POLICY NOTE

THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENT) (SCOTLAND) REGULATIONS 2025

SSI 2025/XXX

The above instrument is made in exercise of the powers conferred by section 13 of the Social Security Act 1988, section 175(4) of the Social Security Contributions and Benefits Act 1992 and sections 30(2), 32(2), 34, 79, 85(5) and 95 of the Social Security (Scotland) Act 2018. The instrument is subject to affirmative procedure.

Summary Box

The purpose of this instrument is to make consequential amendments and transitional provision as a result of the ending of tax credits by the UK Government. Tax Credits form a route for establishing eligibility and child responsibility in relation to Best Start Foods, Best Start Grant, Scottish Child Payment. They also form a route for eligibility to Funeral Support Payment, to the Winter Heating Payment and the Pension Age Winter Heating Payment.

These provisions are required to ensure that the policy intent that devolved legislation should match the reality of which qualifying reserved benefits are available to determine eligibility for devolved benefits.

A further amendment is required to the Social Security (Information-sharing) (Scotland) Regulations 2021 to replace an outdated reference to Discretionary Housing Payments being made under the Discretionary Financial Assistance Regulations 2001.

Further amendments are also required to the Scottish Child Payment Regulations 2020, and the Carer's Allowance Supplement and Young Carer Grants (Residence Requirements and Procedural Provisions) (EU Exit) (Scotland) Regulations 2020 in relation to appeals on Scottish Child Payment, and Carer's Allowance Supplement where individuals are seeking to receive this support from outside of the UK. These amendments ensure that there is alignment for appeals across all benefits.

Policy Objectives

The regulations for a number of Scottish Government social security benefits refer to tax credits to establish eligibility and, in some cases, child responsibility. The Tax Credit scheme ended on 5 April 2025. These amending regulations ensure that devolved legislation matches the reality of which qualifying reserved benefits are available to determine eligibility for devolved benefits.

The regulations which require amendment are:

The Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018

The Welfare Foods (Best Start Foods) (Scotland) Regulations 2019

The Funeral Expense Assistance (Scotland) Regulations 2019

The Scottish Child Payment Regulations 2020

The Winter Heating Assistance (Low Income) (Scotland) Regulations 2023

The Winter Heating Assistance (Pension Age) (Scotland) Regulations 2024

Each of the amended regulations (with the exception of the Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018) were introduced after the Tax Credit scheme was closed to new applications in April 2019. The original policy intent for each set of regulations was to ensure that people on low incomes were protected, and in relevant cases, to ensure that there was a safe and secure transfer to the new benefit from the UK scheme which had been devolved. It is for this reason that tax credits were included as a route to eligibility and child responsibility, despite the known fact that the UK Government intended to close tax credits in the future as part of the move from 'legacy benefits' to Universal Credit which was introduced in 2013.

The regulations include saving provisions for the Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018, the Welfare Foods (Best Start Foods) (Scotland) Regulations 2019, the Funeral Expense Assistance (Scotland) Regulations 2019 and the Scottish Child Payment Regulations 2020 to ensure that any individual who receives a backdated tax credit award after the coming into force date (for example, because they had an ongoing appeal) can rely on this backdated award to qualify for these benefits.

The regulations also include an amendment to the Social Security (Information-sharing) (Scotland) Regulations 2021 to replace reference to Discretionary Housing Payments being made under the Discretionary Financial Assistance Regulations 2001 (the 2001 Regulations) with reference to Discretionary Housing Payments now being made under the Social Security (Scotland) Act 2018 (the 2018 Act). The amendment is necessary because the 2001 Regulations have now been revoked in Scotland and Discretionary Housing Payments are now payable under Part 5 of the Social Security (Scotland) Act 2018..

The regulations also include amendments to the Scottish Child Payment Regulations 2020 and the Carer's Allowance Supplement and Young Carer Grants (Residence Requirements and Procedural Provisions) (EU Exit) (Scotland) Regulations 2020 to align with provisions in the Social Security (Scotland) Act 2018 as amended by the Social Security (Amendment)(Scotland) Act 2025[1].

For appeals on Scottish Child Payment and Carer's Allowance Supplement where individuals are seeking to receive this support from outside of the UK, the amendments clarify that when exercising its powers to either uphold a determination or make its own determination in an appeal, the First-tier Tribunal must not take into account circumstances which did not exist at the relevant time, although it may take into account circumstances which existed but which were not known. The purpose is to ensure that people have re-determination and appeal rights in relation to any change in their circumstances for a later period.

1 https://www.legislation.gov.uk/asp/2025/2/contents

The amendments are necessary to ensure that the regulations align with the Social Security (Scotland)Act 2018 as amended, and that appeals are dealt with consistently across all benefits.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Social Security (Miscellaneous Amendment) (Scotland) Regulations is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This legislation is not relevant to the Scottish Government's policy to maintain alignment with the EU, because each EU member state has its own social security laws. EU rules co-ordinate these separate social security systems between member states to support freedom of movement, but this legislation is not relevant to social security co-ordination specifically.

Consultation

As the programme for 'Move to UC' from tax credits will have already been completed by the time these regulations come into force, and as this is a policy fully reserved to the UK Government, there was no benefit to a formal consultation related to the Tax Credit amendments.

Scottish Government officials presented details of the Move to UC to a stakeholder's group meeting in February 2024. This group included representatives from Citizens Advice Scotland, CPAG, Age Scotland, COSLA, NAWRA, the Poverty Alliance, Maggie's and others. No significant concerns were raised in relation to the planned closure of Tax Credits or Move to UC programme, or the support that Social Security Scotland had put in place to support clients who receive Scottish Government benefits, to ensure that they did not lose entitlement.

Impact Assessments

The following impact assessments have been completed on the draft SSI:

- A Fairer Scotland Duty Assessment
- A Child Rights and Wellbeing Impact Assessment
- An Islands Communities Impact Assessment

An Equalities Impact Assessment and a Data Protection Impact Assessment are not required, due to the technical nature of the parts of the regulations which relate to tax credits and consequential amendments. These are required to respond to UK Government policy (i.e. to abolish tax credits) or to make minor technical updates to regulations.

We have consulted the Information Commissioner's Office (the ICO) under Article 36(4) of the UK GDPR. The ICO has confirmed that they do not require to engage further at this time.

With regard to the amendment on appeals, a full suite of impact assessments was prepared during the development of the Social Security (Amendment) (Scotland) Act 2025[2].

Financial Effects
A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The Scottish Government does not believe that these consequential amendments will have an adverse impact on the competitiveness of Scottish companies or the third sector within Scotland, the United Kingdom or internationally, including Europe and the rest of the world.

With regard to the amendment on appeals, a Business and Regulatory Impact Assessment[3] was prepared during the development of the Social Security (Amendment) (Scotland) Act 2025[4]

Scottish Government
Social Security Directorate

27 April 2025

2 https://www.parliament.scot/bills-and-laws/bills/s6/social-security-amendment-scotland-bill.
3 https://www.gov.scot/publications/social-security-amendment-scotland-bill-business-regulatory-impact-assessment/pages/2/.
4 https://www.parliament.scot/bills-and-laws/bills/s6/social-security-amendment-scotland-bill.