Scottish Commission on Social Security

Scrutiny report on draft Regulations:

The Care Leaver Payment (Scotland) Regulations 2026

Submitted to the Scottish Government and the Scottish Parliament's Social Security Committee on 27 November 2025.

SCoSS/2025/14

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Recommendation 9: The Scottish Government should consider amendments to regulations in light of the technical issues we have identified.

Observation 1: The new payment is a welcome addition to the existing support available to young people who are leaving care as a step towards The Scottish Government keeping The Promise.

Observation 2: As the language, terminology and understanding of the needs of care experienced people evolves, the name of the payment is something the Scottish Government should keep under review.

Observation 3: Automatic payments, removing the need for individuals to submit an application, are an effective way of ensuring those entitled to a care leaver payment receive it.

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

1.2.1 Social security principles and Our Charter

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

Care Leaver Payment differs from previous social security benefits introduced by the Scottish Government and this has implications for our scrutiny of the draft regulations. The introduction of the payment marks the first use of the new powers under section 93A(1) of the Social Security (Scotland) Act 2018 ('The Act'), allowing Scottish Ministers to establish one or more schemes to give financial assistance to individuals who have had experience of being in the care system.[2] While the primary legislative basis for the payment is the Social Security (Scotland) Act, the Minister and policy team working on the payment sit within the Scottish Government's Children, Young People and The Promise portfolio. Payments will not be made by Social Security Scotland, but by a local authority.

Any benefit created within the scope of section 93A does not form part of the 'Scottish social security system' as defined by section 23 of the Act. However, we *are* specifically required to give regard to the social security principles in our scrutiny of the regulations.[3]

The social security charter ('Our Charter') does not apply to the Scottish Government or local authorities when making regulations to establish the Care Leaver Payment or in its administration.[4] The Charter does apply to the Scottish Government in the development of the policy that the regulations are intended to deliver. [5]

The Scottish Government noted in response to questions that local authorities would deliver the payment under the Getting It Right for Every Child (GIRFEC) principles.

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[1] Social Security (Scotland) Act 2018
[2] Section 93A was added to the Social Security (Scotland) Act 2018 via amendments included in the provisions made in the Social Security (Amendment) (Scotland) Act 2025.
[3] Social Security (Scotland) Act 2018 s97(1)(v) and s97(6)
[4] Social Security (Scotland) Act 2018 s15(2)(a)(ii)
[5] Social Security (Scotland) Act 2018 s15(2)(a)(i)

> *“Local Authorities will deliver the [Care Leaver Payment] in a manner that accords with GIRFEC, which would naturally include delivering the [Care Leaver Payment] in a way that respects the dignity of the individual.”*[6]

While there are some similarities between the rights-based framing of GIRFEC (and the SHANARRI wellbeing indicators included within the GIRFEC approach[7]) and the principles and charter, GIRFEC is not as specific as Our Charter about what people can expect from the service (e.g. formats/ways of communicating), nor as comprehensive or proactive (for example, the Charter refers to telling you about entitlements and supporting you through application). Given that the Care Leaver Payment is being established within the scope of the Social Security (Scotland) Act, we work on the basis that the social security principles and Charter represent the established benchmark for best practice in this field.

Finally, since the Care Leaver Payment sits outside Part 2 of the Act, the standard provisions on the determination of applications, redeterminations, appeals, information provision and overpayments do not apply. We discuss some of the implications of this in part 4.1 of this report.

Recommendation 1: The Scottish Government and local authorities should give due regard to the social security principles and the social security charter in the design, administration and the development of guidance for Care Leaver Payment.

Our scrutiny considered both the social security principles (Annex A), the ‘Our Charter’ expectations and relevant human rights provisions.

Among these, we saw that the following social security principles were particularly relevant:

- Principle (a) social security is an investment in the people of Scotland;
- Principle (b) which recognises social security as a human right and as a means of enabling other rights; and
- Principle (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.

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

- Governments ensure children’s rights to social security (Article 26)
- 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).

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[6] Scottish Government response to SCoSS questions, received 22 October 2025

[7] SHANARRI is an acronym for the eight wellbeing indicators that guide the GIRFEC approach to children's rights and development in Scotland. These are safe, healthy, achieving, nurtured, active, respected, responsible, included. [Scottish Government, Getting It Right For Every Child, Wellbeing (SHANARRI)]

1.2.2 Scrutiny process

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 of the draft regulations hosting a policy roundtable with input from four organisations. We also received written comments from stakeholders which are incorporated into this report.

In this report we examine the Scottish Government's approach to the payment and its purpose and value, how local authorities will deliver the payment and the challenge rights and safeguards afforded to care leavers throughout the process. We also address several technical issues in the draft regulations.

2. Care Leaver Payment

2.1 Support for care leavers

The draft regulations outline the rules for a new Care Leaver Payment, a £2000 payment to young people moving on from care. The Scottish Government note that the introduction of the payment aims to provide young people leaving care with additional financial security by removing barriers they face whilst moving into adulthood and more independent living.

The intention is that local authorities will make the first payments in Spring 2026, and Care Leaver Payment is projected to provide support to an estimated 1,727 young people in 2026-27 and an estimated 6,455 young people by 2029-30.[8]

Consultation analysis suggests that respondents "largely supported the proposal to establish a Care Leaver Payment and thought it would help (to some extent) to reduce some of the financial barriers that care leavers can face when moving on from care."[9] Support for additional financial support for young people coming out of care was reiterated in our discussions with stakeholders.

Observation 1: The new payment is a welcome addition to the existing support available to young people who are leaving care as a step towards The Scottish Government keeping The Promise.

2.2 Eligibility

The 2021/22 Programme for Government included a commitment to the creation of a "Care Experienced Grant".[10] The Scottish Government has taken the decision to introduce the Care Leaver Payment as a step towards fulfilling this commitment. While we welcome the addition of this payment as a new source of financial support to "young people moving on from care", it is clear that there is a wider group of care experienced people who will not benefit from the new payment.

The Scottish Government consultation noted that while "a range of respondents agreed with the proposed eligibility criteria and age requirements for applicants, it was very common for respondents to suggest that the proposed eligibility criteria and

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[8] Scottish Government, Care Leaver Payment, policy note
[9] Scottish Government, Care Leaver Payment: consultation analysis
[10] Scottish Government, Programme for Government 2021 to 2022

age requirements were too restrictive or that consideration should be given to extending eligibility for the payment to other groups."[11]

We note that the new section 93A of the 2018 Act, under which these regulations are made, gives Ministers the power to make regulations to establish one or more schemes to deliver financial assistance to those people who have experience of being in the care system. While we note the pragmatic move to make a payment to one group at this stage, other groups of care experienced people should be considered as the Scottish Government makes improvement to this payment or considers the addition of other payments over time.

For instance, Care Leaver Payment will only be available to an individual who either was looked after on or after their 16th birthday as long as they cease to be looked after on or after 1 April 2026, and is not in receipt of continuing care or who was in receipt of continuing care, and ceases to receive continuing care on or after 1 April 2026.

In the latest version of the draft Equality Impact Assessment shared with us, the Scottish Government states that the payment may indirectly discriminate on age grounds, however, this is justified by referring to the amending legislation and the intention to focus on a particular group within the care experienced population. No mitigating action is suggested in the Equality Impact Assessment.[12]

Some care experienced people will not receive Care Leaver Payment. For example:

- People who cease to be 'looked after' before the age of 16;
- People who cease to be 'looked after' before April 2026;
- Care leavers who are placed in Scotland but remain under the responsibility of an English, Welsh or Northern Irish local authority.

Recommendation 2: The Scottish Government should consider, in line with principle (g) of the social security principles on continuous improvement, how they can provide payments to the wider group of care experienced people.

2.3 Name of the payment

In our discussions with stakeholders they noted that there has been a general shift away from using the term "care leaver".

Observation 2: As the language, terminology and understanding of the needs of care experienced people evolves, the name of the payment is something the Scottish Government should keep under review.

3. Amount of the payment

The Scottish Government has committed to developing a payment to provide young people moving on from care with "additional financial security". The 2021/22 Programme for Government noted that this would be "a £200 annual payment over 10 years to young people with care experience between the age of 16 and 26."

Following stakeholder feedback and early user testing, by the November 2023 consultation the Scottish Government had revised its approach and proposed the

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[11] Care Leaver Payment Consultation: Analysis of Responses

[12] Scottish Government, Care Leaver Payment: draft Equality Impact Assessment, shared with SCoSS on 24 September 2025.

payment be a one-off lump sum payment of £2000, which reflected “views on the current cost of living and the potential limited impact of yearly payments of £200. It has also been highlighted that it could be challenging to deliver annual payments over 10 years without a re-application process.”[13]

Some stakeholders noted that the amount may not cover the costs faced at this point. We note the Scottish Government’s commitment to ensuring that Care Leaver Payment is delivered alongside other forms of support for care experienced people, however other forms of support may be paid at the discretion of the local authority. We, therefore, believe that the amount of the payment should be kept under review as evidence about use of the payment becomes clear.

Recommendation 3: The Scottish Government should keep the amount of the payment under review based on the outcomes achieved for care leavers.

There may be a risk that local authorities, could see the payment as a replacement for existing leaving care grants rather than an additional payment. There is also a risk that these decisions could be subject to inconsistent implementation across Scotland’s thirty two local authority areas.

This risk could be mitigated through guidance from the Scottish Government, saying that Care Leaver Payment cannot be used as a replacement for other support. This would reflect the approach the Scottish Government has taken to the Care Experienced Bursary, where guidance was updated to note that they payment was not intended to “act as a replacement for any other financial support received by this group.”[14]

Recommendation 4: National guidance should state that the payment is supplementary to, and not a replacement for, existing care leaver provision.

Regulation 4(2) allows the responsible authority, with the agreement of the individual, to give the payment in whole or in part in the form of a voucher or in whole or in part to a provider of goods or services on behalf of the individual. We acknowledge that an alternative to money may be needed in certain circumstances.

However, paying money should be the default as it is with other types of social security assistance.[15] This can promote independent living in line with principle (d) of the social security principles (respect for the dignity of individuals is to be at the heart of the Scottish social security system).[16] Regulations for Care Leaver Payment, unlike other benefits, do not make this expectation clear.

Recommendation 5: Regulation 4 should explicitly say that the payment is to be given as money subject to the option to pay in another way by agreement. The guidance should make it clear that money should be the default.

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[13] Scottish Government, Care Leaver Payment Consultation, November 2023
[14] Scottish Government, Care Experienced Bursary Policy Note, June 2019
[15] For example, a Young Carer Grant ‘is to be given as money’ by regulation 12(2) of The Carer’s Assistance (Young Carer Grants) (Scotland) Regulations 2019 but can be offered in another form by agreement. https://www.legislation.gov.uk/ssi/2019/324/part/4
[16] Social Security (Scotland) Act 2018

4. Delivery

4.1 Applications, determinations and appeals

The responsible local authority will deliver the payment and will be required to provide advice and assistance to the young person in connection with the payment. The regulations allow for the payment to be made automatically, and without an application process at the point that the young person is leaving care.

Observation 3: Automatic payments, removing the need for individuals to submit an application, are an effective way of ensuring those entitled to a care leaver payment receive it.

In discussion with Scottish Government officials they noted that the responsible authority is under a legal duty to ensure that eligible individuals receive the payment. There is provision for internal review if someone receives a determination that they are not entitled to a payment and considers this to be incorrect.

Regulation 7 allows an individual, if the local authority has determined that they should not receive a payment, to request a review of the determination. The request must be made to the responsible authority within a year of the determination and state the reasons why an individual considers that they are eligible for a care leaver payment. Regulation 8 stipulates that upon receiving such a request, the responsible authority must appoint an officer of the local authority who was not involved in the original determination to review the determination.

Stakeholders agreed that payments should be made automatically to those identified as entitled but noted that the lack of an application process could lead to issues, particularly if a payment is missed or a dispute arises. However, an independent review, barring a judicial review, is not currently built into the process. This is the case for some Social Security Scotland benefits where, even though the payment is made automatically, an application and redetermination process is available in case someone does not receive the payment to which they are, or believe they are, entitled.[17] In these cases the independent review function is fulfilled by the tribunal. Nor is it clear that the provision for internal review is sufficient to allow for the challenge of all perceived errors. A person who thinks they are a care leaver who ought to be entitled to a Care Leaver Payment but has received no communication at all on the subject, does not have a determination so under the regulations has no right to request an internal review. Such individuals require an opportunity to submit an application.

One of the central messages of The Promise was that “children and young people must be listened to and meaningfully involved in decision-making about their care”. This is in line with Article 12 of the UN Convention on the Rights of the Child (UNCRC). The exclusion of an application process and challenge rights for Care Leaver Payment would seem to fall short of this commitment.

We have concerns that the reliance on the provision of a judicial review to provide compliance with article 6 of the European Convention on Human Rights, which guarantees a fair hearing in the determination of one’s rights. This may be out of reach to many individuals particularly if there is no channel for applications. In order

[17] For example, Winter Heating Payment, Child Winter Heating Payment and Best Start Grants are all fully or partially automatically paid and have redetermination processes attached to them.

to fulfil these commitments, rights-based social security benefits should have an application and independent review process attached to them.

Recommendation 6: As Care Leaver Payment is established through social security legislation its determination and appeals process should be rights-based. As such, the process to establish eligibility should include an application process and independent review alongside automatic payments.

4.2 Appointees for disabled people who lack capacity

There may be circumstances where a young disabled person could lack capacity to manage the Care Leaver Payment. While many disabled people will have an appointee or guardian who manage benefits on their behalf, this could be challenging for a care leaver and create a risk of financial exploitation or mismanagement.

In discussion with stakeholders, Contact noted that where young people receive existing Scottish social security benefits "Social Security Scotland need to decide whether the young person has the capacity to manage their own disability benefit – if they don't have capacity then an appointee must be identified. So, unless a carer leaver hasn't claimed child disability payment/adult disability payment they should already have an appointee in place, well before any award of a Care Leaver payment."

Whilst arrangements are in place in the Social Security (Scotland) Act 2018 for Scottish Ministers to "appoint a person (an "appointee") to act on behalf of a child in connection with the determination of the child's entitlement to assistance" these only apply to certain benefits as specified by the Act, and do not extend to Care Leaver Payment.

While young people in these circumstances will almost always have an appointee in place to manage Child Disability Payment on their behalf, there is no provision in the draft regulations for the appointee to continue to act for the young person in relation to their Care Leaver Payment. It is important that there is alignment between the social security system and local authorities to ensure processes work smoothly for disabled care leavers and their support needs are met.

Recommendation 7: The Care Leaver Payment regulations should make specific provision for appointees and the processes that local authorities use should be aligned with Social Security Scotland.

5. Interactions with other benefits

Discretionary Housing Payments (DHPs) are intended to help people receiving Housing Benefit or the housing element of Universal Credit with housing costs such as deposits or shortfalls in rent.[18] A care leaver who is looking for private rented accommodation and receives Universal Credit but has no other resources could apply for a Discretionary Housing Payment to help with a deposit. But if they have received a Care Leaver Payment, having that money in the bank might prevent them getting a Discretionary Housing Payment. In these circumstances, some or all of the Care Leaver Payment would then have to be spent on the deposit, leaving less to

[18] Mygov.scot, Applying for a Discretionary Housing Payment

support other aspects of independent living and reducing its overall value to the care leaver.

Recommendation 8: The Scottish Discretionary Housing Payment Guidance Manual should be amended to disregard Care Leaver Payment for the purposes of assessing an individual's eligibility for Discretionary Housing Payment.

6. Technical issues

The draft regulations do not provide local authorities with the power to issue a new determination if they believe their initial determination was incorrect. In cases where a payment has been made in error and the authority seeks to recover it you would reasonably expect them to make a new determination. As drafted, the regulations do not specify this power, and they should be amended to include an explicit right of review.

Regulation 14(1)(3)(b) on exclusion from liability concludes by referring to a "wrong assumption." For the Care Leaver Payment, determinations will be made based on the actual circumstances at the time, not on assumptions. This terminology is typically used in regulations governing ongoing payments, where eligibility is assumed to continue, rather than for one-off payments. The Scottish Government should consider whether "wrong assumption" is the appropriate term in the context of the Care Leaver Payment.

Recommendation 9: The Scottish Government should consider amendments to regulations in light of the technical issues we have identified.

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.[19] Section 97 states that the Commission must report on draft regulations proposed to be made under various sections of the Act including Section 93A(1) which is the part and chapter under which the power for these draft regulations are made and which was added to our remit via the Social Security (Amendment) (Scotland) Act 2025.

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,[20] as operationalised via Our Charter.[21]

The Minister for Children, Young People and the Promise referred the draft regulations to us,[22] along with a Policy Note,[23] on 4 September 2025. We were given a deadline for reporting of 27 November 2025.

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

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[19] Social Security (Scotland) Act 2018
[20] Social Security (Scotland) Act 2018
[21] Social Security Scotland, Our Charter
[22] Scottish Commission on Social Security, The Care Leaver Payment (Scotland) Regulations 2026, referral documents
[23] Scottish Government, Care Leaver Payment, policy note

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

4 September 2025	Draft regulations formally referred to SCoSS by the Minister for Children, Young People and The Promise
25 September 2025	Officials attended a SCoSS Board meeting to discuss the draft regulations
30 October 2025	SCoSS Board discussed draft report at a Board meeting
5 November 2025	Policy roundtable with stakeholders
14 November 2025	SCoSS Board discussed draft report at an ad hoc Board meeting
26 November 2025	SCoSS Board discussed and signed off report at a Board meeting
27 November 2025	SCoSS report laid