

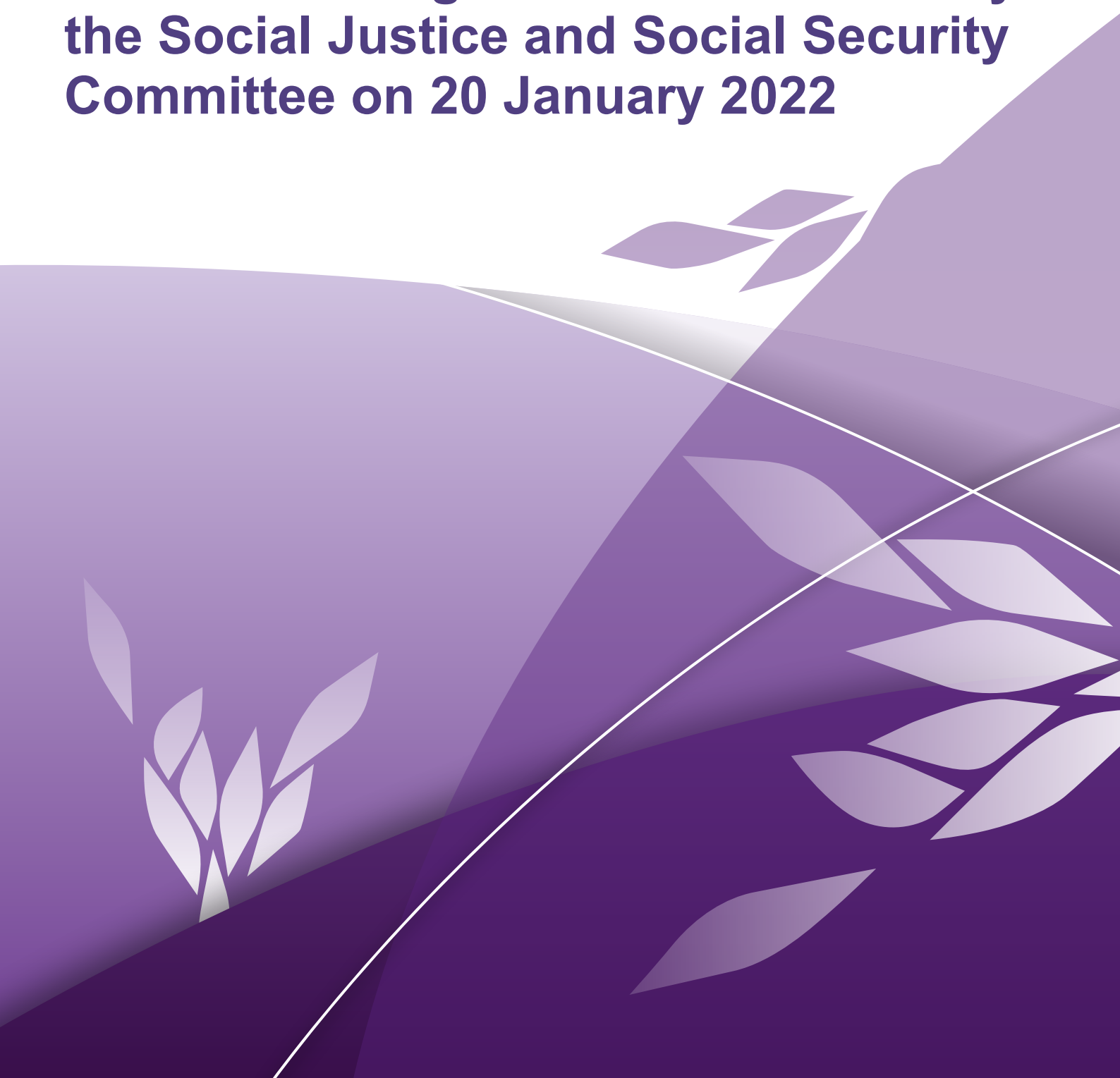


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Social Justice and Social Security Committee

Subordinate legislation considered by the Social Justice and Social Security Committee on 20 January 2022



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Social Justice and Social Security Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Social Justice, Housing and Local Government, excluding matters relating to local government, housing and planning.



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The Scottish Child Payment Regulations 2020 and the Disability Assistance for Children and Young People (Scotland) Regulations 2021 (Miscellaneous Amendments) Regulations 2022 [draft]

1. This report sets out the Social Justice and Social Security Committee's consideration of [The Scottish Child Payment Regulations 2020 and the Disability Assistance for Children and Young People \(Scotland\) Regulations 2021 \(Miscellaneous Amendments\) Regulations 2022](#) (2nd meeting, 2022). The [minutes](#) of the meeting have been published on the Committee's webpages. The [Official Report of the meeting](#) will be published in due course.
2. The Scottish Child Payment Regulations 2020 and the Disability Assistance for Children and Young People (Scotland) Regulations 2021 (Miscellaneous Amendments) Regulations 2022 were laid on 29 November 2021. This Scottish Statutory Instrument (SSI) was made in exercise of the powers conferred by sections 31, 36, 51, 52, 79 and 95 of the Social Security (Scotland) Act 2018. This instrument makes miscellaneous amendments to both the Scottish Child Payment Regulations 2020 and the Disability Assistance for Children and Young People (Scotland) Regulations 2021. This instrument is subject to the affirmative procedure, which means it is for the Committee to recommend to the Parliament whether the draft regulations be approved.
3. According to the Scottish Government's [Policy Note](#), the instrument makes the following changes:
 - In respect of the Scottish Child Payment Regulations 2020, the instrument confirms the date when the period for Ministers carrying out a re-determination of entitlement begins where the First-tier Tribunal set aside a decision by the Scottish Ministers not to accept a request for a re-determination of entitlement to Scottish Child Payment.
 - In respect of the Disability Assistance for Children and Young People (Scotland) Regulations 2021, the instrument makes it clear that individuals with refugee status are exempt from one of the residence conditions (the habitual residence test). It also removes the ability for clients who are currently in receipt of Disability Living Allowance, Personal Independence Payment or Armed Forces Independence Payment to make a pre-emptive application for Child Disability Payment. It seeks to remove potential ambiguity on the level of costs of any qualifying services that are met by a local authority for the purposes of determining if an individual is in alternative accommodation.
 - The instrument further places a duty on Ministers to determine whether an individual is entitled to short-term assistance in circumstances where the First-tier Tribunal for Scotland set aside a decision by the Scottish Ministers not to accept a request for a re-determination of entitlement to Child Disability

Payment.

- Finally, in respect of both the Scottish Child Payment Regulations 2020 and the Disability Assistance for Children and Young People (Scotland) Regulations 2021, it allows Ministers to suspend ongoing payments of Scottish Child Payment or Child Disability Payment in prescribed circumstances.
4. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on [14 December 2021](#), and noted that while the Scottish Government laid responses to two reports by the Commission on 29 November which conformed with section 97(9), a third set of minor technical amendments in this instrument were not reported on by the Scottish Commission on Social Security prior to laying the instrument. In correspondence, the Scottish Government noted that this was an administrative oversight. The DPLR Committee welcomed the Scottish Government's apology for the administrative oversight, and acknowledged that this oversight was only related to one set of minor technical amendments in the instrument. It did however write to the Minister for Parliamentary Business to highlight its desire for the laying requirements in section 97(9) to be complied with in full.
 5. During the evidence session Committee members raised several points regarding the regulations. Members discussed the suspension of benefits, including the timescales for individuals to provide further information to Social Security Scotland, the guidance that will be available to support individuals and decision-makers in the suspension process, and reasoning around self-assessment versus an objective test. Members also highlighted issues around the legal right to advocacy in cases of suspension. The case transfer process was discussed and the risks associated with ending existing DWP benefits to apply for benefits through Social Security Scotland.
 6. The Minister made a commitment to provide further information in writing on recruitment and the expansion of resource for Social Security Scotland and the Scottish Commission on Social Security. He also indicated that additional information would be made available on the process for seeking medical reports in support of claims, if there will be any prioritisation system in the case transfer system and the circumstances where claimants are entitled to advocacy.
 7. Following the evidence session, the Minister for Social Security and Local Government moved motion S6M-02786 in the name of Shona Robison MSP—

That the Social Justice and Social Security Committee recommends that the Scottish Child Payment Regulations 2020 and the Disability Assistance for Children and Young People (Scotland) Regulations 2021 (Miscellaneous Amendments) Regulations 2022 [draft] be approved.
 8. The motion was agreed to without division.
 9. The Social Justice and Social Security Committee recommends to the Scottish Parliament that the Scottish Child Payment Regulations 2020 and the Disability Assistance for Children and Young People (Scotland) Regulations 2021 (Miscellaneous Amendments) Regulations 2022 [draft] be approved.

