



# Report

**Date:** 10 February 2021

**Security Level:** IN CONFIDENCE

**To:** Hon Carmel Sepuloni, Minister for Social Development and Employment

## **Legislative amendments required for the removal of the subsequent child policy**

### **Purpose of the report**

- 1 This paper seeks your approval to a proposed timeline to progress the Social Security (Removal of Subsequent Child Policy) Amendment Bill (the Bill), that will remove the subsequent child policy (the policy) from the Social Security Act 2018. It also asks you to agree to the proposed transitional provisions for affected clients, which will be captured in the Bill.

### **Executive summary**

- 2 In September 2019, you agreed to progress the removal of the policy from the Social Security Act 2018 (REP/19/8/838 refers). In July 2020, the Cabinet Social Wellbeing Committee (SWC) agreed to the removal of the policy, to be given effect from November 2021 (SWC-20-MIN-0101 refers). SWC also invited you to issue drafting instructions to the Parliamentary Counsel Office (PCO), and noted that you will report to the Cabinet Legislation Committee in due course with a Bill to amend the Social Security Act 2018.
- 3 You submitted legislative bids for your 2021 Legislation Programme to the Cabinet Office in January 2021, including a bid for the Social Security (Removal of Subsequent Child Policy) Amendment Bill. The next step is to report to the Cabinet Legislation Committee, to seek approval for the Bill's introduction.
- 4 We recommend the Bill provide for a 28-day transition period both prior to and following the law change (56 days total), with transitional provisions to improve the client experience by reducing complexity for clients and ensuring that the treatment of different client scenarios aligns with the policy intent of removing the policy.<sup>1</sup>
- 5 In specified cases where a client would otherwise have multiple changes in benefit entitlement over a short period, the transitional provisions will state that the Ministry of Social Development (MSD) must respond to a benefit application or change in circumstances (during the transition period) in line with the removal of the policy. This is subject to the benefit application/notification and commencement/effective dates falling within the transition period.

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<sup>1</sup> Note this paper refers to two different 28-day time periods:

- transitional provisions 28-days either side of the removal of the policy (56 day total transition period)
- the 28-day rule as applied to sole parents benefit commencement dates in the Social Security Act 2018.

- 6 Prior to the policy's removal, in outlying circumstances MSD may also be able to use section 224 of the Social Security Act 2018 to not apply the policy (in order to improve the client experience for some parents).
- 7 MSD will provide additional support for all affected clients through the policy change, including proactive communication.
- 8 On your behalf, officials have issued drafting instructions for the Bill, and PCO's drafting is underway.
- 9 We propose that the Bill should have a commencement date of 8 November 2021, but must be enacted prior to 11 October 2021 to allow for the transition period. We therefore recommend you report to the Cabinet Legislation Committee on 11 March 2021, and request the Bill be introduced on 18 March 2021 in order to meet this timeline.
- 10 Subject to your agreement, we will provide you with a draft Cabinet paper and the draft Bill by 17 February 2021, for your feedback ahead of Ministerial and agency consultation.

### Recommended actions

It is recommended that you:

- 1 **note** Cabinet agreed to the removal of the subsequent child policy, invited you to issue drafting instructions to the Parliamentary Counsel Office, and noted that you will report to the Cabinet Legislation Committee in due course with a Bill to amend the Social Security Act 2018 (SWC-20-MIN-0101 refers)
- 2 **note** you have submitted a legislative bid for a stand-alone Social Security (Removal of Subsequent Child Policy) Amendment Bill for your 2021 Legislation Programme, and PCO has started drafting this Bill
- 3 **agree** to the proposed 28-day transition period both prior to and following the law change on 8 November 2021 (56 days total), to reduce complexity for clients and ensure that the treatment of different client scenarios in the transition period aligns with the policy intent of removing the subsequent child policy
- 4 **note** the proposed transitional provisions will require MSD to respond to a benefit application or change in circumstances in line with the removal of the subsequent child policy, within the transition period (and in specified scenarios)
- 5 **note** in some circumstances, MSD may use section 224 of the Social Security Act 2018 to not apply the subsequent child policy prior to its removal from the Act
- 6 **note** MSD will provide additional support to all affected clients through the policy change, including proactive communication
- 7 **agree** to the timeline proposed in paragraph 54, in order to seek Cabinet Legislation Committee approval for the introduction of the Social Security (Removal of Subsequent Child Policy) Amendment Bill

**Agree / Disagree**

**Agree / Disagree**

8 **note** if we identify anything further to be added to the transitional provisions in the Social Security (Removal of Subsequent Child Policy) Amendment Bill, we will update you by 17 February alongside the draft Cabinet paper.



Leah Asmus  
Policy Manager  
Welfare System Policy

10 / 2 / 2021

Date



Hon Carmel Sepuloni  
Minister for Social Development and Employment

14 / 2 / 21

Date

RELEASED UNDER THE OFFICIAL INFORMATION ACT

## Background information

*Cabinet agreed to the removal of the policy, to be given effect from November 2021*

- 11 In September 2019, you agreed to progress the removal of the policy from the Social Security Act 2018, which currently impacts eligibility for Sole Parent Support and places obligations on parents to return to work earlier if they have an additional dependent child while receiving a main benefit (REP/19/8/838 refers).<sup>2</sup> This initiative aligns with your commitment to overhaul the welfare system and to support people who are caring for their children.
- 12 In June 2020, we advised that the cost to operationalise the removal of the policy, an estimated \$4.01 million over four years, will be covered within the Ministry of Social Development's baseline (REP/20/06/697 refers). We also confirmed the removal of the policy should be fully implemented in November 2021.
- 13 In July 2020, the Cabinet Social Wellbeing Committee (SWC) agreed to the removal of the policy, to be given effect from November 2021 (SWC-20-MIN-0101 refers). SWC also invited you to issue drafting instructions to the Parliamentary Counsel Office, and noted that you will report to the Cabinet Legislation Committee in due course with a Bill to amend the Social Security Act 2018.
- 14 You publicly announced the removal of the policy following Cabinet's decision in July 2020, and this Cabinet paper was proactively released in September 2020.

*Amendments to primary legislation are required to remove the policy*

- 15 We advised that amendments to primary legislation are required to remove the policy. Sections 221 – 224 (factors affecting benefit: subsequent child) provide for the policy, and must be removed from the Social Security Act 2018 prior to the implementation date.
- 16 Regulation 74 (deferral of work-test obligations of person with dependent child under age 1 year) also must be removed, as it applies specifically to people who are impacted by the policy.<sup>3</sup> We have also advised that implementation will require transitional provisions in legislation (REP/19/8/838 refers).
- 17 In June 2020, we indicated that we would provide you with advice later in 2020 on the most appropriate legislative vehicle to make these changes. [REDACTED] 9(2)(f)(iv) OIA [REDACTED] (REP/20/06/697 refers).

*You submitted a legislative bid for the Bill as part of your 2021 Legislation Programme*

- 18 In December 2020, we provided advice on your Legislation Programme for 2021, noting we are not aware of any other legislative vehicles that would align with the timeframes required for the removal of the policy to be given effect from November 2021 (REP/20/12/1184 refers). You agreed to submit a stand-alone Social Security

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<sup>2</sup> Note work obligations change based on the age of the client's youngest dependent child:

- work preparation obligations if the child is aged under three years
- part-time work obligations if the child is aged three and above, up to fourteen years
- full-time work obligations if the child is aged fourteen years and over.

<sup>3</sup> Note other amendments to legislation will be required to remove the policy, and these will be included in the draft Bill and draft Cabinet Legislation Committee paper for your review (outlined further below).

(Removal of Subsequent Child Policy) Amendment Bill for your 2021 Legislation Programme.

- 19 We provided you with final legislative bids in January 2021, including for the Social Security (Removal of Subsequent Child Policy) Amendment Bill (REP/21/1/002 refers). The Bill's legislative priority is Category 2 as it must be passed in 2021 in order to meet the Cabinet-agreed implementation date of November 2021. You submitted this legislative bid, alongside other bids for your 2021 Legislation Programme, to the Cabinet Office in late January 2021.

### **Transitional provisions in legislation are required for a proposed transition period**

*We recommend a 28-day transition period both before and after the law change*

- 20 Despite the policy change generally having no impact on the rate of benefit received by clients, it will result in a change in benefit type, and/or a change in work obligations for affected clients. To mitigate the potential impact of a benefit application or change in circumstances during the transition period, we propose that the Bill should include a 28-day transition period both prior to and following the law change (the transition period).
- 21 Transitional arrangements are accommodations for existing and potential new clients, required to reflect a policy change. The Social Security Act 2018 currently requires MSD to apply the policy, except under limited circumstances. Transitional provisions in the legislation are required to enable MSD to treat clients in line with the policy's removal, before the policy is removed on 8 November 2021.
- 22 In specified scenarios during the transition period, transitional provisions will allow clients to receive the benefit they would be entitled to if the policy had already been removed. This will avoid situations where clients are moved from one benefit (and/or set of work obligations) to another over a short period of time, which can cause them confusion and have a negative impact on the client experience.
- 23 The intent of this transition period is to improve the client experience by reducing complexity and ensuring that the treatment of different client scenarios in the transition period aligns with the policy intent of removing the policy.
- 24 A 28-day transition period both prior to and following the law change (56 days total) aligns with the length of time for the 28-day rule of the Social Security Act 2018 (as applied to some benefit recipients).<sup>4</sup> We consider it is an appropriate length of time to fulfil the intention of the transitional provisions.
- 25 The transition period extends either side of the law change because the dates of application, decision by MSD, and commencement (or corresponding dates for a change in circumstances) can be spread across several weeks. A broad window is therefore required to ensure equitable treatment across a range of timings within the transition period.

*Transitional provisions will apply to benefit applications, with an application and commencement date that falls within the transition period*

- 26 Subject to your agreement, the Bill will include transitional provisions stating that MSD must respond to a benefit application in line with the removal of the policy, where:
- the application is made within the transition period, and

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<sup>4</sup> If a benefit application is received within 28 days of a client's entitlement date, the 28-day rule allows for a benefit (always for Sole Parent Support and in specific situations for Jobseeker Support) in some circumstances to commence from a date earlier than the application date (section 316(2) Social Security Act 2018).

- the application is for a benefit that commences within the transition period, and
  - the policy would otherwise prevent the client from being eligible to Sole Parent Support and/or impose a higher level of work obligation.
- 27 MSD will receive applications for main benefits in the time leading up to and following the removal of the policy on 8 November 2021. It is possible that MSD will receive applications from clients who have previously been on benefit and have a child previously deemed to be a 'subsequent' child.<sup>5</sup>
- 28 In this situation, without transitional provisions, the policy may affect the client's benefit entitlement (benefit type and/or work obligations). Without transitional provisions, the client's benefit entitlement would then change a short time after commencement, when the policy is removed on 8 November.<sup>6</sup> An example scenario is outlined below.

*Example A (without transitional provisions)*

Donna is a sole parent with a 15 year old daughter and a 4 year old son. She previously received a main benefit, and her son was born at the time she was on-benefit. Her son is therefore deemed to be a 'subsequent child' under the current policy.

Donna has been off-benefit for a year, but is now reapplying with a commencement date on 25 October 2021 (two weeks before the policy is removed). For these two weeks, she will receive Jobseeker Support with full-time work obligations (based on the age of her daughter). When the policy is removed on 8 November 2021, she will then change to Sole Parent Support with part-time work obligations (now based on the age of her son).

- 29 We consider that applying the policy to clients within the transition period (in a situation such as the example outlined above) would have a negative impact on the client experience, particularly through increased complexity.
- 30 Clients receive communications from MSD when their benefit entitlement changes. Multiple changes to a client's entitlement over a short period would therefore result in a number of communications from MSD with updated messaging, which is ultimately confusing and would have a negative impact on the client experience.
- 31 We therefore propose that transitional provisions are included in legislation, requiring MSD to treat these clients in line with the removal of the policy (ie as if the policy has already been removed) (see Figure 1 of [Appendix One](#)). As there is no change to the

<sup>5</sup> Note a child is only deemed to be a 'subsequent' child for the caregiver the policy applied to, and therefore does not necessarily apply to any other possible caregivers of that child by default (ie if the child leaves their care). A 'subsequent child' is, however, a permanent status for that child when in the care of the person that the policy has been applied to, even if they leave and then return to benefit.

<sup>6</sup> Note this is only the case for clients whose entitlement is directly affected by the policy at the time. Some clients with a 'subsequent' child in the same age bracket as their youngest 'non-subsequent' child may not be immediately impacted by the policy's removal on 8 November 2021.

rate of benefit received, there are very limited fiscal implications to this proposal.<sup>7</sup> An example scenario is outlined below.

*Example A (with transitional provisions)*

As Donna applies for benefit and has a commencement date within the 28-day transition period (56 days total), MSD will not apply the policy. Donna's entitlement will be based on the age of her son from the day her benefit commences, so she will receive Sole Parent Support with part-time work obligations. She will therefore experience no further change after two weeks when the policy is removed.

32 The case outlined above is only one example of a range of possible timings for an application in progress. The 28-day transition period both prior to and following the law change will accommodate other potential scenarios within the 56 days total, particularly regarding the timing of the application and commencement dates.

*Transitional provisions are also required for clients with a change in circumstances*

33 Subject to your agreement, the Bill will also include transitional provisions stating that MSD must respond to a client's change in circumstances in line with the removal of the policy, where:

- the change in circumstances may affect the client's entitlement, and
- the change in circumstances occurs in the transition period, and
- the change in circumstances is made known to MSD (either by the client notifying MSD, or through use of other information available to or held by MSD) in the transition period, and
- the policy would otherwise affect the client's entitlement to Sole Parent Support or increase their level of work obligation (eg non-subsequent child leaving their care).

34 Clients are required to notify MSD of a change in their circumstances if the change affects their entitlement to receive a benefit.<sup>8</sup> This includes, for example, the number of children in their care (eg if a child leaves their care). A change in circumstances may also be evident through the use of other information available to MSD. This includes, for example, the birthday of a child, which impacts a client's work obligations.<sup>9</sup>

35 The transitional provisions are proposed as we anticipate that changes in circumstances will occur within the transition period. Without transitional provisions, a client's entitlement may change during the transition period due to a change in

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<sup>7</sup> It is possible that some clients may become eligible for additional financial incentives (such as the Work Bonus) earlier than they would have when the policy is removed. These costs are covered in the costings for this initiative.

<sup>8</sup> Section 113 Social Security Act 2018

<sup>9</sup> The birthday of a child is relevant when a subsequent child turns one (the policy applies from when the subsequent child turns one), and when a child ages between work obligation brackets.

circumstances, and then change again when the policy is removed on 8 November 2021.<sup>10</sup> An example scenario is outlined below.

**Example B (without transitional provisions)**

Joel is a sole parent with a 13 year old daughter and a 5 year old son. Joel was receiving a main benefit at the time his son was born, so he is deemed to be a 'subsequent' child. Joel currently receives Sole Parent Support with part-time work obligations (based on the age of his daughter).

Joel's daughter has her 14<sup>th</sup> birthday on 25 October 2021 (two weeks prior to the removal of the policy). For these two weeks, Joel will have to transfer to Jobseeker Support with full-time work obligations (based on the age of his daughter). When the policy is removed on 8 November, Joel will switch back to Sole Parent Support with part-time work obligations (now based on the age of his son).

- 36 We consider that applying the policy to clients within the transition period (who have a change in circumstances such as the above example) would have a negative impact on the client experience, particularly through increased complexity. This includes the potential for a number of communications from MSD when a client's benefit entitlement (benefit type and/or work obligations) changes multiple times over a short period.
- 37 We therefore recommend that the proposed transitional provisions also require MSD to treat these clients in line with the removal of the policy (ie as if the policy has already been removed). As there is no change to the rate of benefit received, there are also very limited fiscal implications to this proposal.<sup>11</sup> An example scenario is outlined below.

**Example B (with transitional provisions)**

As MSD is aware of Joel's daughter's birthday, and the effective date of this change in circumstances falls within the 28-day transition period, MSD will not apply the policy. From his daughter's 14<sup>th</sup> birthday, Joel's entitlement will be based on the age of his son. He will continue to receive Sole Parent Support with part-time work obligations. He will therefore experience no further change when the policy is removed on 8 November 2021.

- 38 Transitional provisions will also cover a range of other scenarios related to a client change in circumstances.

### **Situations where transitional provisions will not apply**

*MSD may use section 224 of the Social Security Act 2018 to treat some clients in line with the removal of the policy prior to the law change*

- 39 There may be client circumstances where transitional provisions are unable to be used. This includes, for example, an application made prior to the transition period (eg when their employment ceases), with a commencement date inside the transition period (eg if employment termination payments have delayed their commencement date) (see Figure 2 of [Appendix One](#)).

<sup>10</sup> Note again this is only the case for clients whose entitlement is directly affected by the policy at the time.

<sup>11</sup> It is possible that some clients may become eligible for additional financial incentives (such as the Work Bonus) earlier than they would have when the policy is removed. These costs are covered in the costings for this initiative.



- 40 In this circumstance, transitional provisions are unable to be used (as the Bill will not yet be enacted at the time of application), but given the commencement date falls within the transition period, the client experience would be impacted in a similar way to that outlined above.
- 41 Section 224 of the Social Security Act 2018 states that MSD may elect not to apply the policy, in limited circumstances where MSD is satisfied that it would not achieve the purpose stated in section 221, or there are circumstances beyond the control of the beneficiary parent concerned, making it inappropriate or unreasonable to apply the policy.
- 42 In order to improve the client experience, prior to the policy's removal (in outlying circumstances) MSD may be able to use section 224 of the Social Security Act 2018 to not apply the policy. It is important to note, however, that section 224 is discretionary, and will therefore be assessed on a case-by-case basis. Also note that section 224 will be removed on 8 November 2021, and can therefore only be used prior to the removal of the policy.

*MSD is required to treat some clients in line with the current policy, until it is removed on 8 November 2021*

- 43 Clients who do not have a benefit commencement or change in circumstances within the transition period will be treated in line with the current policy until it is removed on 8 November 2021 (see Figure 3 of [Appendix One](#)). This includes those with no application or change in circumstances at all, as well as those who do have an application or change in circumstances, but it falls outside the transition period.
- 44 In order to improve the client experience, MSD will, however, provide additional support through the policy change for all affected clients (whether covered by transitional provisions, section 224, or neither). This includes, for example, proactive contact with affected clients prior to November 2021, through a letter detailing how their entitlement will be impacted. Following this contact, clients will be able to contact MSD to find out further information about what the change means for them. These processes do not require legislative provisions.
- 45 Clients will not be required to do anything in relation to the process of being transferred to a different benefit and/or different work obligations. MSD will manage this change for affected clients.
- 46 Further detail on the use of transitional provisions, section 224, and the status quo is provided in [Appendix One](#). Frontline staff will be informed of these processes prior to the removal of the policy (and the transition period).

## **The Social Security (Removal of Subsequent Child Policy) Amendment Bill**

*The Parliamentary Counsel Office is currently drafting the Bill*

- 47 As outlined above, Cabinet previously invited you to issue drafting instructions to PCO. On your behalf, officials have issued drafting instructions for the Bill, and PCO's drafting is underway. Subject to your agreement, we will provide you with the draft Bill alongside a draft Cabinet Legislation Committee paper later in February 2021, for your review (outlined further below).
- 48 The draft Bill will contain two parts:
- Part 1 – substantive and consequential amendments to the Social Security Act 2018 and Social Security Regulations 2018, to remove provisions related to the policy and to make consequential amendments
  - Part 2 – transitional provisions related to the removal of the policy (as outlined above).

49 We do not consider it necessary to release an exposure draft Bill.<sup>12</sup> The Bill will be provided to the Ministry of Justice by 16 February 2021 for an assessment of consistency with the New Zealand Bill of Rights Act 1990.<sup>13</sup> As indicated in your legislative bid, it is anticipated that the Bill will comply with each of the following:

- the principles of the Treaty of Waitangi
- the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
- the principles and guidelines set out in the Privacy Act 1993
- the relevant international standards and obligations, and
- the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

*Cabinet approval is required for the introduction of the Bill into the House*

- 50 Cabinet has agreed that the policy will be removed from November 2021. We propose that the Bill's commencement date be 8 November 2021. In order to allow for the 28-day transition period prior to the commencement date, the Bill must be enacted prior to 11 October 2021. This is outlined in your legislative bid for the Bill (REP/21/1/002 refers).
- 51 In order for the Bill to meet this implementation timeline, the date requested for introduction of the Bill should be 18 March 2021, with the first reading scheduled for 23 March 2021 (as outlined in the proposed timeline below).
- 52 The Cabinet Legislation Committee examines all draft bills before they are approved for introduction, and then refers bills to Cabinet for final approval for introduction into the House. We therefore recommend you report to the Cabinet Legislation Committee on 11 March 2021.
- 53 We recommend a truncated process for Ministerial and agency consultation on this Cabinet paper, to allow sufficient time for the Bill to progress through the House. We will continue to liaise with PCO and your office regarding the logistics of this consultation, including the possibility of consultation on the draft Bill alongside the Cabinet paper.
- 54 If you agree to seek introduction of the Bill on March 18 2021, the following table provides an overview of a recommended timeline:

<b>Key deliverable</b>	<b>Timeframe (2021)</b>
Draft Cabinet paper provided to you for feedback	Wednesday 17 February
Ministerial and agency consultation on draft Cabinet paper	Friday 19 February to Tuesday 2 March
Lodge Cabinet paper, draft Bill and disclosure statement	Thursday 4 March

<sup>12</sup> The removal of the policy relates to the Welfare Expert Advisory Group's recommendation to remove some obligations and sanctions in the welfare system (recommendation 11 of Whakamana Tāngata). The Welfare Expert Advisory Group undertook public consultation in the development of their advice on the overhaul of the welfare system.

<sup>13</sup> Note your legislative bid suggested that the Bill would be provided to the Ministry of Justice by 23 February 2021, however this has been brought forward to allow sufficient time for their assessment.

Cabinet Legislation Committee consideration	Thursday 11 March
Cabinet consideration	Monday 15 March
Date requested for introduction of the Bill	Thursday 18 March
First reading	Tuesday 23 March
Date of report back from select committee	Friday 23 July
Date of enactment	Prior to Monday 11 October
Date of commencement	Monday 8 November

- 55 As advised in your legislative bid, it is anticipated that four months will be sufficient time for Select Committee consideration of the Bill, and this is reflected in the table above (REP/21/1/002 refers).
- 56 If you prefer not to conduct a truncated Ministerial and agency consultation process for the Cabinet Legislation Committee paper, the introduction, enactment and commencement of the Bill would need to be delayed. We will continue to work with your office to confirm the timings.

### Next steps

- 57 Subject to your agreement to the proposed transitional arrangements and to seek Cabinet Legislation Committee approval for the introduction of the Bill (recommendations 3 and 7), we will provide you with a draft Cabinet paper and the draft Bill by 17 February 2021, for your feedback ahead of Ministerial and agency consultation.
- 58 Note if we identify anything further to be added to the transitional provisions in the Bill, we will update you by 17 February alongside the draft Cabinet paper.

File ref: REP/21/2/059

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## Appendix One: Different client scenarios

