12 of the United Nations Convention on the Rights of the Child (UNCRC) stipulates that children have the right to express their views and to participate in decisions that directly affect them

¹⁵ [Social Security \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2018/10/contents)

¹⁶ [Social Security \(Scotland\) Act 2018 \(www.legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2018/10/contents)

¹⁷ [Social Security Scotland - Our Charter](#)

¹⁸ [Referral – The Two Child Limit Payment \(Scotland\) Regulations 2026](#)

¹⁹ [Draft Policy Note - The Two Child Limit Payment \(Scotland\) Regulations 2026](#)

²⁰ [The Two Child Limit Payment \(Scotland\) Regulations 2026: Further correspondence from the Scottish Government](#)

Recommendations and observations

Recommendation 1: To meet the policy intent of mitigating the two-child limit, the Scottish Government should consider what policy instruments would best deliver comprehensive mitigation to all groups currently affected by the two-child limit, including those who are currently ineligible.

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Recommendation 5: The Scottish Government should research the impact of not allowing backdating of the Two Child Limit Payment to understand who is missing out, and by how much.

Recommendation 6: The Scottish Government should consider redrafting Paragraph 8 of Schedule 1 to better match the policy intent.

Recommendation 7: The Scottish Government should consider redrafting regulation 17 to clarify intent.

Annex A: The Scottish social security principles

The Scottish Commission on Social Security (SCoSS) takes the Scottish social security principles, as laid out in the Social Security (Scotland) Act 2018, into consideration when scrutinising proposed social security legislation and regulations. The Scottish social security principles are:

- (a) social security is an investment in the people of Scotland,
- (b) social security is itself a human right and essential to the realisation of other human rights,
- (c) the delivery of social security is a public service,
- (d) respect for the dignity of individuals is to be at the heart of the Scottish social security system,
- (e) the Scottish social security system is to contribute to reducing poverty in Scotland,
- (f) the Scottish social security system is to be designed with the people of Scotland on the basis of evidence,
- (g) opportunities are to be sought to continuously improve the Scottish social security system in ways which—
 - (i) put the needs of those who require assistance first, and
 - (ii) advance equality and non-discrimination,
- (h) the Scottish social security system is to be efficient and deliver value for money.

Annex B: Scrutiny timeline

24 April 2025	Officials attended a SCoSS Board meeting to discuss the forthcoming draft regulations.
24 June 2025	Draft regulations and Section 86A formally referred to SCoSS by the Cabinet Secretary for Social Justice.
11 July 2025	Officials attended SCoSS ad hoc meeting to discuss the draft regulations.
13 August 2025	Revised draft Two Child Limit Payment (Scotland) Regulations 2026 shared by the Scottish Government.
14 August 2025	SCoSS Board discussed draft report at ad hoc meeting.
28 August 2025	SCoSS Board discussed and signed off report at Board meeting.
1 September 2025	SCoSS report laid.