

Regulatory Impact Statement: Exempting back-payments, associated with correcting entitlements to the Accommodation Supplement, from income and cash asset tests under the Social Security Act 1964.

Agency Disclosure Statement

1. This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Social Development (MSD).
2. This RIS analyses options to ensure that lump sum back-payments to correct underpayment of Accommodation Supplement (AS) entitlements are exempt from income and cash asset tests under the Social Security Act 1964. An exemption is required to ensure that lump sum back-payments to correct underpayment of AS will not negatively impact on clients' financial assistance entitlements under the Social Security Act 1964 because this error was outside the client's control.
3. MSD considered a number of options, taking into account the policy objectives and fiscal constraints.
4. The preferred option in this RIS is to amend regulations to ensure lump sum back-payments to correct underpayment of AS entitlements, and any income derived from them, are exempt from income and cash assets tests for financial assistance under the Social Security Act 1964 for 12 months.
5. Without an exemption, back-payments of AS, and any income derived from them, would be taken into account as either income or cash assets when calculating financial support entitlements. MSD assessed the preferred option, the status quo and a non-regulatory option against policy objectives and fiscal constraints (Appendix 1 refers).
6. 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 November 2016.
7. This RIS provides the required level of analysis, including the relevant background, problem definition, impact analysis, and other options considered.
8. 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.

9. 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.

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Executive Summary

10. The Accommodation Supplement (AS) is a weekly payment to help subsidise housing costs for low-income beneficiary and non-beneficiary households with limited income and cash assets. In 2014, MSD identified a significant error in its assessment and payment system that affected the calculation of client entitlements for AS.
11. As at 1 August 2016, there are approximately 127,000 clients who received AS between 1993 and December 2014 that are affected by the error. The potential cost of underpayments to all affected clients is up to \$29 million, while the potential cost of overpayments is approximately \$53 million.
12. MSD intends to correct entitlements to AS through a lump sum back-payment on the basis that MSD must correct these AS entitlements in order to retain trust and confidence in the social welfare system.
13. 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 of AS by then reducing financial assistance entitlements due to income or cash asset tests. Therefore, MSD proposes amendments to 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 to ensure the lump sum back-payments to correct entitlement to AS, and income derived from them, do not interfere with client entitlements under the Social Security Act 1964.
14. Making lump sum payments to correct AS entitlements, and income derived from them, exempt from being subject to income and cash asset tests through regulations is the most effective route to achieve the following policy objectives:
 - a. correct underpayment of AS entitlements as quickly as practicable;
 - b. ensure that the option is easy to administer;
 - c. reduce costs to Crown and clients; and
 - d. provide equity of outcome.
15. 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 Social Security Act 1964 without interfering with entitlements. MSD consider any risks associated with them to be negligible.

Status quo and problem definition

Background

Correcting entitlements to the Accommodation Supplement

16. The Accommodation Supplement (AS) is a weekly payment to help subsidise housing costs for low income beneficiary and non-beneficiary households with limited income and cash assets.
17. In 2014, the Ministry of Social Development (MSD) identified a significant error in its assessment and payment system that affected client entitlements to AS from 1993 to 2014. The error resulted in the calculation and payment of inaccurate AS entitlements for some clients. The impact of the error meant that some affected clients received less AS than they were entitled to, while others received more. When the issue was identified, MSD took immediate action to fix the error in the payment system so that new clients would receive correct AS entitlements. This was put in place in December 2014.
18. MSD will correct underpayment of AS entitlements through a lump sum back-payment to each client. There are approximately 49,000 people (22,000 current clients and 27,000 former clients) who are entitled a lump sum back-payment of AS. The lump sum back-payments range from \$1 to \$28,538.00, with an average payment of \$567.29. It is probable that some clients will have their financial assistance entitlements reduced or stopped due to income or cash asset tests under the Social Security Act 1964.

Income and Cash Asset tests

19. 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 this to help support themselves. When people receive income from sources including wages, investments or interest payments, this reduces the financial assistance they receive.
20. Assistance is means-tested using income and cash assets tests. For the purposes of these tests, income¹ means:
 - a. any money received (before income tax) which is not a one-off capital payment;
 - b. the value of any interest (before income tax) acquired which is not a one-off capital payment;
 - c. payments, capital payments or the value of credits or services received periodically that are made and used for an income-related purpose; and
 - d. the value of goods, services, transport or accommodation supplied on a regular basis.

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.

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21. Cash assets mean assets of the client and their partner (if any) that can be easily converted into cash, for example:
- a. mortgage investments;
 - b. building society shares; or
 - c. money in bank accounts, including fixed and term deposits with any bank, friendly society, credit union, or building society.
22. The benefit system has three tiers of assistance:
- a. 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).
 - b. the second tier is additional assistance paid to people in particular situations or with specific on-going costs. For example, 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 AS.
 - c. 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 assistance includes the Temporary Additional Support.
23. Cash asset and income testing is also relevant for Residential Care Subsidy and Loans.

Problem

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

24. AS payments are non-taxable. Lump sum payments to remedy administrative errors are not excluded in the definition of income or cash assets (for the purposes of income and/or cash asset tested financial assistance) in the Social Security Act 1964.
25. 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 Social Security Act 1964; 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

26. Clients owed back-payments of the AS 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 Social Security Act 1964.

27. While core benefits are not cash asset tested, certain supplementary benefits are, for example:
- a. there is no entitlement to AS if cash assets are over \$8,100 (for a single person); and
 - b. Special Benefit and Temporary Additional Support has a cash asset threshold for a single person of \$1,050.92.
28. 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 of AS by then reducing financial assistance entitlements due to income or cash asset tests. MSD recommends that all back-payments, and income derived from them, are made exempt from all forms of cash asset and income testing under the Social Security Act 1964 and related regulations for 12 months. The 12 months exemption period is consistent with other similar cash asset and income exemptions currently applied in the welfare system.

Scale of the problem

29. The number of clients who are potentially affected, by the interface between a lump sum payment and the income and cash asset testing threshold, is 22,000 plus those 27,000 former clients who receive a lump sum payment and may seek financial assistance under the Social Security Act 1964 in the next 12 months.
30. 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

31. MSD is correcting entitlements to AS in order to retain trust and confidence in the social welfare system. MSD identified four key objectives to assess the effectiveness of the proposed options against:
- a. correct underpayment of AS entitlements as quickly as practicable;
 - b. ensure that the option is easy to administer;
 - c. reduce costs to Crown and clients; and
 - d. provide equity of outcome.

Options and impact analysis

32. Three options were assessed against the four policy objectives set out above.
- a. Option 1 - a non-regulatory option involving providing the lump sum payment without amending the regulatory framework (the status quo).

- b. Option 2 – amend regulations to exempt all lump sum payments made under the programme to correct entitlements to AS, and income derived from them, from income and cash asset tests.
- c. Option 3 – make back-payments to correct entitlements to AS via multiple weekly installments.

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

Option 1: Status Quo

- 34. Under this option, MSD would make the lump sum back-payments to correct entitlements to AS which would then be taken into account for income and cash asset tested financial assistance.
- 35. This option would likely result in the government’s remedy to the underpayment of AS entitlements to cause a reduction in financial assistance for some clients. Some clients will then have to reapply for financial assistance they currently receive.
- 36. 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. Therefore, this approach could undermine the trust and confidence in the welfare system.

Option 2: Amend regulations to exempt lump sum payments to correct entitlements to AS from income and cash asset tests

- 37. Option 2 seeks to amend regulations to exempt lump sum payments provided to correct the AS error, and income derived from these payments, from assessment of clients’ eligibility for financial and benefit assistance (for a period of 12 months from the date the lump sum is paid). The exemption is sought because these payments are being made to correct for an administrative error that is outside of the client’s control.
- 38. The use of regulations to exempt lump sum payments, and income derived from them, from income and cash asset tests is required because income and cash asset tests are defined in the Social Security Act 1964. However, under section 132 of the Social Security Act 1964, it is possible to make exemption regulations of this kind.
- 39. This exemption would require an amendment to the:
 - a. Social Security (Income and Cash Assets Exemptions) Regulations 2011;
 - b. Social Security (Temporary Additional Support) Regulations 2005; and
 - c. Social Security (Long-term Residential Care) Regulations 2005.
- 40. 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.
- 41. Option 2 meets all of the policy objectives. It ensures recipients of a lump sum payment (to correct an historical underpayment of AS) continue to receive current levels of financial assistance under the Social Security Act 1964 without interruption. This

continuation of financial assistance will assist in the maintenance of trust and confidence in the social welfare system.

42. 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-payments to correct entitlements to AS via multiple weekly instalments

43. Under this option MSD would pay back the underpayment of AS 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 Temporary Additional Support.
44. 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

45. MSD consulted The Treasury, the Crown Law Office and the Ministry of Health on the Cabinet paper *Correcting Entitlements to the Accommodation Supplement*. However, these agencies have not been consulted on the RIS on the basis that the regulatory impact is not novel or extensive.
46. MSD consulted with beneficiary advocates and they are supportive of the proposal to provide a lump sum back-payment to correct entitlements to AS and the proposed income and cash asset test exemption.

Conclusions and recommendations

47. 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 to correct entitlements to AS from income and cash asset tests, meets all the policy objectives. Therefore, MSD recommends this option.

Implementation plan

48. We recommend efficient implementation of the proposed regulations to enable MSD to commence the programme to correct entitlements to AS through lump sum back-payments to clients who did not receive their full entitlement to AS between 1993 and 2014.

Sequencing of remedial action

49. Correcting current client's rate of payment is currently underway and can be completed before the recommended regulations come into effect. However, the provision of lump sum back-payments is reliant on the recommended regulations having effect.
50. Once the recommended regulations are in effect, all current clients (at the time MSD begin amending records) will be proactively contacted and paid what they are owed.
51. MSD do not have current contact details for clients who are no longer in receipt of a benefit and there are privacy concerns about sending personal information to a last known address. Therefore, MSD have developed a comprehensive stakeholder engagement and communication strategy aimed at getting information to non-current clients who may be entitled to a payment. This will include engaging with a number of organisations such as beneficiary advocates, Citizens' Advice Bureaux, social services agencies, disabled persons' organisations and Age Concern.
52. People who want to find out whether they are eligible for any payment will be able to contact MSD through all of the usual channels such as service centres, contact centres and online. All queries will be directed to an online portal which will be established. Clients will be able to access the portal from kiosks in service centres if they have no other way of accessing the internet or require assistance with computers.

Risks

53. 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 Social Security Act 1964. MSD consider any risks to be negligible and relate to the programme to correct entitlements to AS itself, rather than the regulatory changes recommended in this RIS.

Monitoring, evaluation and review

54. 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 entitlement to the AS as a whole is being monitored.

² E.g. 3k to Christchurch scheme through the Social Security (Income and Cash Assets Exemption) Amendment Regulations 2014

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	Correct underpayment of AS entitlements as quickly as practical.	Ensure the option is easy to administer	Reduce 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 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 payments did not happen, these clients would continue to receive benefits. The back-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.	<p>This option means the government's remedy to the underpayment of AS 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.</p> <p>The net effect would be increased frustration for clients and a reduction of trust and confidence in the integrity of the welfare system.</p>
2. Create regulations to exempt back payment	Would not result in any unnecessary delay in the full sum being repaid.	Once the regulation is in place, the back 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.</p>	If the back-payments did not happen, these clients would continue to receive benefits. The back-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 payment not having an impact on on-going client benefit entitlements.	Establishing a regulation to exempt the back payment from income and cash asset testing requires no special administration, carries little cost to the Crown and clients once established and provides for efficient repayment of the debt to clients. It is a methodology which is unlikely to undermine trust and confidence in the social welfare system.
3. Weekly payment until underpayment is remedied	In some instances this money has been owed since 1993. The government has known about the issue since December 2014. This method would delay full repayment for a longer time than is necessary and is likely to significantly undermine trust and confidence in the social welfare system.	<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 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 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. Some clients will have been owed this money for several years. 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 the underpayment through weekly instalments is the most administratively onerous of the three options and does not achieve our objective to retain trust and confidence in the integrity of the social welfare system. It would likely generate unfavourable coverage due to the time delay in clients receiving money they are owed.