The Committee will meet at 9.30 am in the Sir Alexander Fleming Room (CR3).

1. **Declaration of interests**: Jeremy Balfour will be invited to declare any relevant interests.

2. **Decision on taking business in private**: The Committee will decide whether to take items 7 and 8 in private.

3. **Social Security (Scotland) Bill**: The Committee will take evidence on the Bill at Stage 1 from 'Your Say' witnesses—
   - Norman Gray;
   - Brian Hurton;
   - Moira Sinclair.

4. **Social Security (Scotland) Bill**: Pauline McNeill and Ruth Maguire will report back to the Committee on the Inclusion Scotland event they attended on 16 August.

5. **Subordinate legislation**: The Committee will take evidence on the Universal Credit (Claims and Payments) (Scotland) Regulations 2017 (SSI 2017/227) from—
   - John Dickie, Director, Child Poverty Action Group in Scotland (CPAG);
   - Jeremy Hewer, Policy Advisor, Scottish Federation of Housing Associations;
   - Michael McClements, Policy Manager, COSLA;
6. **Social Security (Scotland) Bill (in private):** The Committee will review the evidence heard earlier in the meeting.

7. **Social Security (Scotland) Bill:** The Committee will consider possible additional witnesses for the Bill.

8. **Witness invitation:** The Committee will consider a further witness invitation.

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Simon Watkins  
Clerk to the Social Security Committee  
Room TG.01  
The Scottish Parliament  
Edinburgh  
Tel: 0131 348 5228  
Email: SocialSecurityCommittee@parliament.scot
The papers for this meeting are as follows—

**Agenda Item 3**

Note by the Clerk SC/S5/17/15/1

**Agenda Item 4**

Inclusion Scotland Event Outcomes SC/S5/17/15/2

**Agenda Item 5**

SPICe Briefing and Written Submissions SC/S5/17/15/3

**Agenda Item 7**

PRIVATE PAPER SC/S5/17/15/4 (P)

**Agenda Item 8**

PRIVATE PAPER SC/S5/17/15/5 (P)
Background

1. The predecessor Welfare Reform Committee ran an initiative called ‘Your Say’ where benefit claimants were encouraged to write in with their experiences of the social security system. A number of these appeared before the committee to tell their stories. In all six evidence sessions were held in this way.

2. The Social Security committee agreed in the spring to host a workshop of this group to get their views on the Social Security Bill. The workshop was held on 24 August and more than a dozen witnesses with their carers attended, as well as the convener. The attendees came from all over Scotland and were on a range of benefits, although most of them disability-related. The attendees ran through the committee’s call for evidence and discussed their views.

3. Three of the attendees agreed to appear before the committee to represent the views of the group. They will read out a statement of the views expressed and then answer questions from the committee. Copies of the statement will be available on the day.

Simon Watkins
Clerk
Social Security Committee
1. On 16 August we attended a meeting of Inclusion Scotland’s Poverty and Social Security Policy Panel especially arranged to focus on the Social Security Bill. The meeting was attended by about 50 Inclusion Scotland members.

2. The consideration of the Bill included a number of break-out groups, which we attended and which did not always express the same views. The note below summarises the views that were expressed:

* There was a recognition that they needed to be a balance between primary legislation and regulations, and advantages in having all the guidance in one place - regulations - but there was a feeling in some quarters that baseline entitlements should be included in the bill.

* in general the principles were liked and reference was made to them being the original founding principles of social security. The following additional principles were suggested:
  - Social Security should have the aim of allowing recipients to contribute and participate in Scottish society
  - there should be a right to independent assistance and advocacy
  - the Social Security system should be person-centred

* the Charter was regarded as a bit ‘woolly’. It should include performance criteria that can be measured and there should be a method of monitoring and recourse if these are not met. It should include individual rights.

* there was no agreement on whether it should be the responsibility of the agency or individuals to provide medical information. However, it was felt that individuals should not pay fees to doctors for information and that there should be an agreed fee structure.

* attendees supported the creation of the short-term benefit, provided there was no repayment mechanism in the event of losing an appeal.
* there should be a time limit for the completion of re-determination.

* attendees were divided on whether there should be a re-determination stage or not.

* overpayment due to agency error - on balance attendees felt that there should be no repayment, but where repayments were reasonable they should be of manageable amounts.

* on balance attendees would like payments always to be in cash, rather than in kind. If in kind resources are ever provided, they should be a choice.

Pauline McNeil MSP/ Ruth Maguire MSP
Social Security Committee
Social Security Committee
15th Meeting, 2017 (Session 5), Thursday 7 September 2017

The Universal Credit (Claims and Payments) (Scotland) Regulations 2017

1. Introduction and summary

This note provides background to the Universal Credit (Claims and Payments) (Scotland) Regulations 2017 (“the regulations” below). The regulations were laid before Parliament on 29 June 2017, and come into force on 4 October 2017. The Scottish Government previously published a draft version of the regulations and ran a public consultation on them.

Alongside the regulations, the Scottish Government published a Business and Regulatory Impact Assessment. An Equality Impact Assessment (“EqIA” below) was produced in January 2017, and is due to be updated before the regulations come into force, according to the Policy Note to the regulations.

The regulations will eventually give most Scottish universal credit (UC) claimants the right to request:

- payment of UC twice a month
- that the UC housing costs element is paid directly to their landlord (both social sector and private landlords).

These are collectively referred to as “the flexibilities” below.

All of the witnesses giving oral evidence to the Committee responded to the consultation on the previous draft regulations, and have also provided written evidence in advance of this session. Citations for witness submissions are not given, as they are all included in the papers for the meeting.

Some aspects of the regulations that members may wish to discuss with witnesses include:

- their coverage, as current UC claimants are not able to request the flexibilities
- the review process if requests are refused, as there is no right of appeal
- the interaction with “alternative payment arrangements”
- the potential impact on claimants who request twice-monthly payments at the outset of their claim
- how much witnesses currently know about how the flexibilities will work in practice
- whether landlords are adequately protected by the regulations.

These areas are considered further below. Further background information on UC can be found in SB 17-09 The Introduction of Universal Credit, and at https://www.gov.uk/universal-credit.
2. Consideration by the Delegated Powers and Law Reform (DPLR) Committee

The Delegated Powers and Law Reform (DPLR) Committee will consider the regulations at its meeting on 5 September 2017. The Committee clerks will provide an update on the DPLR Committee’s consideration of the regulations at the meeting.

3. Draft regulations and consultation process

Before laying these regulations, the Scottish Government produced a set of draft regulations, which were set out in a public consultation in early 2017 (“the consultation” below). Responses to the consultation are published on the Scottish Government consultation hub. Respondents expressed concerns about a number of things (many of which are discussed further below), including:

- whether rights to the flexibilities were created, or only a right to request them
- how decisions on the flexibilities could be challenged
- what safeguards would be in place for landlords if a claimant cancelled a request for direct payments
- how claimants would be informed of the options
- how the flexibilities interact with "alternative payment arrangements" that the DWP can already make for UC claimants (see below)
- the definition of a “Scottish claimant”
- the effect of a request for more frequent payments at the start of a UC claim.


4. Changes made by the regulations

The regulations provide for some Scottish UC claimants to be able to request:

- twice monthly payments of UC
- payment of their rent and any eligible service charges included in the housing costs element of UC direct to their landlord (whether social sector or private).

In relation to payments direct to the landlord, the regulations also clarify that if the total UC payment for a month is less than the amount of the housing costs element, the whole award is to be paid to the landlord.

The structure of the regulations is similar in relation to both of the flexibilities:

- an eligible claimant can request a change to the payment arrangements
- the DWP must agree to the request unless that would be “unreasonable”
- if it refuses a request, the DWP must explain why to the claimant
- eligible claimants must be advised of the availability of the flexibilities
- the flexibilities exist alongside the DWP’s own discretion to agree to alternative payment arrangements.

The Scottish Government consultation response confirms that as UC remains reserved, “arrangements for delivery [of the flexibilities] will be set out formally in a Service Level Agreement agreed by both Governments.” It is not clear whether the intention is to make this agreement public. It is also unclear how much it will cost the
Scottish Government to implement the flexibilities. This was confirmed as a cost to be met from the Scottish Government budget by the Fiscal Framework document.¹

5. Who the regulations apply to

The regulations only apply to new claims for UC made on or after 4 October 2017 in UC “full service” areas. Full service areas are areas in which UC has replaced new claims for all of the benefits it replaces, including from families and disabled people, for example. In most areas of Scotland, UC can currently only claimed by single jobseekers and so these regulations will not initially apply.²

The coverage of the regulations is more restricted than the previous draft regulations. As SFHA point out in their written submission, at present the flexibilities will never apply to people who claimed UC before 4 October 2017, or who claim UC in an area before it moves to the full service, unless there is a break in their claim. The policy note does not make clear why this is the case, nor why the regulations laid are more restrictive than the draft regulations were. The Scottish Government response to the consultation states that they are:

“working with the DWP to agree when existing UC recipients will also have the option of requesting the Scottish flexibilities and we will communicate this widely to people in receipt of UC and local and national partners before the Scottish flexibilities for new claimants in full service UC areas come into effect.”

This suggests that further information will be available before 4 October 2017. However, further regulations will be required to extend a right to request the flexibilities to existing UC claimants.

The Business and Regulatory Impact Assessment suggests that as: “UC is not due to be fully implemented by DWP until 2022 … [the Scottish Government proposes that] the regulations should be reviewed at that point.” In light of the quote from the Scottish Government consultation response above, it seems likely that amending the regulations before 2022 is already under consideration. See also Section 10 below, discussing other potential UC flexibilities that are not provided for in the regulations.

6. Right to flexibilities and review process if a request is refused

A number of respondents to the consultation felt that the draft regulations did not meet the Scottish Government’s policy intention, as they did not create a right to the flexibilities, only a right to request them. Similarly, “a number of respondents…expressed concern about the apparent absence of any right or route to appeal a decision.”³

¹ See para 33 of The agreement between the Scottish Government and the United Kingdom Government on the Scottish Government’s fiscal framework (February 2016)
² Current full service areas are, broadly speaking, East Lothian, East Dunbartonshire, Inverclyde, Highland, Stirling and Clackmannanshire. All areas of Scotland are expected to move to the full service by September 2018. For more details see SB 17-09 The Introduction of Universal Credit (March 2017) and DWP, Universal Credit Transition Rollout Schedule – July 2017 to September 2018 (July 2017)
³ Scottish Government, Universal Credit Claims and Payments (Scotland) Regulations: Analysis of responses to the public consultation exercise, June 2017
In its response to the consultation, the Scottish Government explained that an absolute right to the flexibilities has not been included as “the DWP… is delivering the flexibilities and this proposal is incongruent with their legislation and underlying principles of welfare reform.” The response goes on to explain that administrative decisions in the reserved benefits system generally do not attract a right of appeal.  

The regulations have been amended to provide that the DWP must not refuse a request, unless it would be unreasonable to grant it. The Scottish Government expect that requests would only be refused in exceptional circumstances, and “are working with the DWP to ensure that a process is in place where the non-granting of a flexibility, if challenged, can be reviewed if new evidence is presented.”

Renfrewshire Council’s written submission calls for refusal reasons to be “explicitly defined within operational guidance”, whilst COSLA raise a similar concern about the “lack of clarity” about when requests might be refused. CPAG in Scotland call for continued exploration of appeal rights with the DWP, arguing that this “would be in keeping with the Scottish Government’s commitment to create a social security system that treats individuals with dignity and respect.”

No further detail of how a review process might work is currently available, although the Scottish Government response to the consultation states that the Service Level Agreement with the DWP will include “management information on reviews”.

7. How the flexibilities will work in practice

7. How the flexibilities will work in practice

At present, no information is publicly available making clear how and when applicants will actually be able to request the flexibilities. The flexibilities may be part of the online UC claims process, as the EqIA states that “the choice of monthly or twice-monthly payments will be built into the UC system.” If this is the case, it would seem important that there is a robust mechanism in place to ensure that applicants are supported to exercise the choice, if necessary.

The Minister for Social Security’s letter to the Convener about the regulations stated that the issue of how the flexibilities will work in practice was “outside the remit of the consultation”. However, she confirmed that “the Joint Ministerial Working Group on Welfare will discuss the arrangements when it next meets”. This meeting is due to take place on 14 September 2017. It remains to be seen what further information will be published.

Some of the potential implications of the uncertainty about exactly how the flexibilities will work are discussed in the following sections.

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4 In the case of the payment arrangements for UC, due to schedule 3 para 1(e) of The Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 No. 381

5 Scottish Government, Response to the Consultation on Universal Credit (Claims and Payments) (Scotland) Regulations 2017, June 2017

6 Strictly speaking, the UC flexibilities are not part of the “Scottish social security system” (see s.7 of the Social Security (Scotland) Bill 2017 SP Bill 18 [as introduced]) and so the principles set out in that bill do not actually apply to them. However, the Scottish Government is clear that promoting dignity and respect form part of its thinking in relation to the flexibilities, in spite of this not being required by law – see the quote on p6 below.

7 The minutes of the most recent meeting were published on 8 June by the Scottish Government: Joint Ministerial Working Group on Welfare minutes: February 2017
8. Interaction with alternative payment arrangements and local support services

Witnesses highlighted in their written evidence that personal budgeting support is currently provided by local organisations, and expressed concern about whether (as Renfrewshire Council put it) “work coaches in the DWP… have sufficient time to discuss the full consequences of requests for more frequent payments”. The Scottish Government consultation response discusses at length (paras 26-32) the role of the Joint Implementation Forum (JIF), and the importance of “clear and effective communications” in a format suitable for all applicants. Whilst welcoming this approach, COSLA also highlights that “local authorities still have little detail around the practical implementation of these flexibilities” (written evidence).

“Alternative payment arrangements” (“APAs” below) is the name given to the possibility that the DWP will agree to one or more of:

- Paying the UC housing costs element direct to a landlord.
- Paying UC more frequently than monthly.
- Splitting UC payments between members of a couple.

Whether these arrangements are put in place currently depends on a decision made by the DWP about the vulnerability of the claimant(s). It is intended that these arrangements will normally be time-limited.

APAs sit alongside personal budgeting support (PBS), which is also provided to all new UC claimants. This may be as simple as signposting to online budgeting tools, or may involve a referral for face-to-face budgeting advice delivered by local authorities (or other organisations contracted by them). Further details of the current arrangements are set out in the DWP’s publication Universal Credit Personal Budgeting Support and Alternative Payment Arrangements (March 2017).

It is currently unclear how APAs and PBS will interact with the flexibilities in practice. It appears that APAs may take priority, as the policy note states that an APA “will continue to operate for those who fall under the current criteria”. The regulations themselves are clear that the flexibilities do not replace the DWP’s discretion to make arrangements in these areas (Regs 2(4) and 4(6)). The regulations also provide that Scottish UC claimants do not have to be notified of the existence of the flexibilities if an equivalent APA is in place (Regs 3(2) and 5(2).

The EqIA also suggests that Scottish claimants who do not want more frequent payments may not have a choice if an APA is already in place, suggesting that it will not be possible to opt out of monthly payments if “the DWP Jobcentre work-coach deems more frequent payments necessary.”

8. Impact of an early request on the first payment of universal credit

A number of responses to the consultation expressed concern about the six-week wait for the first payment of UC. The Scottish Government has made clear that it shares these concerns, this issue being prominent in its reasons for calling for a halt to the roll-out of UC. The structure of UC means that no payment of UC entitlement
is made during this period, so the flexibilities cannot allow for an early payment to be made, although DWP can pay advances of UC entitlement.9

Renfrewshire Council’s written submission highlights a potential issue if claimants choose to request twice-monthly payments at the outset of their claim, as they will effectively still wait for six weeks, but then only receive a partial payment. The council argue that “it is essential that this is an informed choice with this in-built delay fully considered and discussed with any applicant before choosing more frequent payments.”

9. Protection for landlords

Some respondents to the consultation expressed concern about what would happen if applicants chose to end direct payments of rent to their landlords, in terms of whether landlords would be notified, and would be able to make a case for continued direct payments. This led some to argue for direct payment of rent to landlords in all cases. The Scottish Government response to the consultation states that it is:

“strongly of the view that applicants and recipients of UC must have a choice. It is not for Government to tell an individual how to manage their household budget and is contrary to our social security principles of dignity and respect. In addition, making the direct payment of rent to landlords a default position creates a clear disparity of choice between people in receipt of UC and those who are not.”

The last sentence of this quote accurately describes the normal position for private sector and housing association tenants getting housing benefit (HB).10 But it should be noted that local authority tenants still receiving HB – including those over pension age, who will never be transferred to UC – do not receive housing benefit as a payment, but rather in the form of a “rent rebate”.11 As such, to completely avoid a disparity with the HB scheme, the regulations would have to have made provision for automatic payment to landlords in some circumstances.

The Business and Regulatory Impact Assessment for the regulations acknowledges that:

“There is a potential negative impact for landlords where the UC housing element does not cover the full rent, leaving some to be paid by the tenant. However, this is the same as the position now under current UC arrangements.”

The House of Commons Work and Pensions Select Committee’s 2015 inquiry into Benefit Delivery heard evidence of issues at that time around lack of notification to

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9 Essentially UC entitlement for a month is decided on the basis of the claimant’s circumstances at the end of an “assessment period”. “Short-term advances” of UC entitlement are available during the waiting period, but must be repaid from future UC entitlement.

10 An exception to this is that if a tenant is in rent arrears of over 8 weeks rent, payment of housing benefit (HB) must be instead made to the landlord (Reg 95 of The Housing Benefit Regulations 2006 No. 213)

11 See s.134(1A) of the Social Security Administration Act 1992 c.5
claimants and landlord when direct payments of the housing costs element to the landlord ended. Information about UC for landlords on gov.uk currently states that:

“DWP will notify [the landlord] when the MPTL [managed payment to landlord] ceases but we won’t tell you the reason why. This is because of data sharing regulations and claimant confidentiality.”

SFHA’s written evidence highlights that:

“Experience to date has been, in respect of Managed Payments to Landlords and Third Party Deduction payments, that the quality of information from the DWP has been variable; there is a danger of reputational harm to housing associations if the direct payment system does not operate reliably.”

10. Further flexibilities not set out in the regulations

The Ministerial forward to the Scottish Government consultation response made clear that work is ongoing to implement further UC flexibilities which are not included in the regulations:

“First, the power to vary the amount of housing costs paid to people in receipt of Universal Credit and we are working with the Department for Work and Pensions to establish a way by which we can abolish bedroom tax at source. Second, there was strong support, from respondents to the social security consultation, to split payments between members of a household. We have already begun to take this work forward with womens’ groups, disability and carer organisations and, following discussion with the Department for Work and Pensions, we will make an announcement on how and when split payments can best be delivered as soon as we can.”

The EqIA only describes the flexibilities which are actually set out in the regulations. Whilst it identifies positive effects for both women and men of the flexibilities included in the regulations, it does not make any mention at all of the power to split UC payments between members of a couple. Several organisations responding to the consultation argued that splitting payments would allow “for increased gender equality, particularly for women in relation to access to resources.”

Jon Shaw

SPICe Research

01 September 2017

Note: Committee briefing papers are provided by SPICe for the use of Scottish Parliament committees and clerking staff. They provide focused information or respond to specific questions or areas of interest to committees and are not intended to offer comprehensive coverage of a subject area.

The Scottish Parliament, Edinburgh, EH99 1SP www.parliament.scot

12 Scottish Government, Universal Credit Claims and Payments (Scotland) Regulations: Analysis of responses to the public consultation exercise, June 2017
Annexe A

Submission from CPAG

1. CPAG welcome the opportunity to give evidence to the Social Security Committee on whether our policy concerns, as set out in our response to the consultation on Universal Credit (Claims and Payments) (Scotland) Regulations 2017, have been addressed.

Citation, commencement and interpretation

2. We welcome the clarification about residency status of “Scottish UC applicant or recipient” as set out in Regulation 1. This is helpful and is an improvement upon the draft regulations’ wording of “lives in Scotland”.

Regulation 2 - Persons to be able to request twice-monthly payments

3. CPAG previously highlighted concerns about the unintentional consequences of a ‘right to request’ resulting in the draft Regulations not meeting the policy intention of claimants having a right to choose twice monthly payments.
4. CPAG welcome the Scottish Government’s acknowledgement of these concerns and attempt to address these by changing the regulations to state that the SoS “must agree” unless the request is considered “unreasonable”.
5. It is helpful to note that the Scottish Government expects almost all requests for a flexibility to be granted (unless there are exceptional circumstances e.g. Alternative Payment Arrangements are in place).
6. However, the strengthened wording does not define what would be considered ‘unreasonable’. Previously, we had highlighted in response to the draft regulations that circumstances in which twice-monthly payments are not appropriate should be prescribed in regulations. It is important that the joint SG and DWP communications makes it clear to applicants, with examples, of where a request might be refused.

Right of appeal

7. CPAG remain concerned that there is no right of appeal to a decision by the Secretary of State. We welcome the commitment by the Scottish Government in the Response to the Consultation that they are working with the DWP to ensure that a process is in place where decisions can be reviewed if new evidence is presented. However, this is not a full right of appeal and we would support continued exploration of appeal-right options with the DWP. This would be in keeping with the Scottish Government’s commitment to create a social security system which treats individuals with dignity and respect.
8. CPAG recognise that the Scottish Government cannot introduce appeal rights alone and in our response to the consultation, we highlighted that an amendment would potentially have had to be made to the Universal Credit etc. (Decisions and Appeals) Regulations 2013 before the SSI came into force. We would welcome the Scottish Government continuing to explore appeal rights with the UK government as this
would be in keeping with the broader principles being enshrined in the elsewhere in Scottish social security system.

Regulation 3 - Persons to be advised they can request twice-monthly payments &

Regulation 5 - Tenants to be advised that they can request direct payments for rent and services

9. Regulation 3 is helpful in that it sets out that every person entitled to request twice-monthly payments must be advised that they can request such a split and be given information about the choice. Similarly, Regulation 5 sets out the right to be advised that tenants can request direct payment for rent and services. However, there needs to be further clarity about who will make this information available to the claimant, how the information will be communicated and at what point in the claim process the information will be made available.

10. We welcome the Scottish Government response to the Consultation on Universal Credit setting out the importance of clear, timely and effective communications. The service level agreement between the Scottish Government and the DWP to deliver UC flexibilities must also be clear in setting out such issues and clarifying roles and responsibilities to ensure applicants are aware of the choices available to them.

Regulation 4 - Tenants to be able to request direct payments for rent and services

11. As with Regulation 2, CPAG previously highlighted concerns about the unintentional consequences of the wording ‘may request’ resulting in the draft Regulations not meeting the stated policy intention of claimants having a right to choose managed payments of rent direct to landlords.

12. Again, as with Regulation 2, the changed wording to the new language setting out that the Secretary of State “must agree” unless the request is considered “unreasonable”, is an improvement upon the draft Regulations.

13. The revised wording of Regulation 5 sets out that a direct payment to landlord request can only be refused if “unreasonable to implement”. However, as with Regulation 2, the strengthened wording does not define what would be considered ‘unreasonable’ and we would welcome a definition of unreasonable circumstances being laid out more clearly.

14. CPAG’s concerns highlighted in our response to the Draft Regulations on claimants’ liability to make payment have not been addressed in the revised Regulations. In particular, we wish to draw attention to the potential problems which have not been addressed in the regulations which may arise if the housing element of UC fluctuates from month to month (e.g. a person in paid employment with fluctuating income), leading to a shortfall in rent, and claimants not being aware of the problem. A mechanism to ensure claimants could be informed of their outstanding rental liability on a monthly basis could address this.
15. Finally, while the Scottish Government notes in its response to the consultation that this is an operational issue, it is still not clear would happen where joint UC claimants disagree on whether they should receive twice monthly payments or payments direct to their landlord. One party might, for example, request twice monthly payments while the other requests monthly payments. It is not apparent how this circumstance would be resolved.

For more information please contact Jenny Duncan, Policy and Parliamentary Officer, CPAG in Scotland on jduncan@cpagscotland.org.uk

Submission from SFHA

1. Who we are

1.1. The SFHA represents 119 housing associations and cooperatives who help provide homes for over 280,000 households across Scotland. A significant proportion – about 60% - of housing association rental income comes from housing benefit. It is therefore vital that this income is not disrupted if housing associations are to continue their full range of activities – including sustaining tenancies and developing homes to meet the Scottish Government’s target for affordable housing.

1.2. The SFHA welcomes the opportunity to present evidence to the Social Security Committee on The Universal Credit (Claims and Payments) (Scotland) Regulations 2017 that has been laid before the Scottish Parliament. In its original response to the consultation on the regulations, submitted in March 2017, the SFHA raised a number of concerns. Though some of these concerns may lie outwith the scope of the Scottish Government’s administrative flexibilities, they are concerns the Social Security Committee should be aware of.

2. Executive Summary

2.1. The regulations offer a welcome alternative to the restrictions in force in Universal Credit, which should both assist with personal budgeting and offer a measure of assurance for housing associations, but:

- Twice monthly payments will not address the major shortcoming of Universal Credit – the initial minimum wait of up to 6 weeks before first payment;
- The flexibilities are just one small element in a maelstrom of change in the benefits system, the implementation of which has been beset by problems, leaving some claimants destitute;
- The flexibilities can only be applied to a limited number of Universal Credit claimants - indeed the regulations laid before Parliament appear to have introduced more restrictions; was this the intention?

3. The Regulations

3.1. Regulation 6 of the regulations laid in Parliament on 29 June is significantly different from the original draft circulated for consultation in January 2017. The original stated that the flexibilities could only be applied for claims
administered by the Universal Credit Full Service\(^1\). The regulations laid before to Parliament in June appear to go further: the flexibilities can only be applied to new claims made after 4 October – claims made before 4 October but not processed until after that date are excluded; claims in Full Service areas but not administered by the Full Service system are excluded; claims made after 4 October outwith the Full Service system but are subsequently transferred to the Full Service System are excluded.

3.2. Whilst it is understood that for technical reasons the flexibilities can only be administered by the full service, on the basis of these regulations it appears that there will be a rump of Universal Credit Claimants who will not be able to take advantage of the flexibilities. For example, East Ayrshire and South Lanarkshire Job Centres are due to switch to the Full Service in October; some claimants will be able to take advantage of the flexibilities if their claim was made on or after 4 October, but those who have made a claim on any date up to and including Tuesday 3 October will not. The SFHA would therefore like reassurance from the Scottish Government and DWP that any claimant, once their claim was administered by Universal Credit Full Service, could apply for either twice monthly payments in accordance with Regulation 2, or apply to have their housing costs paid direct to their landlord in accordance with Regulation 4.

3.3. The 2015 Scottish Household Survey\(^2\) reported that over half of social rented sector tenants have no savings and nearly 60% of single parent households across all tenures have no savings; yet it is these such households who may need to resort to claim Universal Credit and who will struggle to manage with no payment for 6 weeks after their initial claim. This point was made very eloquently by Martin Williams, a Welfare Rights worker at the Child Poverty Action Group when giving evidence to the House of Commons Work and Pensions Select Committee\(^3\) in January 2017:

‘You have to understand that the vast majority of people we come across—and it is typical of Universal Credit claimants—do not have six weeks’ money in hand at the point they make their claim. That is for a couple of reasons, quite apart from the fact that people at the bottom end of the income distribution tend not to have money in hand. It is because many of those claimants are not coming from work on to Universal Credit. For example, if your employment support allowance is stopped because you are found fit for work, that is a benefit that is paid two-weekly in arrears. You then have to claim Universal Credit if you

\(^1\) This submission uses the terms that are currently used by the DWP – Universal Credit Live Service that was used to rollout Universal credit initially, using gateway criteria to restrict those who could apply for universal credit, and Universal Credit Full Service, which is currently being rolled out across the UK with the gateway criteria removed. Universal Credit Full Service is synonymous with the digital service referred to in the regulations

\(^2\) http://www.gov.scot/Publications/2016/09/7673/7

\(^3\) http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/work-and-pensions-committee/universal-credit-update/oral/46063.pdf
are not challenging the decision. You do not have the money on hand. Even for those who are coming from work, the evidence seems to be that they are not people who had salaried monthly payments. Social Market Foundation research said that 40% of those in the lowest two income quintiles are paid weekly rather than monthly. People just do not have the money at the start and the evidence of the hardship that causes is that we see them in a food bank context where we provide advice.”

3.4. There is no transitional protection for those currently moving from a legacy benefit to Universal Credit because of a change of circumstance – transitional protection will only be available to those subject to the managed migration of claimants that is due to begin in 2019. Twice monthly payments may help claimants to manage their personal budgets in the long run, but it does not address the initial wait, which is why the SFHA has argued that advance payments – which exist within UC regulations, should be made a default option rather than something to be applied for. Advance payments are not ideal in that the DWP will claw back the advance payment very quickly from payments, but they would at least offer a better alternative to borrowing from illegal money lenders.

3.5. The option of direct payments to landlords is welcome, though there is still a concern over communication issues with the DWP: landlords need timeous information about the payments they receive. Experience to date has been, in respect of Managed Payments to Landlords and Third Party Deduction payments, that the quality of information from the DWP has been variable; there is a danger of reputational harm to housing associations if the direct payment system does not operate reliably.

4. Conclusion

4.1. The regulations do offer some comfort to claimants and to landlords, but they do not fully address all the shortcomings of Universal Credit administration, which lie with the UK Government. The exclusions to the entitlement to the flexibilities, detailed in Regulation 6, from the SFHA’s reading of the regulations, appear to be excessive; they would lead to a significant number of claimants whose claim was made before the commencement date being prevented from taking advantage of the flexibilities, even after their claim is administered by the Universal Credit Full Service.

Submission from COSLA

As the representative body for Scottish local authorities, COSLA welcomed the opportunity to respond to the consultation on Universal Credit (Claims and Payments) (Scotland) Regulations 2017 and to provide further comments to the Social Security Committee to assist with their scrutiny of the Regulations.

COSLAs submission to the consultation echoed local governments support for the content of the technical regulations and confirmed that the regulations should make it easier for
people to manage their Universal Credit (UC) payments. COSLAs submission also reflected views of our membership on the wider operational issues, whilst we recognised these were perhaps out with the scope of the original consultation, we felt it important to raise these for consideration.

**Technical Amendments**

In terms of the technical content of the regulations COSLA welcomes the amendments made in response to the views provided by all of those who responded. The amendment to ensure the Secretary of State (SoS) must agree to a request unless it is considered unreasonable should address concerns around requests being refused without legitimate reasons and hopefully smooth the process for people across Scotland. That said we would highlight the lack of clarity around what dispute resolution is should the SoS decide a request for a payment to landlord or more frequent payment is unreasonable.

Local government also welcomes the updated references to rent, to ensure service charge elements are adequately reflected in the regulations. Rent arrears are already a significant concern for local authorities, in and around UC, and whilst the original omission may not have caused significant issues, the amendment minimises the risk to landlords around this issue.

**Wider operational issues**

COSLA's original response also focussed on the wider operational issues around these Regulations mainly:

- Clarification around timescales for implementation of the Scottish flexibilities
- Interactions with Discretionary Housing Payments (DHP) and other local government services
- Identification and discussion of the additional administrative burdens Councils may encounter because of these Regulations.

Scottish Government have provided clarity around the timescales for implementation of the Scottish flexibilities which is welcomed. From a local government perspective commencement in October 2017 is beneficial given the planned escalation of Universal Credit roll out. It would be helpful to understand how any delay in full roll out of UC will affect these priority flexibilities.

That said local authorities still have little detail around the practical implementation of these flexibilities. Scottish Government should ensure, as suggested in our original submission, that they work with Councils and social landlords to explore the end to end process, given Councils and landlords will receive many of these payments across Scotland. Councils need to understand how an increase in the number of direct payments from DWP, both in terms
of numbers taking up payments direct to landlords and as a knock-on effect to more frequent payments, will impact them.

Scottish Government and DWP, via the Joint Implementation Forum, are in the process of taking forward the practical implementation of the Scottish Flexibilities. This forum will be helpful in ensuring adequate preparations are made within these two organisations for implementation however will do little to ensure local government and landlords additional burdens are addressed. COSLA is happy to facilitate discussions in and around these issues which may include increases in both transaction costs and additional support to ensure Scottish applicants to UC are aware of their right to utilise a flexibility.

Examples where clarity around the end to end processes include:

- How DWP will consistently highlight and apply flexibilities to only Scottish cases, and how the risk of error will be minimised
- How the split payments will interact with advance payments of UC
- Who will be responsible for advising Scottish applicants around the best course of action regarding managed payments – particularly where applicants are in variable work or where direct payments of the full eligible rent will leave applicants with little or no UC

Lastly Councils will also still have responsibility for the administration and payment of DHP both in terms of the spare room subsidy (at least until the power to vary housing costs is enacted) and more general applications for assistance. Access to information to allow Councils to accurately determine and pay DHPs is already administratively complex – discussion around the impact of flexibilities need to take place to ensure the complexities do not increase. Given the short-time frame we would suggest these discussions are taken forward as a matter of urgency.

**Further Flexibilities**

We also note Scottish Governments intention to progress the other two flexibilities separately. Namely splitting payments between members of a household and the power to vary housing costs paid in UC. It is imperative local government are involved early in discussions around these two further powers given the significant role we play in mitigating the spare room subsidy via DHPs and the potential impacts of splits payments which to date have not been utilised under existing UC provisions. Given that there is much less experience and data is available around split payments we would suggest caution in determining split payment policy notwithstanding the issues around gender and tackling inequalities which are of course relevant and important.

In conclusion COSLA welcomes the amendments made to the Universal Credit (Claims and Payments) (Scotland) Regulations 2017 but suggest both Scottish Government and DWP should seek to include Councils, landlords and other relevant stakeholders in the practical
design and implementation without delay to ensure policy outcomes can be delivered across Scotland.

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Submission from Renfrewshire Council

Renfrewshire Council welcomes the opportunity to respond to the consultation on Universal Credit (Claims and Payments)(Scotland) Regulations 2017. The further comments will hopefully assist the Social Security Committee with their scrutiny of the Regulations, and provide points for consideration when the operational policy and guidance is drafted by the Scottish Government and the Department for Work and Pensions (DWP).

Do the regulations meet the policy intent of offering a choice to applicants on having their UC payments made twice monthly?

Following the amendments of the draft Regulations, and the Scottish Government response to the consultation, the Regulations do meet the policy intent within the scope of the devolved powers. The following points, however, should be considered with regards to operational guidance and administration for a coherent end to end process:

- Paragraph 2(4) – it may be worthwhile clarifying within operational guidance in what circumstances a payment may be made more, or less, frequently than twice monthly.

- Currently where the DWP pay Universal Credit (UC) twice monthly, the periods of payment are such that the first payment is split with the first half payment made at the end of the first assessment period, and the second half payment paid a few weeks later (8 or 9 weeks from date claim originally made). Whilst it is welcomed that customers have a choice, it is essential that this is an informed choice with this initial in-built delay fully considered and discussed with any applicant before choosing more frequent payments. Indeed, it is uncertain whether any impact assessment has been done on any possible increase in applications for budgeting advances/Scottish Welfare Fund (SWF) payments that may arise while applicants wait for their UC payments. We suggest that robust ongoing monitoring of the impact on these aspects needs to be undertaken.

- Paragraph 2(3) – It is accepted that it is outside of the Scottish Government’s powers to insert appeal rights in the Regulations for a request for a more frequent payment being refused within UC. It is essential that any refusal reasons are explicitly defined within operational guidance. The Scottish Government would need to ascertain if they have control over this guidance to measure and monitor the refusals for any policy/guidance/training improvements.
- Local Authorities receive information from the DWP in terms of UC awards for the administration of Council Tax Reduction (CTR). Clarification should be given on how these changes will alter the notification process. In addition, how the administration of twice monthly payments will affect Discretionary Housing Payment (DHP) administration (especially ‘Bedroom Tax’ awards), managed payments and deductions needs to be clarified. Additional burdens maybe placed on Local Authorities and Landlords as an unintended consequence – who pays for this additional administrative burden?

- The information flow regarding UC awards is complex, especially with regards to DHP administration where Data Sharing is less straightforward than that for CTR. There needs to be discussion regarding the impact of these flexibilities to ensure greater information flow to prevent complicating administration processes further.

- The Scottish Government will understand that Personal Budgeting Support (PBS) for Universal credit recipients is provided by Local Authorities, advice agencies and other Third Sector agencies. Are the work coaches in the DWP fully skilled and do they have sufficient time to discuss the full consequences of requests for more frequent payments especially when UC awards fluctuate with earnings? Any time constraints on these discussions may lead to ill-considered requests for flexible payments, leading to additional PBS. Would any additional PBS referrals, as a consequence of these Regulations, be funded by the DWP or the Scottish Government?

**Do the regulations meet the policy intent of offering a choice to UC applicants on managed payments of rent direct to landlords?**

Following the amendments of the draft Regulations, and the Scottish Government response to the consultation, the Regulations do meet the policy intent within the scope of the devolved powers. The following points, however, should be considered with regards to operational guidance and administration for a coherent end to end process:

- Paragraph 4(4) - It is accepted that it is outside of the Scottish Government’s powers to insert appeal rights in the Regulations for a request for a managed payment being refused within UC. It is essential that any refusal reasons are explicitly defined within operational guidance. The Scottish Government would need to ascertain if they have control over this guidance measure and can monitor the refusals for any policy/guidance/training improvements.

- It is essential that applicants understand fully the consequences of having managed payments, and how any fluctuations in the award of UC would alter either the amounts paid to landlords and/or the amounts paid to the applicant.

- Whilst the delays in awarding Housing Costs have seen some improvement by DWP changes to their process, it should be investigated whether any further streamlining can be done in light of these Regulations to reduce/eradicate delays in Housing Costs awards. These delays have a knock on affect in the administration of CTR and DHP.
The Scottish Government will understand that PBS is provided by Local Authorities, advice agencies and other Third Sector agencies. Are the work coaches in the DWP fully skilled and do they have sufficient time to discuss the full consequences of requests for more frequent payments especially when UC awards fluctuate with earnings? Any time constraints on these discussions may lead to ill-considered requests for flexible payments, leading to additional PBS. Would any additional PBS referrals, as a consequence of these Regulations, be funded by the DWP or the Scottish Government?
The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 5(1)(i) and (p) and section 189(4)(a), (5) and (6) of the Social Security Administration Act 1992 and all other powers enabling them to do so.

In accordance with sections 29(4) and 30(3) of the Scotland Act 2016, they have consulted the Secretary of State.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Universal Credit (Claims and Payments) (Scotland) Regulations 2017 and come into force on 4th October 2017.

(2) In these Regulations—

“the 2013 Claims and Payments Regulations” means the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013;

“housing costs element” has the meaning in regulation 25 of the Universal Credit Regulations 2013, but does not include a housing costs element calculated under schedule 5 of those Regulations (housing costs element for owner-occupiers);

“Scottish UC applicant or recipient” means a person applying for universal credit, or awarded universal credit, who resides in Scotland (and any one of the members of a couple living in Scotland who jointly make a claim for, or have been awarded, universal credit).

Persons to be able to request twice-monthly payments

2.—(1) Despite regulation 47(1) of the 2013 Claims and Payments Regulations (universal credit generally to be paid monthly in arrears), a Scottish UC applicant or recipient may request at any
time to receive future payments of universal credit twice-monthly in arrears, where that is more frequent than the payments that would otherwise be made.

(2) A person who has made the request referred to in paragraph (1) may at any time—
   (a) request that the Secretary of State cancel it; or
   (b) make a further such request.

(3) The Secretary of State must agree to a request made under paragraph (1) or (2), unless the Secretary of State considers it to be unreasonable to implement the request, in which case the Secretary of State must advise the person who made it of the reasons for its refusal.

(4) Nothing in this regulation restricts the ability of the Secretary of State to arrange for payments of universal credit to be made twice-monthly, or more or less frequently than twice-monthly, in any case or class of case.

Persons to be advised that they can request twice-monthly payments

3.—(1) Every person entitled to request twice-monthly payments under regulation 2(1) must be advised that he or she can so request and be given information about the implications of that choice.

(2) Paragraph (1) does not apply where the Secretary of State is arranging, or has arranged, for payments of universal credit to be made twice-monthly, or more frequently than twice-monthly.

Tenants to be able to request direct payments for rent and services

4.—(1) A Scottish UC applicant or recipient whose award of universal credit will include, or includes, a housing costs element in respect of a rent payment or service charge payment may request at any time to have an amount of universal credit paid directly to the person to whom those payments are due.

(2) In paragraph (1)—
   (a) “rent payment” has the meaning given by paragraph 2 of schedule 1 of the Universal Credit Regulations 2013; and
   (b) “service charge payment” has the meaning given by paragraph 7 of that schedule.

(3) A person who has made the request referred to in paragraph (1) may at any time—
   (a) request that the Secretary of State cancel it; or
   (b) make a further such request.

(4) The Secretary of State must agree to a request made under paragraph (1) or (3), unless the Secretary of State considers it to be unreasonable to implement the request, in which case the Secretary of State must advise the person who made it of the reasons for its refusal.

(5) The amount of an award of universal credit to be paid in accordance with paragraph (1) is the amount of the housing costs element of the award that relates to liability to make rent payments and service charge payments or, if less, the amount of the award.

(6) Nothing in this regulation restricts the ability of the Secretary of State to direct that payments of universal credit be made to a person other than a claimant under regulation 58 of the 2013 Claims and Payments Regulations (payment to another person on the claimant’s behalf) or to make deductions and payments in accordance with the provisions of schedule 6 of those Regulations.

Tenants to be advised that they can request direct payments for rent and services

5.—(1) Every person entitled to request direct payments under regulation 4(1) must be advised that he or she can request to have an amount of universal credit paid directly, as described in that regulation.

(2) Paragraph (1) does not apply where the Secretary of State is arranging, or has arranged, for universal credit to be paid directly.
Applications for, and awards of, universal credit to which these Regulations do not apply

6.—(1) These Regulations have no effect in relation to—

(a) an award of universal credit which has been made before 4th October 2017;
(b) an application made before that date for such an award or an award made as a result of such an application;
(c) an award of universal credit which is not administered on the digital service computer system operated by the Secretary of State in digital service areas;
(d) an application for such an award which will not be administered on that system if granted;
(e) an award of universal credit which is administered on that system only as a result of a decision of the Secretary of State to transfer the administration of that award to that system from another system operated by the Secretary of State.

(2) For the purpose of paragraph (1)(c), “digital service area” has the meaning given in regulation 5(3) of the Universal Credit (Digital Service) Amendment Regulations 2014(a).

JEANE FREEMAN
Authorised to sign by the Scottish Ministers
St Andrew’s House,
Edinburgh
27th June 2017

(a) S.I. 2014/2887, as substituted by S.I. 2015/1754.
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide flexibilities to the operation of the claims and payments system for universal credit in relation to Scotland.

Regulation 1(2) provides the definition of “Scottish UC applicant or recipient” that is used to determine the persons applying for, or in receipt of, universal credit to whom the Regulations apply. Its definition of “housing costs element” provides that regulations 4 and 5 only apply to persons who are tenants and do not apply to owner-occupiers who receive universal credit with a housing costs element.

Regulation 2 allows persons to request to have universal credit payments made twice-monthly, where payments would be otherwise made less frequently. A person who has made that request can cancel it at any time. The Secretary of State may only refuse a request that it would be unreasonable to implement. If a request is refused the person must be told why.

Regulation 3 provides for persons entitled to request the flexibility to be advised that they can request to have universal credit paid twice-monthly, rather than monthly, unless the Secretary of State is already making, or proposing to make, payments with at least that frequency.

Regulation 4 allows Scottish universal credit applicants and recipients who are tenants to request to have universal credit payments made directly to persons to whom rent and service charges are due. The payments would be of universal credit so far as relating to the person’s liabilities for accommodation which that person rents. A person who has made that request can cancel it at any time. The Secretary of State may only refuse a request it would be unreasonable to implement. If a request is refused the person must be told why.

Regulation 5 provides for persons entitled to request the flexibility to be advised that they can request to have rent payments and service charge payments made directly, unless the Secretary of State has already made, or is proposing to make, arrangements for such payments.

Regulation 6 provides that these flexibilities only apply where the person’s application for an award of universal credit award is made on or after the date that these Regulations come into force and where that award will be administered on the Secretary of State’s digital service computer system. That system is currently being rolled out across Scotland. The flexibilities will also not apply to persons whose awards of universal credit are administered on that system solely as a result of being transferred to it from roll-out of the system, rather than entered on that system as the result of the making of an application.
POLICY NOTE

The Universal Credit (Claims and Payments) (Scotland) Regulations 2017

SSI 2017/227

The above instrument was made in exercise of the powers conferred by section 5(1)(i) and (p) and section 189(4)(a), (5) and (6) of the Social Security Administration Act 1992 and all other powers enabling Ministers to do so. The instrument is subject to negative procedure.

Policy Objectives

Universal Credit (UC) is a single payment for working age people which replaces some other benefits\(^1\) and is reserved to the UK Government. Currently, UC is paid monthly and the housing element of UC is paid direct to the claimant who then must arrange for payment to their landlord to cover the rent and service charges.

Sections 29 and 30 of the Scotland Act 2016 allow Scottish Ministers to introduce flexibilities in relation to UC, including with regard to the person to whom, and the time when, UC is to be paid. The objective of the flexibilities is to enable the delivery of UC to be better suited to the needs of people in Scotland.

The two priority flexibilities being progressed through the Universal Credit (Claims and Payments) (Scotland) Regulations 2017 are:

- having the option of being paid UC twice a month rather than monthly; and
- having the option of any UC housing element being paid direct to social and private sector landlords.

The overall aim is to give persons applying for UC in Scotland more power and choice over the way in which their UC payments are made. The regulations are designed to offer an individual a choice to have payments made twice monthly. The regulations also offer an individual the opportunity to have their housing element of UC paid direct to their landlord (social and private sector). The intention is to help the person applying for, or in receipt of, UC to manage their UC account in a way that suits them best to assist with household budgeting, securing their tenancy and avoiding any build-up of rent arrears.

The regulations will not affect the overall amount of UC that is payable. Nor will the regulations replace the Department for Work and Pensions (DWP) system for Alternative Payment Arrangements which will continue to operate for those who fall under the current criteria of requiring them (e.g. as a result of a vulnerability or rent arrears). As UC remains reserved to the UK Government, the flexibilities in these regulations will be delivered by DWP on behalf of the Scottish Government.

\(^1\) Income-based Jobseeker’s Allowance; Housing Benefit; Working Tax Credit; Child Tax Credit; income-related Employment and Support Allowance; and Income Support.
The regulations apply to new claimants in full service UC areas. A full service UC area is one where a person has an online UC account to manage his/her claim. Full service UC is being rolled out across the UK and should be concluded in September 2018 for all new claims, and managed migration of existing benefit claimants is due to be completed in March 2022.

Consultation

On 16 January 2017, the Scottish Government launched a consultation seeking views on draft Universal Credit (Claims and Payments) (Scotland) Regulations 2017. It ended on 13 March 2017 and 100 responses were received; 70 from organisations and 30 from individuals.

The consultation asked if the draft regulations met the policy intent of offering a choice to applicants on having their UC payments made twice monthly and also the choice of managed payments of rent direct to landlords.

An independent analysis of the consultation responses was carried out by Craigforth and the full report is available at: http://www.gov.scot/Publications/2017/06/7377. On the frequency of payment question, 88 out of 100 respondents thought the draft regulations met the policy intent. On the question of managed payments of rent to landlords, 87 out of 100 respondents thought the policy intent was met.

Other comments were also received, many of which were outside the remit of the consultation, and indeed the powers available to the Scottish Government through the Scotland Act 2016. These included how the flexibilities would work in practice, for example, the relationship with Alternative Payment Arrangements, how an applicant appeals a decision and what are the circumstances for refusal. The importance of making claimants aware of the choice of the Scottish flexibilities was also stressed by a number of respondents.

A number of changes were made to the UC draft regulations based on respondents’ views.

A full list of respondents who agreed to their details and submission being published is on the Scottish Government website. It includes CoSLA, Citizens Advice Scotland, Child Poverty Action Group and a large number of local authorities and housing associations.

The Scottish Government response to the independent analysis of the consultation responses is available at: http://gov.scot/Publications/2017/06/8512

Impact Assessments

An integrated impact assessment has been completed on the policy and a results template is available at: http://www.gov.scot/Publications/2017/01/5228. No negative impacts of the policy have been identified for any of the protected characteristics. The Equality Impact Assessment process has not altered the policy intention but it has identified evidence gaps and potential data needs going forward to allow for policy implementation to be monitored across equality groups. An updated EQIA will be published before the regulations come into effect on 4 October.
Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy on business is minimal.

Scottish Government
Social Security Directorate

29 June 2017