

**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.