



## SPICe Briefing

## Pàipear-ullachaidh SPICe

# Social Security (Amendment) (Scotland) Bill: consideration prior to Stage 3

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This briefing sets out parliamentary scrutiny of the Social Security (Amendment) (Scotland) Bill ahead of Stage 3. It recaps on Stage 1 Committee scrutiny and provides a summary of amendments at Stage 2.

## Social Security (Amendment) (Scotland) Bill [AS INTRODUCED]

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# Summary

The [Social Security \(Amendment\) \(Scotland\) Bill](#) makes mostly technical amendments to the framework for devolved social security. The overall aim is to:

“ create efficiencies and enhance the administration of the Scottish social security system, with a focus on measures to improve the client experience and to deliver value for money.”

Scottish Government, 2023<sup>1</sup>

At Stage 1, the lead Committee was the Social Justice and Social Security Committee, who [reported on 14 May 2024](#). The [Scottish Government responded on 31 May](#).

In general, the Committee was positive about the Bill, with the exception of having some concerns about the provisions in Part 6 on information for audit. The general principles were [approved by the Parliament on 4 June 2024](#).

At Stage 2, most of the successful amendments to the Bill were technical or sought to improve the drafting rather than being a change in policy. Areas of new policy were:

- A regulation-making power to set out when **late applications** would be accepted. This is in response to debate at Stage 1.
- Allowing **overpayments of ‘top-up’ benefits**, such as Scottish Child Payment to be deducted from other Social Security Scotland benefits. This makes it consistent with rules for other benefits.
- The Scottish Government supported Jeremy Balfour MSP’s amendments that would remove the requirement for a decision maker to identify an **error before being able to lapse an appeal**.
- The Scottish Government will be **required to consult** on which groups should be exempt from having to provide information for audit.
- A Scottish Government amendment at Stage 3 will provide for all Social Security Scotland benefits to be **uprated for inflation**.

Unsuccessful amendments are also discussed in this briefing where they reflect ongoing debates about Scottish social security or where the Member indicated the issue may be returned to at Stage 3.

The date of the Stage 3 debate has yet to be announced.

# Overview of the Bill

The [Social Security \(Amendment\) \(Scotland\) Bill](#) was introduced in the Parliament on 31 October 2023, by the Cabinet Secretary for Social Justice, Shirley-Anne Somerville MSP. The [Policy Memorandum](#), [Explanatory Notes](#) and [Financial Memorandum](#) were published alongside the Bill. Further information about the Bill can be found on the [Scottish Parliament website](#).

The Bill is largely technical in nature. A [SPICe briefing on the Bill](#) as introduced provides information about the changes the Bill proposes to make to the administrative framework for devolved social security. These include:

- Regulation-making powers that would allow new benefits for people with care experience and new benefits for families with children to be introduced in future.
- Repealing COVID-19 measures which allowed late applications.
- Changes to the process for challenging decisions, including allowing Social Security Scotland to offer a better award to a claimant who has lodged an appeal. If accepted, this would end the appeal. This is known as a “lapsed appeal.”
- Making representatives liable for overpayments in certain circumstances. (Some people have a formally appointed representative, such as an appointee or guardian, who manages benefits for them). Review and appeal rights are provided for.
- Requiring individuals to provide information to Social Security Scotland in order to estimate the amount of fraud or error in the system as a whole.
- Introducing a scheme of 'compensation recovery' to mirror the existing, long-standing, Department for Work and Pensions scheme.
- Bringing additional regulations into the scope of the Scottish Commission on Social Security.

# Stage One Scrutiny

The Social Justice and Social Security (SJSS) Committee led scrutiny of the Bill at Stage 1. The [Stage 1 debate was held on 4 June 2024](#) and the general principles of the Bill were agreed to.

## Committee evidence

A call for views by the SJSS Committee received 27 responses. Five evidence sessions were held with stakeholders. These took place on [7, 14, 21 and 28 March](#) and [18 April 2024](#).

The Delegated Powers and Law Reform Committee considered the Bill on [6 February](#) and [19 March](#), issuing a [report on 26 March 2024](#).

[The Finance and Public Administration Committee](#) received three responses to its call for views and took no further action.

## Committee report and Scottish Government response

The SJSS Committee [published its report on 14 May 2024](#) and the Scottish Government responded on [31 May](#). The Committee agreed the general principles. The one area of particular concern was the provision in Part 6 to require people to provide information to Social Security Scotland for the purposes of auditing overall levels of error and fraud in the system. The following summarises the recommendations and response.

### Part 1: Types of social security assistance

In their Stage 1 report, the Committee asked the Scottish Government for its early priorities for changing the Scottish Child Payment. The Scottish Government said they did not have plans for radical changes to eligibility, and their key priority was: “close alignment of the five family payments.”

Further detail on the scope of ‘Care Experience Assistance’ was requested. The Scottish Government said the first use of these powers would be to provide a payment to care leavers, but it was drafted to allow scope for future payments to different groups of those with care experience.

The Committee asked the Scottish Government to justify any departures from the general framework for social security when creating the care leaver payment. The Scottish Government said it had not yet decided on the delivery mechanism. However, even if it was not a Social Security Scotland payment, they might still introduce a take-up strategy and review process for applications.

## Part 2: Late applications

The Committee welcomed the Cabinet Secretary's plans to "take forward investigations at Stage 2" to extend flexibility for late applications.

The Scottish Government later lodged Stage 2 amendments that would provide for regulations to be set out when late applications would be accepted.

## Part 3: Redeterminations and appeals

The Committee asked the Scottish Government to consider various stakeholder suggestions. These included:

- making deadlines for requesting redeterminations more consistent
- removing the need for an error to be identified before an appeal could be lapsed
- providing for a 'cooling off' period for withdrawing requests for redetermination and appeals
- removing the need for a redetermination stage after an appeal has lapsed
- allowing Social Security Scotland to make decisions following process appeals based on the information available if attempts to get further information have failed
- creating a right of appeal to Upper Tribunal in process appeals.

The Scottish Government did not agree that these issues required amendment, and said they were still considering the point about process appeals and the Upper Tribunal. At Stage 2, the Scottish Government supported an amendment removing the need for an error to be identified before appeals can be lapsed.

## Part 4: Liability for overpayments

The Committee asked for an explanation of how the changes to liability reflect the social security principles and how they would work in practice.

In response, the Scottish Government said that:

“ in the vast majority of cases where an overpayment arises, the representative will have tried to act in the best interests of an individual and the individual will have benefited from the error. In these cases, it seems unfair to apply liability to the representative.”

Somerville, 2024<sup>2</sup>

The response noted that “Social Security Scotland has a range of tools at its disposal to ensure no-one is placed into hardship as a result of recovery.” Although “the detailed service design for appealing liability for an overpayment has yet to take place.”<sup>2</sup>

## Part 5: Appointees

The Committee asked that Social Security Scotland monitor the time taken to complete appointee approvals. The Scottish Government said that this would be “borne in mind as the agency continues to develop and refine future statistical analysis.”<sup>2</sup>

## Part 6: Information for audit

The provisions for audit led to the most debate during Committee consideration. In their Stage 1 report, the Committee said it “is not convinced the right balance has been struck” between the different social security principles, and that the Scottish Government could have done more to consult stakeholders. The Committee asked for “a more expansive explanation as to why the provisions do not, in its view, conflate audit and tackling fraud” and asked the Scottish Government to adopt a ‘test and learn’ approach to implementation.

The Scottish Government responded that “The powers to suspend” [benefit] “will only be exercised as a last resort.” If someone fails to respond to requests, Social Security Scotland will:

“ undertake a determination without application to check if the person is still entitled. As such, and differently from other parts of the UK, nobody will ever have their assistance stopped purely for not engaging with the process introduced by the Bill.”

Somerville, 2024<sup>2</sup>

The Scottish Government has sought the views of “more than 40 different organisations” on the groups that should be exempt from these provisions, and a Stage 2 amendment will require public consultation prior to these regulations being laid.

The Scottish Government explained that:

- the provisions allow the gathering of data needed for Social Security Scotland to produce robust fraud and error estimates
- the Bill’s provisions can be considered a tool for internal auditing rather than ‘tackling fraud’
- any cases of fraud identified as a result of the audit process will be addressed using existing statutory powers and processes.

The Scottish Government said it was “happy to engage with stakeholders” on implementation of these measures.

## Part 7: Compensation recovery

There were no Committee recommendations on this Part of the Bill.



## Part 8: Scottish Commission on Social Security (SCoSS)

The Committee welcomed the commitment to Stage 2 amendments, which would add additional regulations to the scrutiny remit of SCoSS.

### Stage 1 debate

In the Stage 1 debate, many Members remarked on the technical nature of the Bill and the Cabinet Secretary for Social Justice, Shirley-Anne Somerville MSP, reiterated commitments for Stage 2 amendment including:

- adding a requirement for public consultation on regulations that would set out who would be exempt from the requirement to provide information for audit (Part 6)
- clarifying the limits of insurer liability in relation to Scottish Ministers' recovery of compensation (Part 7)
- allowing for late applications in certain circumstances (Part 2)
- making additional types of regulation subject to scrutiny by SCoSS (Part 8).

The Cabinet Secretary was also keen to emphasise that, in the provisions on information for audit in Part 6:

“ nobody will lose their entitlement simply as a result of failing to provide information for an audit exercise.”

Scottish Parliament Official Report, 2024<sup>3</sup>

Despite this, some Members, particularly John Mason MSP and Maggie Chapman MSP still had some concerns whether these provisions sat well with the social security principles.

There was some discussion about how particular benefits could develop in future, particularly the Scottish Child Payment, Care Experience Payment and Carer Support Payment.

The Conservative Members looked for further changes to the Bill. For example, Jeremy Balfour MSP proposed that all Scottish social security benefits should be uprated for inflation. At Stage 2, the Scottish Government undertook to bring forward a Stage 3 amendment to provide for this.

## Stage 2 Amendments

Considerations of amendments at Stage 2 took place at meetings of the Social Justice and Social Security Committee on 19 September and 26 September 2024.

The [Bill as amended at Stage 2](#) was subsequently published on the Parliament's website.

This section of the briefing covers the main amendments debated and moved at Stage 2. It highlights where Members indicated that issues would be returned to at Stage 3 but does not attempt to deal with all the Stage 2 amendments lodged.

The Marshalled Lists and Groupings of amendments can be viewed on the Parliament website. The results of all amendments, including divisions, can be viewed in the Social Justice and Social Security Committee minutes:

- [19 September 2024](#)
- [26 September 2024](#).

The Official Reports for each meeting can be viewed at the links below:

- [19 September 2024](#)
- [26 September 2024](#).

## Part 1: Types of social security assistance

There were several groups of Scottish Government amendments that added to the regulation-making powers for different types of Scottish social security benefit. These increase the flexibility for legislating and create more consistency among different benefits. In particular:

- Best Start Grants and Best Start Foods are now forms of '**Childhood Assistance**' and the separate category of 'Early Years Assistance' is repealed (amendments 15 to 23).
- Regulation-making powers were added to each form of assistance which could be used to allow **late applications** to be accepted (amendments 24, 28). This was an issue raised by stakeholders and by the Committee at Stage 1.
- Regulation-making powers were added to Childhood Assistance that could be used to allow **deductions to repay debt** or repay overpayments of other Scottish benefits. This is consistent with the regulation-making powers for other Scottish benefits (amendments 25 and 26).
- A regulation-making power was added to **Care Experience Assistance** which would enable a redetermination process to be created for that payment, therefore adding to the ways in which clients could challenge a decision about a payment (amendment 27).

Unsuccessful amendments by Jeremy Balfour MSP sought to make changes to Care Experience Assistance, Carer Support Payment, Winter Heating Assistance and

Discretionary Housing Payments. These are discussed below.

## Care Experience Assistance

Mr Balfour MSP sought to ensure that the regulations to create **Care Experience Assistance** would be brought forward in the next two years.

Amendment 1 was disagreed to by division 4:5, the Convener using his casting vote. Amendment 2 was not moved.

The Cabinet Secretary for Social Justice, Shirley-Anne Somerville MSP, assured the Committee that:

“ the Scottish Government remains committed to the care leaver payment and resolute in our commitment to keeping the Promise by 2030.”

Scottish Parliament, 2024<sup>4</sup>

## Carer Support Payment

Amendment 3 sought to continue to pay **Carer Support Payment** for 24 weeks after the cared for person died. The Scottish Government plans to extend support from eight to 12 weeks once case transfer from Carer’s Allowance is complete. The Cabinet Secretary argued that any further extension would have to consider cost and the need for discussions with the Department for Work and Pensions (DWP).

Amendment 3 was disagreed to by division 4:5, the Convener using his casting vote.

Mr Balfour MSP sought a regulation-making power to create an earnings taper for Carer Support Payment. This would allow the amount of benefit to reduce gradually as earnings increase, rather than the current ‘cliff edge’, when the whole benefit is withdrawn when the earnings threshold is reached.

The Cabinet Secretary argued that a taper would be complex. She said ‘more effective’ approaches were being considered, such as: “a run-on of support when carers earn over the threshold and increasing the over-all threshold”. She also pointed out that it would already be possible to introduce a taper scheme using existing regulation-making powers.

Amendment 4 was not moved.

## Winter Heating Assistance

Mr Balfour MSP sought to introduce Winter Heating Assistance for those in receipt of the higher rates of either Attendance Allowance or Pension Age Disability Assistance. There are existing payments for those on low incomes and children on disability benefits. Members also discussed the means-tested Pension Age Winter Heating Payment which is due to be introduced shortly. The Cabinet Secretary said that Mr Balfour’s amendment would “present financial, legal and operational challenges”but she was committed to “continuing to review eligibility.”

Amendment 5 was disagreed to by division 2:4 with 2 abstentions.

## Discretionary Housing Payment

Mr Balfour MSP sought to ensure that military compensation payments would not be counted as income when considering entitlement to Discretionary Housing Payments (DHP). The Cabinet Secretary explained that this would be better addressed in guidance, as part of the review of the new DHP guidance.

Amendment 8 was withdrawn.

## New part: Uprating for inflation

Amendment 6 lodged by Jeremy Balfour MSP sought to require Scottish Ministers to uprate all Scottish benefits by inflation each year. Currently only certain categories of benefit must be uprated.

The Scottish Government agreed to bring forward their own amendment at Stage 3 to achieve the same result, and Mr Balfour MSP withdrew his amendment.

## Part 3: Appeals

### Requirement for error before lapsing an appeal

The Scottish Government supported amendments by Jeremy Balfour MSP to remove the requirement for a decision maker to identify an error before they can offer to lapse an appeal (amendments 109 to 111). When a client lodges an appeal, the Bill will allow Social Security Scotland to make a different decision before the appeal is heard and, if the client accepts that, then the appeal would end (lapse). This is intended to prevent unnecessary appeals and was supported at Stage 1. As introduced, the provisions require an ‘error’ to be identified. Stakeholders such as the Child Poverty Action Group argued that this was too narrow and would prevent appeals lapsing where a decision maker takes a different view of the same facts. While the Scottish Government consider the definition of ‘error’ is broad enough, the Cabinet Secretary said:

“ I am content that amendments 109 to 111 as drafted meet the policy intention that a decision maker should be able to make a more favourable determination for the client during an appeal. On that basis, the Scottish Government is happy to support those amendments. We may lodge amendments at stage 3 to make small technical changes to the provisions, but I assure Mr Balfour that such amendments would not alter the policy.”

Scottish Parliament, 2024<sup>4</sup>

The Cabinet Secretary also agreed to bring forward an amendment at Stage 3 to remove an unnecessary definition of error in place of Mr Balfour MSP’s amendment 112, which he therefore did not move.

## Requirement for redetermination stage

The Scottish Government did not support amendments lodged by Jeremy Balfour MSP that sought to streamline the process of challenging a Social Security Scotland decision.

If Social Security Scotland lapse (end) an appeal, they make a new determination (a new decision about the benefit). If the client disagrees with that new decision, then they can challenge it by first asking for a 'redetermination' and, if they still disagree, they can appeal. Stakeholders such as Child Poverty Action Group and Citizens Advice Scotland argued that, in this situation, clients should be able to go straight to appeal without the 'redetermination' step. The Cabinet Secretary however, disagreed, arguing that:

“ Some clients might find a tribunal process intimidating and stressful, and might prefer the opportunity to have Social Security Scotland look at their case again rather than having to appeal to the tribunal”

Scottish Parliament, 2024<sup>4</sup>

Mr Balfour MSP withdrew amendment 106 and did not move 107, 108 and 113 to 115 while saying he would: “see what happens at stage 3.”<sup>4</sup>

## Process appeals

Process appeals are about, for example, Social Security Scotland failing to meet statutory deadlines or an application not being made in the proper way.

Jeremy Balfour MSP's unsuccessful amendments 116 to 125 on process appeals reflected issues raised by stakeholders during Stage 1.

Amendments 116 and 117 sought to introduce a right of appeal to the Upper Tribunal for Scotland in process appeals.

The Cabinet Secretary argued against this new right of appeal saying:

“ We do not consider the amendments necessary. Most process appeals are based on the facts of the appeal—for example, whether a client has completed a benefit application correctly or submitted a redetermination request on time—while Upper Tribunal appeals can be brought only on a point of law.”

Scottish Parliament, 2024<sup>4</sup>

Amendment 116 was disagreed to by division 2:6. Amendment 117 was not moved.

Amendments 118 to 125 were also unsuccessful. They had sought to address an issue raised at Stage 1 about a potential 'endless loop' of process appeals. Currently, when the First-tier Tribunal decides that more information is required to decide whether an application for benefit is valid, Social Security Scotland must try to obtain that information. If they cannot, then they can reject the application, informing the client of their right to ask for a redetermination and appeal.

Stakeholders, such as Child Poverty Action Group and Citizens Advice Scotland, argued in Stage 1 evidence that the Scottish Ministers (i.e Social Security Scotland) ought instead to make a decision based on the information available to it. At Stage 2, the Cabinet Secretary

disagreed, arguing that:

“ if Scottish Ministers do not have the required information, as set out in the 2018 Act, they are not in a position to make a determination of entitlement.”

Scottish Parliament, 2024<sup>4</sup>

Amendment 118 was disagreed to by division 2:4, with 2 abstentions. Amendments 119 to 125 were not moved.

## **Part 4: Overpayments (assistance given in error)**

Scottish Government amendments redrafted the Bill's provisions on liability for overpayments after stakeholders said the original drafting lacked clarity.

Amendment 29 was agreed to by division 6:2. Amendments 30 to 51 and 98 were agreed to.

In voting against amendment 29, Jeremy Balfour MSP argued that:

“ I welcome what the Government has proposed, but it leaves a bit of concern about third-party representation. It is often very hard for people to find somebody who will represent them, and much representation is done on a voluntary basis. I am still concerned that the provisions will put people off giving assistance.”

Scottish Parliament, 2024<sup>4</sup>

## **Part 5: Appointees and representatives**

The Scottish Government made minor and technical amendments to provisions on appointees. There were also two unsuccessful amendments moved by Jeremy Balfour MSP, discussed below.

### **Parental responsibilities and rights**

Amendment 126 sought to enable Social Security Scotland to appoint a person who already has parental responsibilities and rights to be an appointee for a child for the purposes of managing their disability benefits. Currently, having parental responsibilities and rights is sufficient to allow a parent to manage their child's benefits and there is no provision to make them an appointee. At Stage 1, Child Poverty Action Group said that this could cause difficulties where separated parents both retain parental responsibilities and rights. <sup>5</sup>

The Cabinet Secretary argued that this change would create uncertainty, or an additional step, as most parents already have the right to be their child's appointee. She was also concerned that:

“ it could result in Social Security Scotland or the First-tier Tribunal being used as an arena for some separated parents to play out their disputes.”

Scottish Parliament, 2024<sup>6</sup>

Amendment 126 was disagreed to by division 2:6.

Amendment 7 by Jeremy Balfour sought to clarify that benefits for children are paid to the person responsible for the child. It was not moved, but is mentioned here as the Cabinet Secretary [set out in a letter](#) details of how Social Security Scotland ensures that payment is made to the appropriate person, including where two people wish to receive the benefit or act on the child's behalf. The letter stated;

“ I agree that it is of utmost importance that assistance is paid to someone who is eligible to receive it or suitable to manage it on behalf of a child. I am confident that Social Security Scotland already have existing processes in place to ensure this happens, including where there is a dispute between two parties over who should receive or manage the benefit.”

Somerville, 2024<sup>7</sup>

## Third party representatives

Amendment 9, had sought to give a statutory basis to third party representatives, such as welfare rights advisers. The Cabinet Secretary described differing views amongst stakeholders. She suggested that a statutory approach would lack the necessary flexibility and sought to:

“ assure the Committee that the government continues to listen to clients and stakeholders and will seek to streamline the administrative process for nominating a third-party representative as much as possible.”

Scottish Parliament, 2024<sup>6</sup>

Mr Balfour MSP argued that because the current system for nominating representatives is based on practice notes it could be too easily changed without parliamentary scrutiny. In reply, the Cabinet Secretary argued that the system needed to be flexible rather than fixed in primary legislation.

Amendment 9 was disagreed to by division 4:5, with the Convener using her casting vote.

## Part 6: Information for audit

Requiring clients to provide information for the purposes of auditing error and fraud was the most controversial aspect of the Bill at Stage 1. It also sparked extensive discussion at Stage 2.

### Consultation on exempt groups

A successful Scottish Government amendment introduced a requirement to consult on which categories of people would be exempt. Without pre-empting that consultation, the Cabinet Secretary suggested that this might include people whose benefit had recently been reviewed. She agreed to reflect on whether she could provide further examples at Stage 3 of who might be exempt from these requirements.

## Suspending benefit

An unsuccessful amendment by Jeremy Balfour MSP (amendment 10) sought to remove the ability to suspend a person's benefit. He argued:

“ There should be a power for Social Security Scotland to go to a claimant and say, “Will you share that information with us?” However, if the claimant, for whatever reason, does not want to do that, I do not think that they should be penalised.” [...] “it does not matter what terminology you use—we are now introducing sanctions to deal with people.”

Scottish Parliament, 2024<sup>6</sup>

The Cabinet Secretary argued that the suspension power was necessary and would only be used as a last resort:

“ The process will be designed to be as sympathetic as possible to circumstances while maintaining statistical rigour. The individuals who are selected will have access to support. There will be scope for people to provide the required information in a range of formats. Reasonable timescales will always be in place to gather that information. People can ask to have a request withdrawn if they think that they have good reason. Suspension and determination without application will only ever take place when people have received numerous reminders and timeframes.”

Scottish Parliament, 2024<sup>6</sup>

She argued that the provisions were not introducing sanctions:

“ I absolutely want to put on the record that, under this Government, there will never be sanctions on social security—never.”

Scottish Parliament, 2024<sup>6</sup>

Amendment 10 was disagreed to by division 4:5, the Convener using her casting vote.

## Removing Part 6 of the Bill

An unsuccessful amendment from Maggie Chapman MSP sought to remove the information for audit provisions in their entirety. She outlined five key concerns:

1. Lack of consultation
2. Whether the information is required
3. Whether “punitive sanctions” are required
4. Conflation of audit and fraud
5. Incompatibility with the social security principles.

The Cabinet Secretary argued that the provisions were necessary to ensure the system is robust and that:



“ the ethos of treating individuals with fairness, dignity and respect is the bedrock on which our social security system is built. I am content that nothing in this section of the bill runs contrary to that ethos.”

Amendment 58 was disagreed to by division 0:7.

## Part 7: Compensation recovery

Scottish Government amendments to this Part of the Bill were minor and technical. These included some changes suggested by the Delegated Powers and Law Reform Committee.

Amendments 73, 74 and 76 remove references to appeal and review on the grounds that these matters are already covered in Tribunal rules. Jeremy Balfour MSP did not support this, saying;

“ I appreciate what the cabinet secretary has said, in that the provisions are already in the tribunal rules and regulations, I come back to the point that those rules are not scrutinised by Parliament.”

Scottish Parliament, 2024<sup>6</sup>

All the amendments in this group were agreed to, with amendment 73 being agreed to by division: 6:2.

## Part 8: Scottish Commission on Social Security

Following discussion at Stage 1, the Scottish Government brought forward amendments to make the following types of regulations subject to scrutiny by the Scottish Commission on Social Security (SCoSS):

- assistance given in error
- appointees
- information for audit
- care experience assistance.

Jeremy Balfour MSP’s amendment 11, which was not moved, sought to extend SCoSS scrutiny to primary legislation and a broader range of secondary legislation. The Cabinet Secretary said:

“ SCoSS has not asked for such an amendment. [...] I am happy to go away between stage 2 and stage 3 to further clarify that with the chair.”

Scottish Parliament, 2024<sup>6</sup>

The Chair of SCoSS, Ed Pybus, wrote to the Cabinet Secretary on 25 October to provide that clarification. He noted the recent review, stating that:

“ It may be prudent to allow time for SCoSS to take on the extended remit, proposed by the review, before consideration is given to any further extension of the SCoSS remit. The Commission recognises however, that there could be merit in further extending the remit of SCoSS. The Commission consider that before legislating to further extend the remit of SCoSS it would be appropriate to— • allow time for engagement with stakeholders on any proposed extension to the remit; and • that any proposed extension to the remit of the Commission would require a thorough understanding of the resource implications for the Commission of such an extension.”

Pybus, 2024<sup>8</sup>

## **New Parts: Key performance indicators and in-person hearings**

An unsuccessful amendment by Jeremy Balfour MSP sought to introduce ‘key performance indicators’ for Social Security Scotland and the First-tier Tribunal. He explained:

“ I appreciate that it might be not appropriate to do that in primary legislation. My aim is to get the Scottish Government to consult on the matter.”

Scottish Parliament, 2024<sup>6</sup>

The Cabinet Secretary agreed to further discussion:

“ I hear and appreciate Mr Balfour’s frustration on the issue. As he has already alluded to, I do not think that the way to address that is through primary legislation. I have offered to meet Mr Balfour, along with the senior management of the agency, to discuss the areas on which he feels that more information is required.”

Scottish Parliament, 2024<sup>6</sup>

Amendments 12 and 13 were disagreed to on division, 4:5, the Convener using her casting vote.

Mr Balfour MSP’s amendment 14 sought to introduce a presumption that First-tier Tribunal hearings would be heard in-person by default, with the client having the option to choose otherwise. He explained:

“ My policy intent is that there should be a face-to-face hearing unless the claimant does not want that to happen. That puts choice—what the claimant wants—right at the heart of things. That is why I lodged amendment 14. The evidence on paper and in practice shows that the tribunals service is not doing that.”

Scottish Parliament, 2024<sup>6</sup>

The Cabinet Secretary argued against this amendment, saying:

“ I fear that a presumption of an in-person hearing will have the unintended consequence of pushing people towards a type of hearing that they do not want and which does not best suit their needs.”

Scottish Parliament, 2024<sup>6</sup>

She also noted that:

“ The number of in-person hearings, although still small [...] is increasing. Therefore I do not think it necessary to introduction a presumption in legislation if there is already a process in place to allow clients to choose.”

Scottish Parliament, 2024<sup>6</sup>

Amendment 14 was disagreed to by division 4:5, the Convener using her casting vote.

## Stage 3

At Stage 2, the Scottish Government made commitments to bring forward the following amendments at Stage 3:

- a duty to uprate all Scottish social security benefits by inflation each year<sup>4</sup> The Scottish Fiscal Commission wrote to the Social Justice and Social Security Committee on 1 November highlighting their [August 2024 fiscal update](#) and [costing for Pension Age Winter Heating Payment](#) which showed that extending the duty to uprate to all Social Security Scotland benefits would increase spending by £3 million in 2025-26.
- potentially, technical amendments to Jeremy Balfour MSP's successful amendments at Stage 2 that removed the requirement for an error to be identified before an appeal could be lapsed<sup>4</sup>
- to remove an unnecessary definition of error in relation to lapsing appeals.<sup>4</sup>

The Cabinet Secretary said at Stage 2 that she would reflect on whether she could give further examples, at Stage 3, of who might be exempted from the provisions on information for audit.<sup>6</sup>

She also said that she would clarify with the Chair of the Scottish Commission on Social Security whether a broader range of legislation should be brought within their remit.<sup>6</sup> As discussed above, SCoSS wrote on 7 October providing that clarification.

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