POLICY NOTE

THE SOCIAL SECURITY (CLAIMS AND PAYMENTS) (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2021

SSI 2021/305

The above instrument was made in exercise of the powers conferred by sections 5(1)(i) and 189(1), (5) and (6) of the Social Security Administration Act 1992. The instrument is subject to negative procedure.

Summary Box

These regulations make amendments to the Social Security (Claims and Payments) Regulations 1987 and the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013. The amendments will have the effect of allowing large payments of arrears of devolved disability benefits to Scottish clients to be paid in instalments, with the consent of the client.

Policy Objectives

The regulations will amend the Social Security (Claims and Payments) Regulations 1987 and the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 to allow payments of arrears of devolved disability benefits to Scottish clients to be paid in instalments instead of a lump sum if it is in the person's best interests. This will only be done if the person agrees to the payment of the arrears in instalments. The aim is to mitigate the risk of vulnerable clients using the lump sum in a way that may be harmful to them.

Executive competence for disability benefits transferred to Scottish Ministers on 1 April 2020, and they are currently being delivered by the Department for Work and Pensions ("DWP") under the terms of Agency Agreements. The benefits that have been devolved to Scotland and are being delivered under Agency Agreements are: Carers' Allowance, Personal Independence Payment, Disability Living Allowance, Attendance Allowance, Severe Disablement Allowance and Industrial Injuries Disablement Benefit.

DWP often has to retrospectively review entitlement to benefit. If a long time has passed since the original decision this can result in clients being due a large payment of arrears of benefit. There are a number of possible reasons for these payments, for example, delays in processing claims, successful mandatory reconsiderations, successful appeals and official error. For the vast majority of clients, receiving a large arrears payment is not problematic and they can effectively manage the payment themselves, or with some third party support if needed. However, there are clients for whom these payments may pose a potential risk, where having large sums of money at any one time might lead to harmful behaviours which could have tragic consequences. Some vulnerable clients may not have any third party support, or if

they do, it may not be practical for that third party to receive the payment and then manage it. If there is no trusted third party then payment must be made in full to the client.

As part of its approach to handling its most vulnerable clients, DWP already include discussions with clients about large payments that are due to them. These amendments will introduce an additional option to offer to clients in discussions with them or with those acting on their behalf. Detailed DWP guidance has been developed to support this approach linked to DWP's overarching safeguarding strategy.

DWP are bringing forward regulations to make these changes to come into force on 18 October. The Agency Agreements between the Scottish and UK Governments require that the Scottish Government consider mirroring changes to the required legislation to enable devolved benefits to be administered for Scotland consistently with the rest of the UK. Section 32 of the Scotland Act 2016 and section 53 of the Scotland Act 1998, taken together, require that where functions in relation to disability assistance have been devolved, the Scottish Ministers must exercise those functions instead of the Secretary of State. In this instance that means Regulations require to be laid before the Scottish Parliament so as to amend the Regulations as they apply in Scotland to reflect the amendment being carried out by the DWP.

Consultation

The Scottish Government has not undertaken consultation activity because of the short amount of time available to make the required amendments.

Impact Assessments

Impact Assessment	Status	Comment
EQIA	Complete	No impacts identified.
Fairer Scotland	Not required	This is an amendment to existing policy and does not constitute a strategic decision as described in 'The Fairer Scotland Duty: Interim Guidance for Public Bodies'.
BRIA	Not required	This is an amendment to existing policy. The instrument has no financial effects on the Scottish Government, local government or on business.
CRWIA	Complete	No impacts identified.
Islands	Not required	We have not identified any evidence that these Amendment regulations will directly or indirectly discriminate against remote and island communities.
Environmental	Not required	This is not a qualifying plan under the Environmental Assessment (Scotland) Act 2005

Financial Effects

The Minister for Social Security and Local Government confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Social Security Directorate

08/09/2021