

**Regulatory Impact Statement: Treatment of
Special Benefit clients who may be better off on
Temporary Additional Support – options to
exempt back-payments due to clients from
income and cash asset tests under the Social
Security Act 1964**

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Social Development (MSD).

From 1 April 2006 to current date MSD has followed a practice of not giving Special Benefit (SPB) recipients the opportunity to cancel their SPB and apply for Temporary Additional Assistance (TAS) instead. This practice was based on MSD's legal interpretation of the Social Security Act 1964 (the Act) and in particular the grand-parenting provisions for SPB. In July 2015, Crown Law advised MSD that the Act does permit clients to cancel SPB and apply for TAS and that MSD should assess if SPB recipients are better off on TAS and offer them an opportunity to apply for it.

As at 28 April 2017, MSD has identified that approximately 7,148 existing and former clients would have been/are potentially better off on TAS. MSD will provide these clients with the opportunity to receive back-dated TAS from 1 April 2006. MSD intends to change its operational practice for current SPB clients, so at their 26-week review MSD assesses if they would be better off on TAS and gives them the option to cancel their SPB and apply for TAS instead.

This RIS analyses options to ensure that back-dated TAS payments, paid to ensure clients receive their full and correct entitlement to TAS, do not affect a client's financial assistance entitlements under the Act.

MSD assessed three options:


1. Maintain the status quo and have no exemption for lump sum payments of back-dated TAS
2. Create an exemption to ensure lump sum payments of back-dated TAS paid to correct entitlements to TAS since 1 April 2006 and any income derived from them, is exempt from income and cash assets tests for financial assistance under the Act for 12 months
3. Make back-dated TAS payments to correct entitlements to TAS since 1 April 2006 via multiple weekly instalments with the objective of not affecting cash asset testing thresholds.

MSD recommends option 2. To give effect to the preferred option, it is necessary to amend the Social Security (Income and Cash Assets Exemption) Regulations 2011, the Social Security (Temporary Additional Support) Regulations 2005 and the Social Security (Long-term Residential Care Subsidy) Regulations 2005. The preferred option will be implemented in September 2017.

This RIS provides the required level of analysis, including the relevant background, problem definition, impact analysis, and other options considered.

The recommended option in this RIS is not likely to impose additional costs on business, impair private property rights, restrict market competition, or reduce the incentives on business to innovate and invest or override fundamental common law principles.

This RIS was reviewed by a Principal Analyst from MSD who was not involved in the paper, who has determined that the RIS meets the quality assurance criteria.

A handwritten signature in black ink, appearing to read 'James Poskitt', with a long horizontal stroke extending to the right.

James Poskitt

General Manager

Working Age Policy

14 June 2017

Executive summary

1. SPB is a discretionary non-taxable benefit. Its intent is to provide assistance to clients whose particular circumstances are causing them hardship. SPB was replaced by TAS from 1 April 2006. The purpose of TAS is to provide temporary financial assistance to alleviate financial hardship of people whose essential costs cannot be met from their income and other resources. Clients receiving SPB on 1 April 2006 were protected by grand-parented and continued to receive SPB.
2. MSD's interpretation of the legislation which created TAS was that clients could not cancel their SPB and apply for TAS. In July 2015, Crown Law advised that the legislation does provide for this and that MSD should assess if SPB recipients are better off on TAS and offer them an opportunity to apply for it.
3. At 28 April 2017, MSD estimates that 7,148 existing and former SPB clients (out of the 59,899 recipients who were grand-parented on 1 April 2006) would have been better off on TAS than SPB since 2006. This includes 369 clients who are still receiving SPB.
4. MSD intends to provide a lump sum back-payment on the basis that MSD must correct this practice in order to maintain the integrity of the social welfare system and ensure beneficiaries receive what they are legally entitled to.
5. As the lump sum back-payments are being paid as a result of an MSD error, it would be unfair to penalise clients for receiving their lump sum back-payment by then reducing financial assistance entitlements due to income or cash asset tests (for example where they receive other benefits like the Accommodation Supplement). Therefore, MSD proposes to amend the regulations to ensure that lump sum payments of TAS, made due to correct entitlements to TAS since 1 April 2006, are exempted from income and cash asset tests for a period of 12 months.
6. Exempting these payments is the most effective route to achieve the following policy objectives:
 - a. provide back-dated payments to clients affected the loss of entitlement to a higher level of financial assistance via TAS as quickly as practicable
 - b. ensure that the option is easy to administer
 - c. reduce costs to Crown and clients
 - d. provide equity of outcome.
7. The regulatory amendments recommended in the RIS are fit for purpose and are consistent with other regulatory changes made to enable lump sum payments to be made to recipients of financial assistance under the Act without interfering with entitlements. MSD consider any risks associated with them to be negligible.

Status quo and problem definition

Background

Special Benefit and Temporary Additional Support

8. SPB is a discretionary non-taxable benefit. Its intent is to provide assistance to clients whose particular circumstances are causing them hardship. It is paid to people receiving main benefits or to other low-income earners (non-beneficiaries). To receive SPB, clients needed to have:
 - a deficiency between their ongoing income and their costs
 - individual circumstances that warrant receiving a SPB.
9. SPB was replaced by TAS from 1 April 2006. The purpose of TAS is to provide temporary financial assistance to alleviate financial hardship of people whose essential costs cannot be met from their income and other resources. People seeking or granted TAS are required to take reasonable steps to reduce their costs or increase their chargeable income.
10. Clients receiving SPB on 31 March 2006 were protected by grand-parenting provisions and some clients have continued to receive SPB continuously since this time. The intent of the grand-parenting provisions was to ensure that SPB clients were able to retain their SPB under the existing rules, to ensure that no recipient received a reduction in their benefit as a result of the introduction of TAS. Where a client's circumstances change and they no longer qualify for SPB, there is no ability to return to SPB.
11. Table 1 below sets out the differences between SPB and TAS, the primary difference being that SPB is a more discretionary tool than the formula-based TAS.

Table 1: Significant differences between SPB and TAS

Difference	SPB	TAS
Payment calculations	Payment assessed by formula, but with discretion to pay a higher rate.	Payment assessed by a formula only. No discretion to pay a different rate.
Re-grant periods	SPB is reviewed every 26 weeks, and a re-application is required.	TAS is paid for a 13 week period, then a re-application is required.
'Allowable costs'	SPB 'Allowable costs' are any regular essential expenses arising out of a client's special circumstances. There is discretion to include a cost if it meets the definition. Costs associated with Accommodation Supplement and Disability Allowance are included as allowable costs for SPB.	TAS 'Allowable costs' must be on-going and regular expenses. There is no discretion to include a cost not listed in the regulations. Some allowable costs are capped. There is a disability exception amount (set criteria applies).
'Standard costs' (proportion of living costs clients must meet by their own means)	For clients without children, standard costs (set by Ministerial Direction) increase annually by CPI rate. For clients with children, the standard cost is 70 percent of the unabated main benefit and 70 percent of unabated Family Tax Credit.	The standard costs for clients on a main benefit, is 70 percent of the unabated benefit. For clients with dependent children, the standard cost is 70 percent of unabated Family Tax Credit.
Future availability	A client who cancels SPB cannot return to this assistance.	A client who cancels TAS can re-apply at any future time.

Income and Cash Asset tests

12. Central to the benefit system is the principle that assistance is provided based on need, and that where people have additional resources, they should use these to help support themselves. When people receive income from sources including wages, investments or interest payments, this reduces the financial assistance they receive.
13. Assistance is means-tested using income and cash assets tests. For the purposes of these tests, income¹ means:
 - any money received (before income tax) which is not a one-off capital payment
 - the value of any interest (before income tax) acquired which is not a one-off capital payment
 - payments, capital payments or the value of credits or services received periodically that are made and used for an income-related purpose
 - the value of goods, services, transport or accommodation supplied on a regular basis.
14. Cash assets mean assets of the client and their partner (if any) that can be easily converted into cash, for example:
 - mortgage investments
 - building society shares
 - money in bank accounts, including fixed and term deposits with any bank, friendly society, credit union, or building society.
15. The benefit system has three tiers of assistance:
 - the first tier is the main benefits, providing a basic income for people who are not able to support themselves through paid work, which are only income tested (except for the Emergency Benefit and Jobseeker Support Student Hardship which are both income and cash asset tested).
 - the second tier is additional assistance paid to people in particular situations or with specific on-going costs. Low-income people may be eligible for this assistance whether or not they receive a main benefit. This tier of assistance is mostly subject to income testing and may be subject to cash asset testing, such as the Accommodation Supplement.
 - The third tier is tightly income and cash asset tested and provided generally to people in hardship (whether on benefit or not) as one-off grants, such as Special Needs Grants, or may continue over a relatively short period, such as TAS.
16. Cash asset and income testing is also relevant for Residential Care Subsidy and Loans.

¹ The full definition of income is set out in s 3 of the Social Security Act 1964. This definition includes certain payments that are to be exempted from the definition of income for the purposes of the Act.

Problem

Lump sum payments are considered income and/or cash assets for financial assistance payments under the Social Security Act 1964.

17. Clients' owed back-dated TAS due to correct entitlements to TAS since 1 April 2006 will be paid a lump sum. These lump sum payments, and any income derived from them, may affect eligibility or entitlement to financial assistance under the Act.
18. In order to be exempt from cash asset tests, a lump sum payment must be specifically exempted from being income or cash assets in the Act; or the Social Security (Income and Cash Assets Exemption) Regulations 2011, the Social Security (Temporary Additional Support) Regulations 2005, and the Social Security (Long-term Residential Care Subsidy) Regulations 2005.

If no income or cash asset exemption is provided for, clients' entitlements to financial assistance under the Social Security Act 1964 may be reduced due to receipt of the lump sum payment

19. Clients' owed back-dated TAS due to correct entitlements to TAS since 1 April 2006 will be paid a lump sum. These lump sum payments may affect eligibility or entitlement to financial assistance under the Act. Any income derived from these payments may also affect eligibility, for example interest payments.
20. While core benefits are not cash asset tested, certain supplementary benefits are, for example:
 - there is no entitlement to Accommodation Supplement if cash assets are over \$8,100 for a single person, and \$16,200 for a married, civil union or de facto couple, or sole parent; and
 - SPB and TAS have a cash asset threshold for a single person of \$1,062.51, and \$1,770.44 for married, civil union or de facto couple (with or without children) and sole parents.
21. As the lump sum back-payments are being paid as a result of an MSD error, it would be unfair to penalise clients for receiving their lump sum back-payment by then reducing financial assistance entitlements due to income or cash asset tests.

Scale of the problem

22. Of the 59,899 SPB clients grand-parented in 1 April 2006 there are approximately 7,148 people (as at 28 April 2017) affected by the issue, comprising:
 - 369 existing clients receiving SPB who would be better off on TAS
 - 3,811 former SPB clients who were better off on TAS at some point since 1 April 2006 and still in receipt of financial assistance from MSD
 - 2,968 former SPB clients who were better off on TAS at some point since 1 April 2006, but are no longer in receipt of financial assistance from MSD.

23. Table 2 outlines the range of arrears owed:

Table 2: Range of total back-payments to be made

Range	Number	Percentage
\$0-\$100	2,043	28.6
\$100-\$300	1,673	23.4
\$300-\$1000	1,549	21.7
\$1000+	1,883	26.3
Total	7,148	100

24. Due to the different income and cash asset testing thresholds for the various supplementary benefits, and the dynamic nature of income support, it is not possible to reliably estimate the number of clients whose benefit entitlements would likely be affected by a lump sum payment.

Objectives

25. MSD identified four key objectives to assess the effectiveness of the proposed options against:

- providing back-dated TAS payments to clients to correct entitlements to TAS since 1 April 2006 as quickly as practicable
- ensure that the option is easy to administer
- minimise costs to Crown and clients
- provide equity of outcome.

Options and impact analysis

26. Three options were assessed against the four policy objectives set out above.

- Option 1 - a non-regulatory option involving providing the lump sum payment without amending the regulatory framework (the status quo).
- Option 2 – amend regulations to exempt lump sum payments made to correct entitlements to TAS since 1 April 2006, and income derived from them, from income and cash asset tests under the Act for 12 months.
- Option 3 – make back-dated TAS payments to correct entitlements to TAS since 1 April 2006 via multiple weekly instalments.

27. A full analysis of the three options against the policy objectives is in Appendix 1.

Option 1: Status Quo

28. Under this option, the lump sum back-dated TAS payments due to correct entitlements to TAS since 1 April 2006 would not be exempted from income and cash asset tests. The lump sum payments would then be taken into account for income and cash asset tested financial assistance.
29. This would result in a reduction in financial assistance for some clients, with some clients having to reapply for the financial assistance they currently receive.
30. This option meets the objectives for efficient repayment of the debt and administrative ease. However, it falls short of the objectives relating to cost to clients and equity.

Option 2: Amend regulations to exempt lump sum back-dated TAS payments to correct entitlements to TAS since 1 April 2006 from income and cash asset tests

31. Option 2 would amend regulations to exempt lump sum payments to correct entitlements to TAS since 1 April 2006 practice, and income derived from these payments, from income and cash asset tests under the Act. The exemption is sought because these payments are being made to correct an MSD error (failure to meet the duty of active assistance but not giving clients the option to apply for TAS) that is outside of the client's control.
32. MSD recommends that these payments be exempted for 12 months. A 12 month exemption balances the need for recipients to consider how they may use the payment, while ensuring they do not receive social assistance indefinitely despite having a payment they could potentially use to support themselves. The 12 month exemption period is also consistent with other similar cash asset and income exemptions currently applied in the welfare system, such as:
 - Arrears payments due to Accommodation Supplement error
 - Payments to the victims of crime
 - Ex gratia and compensation payments made by the Crown
33. Under section 132 of the Act, it is possible to make regulations to exempt payments, and income derived from them, from income and cash asset tests under the Act. Unless specifically exempted, the lump sum back-dated TAS payments must be assessed for income and cash asset purposes under the Act.
34. This exemption would require an amendment to the:
 - Social Security (Income and Cash Assets Exemptions) Regulations 2011;
 - Social Security (Temporary Additional Support) Regulations 2005; and
 - Social Security (Long-term Residential Care) Regulations 2005.
35. Amendments to the Social Security (Income and Cash Assets Exemptions) Regulations 2011 would flow through to any cash asset and income tests for social housing. The exemptions would also cover Special Needs Grants, Advances and Recoverable Assistance Payments.

36. Option 2 meets all of the policy objectives. It ensures recipients of a lump sum back-dated TAS payment continue to receive current levels of financial assistance under the Act without interruption. The option would be simple to administer and has no compliance costs for recipients of lump sum payments. The exemption would automatically apply.

Option 3: Make back-dated TAS payments via multiple weekly installments

37. Under this option MSD would pay back the back-dated TAS through regular weekly payments with the objective of not affecting cash asset testing thresholds. However, due to the payments repeating, it is likely the payments themselves would be deemed to be income in some circumstances and could interfere with other hardship entitlements such as TAS.

38. Given the various levels of income and cash asset testing thresholds, it would likely require careful analysis of each unique case to ensure that payments did not adversely impact on the benefit entitlements for clients. This approach would result in higher administrative costs for the Crown and also further delay in clients receiving money which is owed to them. This options falls short of all of the policy objectives and should not be pursued.

Consultation

39. This RIS has been prepared by MSD. The Ministries of Health, Education, Justice, Business, Innovation and Employment; the Ministry for Women; the Treasury, Accident Compensation Corporation, Inland Revenue, Parliamentary Counsel Office, the Offices for Disability Issues and Seniors, and the State Services Commission, have been consulted on this paper. MSD has also consulted with beneficiary advocates over the approach to existing and former SPB clients who may be better off on TAS as set out in the paper. The Department of Prime Minister and Cabinet has been informed. No significant concerns were raised during the consultation process.

Conclusions and recommendations

40. MSD analysed each of the options set out above against the four policy objectives. The status quo does not meet all of the policy objectives. Only Option 2, to amend regulations to exempt lump sum payments made to correct entitlements to TAS since 1 April 2006 from income and cash asset tests, meets all the policy objectives. Therefore, MSD recommends this option.

Implementation plan

41. There are three groups of clients affected by this issue:

- group A - Clients receiving SPB now that are potentially better off on TAS
- group B - Clients receiving other financial assistance from MSD but would have been better off on TAS at some point in the past
- group C - Former clients that had received SPB in the past and would have been better off.

42. MSD will be implementing the reviews and payments of group A clients by:

- Writing to advise them that they are potentially better off on TAS and inviting them to an interview to discuss applying for TAS, if they agree, we will assess their TAS entitlement and grant it from the most financially beneficial point. MSD will cancel their SPB and pay them the net arrears, (i.e. the difference between the amount of SPB they received and the amount of TAS they are entitled to).
- This process is estimated to be completed six months after the regulations are changed.

43. MSD will be implementing the reviews and payments of group B clients by:

- Writing to advise them that they may have been better off on TAS and request whether they want to have their entitlement reviewed. Where positive identification of the client is made, we will assess their TAS entitlement and retrospectively grant it from the most financially beneficial point.
- This process is estimated to be completed six months after the regulations are changed.

44. MSD will be implementing the reviews and payments of group C clients by:

- Using a range of communication channels to encourage as many affected former clients as possible to enquire into their entitlement to received back-dated TAS. This includes the online portal developed for the Accommodation Supplement payment error (which can be adapted for use in this situation), as well as communication with key stakeholders, advocates groups, and community groups.
- It is difficult to estimate how long this will take as we are unable to directly contact these clients as we do not have their current contact information.

Monitoring, evaluation and review

45. There are no plans to evaluate the preferred option, given that similar regulatory changes have been made before² and the proposed change is very limited in scope. The programme to correct entitlements to TAS since 1 April 2006 as a whole is being monitored.

² e.g. exempting lump-sum payments made to correct entitlements to Accommodation Supplement as a result of a Ministry IT error

Appendix 1: RIS – Exempting back-payments, associated with the treatment of Special Benefit recipients who would have been better off on Temporary Additional Support, from income and cash asset tests under the Social Security Act 1964.

	Provide back-dated TAS payments to clients to correct entitlements to TAS since 1 April 2006 as quickly as practicable	Ensure the option is easy to administer	Minimise costs to the Crown and clients	Provide equity of outcome	Conclusion
1. Status Quo	Would not result in any unnecessary delay in the full sum being repaid.	Issuing the back-dated TAS payment without the exemption would not require any special administration.	<p>Crown: Could result in some clients having their benefits reduced or stopped. This could result in a small reduction of benefit expenditure for a set period of time.</p> <p>Client: Some clients could have their benefits reduced or stopped as a result of cash asset testing. This may then result in the client having to reapply for benefits again.</p>	If the back-dated TAS payments did not happen, these clients would continue to receive benefits. If the client had received TAS when they were initially eligible their current benefit would not be reduced. The back-dated TAS payment is occurring through no fault of the client. Therefore, it does not seem equitable that the Crown should pick a methodology to rectify an underpayment which would result in a reduction in client income.	This option means the government's remedy to correct entitlements to TAS since 1 April 2006 would likely result in a reduction in financial assistance for some clients. Some clients will then have to reapply for financial assistance they currently receive. The net effect would be increased frustration for clients as their financial assistance is reduced after receiving a back-payment to correct an administrative error outside of the client's control.
2. Create regulations to exempt back-dated TAS payment	Would not result in any unnecessary delay in the full sum being repaid.	Once the regulation is in place, the back-dated TAS payment could be issued without special administration.	<p>Crown: Time taken to get the exemption regulation made.</p> <p>Client: Appropriate benefits would continue and no additional reapplication for benefits would be required. There would be minimal compliance costs.</p>	If the back-dated TAS payments did not happen, these clients would continue to receive benefits. The payment is occurring through no fault of the client. Use of a regulation to exempt lump sum back payments from cash asset testing will result in the back-dated TAS payment not having an impact on client benefit entitlements for a period of 12 months.	Establishing a regulation to exempt the back-dated TAS payment from income and cash asset testing requires no special administration, carries little cost to the Crown and clients once established and provides an efficient resolution of the issue.
3. Weekly payment until back-dated TAS arrears is cleared	This method would delay full repayment for a longer time than is necessary.	<p>Given the various levels of income and cash asset testing thresholds, it would likely require careful analysis of each unique case to ensure that payments did not adversely impact on the benefit entitlements for clients.</p> <p>MSD would need to have systems in place to stop the additional payment at the appropriate time, to ensure the back-dated TAS payment was not over or underpaid to clients.</p> <p>It would be advisable to provide clients with adequate warning of when their weekly payments would reduce to their standard levels to ensure they could adjust their household budgets accordingly.</p>	<p>Crown: Risk the Crown could over or underpay the back-dated TAS payment. To avoid this risk there would likely be monitoring and compliance costs.</p> <p>Client: Significant delay in receiving money they are owed. However, is unlikely to interfere with existing benefits.</p>	MSD has accepted clients are owed this money. It is undesirable that MSD would utilise a payment methodology that would require clients to wait longer than necessary to receive the money owed.	The proposal to correct entitlements to TAS since 1 April 2006 through weekly instalments is the most administratively onerous of the three options and will result in delays in repaying clients.