



SOCIAL SECURITY (AMENDMENT) (SCOTLAND) BILL STAGE 1 DEBATE: BRIEFING FOR MSP'S

May 2024

The Child Poverty Action Group (CPAG) in Scotland works for the one in four children in Scotland growing up in poverty. We collect evidence from families living in poverty and campaign for solutions to bring about a society where children have a fair chance in life free from hardship. We provide training, advice and information on social security to frontline workers to make sure families get the financial support they need.

CPAG welcomes this Bill. It will enhance administration of the Scottish social security system and improve the experience of the individuals who use it. However, it would benefit from amendment which we have detailed in this briefing.

Types of social security assistance

Childhood assistance

We welcome the introduction of 'childhood assistance' which allows a change to the legislative footing of Scottish child payment from a 'top-up' benefit to a standalone payment. This is something we have called for¹. Evidence from CPAG in Scotland's Early Warning System² highlights that there are some low-income families who miss out on Scottish child payment because eligibility is based on getting another benefit, for example universal credit.

In common with other types of assistance, the Bill sets out the framework for childhood assistance in broad terms. In principle, CPAG would prefer to see more detail of what regulations must provide in primary legislation, as

¹ [CPAG's response](#) to the consultation on Scotland's Social Security System: Enhanced Administration and Compensation Recovery

² <https://cpag.org.uk/scotland/ews>

rights set out in an Act cannot be removed as easily as those set out solely in regulations. However, opportunities to improve Scottish child payment are yet to be fully explored. To avoid inadvertently narrowing the potential for improvements, we are not proposing inserting in the Bill more detail of how the new powers should be used.

That said, we will be very disappointed if future childhood assistance regulations do not address the issues already identified with Scottish child payment as a ‘top-up’ benefit or seek to reduce cliff edge loss of entitlement that can be caused by a small increase in income resulting in end of universal credit. We welcome the Committee’s request to Scottish government to set out its priorities for early use of these powers.³

Amendments needed

- Ensure that the definition of ‘child’ gives flexibility to extend entitlement to support young people under 20 whose parents are entitled to child benefit because they are still in education.
- Introduce backdating so that it will be possible for childhood assistance to be paid from a date prior to the date the application was made.

Care experience assistance

The Policy Memorandum accompanying the Bill appears to indicate the delivery vehicle will not be Social Security Scotland. CPAG in Scotland believes in the default of all assistance being developed and delivered by Social Security Scotland, unless there is very good reason. This ensures that the development and delivery of the assistance is in keeping with the Scottish social security principles such as dignity and respect, contributes to the realisation of human rights and the reduction of poverty, as well as continuous improvement. We welcome the Committee’s request for justification for any departures from the social security scheme.⁴

When drafting regulations any challenge rights under this part should be equivalent (and ideally the same) as those for other types of assistance. Different mechanisms for challenging decisions cause confusion and difficulty for individuals and advisers trying to navigate the social security system.

We welcome the Scottish government’s commitment to add scrutiny of the regulations to the Scottish Commission on Social Security’s remit.⁵

Applications for assistance

This repeals the provision which allows a late application to be treated as made in time if the delay in applying was due to COVID. Allowing late applications when the delay was related to COVID was useful, but there are other legitimate reasons why applications are delayed. Allowing late applications can be particularly important for single payment benefits such as Best Start Grants, as if you miss the deadline to apply, you completely miss out on that payment. With ongoing benefits such as Scottish child payment, although there can be a significant loss, you can get the benefit from the date you applied but may not get it backdated for a period before you applied.

³ [Para 49 SJSS Committee’s stage 1 report on the Social Security \(Amendment\) \(Scotland\) Bill](#), May 2024

⁴ [Paras 72 & 73 SJSS Committee’s stage 1 report on the Social Security \(Amendment\) \(Scotland\) Bill](#), May 2024

⁵ [Letter from the Cabinet Secretary for Social Justice](#), April 2024

Amendments needed

Allow late applications where there is good reason. We welcome the Scottish government's commitment to bring a stage 2 amendment to this effect.⁶

Determinations and re-determinations of entitlement to assistance

We welcome:

- the new right to make a redetermination request or appeal more than a year after the determination is made in exceptional circumstances.
- the new right to withdraw a request for a redetermination.
- clarification that an individual will be given the option of waiting for the redetermination to be completed (after the deadline for completion has ended) before deciding whether to appeal Social Security Scotland.
- the introduction of a new determination of entitlement after an error has been identified (but this provision requires modification).

Amendments needed

We welcome the Committee's request that Scottish government consider and would support the following amendments:⁷

- creating consistent deadlines across all the different benefits for making a redetermination request.
- removing the need for an error to be identified before an appeal can be lapsed.
- allowing individuals to re-instate the request for a redetermination after it has been withdrawn.
- removing the need for a redetermination stage after an appeal has lapsed.
- introducing a further right of appeal to the Upper Tribunal for Scotland in process appeals.

Further amendments required:

- Remove the need for the individual's consent to lapse an appeal.
- include further details about the factors that the tribunal hearing a process appeal can/must consider if the application is not in the correct form.
- replace the power to make a further process decision to reject a claim with a requirement to make a determination on the available evidence.

Assistance given in error

We welcome:

- the right to challenge whether an overpayment should be recovered.
- protection for representatives where they have not contributed to an error, but we are not convinced that the right balance between liabilities of individuals and representatives has been reached.

⁶⁶ [Cabinet Secretary for Social Justice, SJSS Committee Meeting, 18th April 2024](#)

⁷ [Paras 119-121 SJSS Committee's stage 1 report on the Social Security \(Amendment\) \(Scotland\) Bill, May 2024](#)

- the introduction of the right to challenge liability to repay an overpayment, however we have concerns about the proposal that an individual can request a 'review' of the decision rather than a redetermination.

Amendments needed

- Ensure protection for representatives does not enable carelessness (or worse) that could leave a vulnerable person paying for their representative's error or misinformation.
- Executors of the individual's estate should be given challenge rights and Social Security Scotland should be required to inform them of those rights.
- Instead of introducing the right to request a review alongside the existing redetermination process, keep it simple by retaining one redetermination and appeals process.

Appointees

We believe this provision enabling an individual appointed by the DWP to act on behalf of a particular claimant, for the purposes of Scottish benefits is simply legally underpinning what already happens in practice.

We are concerned that recovering a representative's liability from the individual's award may cause the individual undue hardship for a fault to which they did not contribute. We are curious as to why this section only applies to certain types of ongoing assistance – employment injuries assistance is excluded.

CPAG's Early Warning System has evidence of delays in some cases where there is a dispute between parents of a child who gets child disability payment but no appointee (as the parents have parental rights an appointment cannot be made unless neither is willing to act of the child).

Amendments needed

- **Require regulations to specify that the individual can request the appointeeship be terminated if the appointee is not acting in the individual's best interests.**
- **Allow parents and carers to become appointees for the purpose of claiming child disability payment for their child so the parents/carers can benefit from the process for determining responsibility if there are competing claims.**

Information for audit

We are concerned that this allows Social Security Scotland to suspend payment if the information requested for audit purposes is not provided. This is likely to prejudice individuals who have difficulty managing their affairs and engaging with bureaucracy and has the potential to stop payments to the most vulnerable individuals.

Amendments needed

Make provision of audit information voluntary to avoid unintended consequences for vulnerable individuals.

Scottish Commission on Social Security

The Bill will mean that almost all social security regulations are referred to the Scottish Commission on Social Security (SCoSS) for scrutiny, including regulations previously not in scope, such as best start foods. CPAG in Scotland is pleased that the scrutiny gap is being closed. We are in no doubt that rights are better protected and the social security system operates more effectively thanks to SCoSS's expert, independent scrutiny. However, the Bill introduces new provisions where the regulations have not been brought into scope for scrutiny.

Amendments needed

Care experience assistance, compensation recovery and information for audit regulation should all be subject to statutory scrutiny by SCoSS.

Contact

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