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16 September 2024

Dear Jeremy,

## **SOCIAL SECURITY (AMENDMENT) (SCOTLAND) BILL: INFORMATION RELATING TO AMENDMENT 7**

Thank you for our meeting on 11 September 2024, where we discussed your proposed amendments to the Bill.

Your proposed amendment 7 aims to ensure assistance is paid to the person responsible for a child at any given time. I agree that it is of utmost importance that assistance is paid to someone who is eligible to receive it or suitable to manage it on behalf of a child. I am confident that Social Security Scotland already have existing processes in place to ensure this happens, including where there is a dispute between two parties over who should receive or manage the benefit. I have provided detail on these processes below.

### **How Social Security Scotland ensure payment is made to an appropriate person**

Decisions over payments to an appropriate person are based on an underlying principle that the money should be given to a person who will use it for the benefit of the child or to benefit the family due to the costs associated with having a child in the family. Social Security Scotland's priority is making sure that this is paid to the eligible person, be that the individual themselves, or someone capable of using the money in the child's interests.

For low income-related benefits where the eligible person is the person receiving the benefit, or as the case may be their partner or a person on whom the eligible person is dependant, Social Security Scotland will need to be satisfied that the eligible person has responsibility for the child. In most cases this is evidenced through the child being named as part of the individual's reserved benefit award, however there are some exceptions in place which are aimed at supporting kinship carers, adoptive parents, guardians, parents through formal surrogacy and young parents.

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Where the eligible person is the child, such as with Child Disability Payment, payment is made to an appropriate individual acting on a child's behalf. When an adult applies on behalf of a child, Social Security Scotland will ensure they have legal authority to act on the child's behalf and that they are practicably able and willing to do so. For a parent to be practicably able to act on the child's behalf, they would need to maintain personal relations and direct contact with the child on a regular basis. By carrying out these checks, Social Security Scotland ensure the applicant is capable of arranging for the assistance to be spent for the benefit of the child and take urgent action if information is received to the contrary

There is also a duty on clients to notify Social Security Scotland of a change in circumstances, which helps ensure the person with responsibility for the child is in receipt of payment.

### **When Social Security Scotland receives information suggesting a person is no longer eligible or suitable to act on behalf of a child**

In these cases, Social Security Scotland will act urgently to determine whether the eligible person, or the person receiving the benefit on their behalf, is still suitable to receive payment. This may be by establishing whether the eligible person receiving one of the Five Family Payments, for example, still meets the child responsibility test. Where someone does not meet this test, for example because they have lost their child responsibility benefit, they are no longer eligible to receive the payments and payment can instead be made to someone else who does meet the test.

Social Security Scotland also have the power to change who payments are made to where necessary, when someone is acting on behalf of a child. For Child Disability Payment, if information is received that suggests that a person may no longer be suitable to act, urgent enquiries will be made to check with the current person managing the assistance if there has been any change to their parental rights and responsibilities and whether they remain willing and practicably able to manage the child's award. This also includes understanding any changes to the current living and care arrangements for the child. Social Security Scotland also have the power to suspend payment of Child Disability Payment where there is a risk of financial abuse, or if the current person is no longer able to continue managing the award, including in circumstances where the individual no longer has care or contact with the child. They also have power, where appropriate, to make payment to another person to be used for the benefit of the child.

The suspension powers for Scottish Child Payment are broadly similar, however the competing claims provisions described in more detail below are used more frequently to ensure assistance goes to the person with child responsibility in most cases where suspension is a consideration.

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## **If two people wish to receive the benefit or act on the child's behalf**

In these circumstances, the priority for Social Security Scotland is ensuring that an appropriate person is receiving the benefit, in order to ensure the child will benefit from the payment. The Regulations for Scottish Child Payment and Best Start Grant include competing claims provisions which enable a resolution when two people meet the child responsibility test, for example by both receiving different child responsibility benefit for the child. The competing claims regulations outline a hierarchy whereby different child responsibility benefits are given higher or lower weighting, depending on how well they evidence that the individual is responsible for the child.

Where two individuals occupy the same position on the hierarchy, Scottish Ministers must decide who is eligible, taking into account the circumstances of the children involved. Guidance is available for staff in Social Security Scotland to ensure they are clear on how to process such claims. Competing claims for Best Start Foods are handled in the same way, with the provisions outlined in guidance rather than in regulations.

When a second person expresses a wish to act on the child's behalf for Child Disability Payment, Social Security Scotland will look at the facts of the case to understand whether there is a need to consider changing who should act on behalf of the child and receive their payments. As described above, they have power to suspend or change who payments are made to where necessary.

Before finally deciding who will act on the child's behalf, Social Security Scotland will:

- gather information about the child's circumstances to understand who is practicably able to act on behalf of the child
- seek the views of those with an interest in the welfare or financial affairs of the child (such as a Social Worker) where appropriate
- consider and understand any safeguarding concerns about the current or alternative arrangements
- decide whether or not to seek the child's views

The decision on who will act on the child's behalf will always be made in the best interest of the child.

Social Security Scotland will carry out this process as urgently as possible, but it is important that they take the necessary time to establish if the current person managing the assistance is still suitable and whether a change requires to be made. It would not be in the interest of the child for Social Security Scotland to change who payments are made to immediately upon the receipt of information without investigating fully to ensure the arrangement would be of benefit to the child.

During a dispute the parties involved will often have differing perspectives as to who is most suitable to manage the assistance and Social Security Scotland are not suited to fully arbitrate disputes. They therefore encourage parents, guardians and families of children to mutually agree who should manage payments wherever possible.

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## Guidance

In the last 18 months Social Security Scotland have sought to continually improve in the area of managing disputes for Child Disability Payment, which has included updates to processes, guidance and notifications. They also now have a specialist team of case managers in place to deal with these complex cases.

This guidance is published on the Social Security Scotland website here: [Managing Assistance Decision Making Guide](#) as well as the relevant competing claims guidance for Scottish Child Payment: [Social Security Scotland - Competing claims for Scottish Child Payment](#).

I trust this information is helpful and would be happy to provide any further information that might be useful to you.



**SHIRLEY-ANNE SOMERVILLE**

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