



T: 0300 244 4000
E: scottish.ministers@gov.scot

Natalie Don MSP
Deputy Convener
Social Justice and Social Security Committee
The Scottish Parliament
Edinburgh
EH99 1SP

By email to: sjss.committee@parliament.scot

Copied to:
info@socialsecuritycommission.scot
dplr.committee@parliament.scot

8 November 2022

Dear Natalie,

I am writing in relation to the Social Security (Miscellaneous Amendment and Transitional Provision) (Scotland) Regulations 2022 (the “draft affirmative instrument”) which the Scottish Government laid on 20 September 2022.

As you will recall, I wrote to the Committee on 26 October setting out that the Scottish Government had identified that ancillary provisions were required to ensure that the draft affirmative instrument would have the desired effects. We accordingly made and laid the Scottish Child Payment (Saving Provisions) Regulations 2022 to come into force on 14 November 2022.

We have urgently reviewed all procedural aspects of transition for existing clients and, following further engagement with the Scottish Commission on Social Security (SCoSS), have identified further transitional issues where provision is required. It is therefore necessary to lay a further negative instrument – the Scottish Child Payment (Ancillary Provision) Regulations 2022 - to come into force on the same day as the draft affirmative instrument.

The Scottish Government accepts that it would be usual to withdraw draft affirmative instruments and re-lay them when issues are identified after laying. However, on this occasion the Scottish Government does not believe that it would be possible to withdraw the draft affirmative instrument and re-lay it while preserving the proposed coming into force date of 14 November 2022, particularly as the Social Justice and Social Security Committee considered the draft affirmative instrument on 27 October and recommended to the Parliament that it be approved. A delay in the coming into force date would have significant negative consequences for the recipients of Scottish Child Payment because it would delay the increase in the weekly rate and the extension of the benefit in respect of older children.

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Accordingly, the Scottish Government has taken the unusual approach of laying a further standalone instrument under section 95 of the Social Security (Scotland) Act 2018, which is subject to the negative procedure. This instrument contains consequential, transitional and saving provisions which need to come into force at the same time as the substantive amendments in the draft affirmative instrument on 14 November.

The Scottish Government therefore submits that it is necessary to lay the negative instrument at this time to ensure that the required provisions come into force at the same time as the substantive provisions in the draft affirmative instrument (subject to the Parliament's approval of that instrument). The Minister for Parliamentary Business has written to the Presiding Officer setting out the reasons for non-compliance with the 28 day rule.

Whilst making changes to live benefits can be complicated, I fully recognise that all relevant matters should have been addressed in the original draft affirmative instrument, so that the Committee had proper time to consider all provisions in the round. I hope it is of some reassurance that the negative instruments do nothing to change the policy intent or delivery plans upon which scrutiny and stakeholder engagement has been based. I apologise to the Committee and can assure you that lessons will be learned and procedures will be strengthened to avoid such a situation happening again.

I have copied this letter to the Scottish Commission on Social Security (SCoSS) and the Delegated Powers and Law Reform Committee.

Best regards,



BEN MACPHERSON

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St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

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