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An t-Ionad Fiosrachaidh

Social Justice and Social Security Committee

**27th Meeting, 2022 (Session 6), Thursday,
27 October**

Social Security Amendment Regulations

Introduction

[The Social Security \(Miscellaneous Amendment and Transitional Provision\) \(Scotland\) Regulations 2022](#) were laid in September along with a [policy note](#) and [impact assessments](#).

Among other things these regulations increase the Scottish Child Payment to £25, extend it to children under 16 and allow automated payments of Best Start Grant to children who already get SCP. These changes are forecast to cost £313m in 2023-24 rising to £345m in 2027-28.

The Scottish Commission on Social Security (SCoSS) [reported on a draft version of these regulations in July](#) and the [Scottish Government responded in September](#). [Additional regulations relating to Ukraine](#) were circulated to SCoSS on 6 September. [SCoSS wrote to the Committee about these on 20 September](#).

The Committee will hear from:

- Ben Macpherson, Minister for Local Government and Social Security, Scottish Government;
- Nicola Birrell, Best Start Grant and Best Start Foods Policy Manager, Scottish Government;
- Karen Clyde, Solicitor, Scottish Government;
- Janet Richardson, Deputy Director, Client Services Delivery, Social Security Scotland; and
- Pauline Torley, Scottish Child Payment Policy Manager, Scottish Government.

What the regulations do

These regulations make changes to the Scottish Child Payment, Best Start Grants and Best Start Foods. They also correct an error across a number of benefits in relation to Irish Citizens coming from Ukraine.

The main provisions are summarised below.

Changes to Scottish Child Payment

- **Extend entitlement to children under 16.** (Regulation 4 (2)) Older children can be added to an existing claim without requiring a new application. However, where there is only one child on the claim and they turn six before these rules commence, then a new claim will be needed.
- **Increase SCP to £25** per child per week (Regulation 4 (6)(a))
- Introduce a **lump sum payment** of up to 12 weeks SCP on the death of a child. (Regulation 4(6(b))).
- **Time limits:**
 - Remove the requirement to pay SCP within four weeks of getting an application. (Regulation 4(7)).
 - Shorten the 'linking period'. (Regulation 8(b)). SCP can be re-started automatically if its less than 12 weeks since a client was last entitled to it. Currently this 12 week period runs from when Social Security Scotland decide a client isn't entitled. These regulations change this, so the 12 weeks will run from the earlier date of when the change occurred that led to disentitlement. (eg. the date the client lost entitlement to Universal Credit). (n.b the linking period applies if someone loses a qualifying benefit or loses responsibility for a child).

Changes to Best Start Grant

- **Automated payments:** Allow BSG early learning and school age payments to be made automatically to those who already get SCP (regulation 2(3)).
- **Pay the higher, 'first child', rate of pregnancy and baby BSG for subsequent children:** if the family are refugees (if the baby was born before coming to the UK), are kinship carers or the parent had to leave home due to domestic abuse (regulation 2(4)(c)). The draft policy note stated: "This amendment was prompted by a UK Upper Tribunal decision in relation to Sure Start Maternity Grant: [SK and LL v Secretary of State for Work and Pensions](#). The Upper Tribunal held (a) refugees and individuals granted humanitarian protection with pre-flight children, and (b) individuals who have their first child when they are already responsible for a child who came into their care after 12 months old, should have access to a Sure Start Maternity Grant."

- Remove the exclusion to paying BSG where the child is in **residential care** (regulation 2(4)(a)(iii)).

Changes to all three benefits: definition of kinship care

These benefits can be claimed by kinship carers (if they are getting the relevant qualifying benefits). Currently the kinship care arrangements recognised are:

- kinship care orders under the Children and Young 2014 Act – (This relates to children who have been looked after and who are at risk of becoming looked after) and,
- agreements with the local authority to place a looked after child in kinship care.

These regulations make it explicit that; a kinship carer can be a friend as well as a relative and also that ‘kinship care’ includes agreements with the local authority for placing looked after children under [regulation 10\(1\) of the Looked After Children \(Scotland\) Regulations 2009](#).

The draft policy note ([published in April](#)) stated that: “We are also exploring whether we need to expand the list of agreements which can be used to evidence a kinship care.”

Ukraine amendments

In line with [corrections](#) made across social security legislation in the rest of the UK, these regulations correct a technical error to ensure that Irish Citizens fleeing from the Ukraine war can access social security benefits. As SCoSS note, failing to address this oversight could have led to the Scottish Government being found in violation of the European Convention on Human Rights and it is outwith competence to make regulations that are incompatible with Convention rights.

Scottish Fiscal Commission Costing

The [SFC published a supplementary costing](#) in September. Introducing these regulations will result in additional spend of £313m in 2023-24 rising to an additional £345m in 2027-28 (table 1).

These policies are already included in the Scottish Budget. However, they will now cost more than originally envisaged.

- Earlier start date adds £15m to costs in 2022-23
- Higher inflation adds around £25m per year from 2024-25 onwards

The table below sets out the forecast cost of three main policies in these regulations

Table 1: Cost of regulations

£ million	2022-23	2023-24	2024-25	2025-26	2026-27	2027-28
Extension to children over six	79	259	283	287	287	287
Increase to £25 per week	30	51	56	57	56	56
Automation of BSG	5	3	2	2	2	2
Cost of regulations	115	313	341	346	346	345

Scottish Fiscal Commission, supplementary costing

The extension to SCP is forecast to bring another 284,000 children into eligibility for SCP – 47.5% of 6 to 15 year olds. The SFC assume take-up for older children will initially be 71% rising to 80% from 2023-24 onwards.

In total, 45% of all children under 16 will be eligible for SCP. (Around 24% of children were in relative poverty in 2017-20). Assuming take-up of 85% for under 6 and 80% for those over 6 results in a forecast caseload of 328,000 children in total in 2023-24 falling to 316,000 by 2027-28.

The forecast assumes that SCP will not be uprated in April 2023. It is forecast to increase to £27.40 in 2024-25 reaching £28.70 in 2027-28.

The SCOSS Report and Scottish Government Response

The [SCOSS report was published in July](#). The [Scottish Government responded](#) on 20 September when the [regulations were laid](#).

In their July report, SCOSS made 13 recommendations and two observations. These are summarised below together with the Scottish Government response.

SCOSS recommended that the Scottish Government should **promote take-up** of SCP (**recommendation 1, 10**), ensure sufficient capacity to cope with the expected spike in claims (**recommendation 2**) and find a way to re-start applications if a child turns 6 shortly before roll-out to under 16s (**recommendation 3**).

In reply, the Scottish Government highlight their promotion of SCP including working with DWP and HMRC. Updated take-up rates will be published ‘in the autumn’. They note that “the surge of expected staff required” is already factored into their workforce plans. The response says that ‘re-starting’ applications would be confusing but “clients who have children who turn 6 within 12 weeks of the launch will receive targeted notifications” telling them to reapply.

SCOSS discuss the ‘cliff-edge’ in SCP (the full amount is lost as soon as eligibility for a qualifying benefit stops). They recommend considering the impact of this in the SCP review (**recommendation 4**), proactively referring people to advice agencies to

help them manage the change (**recommendation 5**) and promoting the Education Maintenance Allowance as a ‘follow-on’ payment (**recommendation 6**).

In reply, the Scottish Government mention the [public consultation \(Closes 27 October\)](#) which includes asking about changing the legislative basis of SCP. Social Security Scotland will continue to develop sign-posting and referral arrangements and are considering the best way to promote Education Maintenance Allowance where children are ‘ageing out’ of SCP.

SCOSS discuss the removal of the **four-week time limit** for processing applications. They refer to the Charter requirement to pay ‘on time in the right amount’ and recommend that Social Security Scotland should clarify how long it needs to make decisions and if it takes longer, they should explain to the client why this is (**recommendation 7**).

In reply, the Scottish Government say that clients will be told within 30 days whether their application has been accepted.

SCOSS disagree with the proposal to change when the **12 week ‘linking period’ starts**. (Currently, if someone’s UC stops and then starts again within 12 week’s, their SCP can be re-started automatically. These regulations would mean that this 12 week period would start from when UC stopped rather than when Social Security Scotland became aware of the change.)

In reply, the Scottish Government say the change is consistent with the original policy intent and, in most cases, will have no impact.

SCOSS describe how families could get different amounts of **lump sum on the death of a child** because it is linked to how long someone had been receiving SCP. They **recommend (9)** that the review of SCP should reconsider this, so that parents get the same amount.

In reply, the Scottish Government say that the approach taken: “was considered the fairest way we can support families [...] using the powers available to us.”

In two recommendation SCOSS queried **whether the regulations meet the policy intent**:

- SCOSS queried how the regulations allow Social Security Scotland to defer or waive making an award of BSG (**recommendation 11**). The Scottish Government have redrafted to make this clearer.
- whether the regulations match the policy intention in relation to refugees (**recommendation 12**). The Scottish Government have revised the regulations in response to this recommendation.

SCOSS also made **two observations**:

- welcoming the **extension of SCP** (observation 1)

- asking the Scottish Government to explore whether English ‘special guardianship arrangements’ should be added to the definition of **kinship care**. (Observation 2). The Scottish Government have expanded the definition to include this.

Impact Assessments

The regulations are published with the [following impact assessments](#).

- Children’s Rights and Wellbeing Impact Assessment
- Fairer Scotland Impact Assessment
- Islands Communities Impact Assessment
- Equality Impact Assessment
- Final Impact Assessment (BRIA)

Mitigation of potential negative impacts

Under the section on mitigation of any potentially negative impacts the CRWIA discusses: reliance on DWP benefits, and defining child as under 16 rather than under 18.

- Basing eligibility on receipt of a qualifying benefit has placed some restrictions on eligibility “Upon balance, the need to tackle child poverty quickly means we believe the decision to proceed using the Section 79 power to deliver Scottish Child Payment was the right approach. However, these considerations will all be factored in to the review of the effectiveness of delivering SCP via the Section 79 power, which we have committed to undertake after the policy is fully rolled out to under 16s.”
- “Whilst we have adopted a narrower definition of a child from the definition in the UNCRC, children over 16 may be eligible for other sources of social security support in their own right, depending on their circumstances. For example, Education Maintenance Allowance (EMA).”

The regulations introduce some measure of automation (automated early years and school age BSG awards for children getting SCP). The BRIA explains the difficulties with further automation:

“We recognise the value of automating SCP payments and considered whether a data feed from DWP to SG confirming client eligibility digitally and payments being made automatically was feasible. However, automation of this sort is complex, time-consuming, and technically challenging – and simply isn’t possible without affecting our planned delivery schedule.”

Impact on poverty and priority groups

The Fairer Scotland Duty summary notes that: “We expect that the increased Scottish Child Payment of £25 could lift 50,000 children out of poverty, reducing overall child poverty by an estimated 5 percentage points in 2023/24.”

It discusses the impact on 'priority groups'. Of parents receiving SCP, 17% have a longer term physical or mental condition. Most UC claimants with children are lone parents (therefore SCP disproportionately benefits lone parents). On ethnicity:

“The latest analysis of client diversity and equalities data shows that for approved SCP applications between December 2020 and May 2021, 89% (26,725) were from people who identified as white, 4% (1,185) as Asian, 2% (525) as African, 1% (215) as Mixed or multiple ethnic groups, less than 1% (30) as Caribbean or Black, and 1% (255) as other ethnic group.”

The EQIA discusses impact on those with 'protected characteristics', noting that as certain groups are more likely to experience poverty the SCP extension will be of particular benefit to them. It also reflects that: “we have sought to foster equality of opportunity to benefit through measures such as inclusive communications and an accessible application process.”

The [EQIA](#) also describes findings from the interim evaluations of BSG, BSF and SCP.

Consultation and take-up

The BRIA and EQIA describes consultation with stakeholders, including events with anti-poverty organisations and the 'Five Family Payment Reference Group. The changes to SCP “were viewed overwhelmingly positively.” Stakeholders emphasised the importance of promoting take-up – particularly amongst those whose children turn six before SCP is extended, and those who would benefit from higher BSG payments under these changes.

The 'Five Family Payments' are promoted through marketing campaigns, and “a communications and engagement strategy has been developed ahead of the launch of the changes we are making to the FFP.” The [EQIA](#) notes that: “We are considering how best to work with under-represented groups and are tailoring our communications and engagement strategy to raise awareness and take-up of the payment in these groups.”

Suggested themes for discussion:

The following four themes are suggested:

- Theme 1: Children turning six this autumn
- Theme 2: Changes to the linking period
- Theme 3: SCP increase and cliff edge
- Theme 4: Processing times

THEME 1: Children turning six this autumn

Currently, SCP stops when a child turns 6. Raising the age limit in November means that, for children who recently turned 6, there could be a very short gap between losing SCP and having to re-apply.

An [FOI response published on 14 July](#) suggests that between 1,700 and 2,000 children lose entitlement to SCP each month because they turned 6. (The number of cases where the family's SCP entitlement stopped altogether will be less than this – because many of these children will have younger siblings who will continue to get SCP).

SCoSS note that:

“Regulations do require an application for a child over six if there is no existing award no matter how short the gap in entitlement. For example, a family could have their Scottish Child Payment award stopped for a child whose sixth birthday is in October 2022 and have to reapply in November”

If there is a younger sibling, then the family's claim continues and, once eligibility is extended, the older siblings can be added on without the need to make a new application. However, if the 6-year-old is the youngest child, then SCP claim stops and they will need to re-apply.

SCOSS suggest that this gap could be addressed either by changing the regulations or by administrative processes:

“There is a case to include a temporary provision in regulations to help bridge this gap. Regulations could be introduced to allow Social Security Scotland to make a ‘determination without application’ for a family with a short gap in entitlement since their child turned six. Alternatively, Social Security Scotland could identify through its own records families in this situation, and offer a simplified tick box application, to ensure nobody misses out on entitlement.”

The Scottish Government have said they will target relevant families encouraging them to re-apply for SCP. In their response to SCOSS they said:

“In order to maximise take up for this group, clients who have children who turn 6 (“age out”) within 12 weeks of the launch whose details are still on our system will receive targeted notifications informing them that they can now reapply for their aged-out child. Although it would be technically possible to restart Scottish Child Payment, user research determined that it would be confusing for the majority of clients and could result in clients not applying when they do need to and other clients applying when they do not need to.”

On theme 1, members may wish to discuss:

- 1. Has the Scottish Government estimated the number of families who will need to re-apply because their youngest child turned six in the months before roll-out?**
- 2. Can the Minister expand on why it would be confusing for clients if SCP re-started automatically for those children who have recently turned six?**

THEME 2: Changes to the linking period

Another example of relatively short gaps in entitlement is where a family temporarily lose entitlement to a qualifying benefit. Universal Credit is based on real time earnings data so entitlement can change from month to month.

Partly for this reason there is a 12 week 'linking period' in SCP. If someone loses SCP because they no longer get a qualifying benefit (such as Universal Credit) or are no longer responsible for a child then if they become eligible again within 12 weeks they don't have to make a new SCP claim.

Currently, that 12 week period starts from when Social Security Scotland decide that a client is no longer eligible. These regulations would change that starting point – to the earlier date when the client actually lost entitlement.

The [Draft policy note states that](#):

“where there is a longer delay between a change of circumstances taking effect and being notified to Social Security Scotland, an individual will need to reapply [this] ensures that individuals are not automatically awarded Scottish Child Payment after long periods of ineligibility.”

SCOSS disagreed with this change, saying:

“SCOSS is not convinced that changing this provision is necessary”

The Scottish Government say the change will have little impact in practice.

“This change will have no effect on the majority of cases where this happens in practice – those individuals who receive Universal Credit where, due to fluctuating incomes, their UC award can drop off for an assessment period – allowing them to be automatically re-enrolled if their UC award restarts within a 12-week period.” (Scottish Government, response to SCOSS)

On theme 2, members may wish to discuss:

- 3. What prompted this change to when the 'linking period' starts? Were there issues arising about how the linking period was working in practice that made this change necessary?**
- 4. In what circumstances would there be a long delay between a client losing entitlement and Social Security Scotland making a decision to stop SCP?**

THEME 3: The SCP increase and cliff edge

These regulations increase SCP to £25. If someone loses entitlement to their qualifying benefit, then they will lose entitlement to the whole amount of SCP. As the value of SCP increases this 'cliff edge' becomes more significant – particularly for larger families.

For example, someone with three children would get £75 per week SCP. If they increase their earnings by £1 they could lose all of this if it took them over the Universal Credit threshold. That said, someone with two or more children would need to be earning at least around £45,500 per year before losing Universal Credit entirely.¹ (If they were claiming for help with rent the threshold would be higher).

The problem is rather more stark for second earners as illustrated in the example below:

Example: a couple over 25, with a mortgage, two children, one adult earning £31,200 per year and the other working part time earning £16,200 per year.

In this scenario the family will lose all their SCP (£200 every four weeks) if the second earner makes an additional £50 per month. (If they were claiming help with rent then they could earn more before losing UC/SCP).

It is not unusual for women to work part time while their children are young and seek to increase their hours as the children get older. Around a quarter of the 42,172 couples with children who claim Universal Credit do not claim help with housing costs (StatXplore, data for Scotland, May 2022).

SCOSS found that the ‘cliff edge’ was a concern of all the stakeholders they spoke to:

“Stakeholders all expressed concern to SCoSS about the impact of the cliff edge on families, however, views differ about how to address it. Options from stakeholders include: tapering Scottish Child Payment, adding a run on of Scottish Child Payment and making payments universal like those of child benefit.”

The Poverty and Inequality Commission told SCOSS that:

“If this cliff edge is not addressed it could make it difficult for parents to take advantage of opportunities to increase their hours and progress in work.”

SCOSS noted that:

“If families believe they could be worse off, they may not risk working more hours or seeking better paid work.”

A [Scottish Government consultation](#) (closing today) asked for views on various social security changes, including changing the legal basis of SCP from a ‘top-up’ benefit under s.79 Social Security (Scotland) Act 2018 to a ‘stand-alone’ benefit. This would make it easier to address the problem of the cliff-edge as it would be legally possible to pay SCP to people who weren’t getting reserved benefits. This would allow policies such as a taper or benefit run-on to be considered.

¹ Single parent, under 25, three children born after April 2017, no housing or childcare costs. April 2022 tax and benefit rules. Gross income £45,500, net income £32,162 p.a. UC award £5 per month, SCP £300 every 4 weeks. UC tapers to £0 at £45,626 gross.

A review of SCP is due once it is fully rolled-out, and SCOSS recommend that this considers how to address the ‘cliff-edge’. (An [interim review was published in July](#)).

SCOSS also consider the impact of SCP stopping when a child turns 16. They make the link to the Education Maintenance Payment suggesting:

“EMA could become a follow-on payment to Scottish Child Payment and an important addition to household income.”

As the Committee noted in its recent evidence session with the Deputy First Minister, the EMA has consistently been under budget and the 2022-23 budget has been reduced by £3m to reflect this. The DFM wrote to the Committee on 13 October saying:

“We continue to work with delivery partners who are expected to carry out promotional activities on the Education Maintenance Allowance programme throughout the academic year, targeted at all eligible young people.”

On theme 3, members may wish to discuss:

- 5. What is the Scottish Government’s view on whether the SCP ‘cliff edge’ discourages people from increasing their income through work - particularly 2nd earners? Has the Scottish Government considered the potential gendered impacts of this?**
- 6. The Scottish Government recently consulted on whether SCP should continue to be a [‘top-up’ benefit](#). What policy options are being considered?**
- 7. What is the Scottish Government doing to promote EMA as a ‘follow-on’ benefit to SCP?**
- 8. Can the Minister update the Committee on when the full review of SCP will start?**

THEME 4: Processing times

The regulations remove the requirement to pay SCP within four weeks of getting an application. The [draft policy note published in April stated](#): “often this deadline cannot be met due to the high volume of claims Social Security Scotland manage.”

No other Social Security Scotland benefits have statutory processing times. The statutory time limit on paying Child Winter Heating Assistance was removed in November 2021. ([Regulation 2\(4\) of The Winter Heating Assistance for Children and Young People \(Scotland\) \(Amendment\) Regulations 2021](#) removed the requirement to pay by December each year).

The announcement that applications for extended SCP would open on 14 November noted that there may be a wait for first payments:

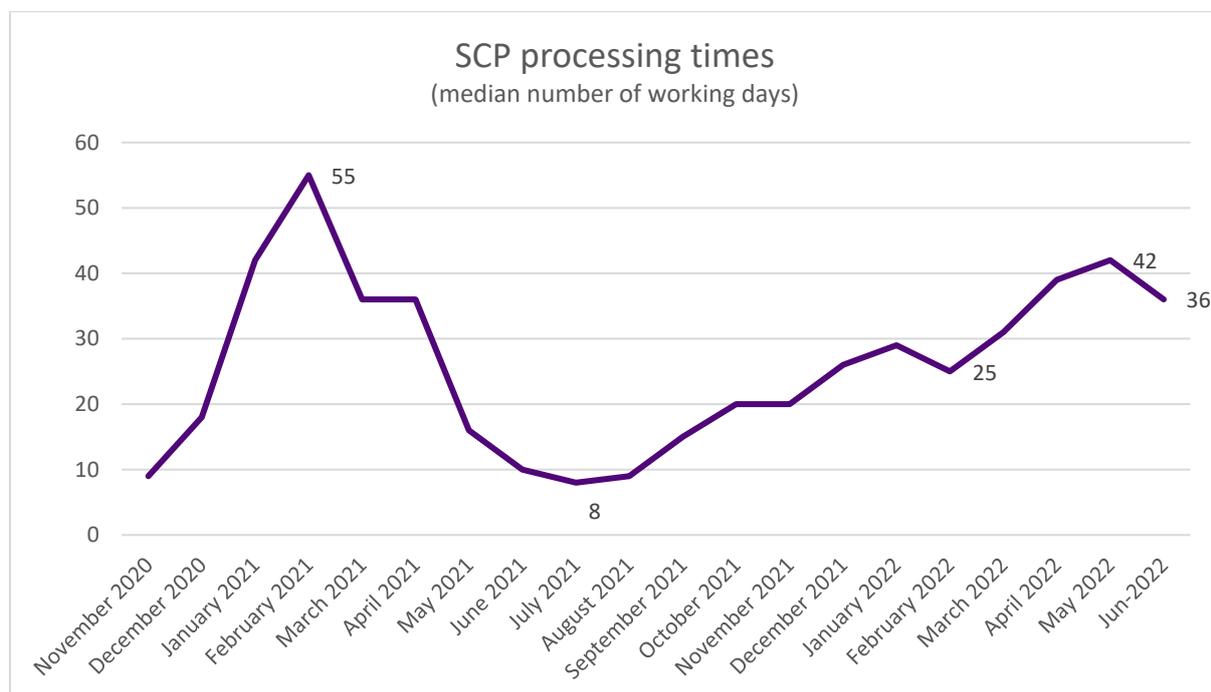
“Given the large numbers of children forecasted to be newly eligible we are expecting a large number of new applications. This means that people applying for the first time might need to wait to get their award, but if eligible will see their payments backdated to the day they first applied.” [Social Security Scotland, news release 6 September.](#)

SCOSS commented on the pressure on systems due to both SCP and ADP:

“It is likely that the spike in applications will be high as an estimated 200,000 more children are expected to qualify. Alongside the roll out of Adult Disability Payment, this will lead to a significant delivery challenge placed on Social Security Scotland. Success will be heavily dependent on the new IT processes working well from the start and on accurate estimates of how many claims will need manual processing.”

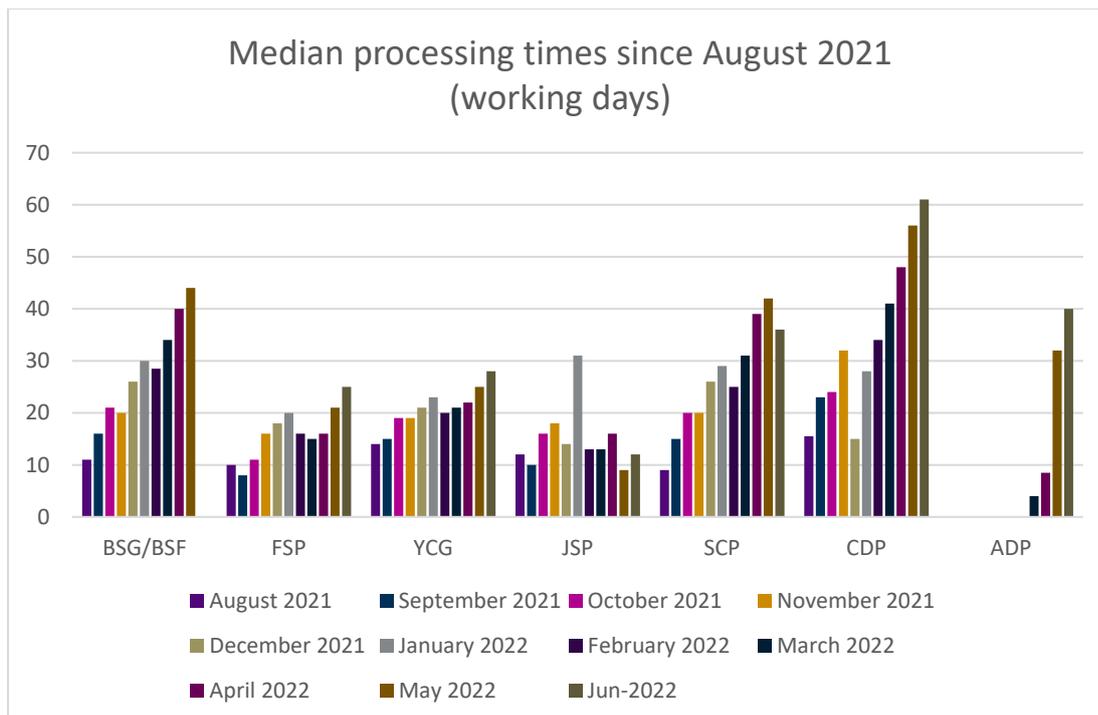
In response to the SCOSS report the Scottish Government said that clients will be told within 30 days whether their application has been accepted.

After recovering from an initial spike, processing times for SCP claims have generally been increasing since summer 2021. The chart below shows the median number of days in each month. The most recent statistics show median processing time was 36 days in June 2022, down from 42 days in May, but still significantly above the 8 days achieved in July 2021.



Source: Scottish Government [SCP High Level Statistics to end June 2022.](#)

Administrative statistics suggest that processing times for a number of Social Security Scotland benefits are getting longer. The chart below shows the trend since August 2021.



Source: [Scottish social security statistics](#). Best Start Grant, Best Start Foods, Funeral Support Payment, Young Carer Grant, Job Start Payment, Scottish Child Payment, Child Disability Payment, Adult Disability Payment.

[The Social Security Charter](#) states: We will “recognise that your time is precious and handle your application and enquiries as quickly as we can”. While there isn’t a ‘target’ for processing times, there is a measurement of how many are processed within 10 working days (Charter measurement 31a. See Table 8 on p.32 of the [Charter Measurement Framework for data for 2020-21](#)).

The [EQIA](#) notes issues with processing times and communications:

“There have been increases in application processing times across both SCP and BSF. Some recipients also report issues - e.g. a lack of communication on the progress of claims, or long helpline waiting times. Steps could therefore be taken to review processing times and to keep applicants better informed about their claims.”

On a related issue, which may provide some mitigation, the final ‘bridging payment’ is due in December. This has been [doubled to £260 per eligible child](#), and is available to the c.145,000 6 to 16 year olds registered for free school meals. Total funding for bridging payments across 2021 and 2022 is c.£169m. These children will be eligible for both £100 SCP and £260 bridging payment in December.

On theme 4, members may wish to discuss:

9. Why was a statutory time-limit originally included? Are those reasons no longer applicable?

10. In what circumstances does it take more than four weeks to process an SCP application?

- 11. What arrangements are in place to manage the expected spike in applications when SCP is opened to older children?**
- 12. Is there a more general issue around processing times – and if so, does this suggest capacity issues at Social Security Scotland?**
- 13. The EQIA states that: “Steps could [...] be taken to review processing times and to keep applicants better informed about their claims”. Is the Scottish Government taking such steps?**

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