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26 October 2022

Dear Elena,

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 be aware, the draft affirmative instrument, amongst other things, includes provisions to extend Scottish Child Payment to individuals responsible for under 16 year olds and increase the weekly rate to £25 per child. If approved by Parliament, the draft affirmative instrument will make provision:

- To increase the weekly rate of Scottish Child Payment to £25 per week, per eligible child;
- To open applications for Scottish Child Payment to all eligible individuals responsible for under-16s – with all payments backdated to the date we receive their application - ensuring that around an additional 300,000 children are potentially eligible for it; and
- To provide for the weekly rate to be doubled for the 12 week period preceding the death of a child.

The policy intention is that:

- the higher weekly rate of £25 should only apply to periods of entitlement which fall on or after 14 November 2022, and
- entitlement to a double payment of Scottish Child Payment where a child dies does not apply where the child in question dies before 14 November 2022.

The Scottish Government identified that ancillary provisions will be required to ensure that the draft affirmative instrument, if approved, has that effect, and have accordingly made and laid the Scottish Child Payment (Saving Provisions) Regulations 2022. These Regulations are subject to the negative procedure and come into force on 14 November 2022.

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The Scottish Government accepts that, in the ordinary course of events, 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. A delay in the proposed 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.

Accordingly, the Scottish Government has taken the unusual approach of laying a standalone savings instrument under section 95 of the Social Security (Scotland) Act 2018, which is subject to the negative procedure. It is necessary for the saving provisions to come into force at the same time as the substantive amendments in the draft affirmative instrument to ensure that the intended policy is delivered.

The Scottish Government has sent a letter to the Presiding Officer setting out the reasons for non-compliance with the 28 day rule.

The Scottish Government has sought to make, lay and bring into force this instrument as soon as possible. I will be appearing before the Social Justice and Social Security Committee on 27 October 2022 in connection with the draft affirmative instrument, and I am happy to discuss these provisions and our approach at that time.

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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