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Social Justice and Social Security Committee

Stage 1 Report on the Social Security (Amendment) (Scotland) Bill



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Social Justice and Social Security Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Social Justice excluding matters relating to housing and tenants' rights.



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Introduction

1. This Scottish Government Bill ¹ was introduced by the Cabinet Secretary for Social Justice, Shirley-Anne Somerville (the “Cabinet Secretary”), on 31 October 2023.
2. The Bill amends the Social Security (Scotland) Act 2018 (“the 2018 Act”) to make changes to the Scottish social security system.
3. The Social Justice and Social Security Committee was designated as the lead committee on the Bill.

Overview of the Bill

4. The Scottish Government's Policy Memorandum ² states that the Bill's main policy objective is to enhance the Scottish system of social security in line with the principles laid out in the 2018 Act.
5. The general aims of the Bill are to:
 - enhance the Scottish system of social security, including to improve the experience of people using the services provided by Social Security Scotland
 - deliver increased efficiency and value for money
 - implement the findings of an independent review into the remit and operation of the Scottish Commission on Social Security
 - revoke emergency provision inserted into the 2018 Act in 2020 at the height of the coronavirus (COVID-19) pandemic.
6. The Bill has nine parts, eight of which deal with a different aspect of social security administration. The nine parts are:
 1. **Part 1 (Types of social security assistance)** creates the framework for introducing new social security benefits for children and care experienced people. This would allow the proposed ‘Care Leaver Payment’ to be introduced and allow Ministers to introduce regulations to change the legislative footing of the Scottish Child Payment.
 2. **Part 2 (Applications for assistance)** repeals COVID-19 measures that allowed late applications when the reason for delay was related to COVID-19.
 3. **Part 3 (Determinations and re-determinations of Entitlement to Assistance)** changes some of the rules about making and challenging decisions about social security assistance in Scotland.
 4. **Part 4 (Assistance given in error)** makes some changes to the rules when an individual or their representative is liable for an overpayment and introduces a right to review of, and appeal against that liability.
 5. **Part 5 (Appointees)** allows an individual who has been appointed to manage an individual's Department of Work and Pensions (DWP) benefits to also

manage their Social Security Scotland benefits. Where an appointee uses any funds outside of their common law or statutory duties, and does so in bad faith, they will be liable to repay those funds to the individual they represent.

6. **Part 6 (Information for audit)** places new duties on clients to provide information to Social Security Scotland in order to audit the monetary value of fraud and error in the Scottish social security system as a whole. Where they fail to do so, their benefit may be suspended. If they still fail to provide the requested information, their entitlement can be reviewed.
 7. **Part 7 (Recovery from compensation payments)** applies where a person who gets social security payments as a result of injury, accident or disease, is also awarded compensation. The person making the compensation payment must deduct the value of the social security payments from the amount paid to the individual and pay it instead to Scottish Ministers. The provisions mirror those of the current DWP scheme, with the intention that devolved assistance will be treated in the same way as reserved benefits.
 8. **Part 8 (Scottish Commission on Social Security)** brings additional regulations into the scope of the Scottish Commission on Social Security's scrutiny and makes changes to governance arrangements following recommendations from an independent review.
 9. **Part 9 (Final provisions)** contains general provisions for the Bill dealing with matters such as subordinate legislation, interpretation and commencement.
7. In summer 2022, the Scottish Government held a public consultation ³ seeking views on proposals to inform the continuous improvement of the Scottish system of social security. A consultation analysis report ⁴ was published in March 2023.
 8. The Scottish Government also commissioned research to be undertaken with the Social Security Experience Panel and Client Panel members to supplement the feedback from the consultation and events. The report ⁵ was published in March 2023.

Evidence

9. The Committee received written evidence on the proposals in the Bill through a call for views. ⁶
10. The Committee held five evidence sessions on 7 ⁷, 14 ⁸, 21 ⁹, 28 ¹⁰ March and 18 April 2024 ¹¹ on the Bill to inform our thinking. A range of individuals from across the third sector, local authorities and those representing the insurance sector were involved. Further details on the Stage 1 scrutiny of the Bill can be found on a dedicated page on the Scottish Parliament website. ¹²
11. We thank everyone who contributed their input and expertise which have helped to shape our views on the Bill.

Scrutiny

12. Under the Parliament's Standing Orders Rule 9.6.3(a), it is for the lead committee to report to the Parliament on the general principles of the Bill. In doing so, it must take account of views submitted to it by any other committee. The lead committee is also required to report on the Financial Memorandum¹³ and Policy Memorandum¹⁴, which accompany the Bill.

Finance and Public Administration Committee

13. The Financial Memorandum¹⁵ states the Bill is projected to have an estimated cost impact of between £7.6 million and £17.2 million within the 2025-26 financial year and between £7.3 million to and £17.9 million in the 2026-27 financial year.
14. By 2028-29, the financial impact of the administrative provisions in the Bill may range from a net cost of £0.1 million to a net saving of £3.5 million.¹⁶ Most of the estimated savings arise from the compensation recovery provisions under Part 7 of the Bill.
15. The Financial Memorandum refers to the principles of continuous improvement and value for money and highlights two provisions intended to deliver increased efficiency and value for money - information for audit and compensation recovery. Parts 6 and 7 of this report consider these provisions.
16. The Finance and Public Administration (FPA) Committee invited written evidence on the estimated financial implications of the Bill as set out in the Financial Memorandum. It received 3 submissions to its call for views.¹⁷
17. The FPA Committee agreed to forward the submissions received to this Committee as part of its consideration of the Bill and take no further action.
18. In its submission to the call for views, the Health and Social Care Alliance Scotland (the ALLIANCE) stated that the projected costs of the administration of the Scottish Child Payment under a Scottish system seemed to have been underestimated. They also said it was important for the Scottish Government to make sure the staffing costs relating to the compensation recovery provisions do not exceed the sums actually recovered.¹⁸
19. The Association of British Insurers (ABI) stated that "the Bill raises several important issues for insurers in Scotland writing liability cover for motor, public and employer's liability policies." They also expressed concerns about the potential costs of a separate Scottish compensation recovery system for insurers, compensators and the Scottish Government.¹⁹

Delegated Powers and Law Reform Committee

20. When a Bill contains provisions conferring power to make subordinate legislation or

conferring power on Scottish Ministers to issue any directions, guidance or code of practice, it must be considered by the Delegated Powers and Law Reform (DPLR) Committee. Details are available in the Delegated Powers Memorandum²⁰.

21. The DPLR Committee considered the delegated powers provisions in the Bill at Stage 1 at its meeting on 6 February 2024²¹ and agreed to write to the Scottish Government²² to ask questions in relation to some of the delegated powers. The Scottish Government replied on 15 February 2024.²³
22. Specifically, it was interested in why a provision to introduce a Care Experience Assistance scheme was included in the Bill when the policy was not fully developed. It was also seeking clarity on the criteria applied to exempt categories of individual from audit and on some newly created delegated powers created to give Scottish Ministers powers to recover devolved social security assistance from compensation paid to persons by liable third parties.
23. Following consideration of the Scottish Government's response²⁴, the DPLR Committee published its report on 26 March 2024²⁵ drawing the Social Justice and Social Security Committee's attention to:
 - the intended use and breadth of the power to provide for Care experience assistance in regulations (Part 1); and
 - the inclusion of certain powers to create offences in relation to compensation recovery (Part 7).
24. The Committee has considered these issues in its report under Parts 1 and 7. The Committee has also looked at the delegated powers at Part 6 on exemption of individuals from audit and Part 8, the role of the Scottish Commission on Social Security (SCoSS) in the scrutiny of these provisions is dealt with in Part 8 of the report.

Policy Memorandum

25. We do not have any specific points to raise on the contents of the Policy Memorandum.

Approach to the report

26. This report focuses on the detail of the first eight parts of the Bill.

Social security principles

27. The Policy Memorandum sets out the overarching policy objectives of the Bill, with reference to the statutory social security principles. The measures in the Bill are intended—

” to enhance the Scottish system of social security in line with those principles, laid out in section 1 of the 2018 Act, particularly the principles which require that ‘opportunities are to be sought to continuously improve the Scottish social security system in ways which put the needs of those who require assistance first, and advance equality and non-discrimination’ and that ‘the Scottish system of social security is to be efficient and deliver value for money.’²⁶

28. The full list of statutory principles is:

1. social security is an investment in the people of Scotland,
2. social security is itself a human right and essential to the realisation of other human rights,
3. the delivery of social security is a public service,
4. respect for the dignity of individuals is to be at the heart of the Scottish social security system,
5. the Scottish social security system is to contribute to reducing poverty in Scotland,
6. the Scottish social security system is to be designed with the people of Scotland on the basis of evidence,
7. opportunities are to be sought to continuously improve the Scottish social security system in ways which:
 - a. put the needs of those who require assistance first, and
 - b. advance equality and non-discrimination,
8. the Scottish social security system is to be efficient and deliver value for money.

29. In general, witnesses agreed that overall the Bill does align with the above principles, with the exception of the provisions on information for audit. This is covered in more detail in Part 6 of this report. There is discussion of the principles throughout the other parts of the report.

30. The Committee notes that this Bill is an opportunity to further align the social security system with the social security principles in light of experience. It is encouraging that most of the evidence we gathered during our deliberations points to very small changes that could further reinforce these principles. When making recommendations throughout this report,

we have endeavoured to keep these principles at the forefront of our considerations.

Part 1: Types of social security assistance

31. Part 1 (sections 1 and 2) sets up the legal framework that would allow new benefits for care experienced people and for families with children to be introduced in future. It would also enable Ministers to introduce regulations to change the legislative footing of the Scottish Child Payment (SCP) and allows for the proposed 'Care Leaver Payment' to be introduced.
32. Witnesses welcomed the proposed provisions for Childhood Assistance and Care Experience Assistance and gave suggestions for how they may be shaped. There were also comments on how regulation powers could be best used to introduce new benefits and how uprating them should be managed.

Scottish Child Payment

33. The SCP is currently delivered under the 2018 Act as a 'top-up' when an individual is receiving a qualifying UK Government benefit. This places constraints on how the payment works because the relevant qualifying benefits are reserved to the UK Government and the Scottish Government has no control over eligibility criteria.
34. The Scottish Government considers that a new legislative footing providing more flexibility over the rules governing SCP would allow it to make changes to the payment in future and better align it with other payments such as the Best Start Grants and Best Start Foods.
35. There was general support from witnesses for making SCP a standalone payment rather than one so strictly linked to reserved benefits.
36. The Child Poverty Action Group (CPAG) stated they would "be very disappointed if future childhood assistance regulations do not address the issues already identified with Scottish child payment as a 'top-up' benefit"²⁷.

Suggested amendments to Scottish Child Payment

37. Most comments concerned how regulation making powers might be used but there were also suggestions for changes to eligibility, the application process and backdating.

Eligibility criteria

38. One suggestion from National Carer Organisations (NCOs) was to change the eligibility criteria to include families with children in receipt of carer benefits. They explained—
 - ” While some families will already be eligible through other qualifying benefits, ensuring that unpaid carers with children are eligible for the Scottish Child Payment would be in line with the principle of both greater flexibility in the way that this operates and reducing poverty.²⁸
39. CPAG raised concerns about the lack of clarity on the impact of eligibility criteria on families with parents living apart. Currently only one person can be considered

responsible for a child and therefore qualify for SCP. They suggested the situation of care that is shared equally between two separated parents should be reviewed because the “universal credit rules seem to prevent the Scottish Government from paying Scottish child payment for one child to one parent and another child to the other parent, which would seem to be a perfectly logical approach”²⁹.

40. Citizen Advice Scotland (CAS) also mentioned another group at risk of missing out on SCP. They noted that currently those with no recourse to public funds responsible for a child under three who is a British Citizen and on a low income³⁰ can access the Best Start Foods scheme. They recommend that the Scottish Government investigate implementing similar mechanisms for SCP.³¹
41. Stirling Council agreed it would be beneficial to have a 'Childhood Assistance Payment' better aligned with Best Start Grants/Best Start Foods than the current SCP and that “some flexibility would encourage the uptake of this benefit and reduce the administrative burden on the claimant”³².
42. Some witnesses were in favour of the introduction of a taper or a run-onⁱ to prevent parents losing their entire entitlement to SCP as soon as they are earning too much to receive Universal Credit.
43. CPAG suggested that—
 - ” An option to address this would be to allow the Scottish child payment to taper away in a similar way to universal credit, but above the point at which universal credit stops. A run-on would be another option that might be more administratively simple, but, where there is a sustained increase in income, it would not continue to provide support in the longer term.³³
44. Rights Advice Scotland saw a run-on as an 'immediate necessity'. Where people are paid four-weekly there can be gaps in Universal Credit entitlement. The current rules mean that SCP cannot be paid during these gaps. They added—
 - ” The person might not necessarily feel any better off, particularly if they are on a four-weekly pay cycle; to then also lose their Scottish Child Payment would be a double dunt.³⁴
45. Some witnesses raised the issue of the upper age limit for qualifying for Scottish Child payment currently set at 16 years. CPAG told Members that young people are increasingly likely to remain in school and depend on their parents past the age of 16.³⁵

ⁱ A taper is a reduction to a benefit based on someone's earned income. The taper rate sets the amount of benefits a claimant loses for each pound they earn. A run-on is an extended payment for an extra number of weeks to help people manage financially when certain benefits stop because they are going back to work, working more hours or earning more money.

Application process

46. Respondents to the call for views cautioned against changes to SCP that would make it more difficult for families to claim the payment. CAS stated that—
- ” care will be required to ensure that unnecessary and distressing re-assessments do not occur, that qualification does not become excessively more complex, that no barriers to take up result from the transition, and that adequate resourcing is provided to deliver the change.³⁶
47. Scottish Action for Mental Health (SAMH) added that the current application process is simple and should remain so if eligibility is widened. They suggested that “any future application process is co-designed and minimises complexities or delays, in line with the Social Security Principles”³⁷.

48. Several witnesses were very keen to see the Scottish Government use the powers under this part of the Bill to change the statutory footing of the Scottish Child Payment to widen the eligibility criteria - for example, to include those in receipt of carers benefits, children older than 16 years, or certain families with No Recourse to Public Funds. They also highlighted the scope to streamline the application process and ensure it stays as simple as possible to encourage uptake.

49. The Committee acknowledges the list of changes sought by witnesses and asks the Scottish Government to set out its clear priorities for early use of these powers for further development of the Scottish Child Payment.

Care Experience Assistance

50. The Bill would create a new category of benefit – Care Experience Assistance. Respondents to the call for views and witnesses were generally in favour of its introduction.
51. The ALLIANCE noted—
- ” Although proposals to introduce “Care Experience Assistance” were not included in the pre-legislative consultation, the ALLIANCE is supportive of the principle of such a payment. We agree with the Scottish Government's rationale of seeking to support people leaving care as they transition to adulthood.³⁸
52. A range of potential payments could be introduced as forms of Care Experience Assistance. The Scottish Government has consulted on introducing one specific form of assistance – the Care Leaver Payment, to fulfil its commitment made in the Promise Implementation Plan.³⁹
53. The Care Leaver Payment would aim to help reduce financial barriers faced by

young people when they move on from care and into adulthood and more independent living.

54. The ALLIANCE described it as "a good opportunity to provide further support to people who face quite unique challenges compared with others in society, and it shows the positive change that is possible with the devolution of social security powers" ⁴⁰ .

Suggested amendments to Care Experience Assistance

55. Respondents to the Call for Views suggested a few amendments to the Bill to improve the provision of Care Experience Assistance.
56. Social Work Scotland and Who Cares? Scotland commented on the terminology and recommended 'Care Leaver' would be more appropriate than the broader 'Care Experienced' term.
57. Social Work Scotland argued that "Care leaver has a specific legal definition within the Children and Young People (Scotland) Act 2014" whereas "Care Experienced can encompass anyone with experience or care, regardless of age or when this occurred, and including those currently in the care system" ⁴¹ .
58. Who Cares? Scotland warned against "using the term Care Leaver without considering the often unintended consequences that comes with this language" and added that the right terminology would 'future proof' the benefit. They explained that—
- ” If you leave care before your 16th birthday, you are not a 'Care Leaver' and therefore not eligible for aftercare (further support from social work). Aftercare is only available for people who leave care on, or after, their 16th birthday, and is potentially available up to age 26. This creates further inequality for care experienced people. ⁴²
59. VoiceAbility, the Scottish Government's contracted advocacy provider, suggested the right to independent advocacy should be extended to support people applying to Care Experience Assistance as it has proved a very useful service for people applying for the Scottish Adult and Child Disability Payments. ⁴³

60. **The Committee draws to the Scottish Government's attention the suggestion to amend the terminology in the Bill to 'Care Leaver' rather than 'Care Experience' as well as the suggestion to put on the face of the Bill the entitlement to independent advocacy support for 'Care Experience Assistance'. The Committee asks the Scottish Government for its views on these suggestions and, in particular, whether changing the terminology in the Bill could have any unintended consequences. The Committee also asks the Scottish Government for further detail on what Care Experience Assistance could potentially cover.**

Regulation making powers

61. The regulation making powers are very broad and would allow for many possible policy choices to introduce the benefit. The Scottish Government could opt to create Care Experience Assistance benefits delivered by Social Security Scotland or via another agency, such as local authorities, where the general framework of social security (principles, charter, appeals system, annual uprating and take-up strategy) would not automatically be applicable to the benefits.
62. The Committee heard different opinions on these options. Some organisations recommended that all new payments should be developed and delivered by Social Security Scotland. CPAG argued this would be in keeping with the Scottish social security principles and human rights.⁴⁴ CAS added that a consistent approach with everything managed under one agency is critical to uphold people's rights.⁴⁵
63. Other organisations favoured the Bill's approach to consider the delivery of Care Experience Assistance by other agencies. Who Cares? Scotland noted that delivery by local authorities could be helpful for young people who may be less likely to apply and could miss out on their entitlement because they do not know about the support available to them or how to access it. They suggested "a duty on local authorities to apply on behalf of a young person who is leaving their care"⁴⁶.
64. CPAG noted that as it stands Care Experience Assistance will not be scrutinised by SCoSS and that even if it is still to be decided what agency would deliver it, it should benefit from expert, independent scrutiny.⁴⁷
65. When considering the Bill, the DPLR Committee raised concerns about the fact that the policy and its implementation were yet to be established through regulations. The Scottish Government gave an assurance that the power and procedures used to make these regulations were "consistent with the approach for other forms of assistance"⁴⁸.
66. In its report on the Bill at Stage 1⁴⁹, the DPLR Committee recommended that the lead committee take further evidence from the Scottish Government on the breadth of this regulation making power.
67. We wrote to the Cabinet Secretary on 29 March 2024. The Cabinet Secretary responded on 15 April⁵⁰ and explained that "the Scottish Government intends to use this power to create regulations to establish the Care Leaver Payment in the first instance". She added that the results of a public consultation that closed in January 2024 were still being analysed and would inform the development of the policy, with further consultation planned to ensure "the details of the scheme have been informed by people with care experience and those delivering support to those people". She added that any regulations would be scrutinised by the Parliament.
68. The Cabinet Secretary also noted that the Scottish Government intends to "introduce a Government amendment at Stage 2 so that the Scottish Commission on Social Security (SCoSS) will scrutinise regulations made under section 93A prior to their being laid"⁵¹.
69. Further to these points, the Committee asked the Cabinet Secretary if it would be

beneficial for the Bill to make Care Experience Assistance subject to the general statutory framework for social security, in keeping with most other forms of Scottish social security. In her reply, the Cabinet Secretary said that “the details of the delivery vehicle for that proposed payment have yet to be determined and will be set out in further regulations” and that this would give the Scottish Government time and space to consult with stakeholders on how to best apply the social security principles of fairness, dignity and respect.⁵²

70. The Committee welcomes the Scottish Government's commitment to add the scrutiny of regulations to deliver Care Experience Assistance to the remit of the Scottish Commission on Social Security.

71. The Committee also looks forward to the results of the analysis of the Care Leaver Payment consultation and would welcome an update on progress on the development of the Payment and current timescales the Scottish Government is working to for its introduction.

72. Notwithstanding the Scottish Government's outstanding decisions on the delivery mechanism for Care Experience Assistance, the Committee emphasises the importance of following the general scheme of social security as set out in the Act. This would have the advantage of ensuring that the take-up strategy, the social security principles and provisions for redetermination and appeal apply to the new benefit.

73. The Committee intends to monitor progress of these new benefits and the rules they will be subject to. We ask the Scottish Government to justify any departures it makes from the social security scheme and to set out what mitigation action it will take to uphold the principles of the scheme.

Annual uprating of new benefits

74. For other benefits the requirement to uprate is in [section 86B of the 2018 Act](#) rather than in regulations.

75. When considering annual uprating regulations in February 2024, the Committee asked the Cabinet Secretary whether there should also be a statutory requirement to uprate Care Experience Assistance and/or Scottish Child Assistance. She said—

” I will keep that under review as the bill develops. After the bill, if Parliament chooses to pass it into an act, we will do everything that we need to do in secondary legislation, as it is sometimes more important and more reasonable to do things in secondary rather than primary legislation.⁵³

76. The Committee looks forward to scrutinising any forthcoming secondary legislation, as it does so annually with the uprating of benefits.

Part 2: Applications for assistance

77. Currently, applications can be made more than a year late where the reason they are late relates to COVID-19. The Bill would repeal this.
78. Only some benefits have an application deadline. Examples are:
- Best Start Grant - applications must be made within the ‘application window’, related to the age of the child. There is some flexibility – for example if a person becomes eligible within 10 days of the ‘application window’ closing, or up to 20 days if the person is waiting for a backdated award of a qualifying benefit.
 - Adult Disability Payment - Part 2 of the application form must be submitted within 8 weeks of Part 1 or later with ‘good reason’ in order that entitlement starts from when Part 1 was submitted. Otherwise, the date of claim will be the date Part 2 is submitted.
 - Funeral Support Payment - applications can be made up to six months after the funeral with some flexibility provided to account for backdated award of qualifying benefits.
79. The Scottish Government considers that there are sufficient flexibilities as it is. The Policy Memorandum states—
- ” There are already a range of flexibilities specific to the forms of assistance where they apply, and which offer scope for the circumstances of the individual case to be taken into account. For example, an application can already be accepted after the initial 8-week deadline for completing an application for Adult Disability Payment has passed, provided the applicant has a ‘good reason’ for being late.⁵⁴

Late applications

80. Broadly, witnesses welcomed the provision to remove COVID-19 as an exceptional circumstance and a good reason for late applications, but with the caveat of extending its scope to enhance the flexibility and fairness of the system.
81. In their submission, SAMH noted—
- ” We do not believe it is fair or proportionate for COVID-19 to be privileged above other health conditions or personal circumstances (including mental health conditions) which may impact someone's ability to lodge an application within the statutory deadline.⁵⁵
82. Witnesses agreed it was important to remove unnecessary complexity in the application process for people in vulnerable situations and that a provision for late applications when there is a good reason could be useful. Right Advice Scotland gave examples—

- ” Why should somebody who is unable to make a claim because they have been left in a coma after being involved in a car crash, or because they have severe mental health problems, lose out on entitlement? I am not saying that we should leave an open door, but we should provide for exceptional circumstances. ⁵⁶
83. CAS suggested that the provisions in place for late re-determinations and appeals should be extended to provide the same consistent flexibility at each stage of the process. In evidence, they explained—
- ” If we are going to introduce the words “good reason” and “exceptional circumstances” in respect of redeterminations and appeals, it is vital that we also introduce them in respect of the completion of initial applications and the submitting of review forms. ⁵⁷
84. The Committee notes that a number of early appeals to the First-tier Tribunal concerned the strict ‘application window’ for Best Start Grant. The following unsuccessful appeal case for the early learning payment illustrates the need for flexibility was published in the Social Security Chamber Decision Reports—
- ” The child’s mother missed the deadline for claiming this benefit by five days. There are no provisions within the regulations that apply that take account of “exceptional circumstances or good cause”. No allowance is made for any application being accepted late even by such a short period. ⁵⁸
85. CAS also told the Committee that the provision for late applications should be supported by a proper structure and access to advice to allow for a consistent, smoother and less daunting process—
- ” At the moment, if someone submits their application for adult disability payment late, they may provide a good reason, but that is not elaborated on or defined in either decision maker’s guidance or the legislation. We need to have a think about that. What is at stake here is the finances of the claimant. ⁵⁹
86. The Cabinet Secretary agreed that the application system should be as flexible as possible for people who may find it difficult to apply on time “when facing exceptionally challenging personal circumstances, such as upheaval in the home, vulnerability, ill health and so on”. She stated it was important to consider exceptional circumstances and is “therefore very content to take forward investigations at stage 2 on how we can move forward with that” ⁶⁰ .

Backdating

87. A related issue to late applications is backdating. There is already provision to backdate a payment in some circumstances. For example, when a person's Adult Disability Payment (ADP) is decided, the award is backdated to the date they completed the application. Another example is Carer Support Payment that can be backdated by up to 13 weeks, which can allow for the time it takes to get an Adult Disability Payment decision.

88. However, CPAG raised the issue that it is not possible to backdate an award of Scottish Child Payment to before the application date. They provided the following example—

” A client applied for universal credit and waited five weeks for their first payment on 20th August. They applied for Scottish child payment and best start grant on 19th August when they found out that universal credit is a qualifying benefit. Universal credit was paid from 13th July, but Scottish child payment cannot be backdated so was paid from 19th August. ⁶¹

89. Rights Advice Scotland gave examples of when backdating could be useful for people in vulnerable financial situations—

” They might have had a cold house and they might have heated their house but not yet have received the heating bill, so the cost could still be outstanding. Someone who has been in hospital with mental health issues or a physical disability might not have been living in their house, but their on-going costs will have continued. ⁶²

90. CAS reinforced the need to consider the financial implications a consistent approach to backdating could alleviate, especially for carers—

” Someone who is waiting for the outcome of an adult disability payment claim before they can access carers allowance will be waiting for additional finance when they may have just given up work to care for someone. ⁶³

91. The Cabinet Secretary stated the Scottish Government needs to look at the system benefit by benefit to see what further improvements can be achieved. However, she added—

” I would caution against any blanket approach that assumes that what works for one benefit will necessarily work for another, given the very different circumstances involved and the different types of benefits. I have asked officials to work with stakeholders to see whether anything can be done and taken forward on that. ⁶⁴

92. **Although the Committee acknowledges that a provision allowing for late applications relating to COVID-19 is no longer needed, it clearly heard that the application process for benefits can be a very daunting experience for claimants. Flexibility is necessary in some instances to allow for late applications, as well as backdating of claims when there is a good reason or exceptional circumstances.**

93. **The Committee welcomes the Cabinet Secretary's plans to 'take forward investigations at stage 2' to extend the flexibility of the provision to accommodate late applications for claimants facing challenging situations. We urge the Cabinet Secretary to consider whether further provision for backdating could also be looked into to keep applications for assistance internally consistent as well as consistent with the social security principles.**

94. **The Committee recommends that the Scottish Government produces appropriate guidance, clear rules and timescales consistent with social security principles to accompany any updated provisions.**

Part 3: Determinations and re-determinations of entitlement to assistance

95. Part 3 of the Bill would:

- Allow requests for re-determination and appeal to be submitted after a year in exceptional circumstances (section 4)
- Allow individuals to withdraw their re-determination request (section 5)
- Require Ministers to complete a re-determination (section 6)
- Allow appeals to 'lapse' where the clients consents to a more advantageous award offered by Social Security Scotland (section 7)
- Clarify the actions that a Tribunal can take following a process appeal (section 8).

96. Witnesses generally welcomed these provisions but some had suggestions for additional changes. These are considered below.

Deadlines to request a re-determination

97. The Policy Memorandum states that guidance will be provided on what 'exceptional circumstances' means for re-determinations.⁶⁵

98. Witnesses were in agreement with accepting redetermination requests and appeals after a year in 'exceptional circumstances' as this would accommodate a vast array of reasons why someone might not feel able to ask for a redetermination within that timescale. Examples were provided by Alzheimer Scotland, The Alliance and SAMH, respectively:

- Life events, such as illness or bereavement and the impact of living with a cognitive impairment⁶⁶
- Things that disrupt a person's life, for example, significant time in hospital, moving to residential care at short notice, bereavement or change in the provision of unpaid care⁶⁷
- Being subject to compulsory treatment⁶⁸.

99. SAMH believed that the approach taken by Social Security Scotland should be as generous as possible, although Craig Smith, SAMH, acknowledged that this "might not chime very well with 'exceptional'". He said—

” There should be an empathetic and compassionate approach to understanding the wide variety of social and health considerations that could be barriers to engaging with the social security system.⁶⁹

100. Several witnesses, including CPAG, CAS and Carers Scotland suggested that deadlines for requesting redeterminations should be consistent across benefits, as the different timescales make it unclear for those trying to use the system.
101. Deadlines to request and complete a redetermination vary by benefit. For example, for Best Start Grant the deadline to request a redetermination is 31 days and Social Security Scotland has 16 days to make a redetermination. For Adult Disability Payment the request must be made in 42 days and Social Security Scotland has to complete its process by 56 days. Further information on the deadlines for other benefits can be found in the Committee's research paper.⁷⁰
102. The Cabinet Secretary considered there were very good reasons for having different dates in place for clients to apply and for Social Security Scotland to undertake its work. She explained that time—
- ” it will take the agency to carry out a redetermination for a single-payment benefit is very different from the time that it will take for, say, adult disability payments, for which a great deal of evidence and supporting information might have to be worked through. It is very important that there is no one-size-fits-all policy.”⁷¹
103. The Cabinet Secretary did however recognise that "there should be an openness from the Government and the agency to hear from clients with experience and people who have assisted them to see whether anything can be done to make the system easier"⁷².

Withdrawing re-determination requests and lapsing appeals

104. Witnesses agreed with the right to withdraw a redetermination request and lapse an appeal. There was, however, concern from some (SAMH, Glasgow City Council, RNIB) that people should not be pressurised into lapsing appeals. In this regard, CAS stressed the need for clear guidance. The Policy Memorandum states that “robust guidance” will be put in place.⁷³
105. Witnesses had different opinions on this. The Law Society of Scotland emphasised the need for informed, written consent.⁷⁴ On the other hand, CPAG said that consent to lapse an appeal should not be required because "It simply adds a bit more confusion and debate. [...] the protection that the new decision must be more favourable makes the process administratively simpler"⁷⁵.
106. Stirling Council, CPAG and SAMH, among others, suggested adding a right to reinstate a withdrawn request within a certain timescale. Stirling Council explained “there also needs to be that time period given to people during which they can change their mind. That has to be a reasonable time period too, because people might want to seek advice, which can take time”⁷⁶.
107. RNIB suggested a 14 day ‘cooling off’ period may be helpful, saying that "this approach would protect the right of the claimant to reinstate the redetermination and

proceed to an appeal, should they choose to take this action depending on what decision is reached" ⁷⁷ .

108. In addition, CPAG suggested removing the requirement for an 'error' to be identified before an appeal can be lapsed. This would allow appeals to be lapsed if Social Security Scotland takes a more generous view of the same facts. ⁷⁸

Is the re-determination stage required?

109. The Bill does not make any changes to the requirement for a redetermination prior to appeal. The Committee has, however, heard different views about this.
110. CAS, CPAG and Rights Advice Scotland argued that it would simplify matters to be able to go straight to appeal. Erica Young, CAS, said—
- ” If there were just one step, at which a claimant could simply lodge a challenge that would be treated as an appeal, and at that point Social Security Scotland decided whether to use the appeal lapsing process to make a redetermination to avoid an unnecessary appeal hearing, that would be a much more streamlined process. ⁷⁹
111. As appeals are lodged through Social Security Scotland in any event, she considered that with proper 'framing', the process ought not to be off-putting for individuals. Additionally, she said CAS intended to raise this issue as part of the formal review of ADP. ⁸⁰
112. Other witnesses, such as SAMH, Stirling Council and RNIB considered that, on balance, the redetermination stage should remain mandatory.
113. RNIB ⁸¹ and CPAG ⁸² both made a more specific point that a redetermination should not be required if someone is challenging the decision that results from a lapsed appeal. They should be able to go straight to appeal, even if redetermination remains mandatory in other situations.
114. In response to suggestions to streamline the process by removing the redetermination stage and going straight to appeal, Scottish Government officials stated that this could place additional resource demands on the Scottish Courts and Tribunal Services if the number of appeals increased. ⁸³
115. The Cabinet Secretary was concerned to ensure that people had access to a redetermination, "because they found tribunals to be intimidating" and because the appeals process is "time consuming and more expensive for the public purse". She did however say she would reflect on the evidence and if there is anything that can be done, the Scottish Government would bring forward amendments at stage 2. ⁸⁴

Process appeals

116. The Bill clarifies the actions that the First-tier Tribunal can take when deciding a

process appeal. A process appeal is where a person feels a process decision by Social Security Scotland is not correct. Reasons for making a process appeal are that:

- Social Security Scotland informed you that your application for benefits has not been accepted.
- Social Security Scotland informed you that your redetermination request did not contain the correct information.
- Social Security Scotland informed you that your redetermination request was late and that you had no good reason for not requesting this sooner.

117. Both CPAG⁸⁵ and RNIB suggested that the First-tier Tribunal ought to be able to take a decision about entitlement based on the available evidence. RNIB commented this would “prevent people who cannot meet evidence requirements getting stuck in a process decision loop”.⁸⁶ In practical terms, this ‘loop’ could happen if the Tribunal decides that further information is needed and sends it back for another redetermination, which is then appealed back to the Tribunal, who decide further information is still needed and send it back again for redetermination and so on.
118. CPAG suggested that allowing a further right of appeal to the Upper Tribunal would “help develop the case law around process decisions”⁸⁷.

119. The Committee has heard that there are several small changes which could be made through this Bill which could help to streamline the redetermination and appeal processes for clients. We are mindful that social security processes can be confusing for people, and because processes have developed organically over time, there is scope to simplify them and to provide clearer guidance for all aspects of the social security system. Furthermore, we believe that, where practicable, taking a streamlining approach would incorporate more fully the social security principles to ensure the system embodies fairness, dignity and respect, as well as being more efficient and providing value for money.

120. The Committee asks the Scottish Government to consider the various suggestions made by witnesses for creating consistent deadlines for redeterminations, removing the need for an error to be identified before an appeal can be lapsed, providing a ‘cooling off’ period for withdrawing requests for redeterminations and appeals, removing the need for a redetermination stage after an appeal has lapsed and avoiding an ‘endless loop’ occurring in process appeals. It should also consider whether providing a further right of appeal to the Upper Tribunal would be of benefit.

121. In relation to deadlines for redeterminations, the Committee notes the Cabinet Secretary’s explanation as to why Social Security Scotland has

different deadlines to complete its processes according to the benefit involved. However, the Committee asks the Scottish Government for its justification for having different deadlines for claimants to request a redetermination.

Part 4: Assistance given in error

122. In the Bill, overpayments are referred to as 'assistance provided in error'. Part 4 makes changes to the rules on liability for assistance provided in error and introduces review and appeal rights against the decision that an individual is liable to repay an overpayment. This part of the Bill deals with decisions on liability. However it does not cover decisions on recovery of assistance given in error. Social Security Scotland will consider someone's financial circumstances before taking such a decision.
123. Specifically, Part 4 of the Bill would:
- make formal representatives such as guardians or appointees liable for overpayments in some circumstances but only if they had misused the funds (sections 9 to 11)
 - make the individual liable for overpayments (whether noticeable or not) caused by their representative, so long as the representative had not misused the funds (section 9)
 - clarify that overpayments can be recovered from a deceased's estate and extend this to include decisions on overpayment liability taken after the individual had died (section 12)
 - introduce a review and appeal right for decisions on overpayment liability (section 13).
124. Some witnesses were confused about who would qualify as an appointee under Part 4 and had concerns it could have an impact on representatives supporting people in a professional capacity.
125. Who is a representative will be set out in regulations. Section 9(4)(d) inserts section 64(6) into the 2018 Act, which empowers Scottish Ministers to make such regulations specifying the categories of persons who are included within the meaning of "individual's representative". It is intended this will include formal representatives such as legal representatives of children, appointees and guardians but not Welfare Rights Advisors or those acting in a similar capacity.
126. Views on this part of the Bill were mixed, with differing views on where liability should lie, when assistance provided in error should be recovered, and from whom.
127. The ALLIANCE thought that the balance of responsibility in the Bill was right and "it makes sense in this context to recover the overpaid sum from the person who receives the payment, as it was an overpayment to them, rather than to recover it from the person responsible for the error, because, if it was a good-faith error, they will not have had any benefit from the payment"⁸⁸.
128. Carers Scotland, on the other hand, stated that it would be "fundamentally unfair" for individuals who need support to manage their benefits to be held responsible for the mistakes of their representatives.⁸⁹

Liability of representatives

129. Currently, under the 2018 Act, an individual who is entitled to a benefit is liable for assistance provided in error if the error was their fault or if it was the kind of overpayment it would be reasonable to notice. The Bill would extend an individual's liability to include 'non-noticeable' errors of their representative. However, if the representative had acted in bad faith, and the error was one it would be reasonable to notice, then it would be the representative who would be liable instead.

130. The Scottish Government believes the provisions in the Bill achieve the right balance by making sure the person who benefited from the overpayment will be the one liable to repay it. In the Policy Memorandum⁹⁰ it states that—

” The provisions at section 9 of the Bill will make provision that an individual is liable where their representative has been the one who was at fault for the error. However, an individual will not be liable so far as the assistance given in error was used for a purpose which was a breach of the duties or responsibilities of their representative, for example, where the representative has not used the money in the interests of the client. [...] The Scottish Government does not think it is fair to seek recovery from vulnerable clients where due to the bad faith of another person they saw no benefit from those overpayments. However, nor does the Scottish Government consider that people should be deterred from volunteering to act on behalf of a friend or family member by a risk to their personal finances.

131. CPAG questioned whether the provisions in section 64(5) would strike the right balance to protect representatives who are not responsible for an error—

” We would not want to discourage people from being representatives if they thought their mistakes could leave them liable for any overpayment, but as drafted this section could make representatives careless (or worse) and leave a vulnerable person paying for their representative's error or misinformation. It might be an error which that individual could reasonably be expected to notice but they relied on their representative's assurances that all was well.⁹¹

132. The Cabinet Secretary explained that the Government has a duty to manage public funds responsibly and therefore recovering assistance given in error from the person who benefited from an overpayment is a reasonable measure but added that—

” It is important that people are reassured that the system that we have in place is thorough and that it will look seriously at overpayments, but that it will not do so in a punitive manner when people have made genuine errors and [...] we would look at the issues case by case.⁹²

Identifying who has benefited

133. Several witnesses pointed out it might be difficult in some cases to determine how much liability rests with the individual or with their representative and whether the representative is fully benefiting from the overpayment or using part of it for the

individual they represent.

134. Witnesses had concerns about how liability could be established depending on the circumstances. Carers Scotland had concerns for people "who might have significant caring responsibilities, be a power of attorney or a guardian and be trying to manage the individual's benefits and the household finances." ⁹³
135. Glasgow City Council noted this could indeed be complicated to unravel in some situations and a clear process is needed to establish liability—

” In some circumstances the appointee might be a care home manager or other similar service provider who manages the claimant's finances but uses some of the money to pay for the service or accommodation that they provide and the remainder for the claimant. [...] As such it may be necessary to have a provision that allows for an overpayment to be apportioned to both the individual and representative. ⁹⁴
136. Witnesses also questioned how what qualifies as misuse of funds could be clearly defined without adequate processes and structures in place. Alzheimer Scotland pointed out that “If there is no direct requirement for people to provide or purchase particular things with their benefit, who is to say that, for example, going on holiday, going out socially or purchasing a vehicle is a misuse of funds, when that could benefit the individual for whom the benefit is being claimed?” ⁹⁵
137. Scottish Government officials acknowledged that, in rare cases, a representative might not behave appropriately and the person they represent should not necessarily be "liable for money that they did not benefit from". They added that in circumstances "in which Social Security Scotland becomes aware that funds are being misused, it would be able to apportion liability appropriately for those funds on that basis of that information. That would happen in practice only when that was brought to the attention of the agency, which would also raise other important questions about the appropriateness of that appointee" ⁹⁶ .

Liability of deceased individual's estate

138. The Bill deals with the liability of an individual's estate for assistance paid after their death and states that overpayments can be recovered from a deceased individual's estate. It also states that if a decision on liability is made before an individual's death, then the liability will automatically transfer to their estate on their death.
139. Witnesses highlighted the need to handle such cases in a sensitive manner. Carers Scotland said that when someone dies, there are a lot of practical things their carer will have to deal with and "there is a need for balance and compassion when attempts to reclaim money are made" ⁹⁷ .
140. As well as considering timings for request for overpayments, Alzheimer Scotland noted that correspondence "initially offers a degree of condolence to the individual in question who is responsible, but the next line is a demand for money" and could be worded in a more compassionate way. ⁹⁸

141. Alzheimer Scotland added that an option to request that an overpayment that has occurred as a result of a death be written off should be considered, developed and widely publicised to make the situation easier. They gave an example of circumstances where this could be relevant—
- ” If money has been paid as a result of the payment processes that are in place—for example, some benefits are paid three weeks behind and one week ahead, which would automatically result in an overpayment—that is not a result of anyone declaring late or delaying notifying Social Security Scotland.⁹⁹

Review and appeal rights

142. Currently, the 2018 Act does not include any rights to challenge a decision on liability. The Bill would enable reviews and appeals. Witnesses welcomed the introduction of such provisions. They were however critical of the creation of a separate review process and argued it would be simpler if a decision on liability was a form of ‘determination’ (under section 50 of the 2018 Act) which could then be redetermined and appealed using the provisions already set out in that Act.
143. CPAG explained that the Bill creates a provision for a new legal process in another part of the Act but the wording is the same as the redetermination process—
- ” The review provisions mirror the redetermination provisions, and then there is provision to appeal against a review, which mirrors the appeal provisions against a determination of entitlement that has been placed in a separate section of the 2018 act.¹⁰⁰
144. Some concern was also raised about vulnerable individuals having to go through a complex appeal process. Cerebral Palsy Scotland worried that—
- ” The appeals process as laid out in the Bill is very legal-heavy. We ask, where would the support for vulnerable individuals who wish to appeal come from? If they are expected to navigate the appeals on their own, we believe the balance of power will always be heavily weighed against these individuals.¹⁰¹

A threshold for debt recovery

145. If an individual is considered liable for an overpayment, Social Security Scotland has discretion whether to recover it. Before doing so, they must consider the financial circumstances of the person that owes the money and decide if it is appropriate and cost effective to recover the overpayment.
146. Social Security Scotland's Debt Management Strategy states that "no individual will knowingly be placed into hardship. Overpayments resulting from official error will not be recovered, unless in specific circumstances"¹⁰².
147. CAS was critical of the vagueness of the definition of 'hardship' and the lack of guidance around it to establish reasonable thresholds. They provided an example of

the consequences of such a lack of structure on a client they supported—

” We dealt with a person who had recently been released from prison and had been on remand for five months. During that time, he accrued an overpayment due to the practical difficulties in reporting changes in circumstances. The social security agency suggested a recovery rate of £195 a month. The debt was only £670. Given that gentleman's circumstances—he had just come out of prison, was dependent on universal credit and was already subject to deductions from his universal credit for an advance payment and from rent arrears and council tax arrears that had accrued during his time on remand—£195 was an entirely unfeasible level. ¹⁰³

148. Witnesses said that as well as having regard to an individual's financial circumstances, the introduction of an income threshold for debt recovery would greatly benefit vulnerable claimants. CAS described how such a measure could work and noted that its suggested approach is used for other schemes such as student loan repayments—

” This would involve setting a threshold under which no payment for recovery of an SSS [Social Security Scotland] debt is deducted and amounts over it are deducted at a fixed percentage. Payment will either be sufficient to clear the debt over time or written off at the end of the payment period. ¹⁰⁴

Fair repayment arrangements and compassion

149. Many of the organisations suggested that a compassionate approach was needed when recovering repayment of assistance given in error and clear processes and safeguards would be required to protect vulnerable claimants and their families.

150. SAMH stated that "any approach must take into consideration the individual's financial status, and, importantly, the impact that repayment may have on their mental health" ¹⁰⁵ .

151. RNIB Scotland advocated for safeguards and processes to be put in place to avoid individuals and their families experiencing potential financial hardship and "a deterioration in their condition, either due to lack of income or stress involved" ¹⁰⁶ .

152. SAMH added that clear guidance and a framework should be introduced and developed with people with lived experience of disability to properly inform such issues. ¹⁰⁷

153. Compassion and clear communication were highlighted as clear principles needed to avoid putting people in a position where they may have to cut back on essentials or get overwhelmed after the death of a person they cared for. Sight Scotland and Sight Scotland Veterans stated—

” The individual must be communicated with accessibly in a manner that meets their respective needs, and it must be ensured that their representative is communicating properly. Poor or no communication could lead to liability for payments that an individual is not aware of [...] communication must be clear, to the point, and accessible, otherwise those with visual impairment will be disadvantaged. ¹⁰⁸

154. The Cabinet Secretary agreed it is important that the operational guidance is developed together with stakeholders and includes safeguarding measures that "ensure that the system is not punitive and does not seek to recoup overpayments in a way that is detrimental to the individual if they are in difficult financial circumstances" are in place. ¹⁰⁹

155. The Committee recognises that the Bill has a difficult balance to manage between protecting public money and ensuring individuals are appropriately liable for mistakes. Many witnesses raised concerns about individuals being liable for the mistakes of their representatives. The Committee would like to be sure that Social Security Scotland's processes are capable of ensuring that those individuals who may be liable for their representative's mistakes are treated fairly, so they are not pushed into hardship, which could exacerbate their vulnerabilities.

156. The Committee asks the Scottish Government for an explanation as to how these recovery and appeal provisions reflect the social security principles. The Committee also seeks to understand how they would work in practice, for instance with the use of discretion in recovering overpayments and in providing support for those who wish to appeal, recognising the importance of a compassionate approach and that many recipients of disability and carers benefits are very vulnerable.

Part 5: Appointees

157. Under the Bill, an individual appointed to manage a person's Department for Work and Pensions (DWP) benefits would also manage their Social Security Scotland benefits until Social Security Scotland completes its own checks (section 14).
158. This is already in place for individuals transferring from Personal Independence Payment or Disability Living Allowance onto Child Disability Payment or Adult Disability Payment. Section 14 of the Bill would enable it to be put in place for other situations, such as when someone moves from England or Wales to Scotland.
159. The majority of the respondents who commented on Part 5 welcomed the temporary recognition of DWP appointees in the Scottish system with the proposals set out, with Stirling Council stating—
- ” Agreed that a Department for Work and Pension (DWP) Appointee should remain in place until Social Security Scotland have had the opportunity to conduct their checks to see if someone is eligible to be an 'Appointee'. This will should allow for seamless transition of payments. ¹¹⁰
160. SAMH noted that—
- ” While we believe safeguarding should be maximised, we accept the rationale for the provisions in the Bill allowing a DWP appointee to act as an appointee in relation to the Scottish Social System, for a limited time in limited circumstances. We believe on balance that these provisions are proportionate and will avoid the risk of harmful delays in payments of awards... While we accept that the provisions are proportionate in a limited number of cases, we believe that the appointee should, as soon as practically possible, be subject to the Scottish appointee process. ¹¹¹
161. Section 15 of the Bill provides that where an appointee uses any funds outwith their common law or statutory duties, and does so in bad faith, they would be liable to repay those funds to the individual they represent.
162. Comments on the liability of appointees in Part 5 were very similar to the views expressed on Part 4 of the Bill, discussed earlier in the report.
163. In response to questions about how the system could be further streamlined, the Cabinet Secretary underlined the importance of sharing information with the DWP when it is in the best interests of the client and when due process is followed. She emphasised that—
- ” it is important that the agency then goes through its own process, because the system that we have established in Scotland includes more checks than the DWP system. If we simply accepted a DWP appointee and did not have our own processes in place, that would, in effect, go against something that we deliberated long and hard about in 2018, which was the level of assurance that we would need to have about appointees, and we would have a less rigorous system. ¹¹²

164. The Committee welcomes the Bill's requirements under section 14 and asks the Scottish Government to ensure that Social Security Scotland checks are carried out 'as soon as reasonably practicable'. To underpin this, the Committee recommends that the Scottish Government monitors and reports on the timescales taken for Social Security Scotland to approve appointees under the devolved social security system.

Part 6: Information for audit

165. Part 6 places new duties on clients to provide information to Social Security Scotland in order to audit the monetary value of fraud and error in the Scottish social security system as a whole. Where clients fail to do so, their benefit may be suspended and, if they still fail to provide the requested information, their entitlement can be reviewed.
166. Many witnesses raised strong objections to this part of the Bill. These primarily concerned the purpose of the measures, the power to suspend benefit if there is non-compliance and the lack of consultation with stakeholders on the provisions.

Purpose of the measures

167. Audit Scotland recommended that Social Security Scotland establish robust estimates of error and fraud in the Scottish social security system. In its 2022-23 Audit it stated—
- ” Social Security Scotland must continue to develop processes to measure the level of fraud and error within the range of benefits being delivered. This includes working with the Scottish Government to remove the barriers that exist in assessing the level of client induced error and fraud. ¹¹³
168. The Memorandum explains how the information will be used—
- ” [...] robust and reliable audit and reporting mechanisms are required to provide assurance that payments are correct, and where they are not, to accurately quantify rates of overpayment, underpayment and fraud. This informs official statistics, identifies areas for improvement and helps to ensure that Social Security Scotland's expenditure is in line with its statutory powers and parliamentary authority. ¹¹⁴
169. In addition, the Policy Memorandum states that if individuals were able to opt-out it would—
- ” [...] prevent reliable estimates of overpayments, underpayments and fraud being obtained and would create a self-selecting rather than random statistical sample. In addition, it is unlikely that individuals engaged in fraudulent activity would willingly participate in any process that is likely to scrutinise their entitlement, defeating the purpose of the audit. ¹¹⁵
170. In its written submission, Audit Scotland emphasised the need to have robust estimates of error and fraud—

” In our view, it is vital that that Social Security Scotland develops a strong understanding of the different benefit streams it administers and the associated risks of error and fraud within them. It is the agency's responsibility to assess the levels of error and fraud in the benefits in its accounts. To do this it needs to have adequate arrangements in place to assess, monitor and report on fraud and error levels in the benefits that it pays out.

[...]

Monitoring and publishing these estimates are an important element of the agency's public performance reporting, supporting its accountability to the Scottish Parliament and public. ¹¹⁶

171. Audit Scotland described the proposed checks as being part of ‘internal audit’—

” This is auditing activity carried out by the management of an organisation to help support its own internal control over the use of public funds, and for reporting on this as part of its accountability to the Scottish Parliament and public. ¹¹⁷

172. In relation to audit opinion, unlike DWP benefits, Social Security Scotland payments made in error would not affect Audit Scotland's opinion on the regularity of the accounts. It explained—

” The same regularity issue does not affect the benefits directly administered by Social Security Scotland. This is due to the different legislation which applies to these benefits which requires Social Security Scotland to make a payment where it has determined someone is eligible. Any payment in line with a determination is deemed to comply with the legislation, irrespective of whether this has been based on incorrect or fraudulent information.

This means that the provisions of the Bill would not directly affect the work we undertake to reach our regularity opinion. ¹¹⁸

Conflation of fraud and error

173. Regarding the purpose of the measures, witnesses were concerned that the provisions in the Bill conflated fraud and error. The Law Society of Scotland said—

” We took a dim view of the linkage that is made in the bill between an error and fraud. That certainly strikes us being a rather harsh approach. ¹¹⁹

174. Other witnesses agreed. CAS stated, “the critical point about the mix-up between error and fraud in the provisions simply must be addressed” ¹²⁰. CPAG was concerned “there would not need to be suspicion of fraud for people to end up losing their money” ¹²¹.

175. In supplementary written evidence, the Law Society of Scotland reaffirmed its position on conflation of audit and fraud and added that if the Scottish Government does not amend the Bill, the exercise of these powers should be by affirmative procedure rather than by the negative procedure, as currently proposed—

- ” Whilst the powers [...] may well be technical and administrative in nature their impact will be associated with the potential suspension or withdrawal of assistance from vulnerable people. The affirmative procedure will ensure that any ensuing regulations will require Parliamentary scrutiny before they are enacted.¹²²

Suspending benefit

176. Schedule 11 to the 2018 Act already allows benefits to be suspended if:
- the client has failed to provide enough information to determine their entitlement
 - there is an appointee in place and they are unable to continue
 - there is an appointee in place and financial abuse is suspected
 - the client has requested a temporary stop.
177. Under section 51 and schedule 11 of the 2018 Act, the existing provisions on suspension require that:
- financial circumstances are considered
 - the client is informed of the suspension, the reason for it and how they could end it
 - the client has a right to a review of the suspension
 - when a suspension ends, clients are paid what they ought to have been paid while benefit was suspended.
178. This Bill would add a further reason to suspend benefit – that the client has failed to provide information for audit within the required deadline.
179. If someone continually fails to provide information, further regulations under section 52 of the 2018 Act could provide for an unscheduled review of entitlement. Where entitlement could not be established, payment could be ended. Such regulations would, following this Bill, be scrutinised by the Scottish Commission on Social Security. The Policy Memorandum states that—
- ” Where, following suspension they still fail to provide the requested information an unscheduled review may be triggered to review their entitlement, which could be brought to an end if appropriate in the circumstances.¹²³
180. An unscheduled review would result in a new determination of entitlement which could be redetermined or appealed in the normal way.
181. There were strong concerns raised by the witnesses about making the failure to provide information for audit a reason to suspend benefit payments. For example, the ALLIANCE, said—

” We have a lot of concern about how the process will work in practice. People’s payments should not be suspended for a failure to provide information once they have already established a valid claim. ¹²⁴

182. The Law Society of Scotland went further and said “the withdrawal of benefits from vulnerable people for an ‘audit’ is draconian and undermines the dignity of the claimant and should be rethought” ¹²⁵ .

183. Many witnesses shared these concerns. Carers Scotland said this part of the Bill is “pretty unclear” and called for more information on the Bill’s intention and scope, particularly about the type of situations where an individual might not understand what is being asked of them. It considered “there might be good reasons why a person is not engaging” ¹²⁶ . As an example, RNIB pointed out that blind and partially sighted people could lack clear information and have difficulties in accessing support to comply. ¹²⁷

184. Stirling Council considered that “if the system was voluntary you might struggle to get enough information”, however the Council qualified this statement saying, “we need to get a balance, and that is very much about safeguarding” ¹²⁸ .

Social security principles

185. Additionally, witnesses felt the proposal to suspend payments did not reflect the social security principles. CPAG argued “the measure is not designed for the people of Scotland on the basis of evidence and [...] it does not put the needs of those who require assistance first” ¹²⁹ . Alzheimer Scotland, also believed the provisions do not align with the principles, commenting “I am sure it is no shock that we would disagree with that approach” ¹³⁰ .

186. Others highlighted their concerns about the potential for this approach to stigmatise people. RNIB said—

” The audit process will absolutely feed into that, particularly the sense of welfare stigma and a constant feeling of having to demonstrate and prove entitlement. ¹³¹

187. VoiceAbility, the Scottish Government’s contracted advocacy provider, stated—

” We have concerns that the collection of yet further information may impact on the dignity of the individuals trying to apply for a payment. We have been told that the information currently collected already puts a strain on people’s ability to collate paperwork and provide the relevant documentation, which in turn may affect their health and well-being. ¹³²

188. Many witnesses pointed specifically to the vulnerability of some people receiving disability benefits. CAS emphasised that disability benefit recipients “will incorporate some of the most vulnerable people in our society” ¹³³ . RNIB said “having to respond to correspondence could be another factor that puts them under additional stress or pressure” ¹³⁴ . Those experiencing multiple issues may also have significant barriers in meeting information requests. SAMH explained—

” With adult disability payment, we are talking about people who may have a wide range of vulnerabilities, including mental health problems such as suicidal ideation, and real challenges in general in engaging with the system. Being asked to take part in an audit process could be inherently very challenging for them. ¹³⁵

189. The Law Society of Scotland pointed to "provisions for an individual to be accompanied by a supporter in connection with providing the required information and for the provision of advocacy support for disabled individuals in connection with providing information, [...] gives an indication as to the draconian nature of this provision". ¹³⁶

Suggested alternative approaches

190. Several witnesses queried whether there were alternative approaches to mandating participation in information gathering. They suggested there was considerable information that could be gleaned from the initial application and the outcomes of reviews, redeterminations and appeals.

191. The Law Society of Scotland considered that the Scottish Government could learn lessons from other agencies—

” I suspect that there are agencies that could give the Scottish ministers advice on getting information without their having to go to the extent of imposing such sanctions. There might be softer ways of encouraging people to provide information. ¹³⁷

192. RNIB believed there should be a variety of methods for contacting the claimant, stating "it should not just be a letter or two followed by a suspension. [...] if someone does not respond or fails to provide information, the local delivery services could have a role in following up with that person locally" ¹³⁸. They added that the Scottish Government could use a test and learn approach with no suspension of benefits—

” We should look at compliance in this space and the problems that people have with engaging and put in place measures to support them. ¹³⁹

193. An additional suggestion from CPAG was that the Scottish Commission on Social Security (SCoSS) should scrutinise the relevant regulations to improve the proposal. ¹⁴⁰

194. It was noted that people would be exempt if Ministers agree that they have 'good reason' for not participating. CPAG believed there should be a right to challenge Ministers' decisions on 'good reason'. ¹⁴¹ Others witnesses, such as SAMH ¹⁴² and RNIB ¹⁴³, suggested Ministers should take a generous interpretation of what is a 'good reason'.

195. According to Glasgow City Council, someone who has recently had their benefit reviewed should automatically be exempt from having to provide information for

audit.¹⁴⁴

Consultation

196. According to the Policy Memorandum section 16 was not consulted on—

” This provision is high priority, fundamental to the functioning of the Scottish social security system and aligns with the practice of other government departments. [...] Stakeholder engagement will inform the processes used to capture information for audit to ensure that they are clear.¹⁴⁵

197. The Law Society of Scotland argued that "being of such high priority and so fundamental would suggest there is even greater reason for consultation" by the Scottish Government. They further questioned why the Policy Memorandum did not set out which other government departments undertake this practice.¹⁴⁶

198. SAMH called for more consultation on the issue and asked for clear guidance, co-produced with people with mental health problems and other disabilities.¹⁴⁷

199. The Cabinet Secretary, responding to the concerns that people have about the conflation of audit and fraud, said "that we are talking about audit, not about tackling fraud".¹⁴⁸ She repeated the point that "we have to do everything on the basis of dignity, fairness and respect. That includes how we do our audit. Audit is exceptionally important because of our requirement to ensure—quite rightly—that we are using public funds correctly".¹⁴⁹

200. In response to criticisms around the provision to suspend benefits if there was a continued failure to provide information, the Cabinet Secretary commented—

” I suggest that, if the audit system was entirely voluntary, someone who was committing fraud would not volunteer to be audited under that system. On that basis, there would be a self-selected sample of people, which would not give the agency the ability to carry out a full audit process.¹⁵⁰

201. On the importance of safeguarding during the process, the Cabinet Secretary was keen to offer reassurance—

” We do not just take away a person's benefit if they do not engage; we ensure that we work with the client so that they understand the importance of the audit process, which is done in a supportive fashion.¹⁵¹

202. She added that "any individual who takes part in the process will be told at the outset that they have the right to support and will be signposted to it" and that individuals can ask to have a request withdrawn if they think that they have good reason to do that. She further advised that she is happy to work with stakeholders to identify these reasons and to consider what other safeguarding measures might be needed in the event a request is not withdrawn and there has been no engagement.¹⁵²

203. With regard to the issue of lack of consultation on the information for audit powers

in the Bill, the Cabinet Secretary explained there had been targeted consultation, but confirmed it did not form part of the full public consultation on the Bill. She gave a commitment to look at the groups that should be exempt from the audit requirements and drew attention to her undertaking to lodge a stage 2 amendment to require a public consultation prior to the exercise of the regulation-making powers.¹⁵³

204. **Organisations that support people to access the benefits system and provide support to claimants navigating the system during their benefits journey, clearly feel that the Scottish Government must do more to explain why the Part 6 provisions need to be linked to the power to suspend benefit.**

205. **Uppermost in the Committee's mind is the importance of the social security principles. The ethos of 'dignity and respect' needs to be evident across all rules, processes and procedures. Recognising, however, that sometimes different principles will need to be weighed against each other, the Committee is not convinced the right balance has been struck.**

206. **The Committee considers that the Scottish Government could have done more to consult with stakeholders on information for audit, and that this could have addressed, at an earlier stage, the issues that have been raised with us. We understand a targeted consultation was undertaken, but a wider consultation would also have been a more inclusive approach. We note the Scottish Government's intention to amend the Bill to specify that regulations on the categories of people who would be exempt from the information for audit requirement will be subject to a form of "super-affirmative" procedure which requires consultation on the regulations.**

207. **This Part of the Bill caused a good deal of confusion for stakeholders with many considering that 'error' had been conflated with 'fraud', and hence that the task of 'audit' had been conflated with 'tackling fraud'. The Committee is, in part, reassured by the Cabinet Secretary's evidence. We still have some reservations about the provisions and, as such, the Committee asks the Scottish Government for a more expansive explanation as to why the provisions do not, in its view, conflate audit and tackling fraud.**

208. **In addition, we ask the Government to advise in its response to this Report whether it will adopt a 'test and learn' approach to implementation to further support its approach to safeguarding.**

Part 7: Recovery from compensation payments

209. When a person is affected by an accident, injury or disease due to the fault of a third party, they may be entitled to compensation. Compensation can be awarded for pain and suffering but also for other things such as loss of earnings or the cost of care. They may also be entitled to social security assistance to cover these same costs.
210. The Bill introduces a Scottish compensation recovery scheme with a certain amount of the compensation payment paid to Ministers. The Scottish Government says the approach will be consistent with the rest of the UK and will reduce complexity for compensators as well as limit the impact on individuals in receipt of compensation. Compensation awarded for general damages such as pain and suffering will not be impacted by the provisions.
211. The Financial Memorandum estimates that up to £5.5 million in benefits payments could be recovered from an estimated 1,385 cases per year.¹⁵⁴ The Scottish Government states that—
- ” Liable third parties should not be subsidised from public funds in their obligation to fully compensate a person for an accident, injury or disease. Furthermore, assistance paid to the injured person should not serve as double compensation for the same loss but should meet their needs while a settlement is being reached.¹⁵⁵
212. The Bill would require the compensator to apply to the Scottish Ministers for a certificate of recoverable assistance setting out what needs to be deducted from the compensation due to the individual and paid instead to Scottish Ministers. The compensator would then have 14 days to make the payment.
213. There was little comment in evidence on the legal provisions as they are closely modelled on the existing system used by DWP.

Options for delivery: benefits of a single system

214. The Scottish Government's preferred option for delivery is to have an agency agreement with the DWP and a single streamlined system for the generation of certificates of recoverable assistance for the whole of the UK, thus saving money on infrastructure and making the service easier to navigate.
215. Witnesses as well as personal injury and insurance bodies who took part in a Scottish Government's engagement on the matter agreed it was better to have a single system with a single certificate covering both Social Security Scotland and DWP benefits, with the caveat of insurers being given enough notice to adapt.
216. The Association of British Insurers told the Committee this would be acceptable with the right lead-in time—

- ” Insurers would need at least 12 months’ notice of this change and details of the new system in order to support its smooth introduction, and provide training for claims handlers to understand the new system and the social security applicable.¹⁵⁶
217. The Forum of Scottish Claims Managers was concerned that compensators would be required to register claims for compensation twice if there was a separate Scottish system and "it would be better to have Scottish benefits recovered with UK benefits to avoid confusion, duplication of certificates and red tape".¹⁵⁷
218. The Bill provides for a certificate of recoverable assistance to be reviewed by the Scottish Ministers. In limited circumstances, an application can be made for a certificate to be additionally reconsidered. The outcome can be appealed to the First-Tier Tribunal for Scotland and to the Social Entitlement Chamber of the UK First-Tier Tribunal for appeals relating to UK benefits.
219. The Forum of Insurance Lawyers suggested these different appeal routes could lead to issues—
- ” Under the bill as it is drafted, if someone wishes to appeal on Scottish benefits, they would have to do so to the Scottish ministers, but if they wish to appeal on English benefits, they would have to appeal to the DWP. There is, therefore, some prospect of a divergence in practice in relation to the appeal process. We do not know how that will play out in due course, but it might cause a little bit of confusion and uncertainty.¹⁵⁸
220. The Cabinet Secretary said she favoured a simple and consistent system that would minimise uncertainty. She added that she did not think a Scottish system separate from the UK one was needed and that the Scottish Government intended to work with DWP on an agency agreement.¹⁵⁹

Creation of criminal offences by regulations

221. The DPLR Committee raised concerns with the Scottish Government about creating criminal offences by regulations. The Bill requires a ‘compensator’ to pay relevant amounts to Scottish Ministers within 14 days of a compensation payment being made or the issue of a certificate of recoverability (section 94E, inserted by section 17 of the Bill). This provision is enforced by giving Ministers powers of investigation (section 94U, also inserted by section 17) and could include criminal offences.
222. In its reply to the DPLR Committee¹⁶⁰, the Scottish Government clarified that this power will be used in relation to any person who:
- is or has been liable for making a compensation payment, or a payment to the Scottish Ministers under section 94E and may include insurers
 - intentionally delays or obstructs an authorised person in the exercise of any functions conferred by regulations
 - refuses or neglects to comply with any requirement relating to the provision of

information or access to electronic information.

223. In its report ¹⁶¹, the DPLR Committee recommended that the lead committee seek further evidence from the Scottish Government:

- about the inclusion of the power to create “neglect” offences, and whether an amendment is needed to remove the reference to “neglect” in section 94U(2)(i)
- on how it proposes that the regulations will define when a person is committing an offence neglecting to comply with a requirement by an authorised officer to provide information or give access to electronic information.

224. The Scottish Government replied to the DPLR Committee on this issue ¹⁶² and stated that it will undertake a consultation before laying out the details of the offences. It went on:

- “Compensators will be aware of their obligations following a request for information or access to electronic information and will not therefore be committing an offence in ignorance. Refusal to comply and neglecting to comply may both arise in practice and must be provided for.”
- It also pointed out that powers to create offences in regulations are available elsewhere in the 2018 Act.

225. In evidence to this Committee, the Cabinet Secretary insisted that “it is vital that when offences are created in legislation, the terms of each offence are clear and properly understood by those who might find themselves accused of committing the offences.” She added that there would be engagement with stakeholders who could be impacted by the offences as well as with insurance sector representatives in order to clearly spell out the details of those offences and align them with the investigation provisions. ¹⁶³

226. She argued that it would be better to go through proper consultation than to add provisions in the Bill at this stage. The Government will instead bring forward secondary legislation subject to the affirmative procedure that “the Parliament will have the opportunity to reject [...] if it does not appreciate what comes forward” ¹⁶⁴.

227. The Committee looks forward to scrutinising any subordinate legislation when it is laid.

Part 8: Scottish Commission on Social Security

228. The [Scottish Commission on Social Security](#) (SCoSS) was established under the 2018 Act to:
- scrutinise draft social security regulations
 - report on the implementation of the Social Security Charter
 - respond to requests from the Parliament and Ministers to report “on any matter relevant to social security”.
229. An [independent review of SCoSS in 2023](#) made recommendations for change, some of which are implemented by this Bill.
230. The Bill would:
- add to the list of draft regulations that SCoSS scrutinise
 - remove its status as a body corporate
 - remove the requirement to audit its accounts.
231. Of the new regulation making powers created by the Bill, the following would fall within SCoSS’s remit:
- Childhood Assistance (automatically within SCoSS remit as they would be made under Chapter 2 of Part 2 of the 2018 Act)
 - Timescales for reviews and appeals about liability for overpayments (added to SCoSS remit by section 18(2) of the Bill).
232. In its written submission, CPAG pointed out that the Bill includes a large number of new regulation making powers, some of which are not added to SCoSS’s remit. CPAG argued that “all should be subject to statutory scrutiny by SCoSS and drew particular attention to the regulation making powers for—
- ”
- **Care Experience Assistance** – “While it may be delivered by someone other than Social Security Scotland, we believe it would be wrong for it not to have the benefit of expert, independent scrutiny”.
 - **Information for Audit** – “The provisions on ‘information for audit’ are important and could impact significantly on people in vulnerable situations who are less able to negotiate complex social security systems. Independent, expert, scrutiny should be built in to ensure that people’s rights are properly considered and protected.”
 - **Compensation Recovery** – “The new compensation recovery scheme is consistent with the UK scheme which is subject to statutory scrutiny by the UK’s scrutiny body, the Social Security Advisory Committee (SSAC). The Scottish scheme should be subject to scrutiny by SCoSS” ¹⁶⁵ .

233. CPAG explained its rationale as to why regulations under this Bill should be scrutinised by SCoSS, saying "anything that affects an individual's rights or the processes for making decisions should be within SCoSS's remit" ¹⁶⁶ .
234. The DPLR Committee reported on these powers. Following consideration by the DPLR Committee, the Scottish Government has agreed to add a requirement to consult before making regulations about who will be exempt from providing information for audit. ¹⁶⁷ It did not, however, specify whether this would include consulting SCoSS.
235. In relation to the regulations concerning Care Experience Assistance, the DPLR Committee also recommended 'super-affirmative' scrutiny of these regulations. ¹⁶⁸
236. The Committee was interested to know why the Scottish Government did not consider SCoSS's scrutiny necessary for Compensation Recovery or Information for Audit. In response the Cabinet Secretary confirmed she was content "to consider lodging stage 2 amendments to bring more powers into the bill in relation to the scope of formal SCoSS scrutiny, following the stakeholder contributions at stage 1 and a recent letter that I received from the SCoSS board" ¹⁶⁹ .

237. The Committee welcomes the Scottish Government's commitment to consider bringing forward amendments at Stage 2.

Overall conclusions on the general principles of the Bill

238. Overall, the Committee considers that the amendment of the Social Security (Scotland) 2018 has been undertaken in a way that takes account of the ethos of the 2018 Act, while amending it to take account of developments in the Scottish social security system.

239. Many of the points raised with the Committee demonstrate how changes to the system that initially at times appear to be a straightforward could have unintended consequences to those the system is there to serve. This has made it difficult at times to ensure that the social security principles are upheld throughout the Bill. The Committee looks forward to receiving further reassurance that fairness, dignity and respect are at the heart of some of the Bill's provisions, including those in Part 6 - Information for audit, and that it is possible to uphold these while ensuring that the system is efficient and secures value for money.

240. The Committee recommends to the Parliament that the general principles of the Bill be agreed to.

Annexe A: Written and oral evidence

Submissions received: [Detailed Consultation](#)

[Aberdeen City Council](#)

[Alzheimer Scotland](#)

[Association of British Insurers](#)

[Cerebral Palsy Scotland](#)

[Child Poverty Action Group in Scotland](#)

[Citizen's Advice Scotland](#)

[Disability Equality Scotland](#)

[Dumfries and Galloway Council](#)

[Enable](#)

[FOIL - Forum of Insurance Lawyers](#)

[Forum of Scottish Claims Managers](#)

[Glasgow City Council](#)

[Health and Social Care Alliance Scotland \(the ALLIANCE\)](#)

[Jenna Logan](#)

[National Carer Organisations](#)

[One Parent Families Scotland](#)

[PAMIS](#)

[Poverty and Inequality Commission](#)

[RNIB Scotland](#)

[SAMH \(Scottish Action for Mental Health\)](#)

[Scottish Women's Convention](#)

[Sight Scotland and Sight Scotland Veterans](#)

[Social Work Scotland](#)

[Stirling Council](#)

[The Law Society of Scotland](#)

[The Poverty Alliance](#)

[VoiceAbility](#)

Supplementary Submissions

Audit Scotland, [Written Evidence](#), 4 March 2024

Who Cares? Scotland, [Written Evidence](#), 19 March 2024

Law Society of Scotland -[Further information following the meeting on 7 March 2024](#)

CPAG -[Further information following the meeting on 7 March 2024](#)

Forum of Scottish Claims Managers -[Further information following the meeting on 28 March](#)

Forum of Insurance Lawyers - [Further information following the meeting on 28 March](#)

Association of British Insurers (ABI) - [Further information following the meeting on 28 March](#)

Correspondence

[Letter from the Minister for Parliamentary Business on the Scottish Government's view on protected subject-matter](#), 9 November 2023

[Letter from the Scottish Government regarding the points raised by the Delegated Powers and Law Reform Committee in their report on the Bill at Stage 1](#), 15 April 2024

Official Reports

[Official Report of Thursday 7 March 2024](#)

[Official Report of Thursday 14 March 2024](#)

[Official Report of Thursday 21 March 2024](#)

[Official Report of Thursday 28 March 2024](#)

[Official Report of Thursday 18 April 2024](#)

Annexe B: Extracts of minutes of meetings

28th Meeting of 2023 (Session 6) Thursday, November 9, 2023

7 Social Security (Amendment) (Scotland) Bill (In Private): The Committee agreed its approach to the scrutiny of the Bill at Stage 1.

4th Meeting of 2024 (Session 6) Thursday, February 8, 2024

1 Social Security (Amendment) (Scotland) Bill (In Private): The Committee agreed its approach to the scrutiny of the Bill at Stage 1.

7th Meeting of 2024 (Session 6) Thursday, March 7, 2024

1 Decision on taking business in private: The Committee agreed to take item 3 in private.

2 Social Security (Amendment) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—Erica Young, Policy Officer (Social Justice), Citizens Advice Scotland; Jon Shaw, Welfare Rights Worker, Child Poverty Action Group Scotland; Richard Gass, Welfare Rights and Money Advice Manager, Glasgow City Council; Michael Clancy OBE, Director of Law Reform, Law Society of Scotland; Diane Connock, Advice Services and Welfare Reform Team Leader, Stirling Council.

Jeremy Balfour indicated that he had previously been a member of the First-tier Tribunal.

3 Consideration of evidence (In Private): The Committee considered the evidence heard earlier in the meeting.

8th Meeting of 2024 (Session 6) Thursday, March 14, 2024

1 Decisions on taking business in private: The Committee agreed to take item 3 in private and that its review of evidence heard, at future meetings, on the Social Security (Amendment) (Scotland) Bill be taken in private.

2 Social Security (Amendment) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—Kirstie Henderson, Policy Officer (Scotland) and Claire Andrews, Legal Rights Officer, Legal Rights Service, Royal National Institute of Blind People (RNIB); Craig Smith, Senior Policy and Research Officer, Scottish Action for Mental Health (SAMH); Allan Faulds, Senior Policy Officer, Health and Social Care Alliance Scotland (the ALLIANCE).

3 Consideration of evidence (In Private): The Committee considered the evidence heard earlier in the meeting.

9th Meeting of 2024 (Session 6) Thursday, March 21, 2024

3 Social Security (Amendment) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—Fiona Collie, Head of Policy and Public Affairs, Scotland & Northern Ireland, Carers Scotland; Vicki Cahill, Policy Officer, Alzheimer Scotland.

5 Social Security (Amendment) (Scotland) Bill (In Private): The Committee considered the

evidence heard under item 3.

10th Meeting of 2024 (Session 6) Thursday, March 28, 2024

2 Social Security (Amendment) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—Lynne Macfarlane, Solicitor Advocate, Forum of Insurance Lawyers (FOIL); Alastair Ross, Assistant Director, Head of Public Policy (Scotland, Wales & NI), Association of British Insurers; Alan Rogerson, Member, Forum of Scottish Claims Managers.

4 Social Security (Amendment) (Scotland) Bill (In Private): The Committee considered the evidence heard under item 2. The Committee agreed to write to the Cabinet Secretary for Social Justice in relation to issues raised by the Delegated Powers and Law Reform Committee ahead of the session on 18 April 2024.

11th Meeting of 2024 (Session 6) Thursday, April 18, 2024

3 Social Security (Amendment) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—Shirley-Anne Somerville, Cabinet Secretary for Social Justice, Iain Hunter, Bill Team Leader, and Kayleigh Blair, Solicitor, Scottish Government.

4 Social Security (Amendment) (Scotland) Bill (In Private): The Committee considered the evidence heard under item 3.

- 1 [Social Security \(Amendment\) \(Scotland\) Bill.](#)
- 2 [Policy Memorandum.](#)
- 3 [Scottish Government's public consultation.](#)
- 4 [Scottish Government's consultation analysis report.](#)
- 5 [Social Security Experience Panel and Client Panel report.](#)
- 6 [Call for views' published responses.](#)
- 7 [Minutes of the Social Justice and Social Security Committee, 7 March 2024.](#)
- 8 [Minutes of the Social Justice and Social Security Committee, 14 March 2024.](#)
- 9 [Minutes of the Social Justice and Social Security Committee, 21 March 2024.](#)
- 10 [Minutes of the Social Justice and Social Security Committee, 28 March 2024.](#)
- 11 [Minutes of the Social Justice and Social Security Committee, 14 April 2024.](#)
- 12 [Social Security \(Amendment\) \(Scotland\) Bill web page](#)
- 13 [Financial Memorandum.](#)
- 14 [Policy Memorandum.](#)
- 15 [Financial Memorandum.](#)
- 16 [Financial Memorandum, Paragraph 9.](#)
- 17 [Finance and Public Administration Committee's call for views.](#)
- 18 [Health and Social Care Alliance Scotland \(the ALLIANCE\), Written Evidence.](#)
- 19 [The ABI, Written Evidence.](#)
- 20 [Delegated Powers Memorandum.](#)
- 21 [Minutes of the DPLR Committee meeting, 6 February 2024.](#)
- 22 [Letter from the Convener to the Scottish Government, 8 February 2024.](#)
- 23 [Letter from the Scottish Government to the Convener, 15 February 2024.](#)
- 24 [Minutes of the DPLR Committee meeting, 19 March 2024.](#)
- 25 [Delegated powers in the Social Security \(Amendment\) \(Scotland\) Bill at Stage 1.](#)
- 26 [Policy Memorandum, Paragraph 5.](#)
- 27 [CPAG, Written Evidence.](#)
- 28 [National Carer Organisations, Written Evidence.](#)
- 29 [Social Justice and Social Security Committee, Official Report, 7 March 2024, Col 6.](#)

- 30 [Best Start Foods if you have no access to public funds.](#)
- 31 [Citizen's Advice Scotland, Written Evidence.](#)
- 32 [Stirling Council, Written Evidence.](#)
- 33 [Social Justice and Social Security Committee, Official Report, 7 March 2024, Col 4.](#)
- 34 [Social Justice and Social Security Committee, Official Report, 7 March 2024, Col 5.](#)
- 35 [Social Justice and Social Security Committee, Official Report, 7 March 2024, Col 3.](#)
- 36 [Citizen's Advice Scotland, Written Evidence.](#)
- 37 [Scottish Action for Mental Health, Written Evidence.](#)
- 38 [Health and Social Care Alliance Scotland \(the ALLIANCE\), Written Evidence.](#)
- 39 [Keeping the promise to our children, young people and families.](#)
- 40 [Social Justice and Social Security Committee, Official Report, 14 March 2024, Col 21.](#)
- 41 [Social Work Scotland, Written Evidence.](#)
- 42 [Who Cares? Scotland, Written Evidence.](#)
- 43 [VoiceAbility, Written Evidence.](#)
- 44 [Child Poverty Action Group \(CPAG\), Written Evidence.](#)
- 45 [Social Justice and Social Security Committee, Official Report, 7 March 2024, Col 7.](#)
- 46 [Who Cares? Scotland, Written Evidence.](#)
- 47 [CPAG\), Written Evidence.](#)
- 48 [Letter from the Scottish Government to the Convener of the DPLR Committee, 15 February 2024](#)
- 49 [Delegated powers in the Social Security \(Amendment\) \(Scotland\) Bill at Stage 1, Paragraph 30.](#)
- 50 [Letter from the Scottish Government to the Convener of the Social Justice and Social Security Committee, 15 April 2024](#)
- 51 [Ibid.](#)
- 52 [Social Justice and Social Security Committee, Official Report, 18 April 2024, Col 5.](#)
- 53 [Social Justice and Social Security Committee, Official Report, 22 February 2024, Col 4.](#)
- 54 [Policy Memorandum, paragraph 5.](#)
- 55 [Scottish Action for Mental Health, written submission.](#)

- 56 Social Justice and Social Security Committee, Official Report, 7 March 2024, Col 8.
- 57 Social Justice and Social Security Committee, Official Report, 7 March 2024, Col 10.
- 58 [Social Security Chamber Decision Report 14, January 2023, Best Start Grant - Early Learning Payment.](#)
- 59 Social Justice and Social Security Committee, Official Report, 7 March 2024, Col 10.
- 60 Social Justice and Social Security Committee, Official Report, 18 April 2024, Col 7.
- 61 CPAG, Written Evidence.
- 62 Social Justice and Social Security Committee, Official Report, 7 March 2024, Col 9.
- 63 Social Justice and Social Security Committee, Official Report, 7 March 2024, Col 11.
- 64 Social Justice and Social Security Committee, Official Report, 18 April 2024, Col 7.
- 65 Policy Memorandum, paragraph 63.
- 66 Social Justice and Social Security Committee, Official Report, 21 March 2024, Col 5.
- 67 Social Justice and Social Security Committee, Official Report, 14 March 2024, Col 3.
- 68 Social Justice and Social Security Committee, Official Report, 14 March 2024, Col 4.
- 69 Social Justice and Social Security Committee, Official Report, 14 March 2024, Col 4.
- 70 [SPICe Paper](#), 7 March 2024 meeting, Page 5, table 1.
- 71 Social Justice and Social Security Committee, Official Report, 18 April 2024, Col 8.
- 72 Ibid.
- 73 Policy Memorandum, paragraph 91.
- 74 Social Justice and Social Security Committee, Official Report, 7 March 2024, Col 15.
- 75 Social Justice and Social Security Committee, Official Report, 7 March 2024, Col 19.
- 76 Social Justice and Social Security Committee, Official Report, 7 March 2024, Col 16.
- 77 [RNIB, Written Evidence.](#)
- 78 Social Justice and Social Security Committee, Official Report, 7 March 2024, Col 33.
- 79 Social Justice and Social Security Committee, Official Report, 28 March 2024, Col 33.
- 80 Ibid.
- 81 Social Justice and Social Security Committee, Official Report, 14 March 2024, Col 8.
- 82 Social Justice and Social Security Committee, Official Report, 7 March 2024, Col 33.
- 83 Social Justice and Social Security Committee, Official Report, 18 April 2024, Col 9.

- 84 Social Justice and Social Security Committee, Official Report, 18 April 2024, Cols 8-9.
- 85 CPAG, Written Evidence.
- 86 Social Justice and Social Security Committee, Official Report, 14 March 2024, Col 7.
- 87 CPAG, Written Evidence.
- 88 Social Justice and Social Security Committee, Official Report, 14 March 2024, col 11.
- 89 Social Justice and Social Security Committee, Official Report, 21 March 2024, col 11.
- 90 [Policy Memorandum](#), paragraphs 112 and 118.
- 91 [Child Poverty Action Group \(CPAG\), Written Evidence](#).
- 92 Social Justice and Social Security Committee, Official Report, 18 April 2024, col 10.
- 93 Social Justice and Social Security Committee, Official Report, 21 March 2024, col 9.
- 94 [Glasgow City Council, Written Evidence](#).
- 95 Social Justice and Social Security Committee, Official Report, 21 March 2024, col 10.
- 96 Social Justice and Social Security Committee, Official Report, 18 April 2024, col 12.
- 97 Social Justice and Social Security Committee, Official Report, 21 March 2024, col 11.
- 98 Social Justice and Social Security Committee, Official Report, 21 March 2024, col 12.
- 99 Social Justice and Social Security Committee, Official Report, 21 March 2024, col 12.
- 100 Social Justice and Social Security Committee, Official Report, 7 March 2024, col 22.
- 101 [Cerebral Palsy Scotland, Written Evidence](#).
- 102 [Social Security Scotland, Debt Management Strategy](#).
- 103 Social Justice and Social Security Committee, Official Report, 7 March 2024, col 24.
- 104 [Citizen's Advice Scotland, Written Evidence](#).
- 105 [Scottish Action on Mental Health \(SAMH\), Written Evidence](#).
- 106 [Royal National Institute of Blind People \(RNIB\) Scotland, Written Evidence](#).
- 107 Social Justice and Social Security Committee, Official Report, 14 March 2024, col 10.
- 108 [Sight Scotland and Sight Scotland Veterans, Written Evidence](#).
- 109 Social Justice and Social Security Committee, Official Report, 18 April 2024, col 11.
- 110 [Stirling Council, Written Evidence](#).
- 111 [SAMH, Written Evidence](#).
- 112 Social Justice and Social Security Committee, Official Report, 18 April 2024, col 13.

- 113 [Social Security Scotland 2022/23 Annual Audit Report](#), Page 20, Recommendation 4.
- 114 Social Security (Amendment) (Scotland) Bill, Policy Memorandum, paragraph 152.
- 115 Social Security (Amendment) (Scotland) Bill, Policy Memorandum, paragraphs 157 to 158.
- 116 [Audit Scotland, Written Evidence](#).
- 117 [Audit Scotland, Written Evidence](#).
- 118 [Audit Scotland, Written Evidence](#).
- 119 Social Justice and Social Security Committee. Official Report, 7 March 2024, Col 27.
- 120 Social Justice and Social Security Committee. Official Report, 7 March 2024, Col 29.
- 121 Social Justice and Social Security Committee. Official Report, 7 March 2024, Col 28.
- 122 [The Law Society of Scotland, Supplementary Written Evidence](#).
- 123 [Policy Memorandum](#), paragraph 153.
- 124 Social Justice and Social Security Committee. Official Report, 14 March 2024, Col 18.
- 125 [The Law Society of Scotland, Written Evidence](#).
- 126 Social Justice and Social Security Committee. Official Report, 21 March 2024, Col 14.
- 127 Social Justice and Social Security Committee. Official Report, 14 March 2024, Col 18.
- 128 Social Justice and Social Security Committee. Official Report, 7 March 2024, Col 28.
- 129 Social Justice and Social Security Committee. Official Report, 7 March 2024, Col 28.
- 130 Social Justice and Social Security Committee. Official Report, 21 March 2024, Col 15.
- 131 Social Justice and Social Security Committee. Official Report, 14 March 2024, Col 18.
- 132 [Voiceability, Written Evidence](#).
- 133 Social Justice and Social Security Committee. Official Report, 7 March 2024, Col 30.
- 134 Social Justice and Social Security Committee. Official Report, 14 March 2024, Col 16.
- 135 Social Justice and Social Security Committee. Official Report, 14 March 2024, Col 16.
- 136 [The Law Society of Scotland, Written Evidence](#).
- 137 Social Justice and Social Security Committee. Official Report, 7 March 2024, Col 28.
- 138 Social Justice and Social Security Committee. Official Report, 14 March 2024, Col 16.
- 139 Social Justice and Social Security Committee. Official Report, 14 March 2024, Col 18.
- 140 Social Justice and Social Security Committee. Official Report, 7 March 2024, Col 28.

- 141 Social Justice and Social Security Committee. Official Report, 7 March 2024, Col 29.
- 142 Social Justice and Social Security Committee. Official Report, 14 March 2024, Col 17.
- 143 Social Justice and Social Security Committee. Official Report, 14 March 2024, Col 19.
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