

In Confidence

Office of the Minister for Social Development and Employment
Chair, Cabinet Legislation Committee

SOCIAL SECURITY (SUBSEQUENT CHILD POLICY REMOVAL) AMENDMENT BILL: APPROVAL FOR INTRODUCTION

Proposal

- 1 This paper seeks approval for the Social Security (Subsequent Child Policy Removal) Amendment Bill (the Bill) to be introduced. The Bill will amend the Social Security Act 2018 (the Act) and Social Security Regulations 2018, to remove the additional dependent child policy (commonly known and referred to in this paper as the subsequent child policy).
- 2 I have sought a category 2 priority for the Bill on the 2021 Legislation Programme (must be passed in the year).

Policy

Cabinet has agreed to the removal of the subsequent child policy

- 3 The subsequent child policy (the policy) requires that when a person has a 'subsequent child' while receiving a main benefit, the subsequent child is only considered when setting work obligations for the parent until the child reaches the age of one (whereas a non-subsequent child would continue to be considered). Work obligations are then based upon the age of a parent's youngest non-subsequent child.¹
- 4 The age of a client's child is considered when determining eligibility for Sole Parent Support, and in setting work obligations. As such, the policy currently impacts eligibility for Sole Parent Support (as opposed to Jobseeker Support), and places obligations on parents to return to work earlier if they have an additional child while receiving a main benefit.
- 5 The Ministry of Social Development's (MSD) modelling on the cohort affected by the policy has found no evidence to suggest that the policy has reduced time on benefit or improved financial or social outcomes. The policy has, however, created inequities in the welfare system for children and their parents, undermined the value of parenting, and disproportionately impacted Māori and women.

¹ Note work obligations change based on the age of the client's youngest (non-subsequent) 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.

- 6 On 22 July 2020, the Cabinet Social Wellbeing Committee agreed to the removal of the policy, to be given effect from November 2021 [SWC-20-MIN-0101 refers]. Cabinet confirmed this decision on 27 July 2020 [CAB-20-MIN-0352 refers].
- 7 This agreed change aligns with the Government's commitment to overhaul the welfare system and to support people who are caring for their children. It is intended to achieve:
- 7.1 increased flexibility for affected parents to spend time with their children in the first 1,000 days of their life (which is a critical time period for a child's long-term development);
 - 7.2 increased equity and simplicity in the welfare system;
 - 7.3 a likely reduction in stress for affected parents, and therefore positive impact on mental health and wellbeing; and
 - 7.4 eligibility for additional (albeit minimal) financial assistance for some parents.²
- 8 I propose that the Bill's commencement date for the removal of the policy comes into force no later than 8 November 2021, with transitional provisions coming into force 28 days earlier on 11 October 2021.

This initiative requires amendments to primary and secondary legislation

- 9 Amendments to primary legislation are required to remove the policy from the Act, and a bill is therefore required to implement this initiative.
- 10 The Bill contains two parts:
- 10.1 part 1 will make substantive and consequential amendments to the Act and regulations, to remove provisions relating to the policy, and to make related consequential amendments; and
 - 10.2 part 2 sets out transitional provisions related to the removal of the policy (outlined further below).
- 11 All the substantive and consequential amendments, and transitional provisions, are included in the draft Bill attached to this paper.

Transitional provisions are required to improve the client experience for some affected parents in the period immediately prior to and following the law change

- 12 This initiative will generally have no impact on the rate of benefit received by clients, however it will result in a change in benefit type and/or work obligations for some affected parents. To mitigate the potential impact of a benefit application or change in client circumstances around 8 November

² Such as the Work Bonus.

2021, I propose that the Bill include a 28-day transition period (the transition period) both prior to and following the law change (56 days total).³

- 13 MSD is currently required to apply the policy where applicable, except under limited circumstances. Some clients may have an application in progress or change in circumstances around the time of the policy's removal, which would result in multiple changes to their entitlement (benefit type and/or work obligations) in a short period of time.
- 14 Clients receive communications from MSD when their entitlement changes, and multiple changes in a short period of time would therefore result in a number of communications from MSD with updated messaging. This is ultimately confusing and would have a negative impact on the client experience.
- 15 To prevent this negative impact on clients, I propose that in specified cases within the transition period, the Bill require MSD to respond to a benefit application or change in circumstances in line with the removal of the policy.
- 16 The intent of these provisions is to improve the client experience by reducing complexity and ensuring that the treatment of clients in the transition period aligns with the policy intent of the initiative. Examples of how transitional provisions will improve the client experience are included in the appendix to this paper.
- 17 As there is generally no change to the rate of benefit received by affected parents when the policy is removed, the proposed transitional provisions will have very limited fiscal implications.⁴ The policy does, however, currently impact work obligations for some clients (as noted above).
- 18 The proposed transition period extends 28 days prior to and following the law change (56 days total), because the dates of application, decision by MSD and benefit 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.

Impact analysis

- 19 A Regulatory Impact Statement was prepared in accordance with Cabinet's impact analysis requirements and was submitted at the time that Cabinet

³ Note this paper refers to three different 28-day time periods:

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

⁴ It is possible that transitional provisions may allow some clients to 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 which are being funded within MSD's departmental baseline, as agreed by the Cabinet Social Wellbeing Committee in July 2020 [SWC-20-MIN-0101 refers].

approval was sought for the policy relating to the relevant regulations [SWC-20-MIN-0101].⁵

Compliance

- 20 The Bill complies with each of the following:
- 20.1 the principles of the Treaty of Waitangi;
 - 20.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 20.3 the disclosure statement requirements (a disclosure statement has been prepared and is attached to this paper);
 - 20.4 the principles and guidelines set out in the Privacy Act 2020;
 - 20.5 relevant international standards and obligations; and
 - 20.6 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Consultation

Government departments

- 21 The following departments were consulted on this Cabinet paper and the attached Bill: Inland Revenue; Ministry of Business, Innovation and Employment; Ministry for Pacific Peoples; Ministry for Women; Ministry of Justice; Office for Disability Issues; Oranga Tamariki – Ministry for Children; Te Puni Kōkiri and the Treasury. The Department of the Prime Minister and Cabinet, and Child Poverty Unit have also been informed.

Public consultation

- 22 While there was no formal public consultation on the removal of the policy, it relates to a recommendation of the Welfare Expert Advisory Group (WEAG).⁶ The WEAG heard from nearly 3,000 New Zealanders in the development of their overall advice to the Government on the overhaul of the welfare system.⁷

Briefing of Government Caucuses

- 23 The Health, Wellbeing and Social Services Caucus Committee has been briefed on the changes set out in the Bill.

⁵ Available at <https://www.treasury.govt.nz/sites/default/files/2020-09/ria-msd-child-pol-aug20.pdf>

⁶ Recommendation 11, *Whakamana Tāngata: Restoring Dignity to Social Security in New Zealand*.

⁷ *Views on New Zealand's welfare system: A summary of consultation responses to the Welfare Expert Advisory Group*.

Binding on the Crown

- 24 The Act to be amended by the Bill already binds the Crown. The Bill does not change this.

Creating new agencies or amending law relating to existing agencies

- 25 The Bill will not create new agencies or amend law relating to existing agencies.

Allocation of decision making powers

- 26 The Bill does not involve the allocation of decision making powers between the executive, the courts and tribunals.

Associated regulations

- 27 The necessary changes to regulations are included in the Bill. A separate legislative instrument is not required, and therefore the 28-day rule does not apply. Even so, the Bill fits with the principle that the law should be publicly available and capable of being ascertained before it comes into force.

Other instruments

- 28 The Bill does not include any provision empowering the making of other instruments that are deemed to be legislative instruments or disallowable instruments (or both).

Definition of Minister/department

- 29 The Bill does not contain a definition of Minister or department.

Commencement of legislation

- 30 As outlined above, the Bill contains two parts. Part 2 comes into force on 11 October 2021, to allow for the 28-day transition period prior to the policy's removal. Part 1 comes into force on 8 November 2021.

Parliamentary stages

- 31 The Bill should be introduced by 25 March 2021 and passed by 11 October 2021.
- 32 The Bill should be referred to the Social Services and Community Select Committee.

Proactive Release

- 33 I intend to proactively release this paper within 30 working days, with redactions as appropriate. The Bill and Disclosure Statement will be available upon introduction to the House.

Recommendations

The Minister for Social Development and Employment recommends that the Committee:

- 1 **note** that the Minister for Social Development and Employment has sought a category 2 priority for the Social Security (Subsequent Child Policy Removal) Amendment Bill on the 2021 Legislation Programme (must be passed in the year);
- 2 **note** that the Bill will amend the Social Security Act 2018 and Social Security Regulations 2018, to remove the subsequent child policy;
- 3 **approve** the Social Security (Subsequent Child Policy Removal) Amendment Bill for introduction, subject to the final approval of the Government caucus and sufficient support in the House of Representatives;
- 4 **agree** that the Bill be introduced by 25 March 2021;
- 5 **agree** that the Government propose that the Bill be:
 - 5.1 referred to the Social Services and Community Select Committee for consideration;
 - 5.2 enacted by 11 October 2021
- 6 **note** the Bill contains two parts:
 - 6.1 part 2 comes into force on 11 October 2021, to allow for the 28-day transition period prior to the policy's removal; and
 - 6.2 part 1 comes into force on 8 November 2021.

Authorised for lodgement

Hon Carmel Sepuloni
Minister for Social Development and Employment

Appendix – Transitional Provision Examples

Example A – benefit application (prior to law change)

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.

Without transitional provisions

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).⁸ 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).

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.

Example B – change in circumstances (prior to law change)

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 his son 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).

Without transitional provisions

Joel's daughter has her 14th 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).

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 14th 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.

⁸ Note a 'subsequent child' is 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.

Example C – benefit application (post law change)

Helen is a sole parent with a 16 year old daughter and an 8 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.

Helen has been off-benefit for 10 months, and is now reapplying on 15 November 2021 (one week after the policy has been removed) following a separation from her partner. Although Helen applied on 15 November, she separated from her partner on 25 October 2021, making her entitlement date for benefit 26 October (two weeks before the policy was removed). This is in accordance with the 28-day rule that allows a benefit to start earlier than the application date.⁹

Without transitional provisions

MSD is required to apply the law as it was at the time of Helen’s entitlement date, which means the policy must be applied. Helen would be entitled to Jobseeker Support initially and then Sole Parent Support from 8 November.¹⁰ Helen will then continue to be eligible for Sole Parent Support with part-time work obligations.

With transitional provisions

As Helen’s application date falls within 28 days following the law change, and her commencement date falls within 28 days prior to the law change, MSD will not apply the policy. MSD will grant Sole Parent Support to Helen, with part-time work obligations from her benefit commencement date.

⁹ 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).

¹⁰ Note work obligations cannot be applied retrospectively. For example, while Helen should have had work obligations for the two week period she was on Jobseeker Support, MSD cannot backdate work obligations and therefore will not apply them in this scenario.