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By email only

Dear Cabinet Secretary

The draft Two Child Limit Payment (Scotland) Regulations 2026 – amendments to paragraph 30 of the schedule

I am writing in response to the updated draft copy of paragraph 30 of the schedule to the Two Child Limit Payment (Scotland) Regulations 2026 referred to the Commission on 29 September 2025.

Further to our report on the draft regulations published on 1 September 2025¹ we note that the Scottish Government intends to amend paragraph 30 of the schedule in order to ‘ensure that where an individual has been overpaid Two Child Limit Payment due to also having the child element included in their Universal Credit award for the same child and period, the individual will be liable for the overpayment’.

The Scottish Government has stated that *“where DWP revises its decision and includes the child element on a person’s Universal Credit claim, the cause of the overpayment will have been DWP’s action, so it won’t be possible to attribute fault to the person being paid. Furthermore, the person could not reasonably have been expected to know DWP would ultimately change its decision, and that therefore an error had been made in respect of Two Child Limit Payment. This means that, without the changes, the person could not be classed as liable for the overpayment, contradicting the Social Security Principle requiring efficiency and value for money.”*²

¹ [Scottish Commission on Social Security, The Two Child Limit Payment \(Scotland\) Regulations 2026: Scrutiny report](#)

² Scottish Government response to a question from SCoSS, received on 9 October 2025.

It is true that in those circumstances, as the regulations are currently drafted, that overpayment could not be recovered.³ However, we are concerned that the way Regulation 30 is amended means that, when a claimant has received both a Two Child Limit Payment and a Universal Credit child element for the same child, a case manager has no discretion when asked to make a decision about a claimant's liability for an overpayment. The claimant is always liable. This lack of any discretion weakens the protections currently in place for claimants.

We have two main concerns:

Firstly, the revised regulation appears to apply more widely than the example provided. For instance, it would apply if someone starts getting the child element of Universal Credit for a child for whom they also receive the Two Child Limit Payment, they inform Social Security Scotland of the change, but due to an error the Two Child Limit Payment continues. The proposed change to the regulations means that, unlike other similar overpayments, the decision maker would have no discretion about whether to recover the overpayment and the claimant would always be liable for repayment regardless of the circumstances. This would apply even when the overpayment was not their fault. Such a blanket provision seems to remove scope for considerations such as the claimant's personal circumstances, whether they acted in good faith, and the equitable treatment of overpaid claimants in similar circumstances.⁴

Secondly, we have not seen any analysis showing how often the situation described by the Scottish Government is likely to occur, or what the impact would be if such overpayments could not be recovered. There are trade-offs to be made between the social security principles⁵ and we note the Scottish Government's recognition that the principle of efficiency (h) should not automatically override principle (g(i)), as the needs of those who require assistance will always be the first and most important consideration'.⁶ Policy should also be made by looking at the evidence (principle f). In this case, without seeing the evidence behind this policy decision, it is difficult to judge whether removing the liability test for this group of claimants is proportionate. Doing so could undermine the principle that dignity should be at the heart of the system (principle d) which may need to be balanced against the principle of efficiency and value for money (principle h).

Recommendation 1: Regulation 30 should be redrafted to ensure it is limited to the recovery of overpayments that result from the Department for Work and Pensions' decision making.

Recommendation 2: Regulation 30 should confer a discretionary power to recover an overpayment rather than mandate recovery.

³ We note that there are other circumstances where the backdated award of a DWP benefit may mean that someone received a payment from SSS that they were no longer entitled to. For example, if an individual gets a backdated award of Contributory Employment and Support Allowance for the same period they received Carer Support Payment for.

⁴ [Scottish Government, Scottish Public Finance Manual: Overpayments](#)

⁵ [Social Security \(Scotland\) Act 2018](#)

⁶ [Scottish Government, Social Security principles and a rights based approach](#)

Observation 1: When the Scottish Government considers different policy options, it would be helpful if we could see the analysis used to weigh those options. This would help us understand how the balance between principles has been assessed.

We would like to thank your officials for their helpful discussions during our scrutiny period, and we hope these observations are helpful. A copy of this letter has been submitted to the Convener of the Social Justice and Social Security Committee and will be published on our website.

Yours sincerely,

Ed Pybus
Chair
Scottish Commission on Social Security