



BRIEFING FOR MSP'S AHEAD OF STAGE 3 DEBATE ON THE SOCIAL SECURITY (SCOTLAND) AMENDMENT BILL

December 2024

1. 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.

2. CPAG welcomes this Bill. It will enhance administration of the Scottish social security system and improve the experience of the individuals who use it. We set out our views on the Bill as a whole during [the call for views](#), and [ahead of the Stage One debate](#) on the general principles of the Bill. We further welcome the engagement with Parliament and government throughout the Bill's passage and the important improvements that have been made to the Bill. It has been strengthened by: the power to make regulations about late applications; early years assistance being brought under childhood assistance; re-drafting of the section on liability for overpayments for representatives, and more of the legislation being brought under the scrutiny of the Scottish Commission on Social Security.

3. **There are, however, still areas of the Bill that must be strengthened at Stage 3.** Below we set out key amendments we urge MSPs to support, and other key issues we believe need addressed in debate.

Amendments to support

- Remove the need for a further re-determination after a decision is changed pending appeal, (amendments 5-8,13,14, Jeremy Balfour MSP)
- Tidying up amendments having removed the need to identify an error before a decision can be changed pending appeal (amendments 9 – 12,15, Shirley-Anne Somerville Cabinet Secretary)
- Determinations as part of an appeal (amendment 16, Shirley-Anne Somerville Cabinet Secretary)
- Allow process appeals to progress to the Upper Tribunal (amendments 17&18, Jeremy Balfour MSP)
- Duty to uprate benefits (amendment 1, Shirley-Anne Somerville Cabinet Secretary)

Other key issue for debate

- Power to make provisions for late applications for assistance

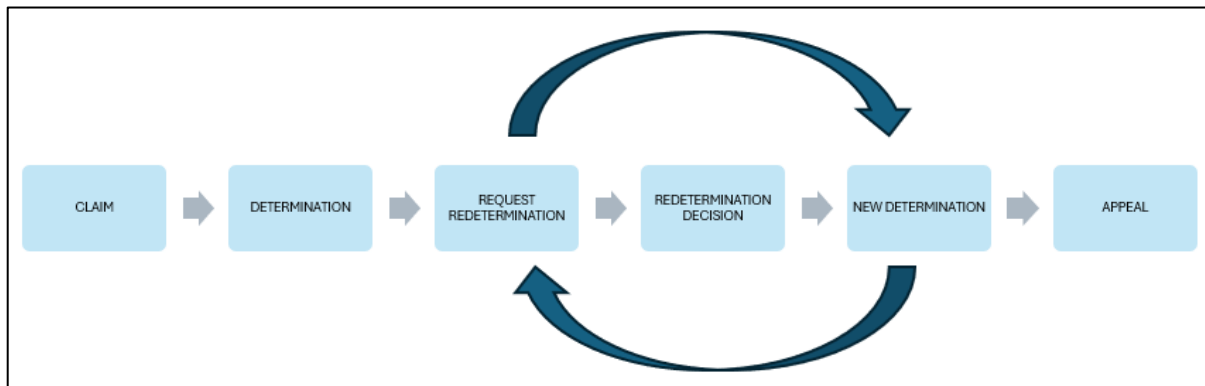
Amendments

4. Remove the need for a further re-determination after a decision is changed pending appeal, (amendments 5-8,13,14, Jeremy Balfour MSP)

CPAG welcomed the provisions in the Bill which will allow Social Security Scotland to make a new determination ahead of an appeal if it is identified that the original determination is less generous than it should have been. However, if the individual is unhappy with the new determination, rather than proceed to appeal, they must request a redetermination of the new determination. For example:

Alan appeals a decision and subsequent re-determination refusing him adult disability payment. While Social Security Scotland is preparing for the appeal it notices that Alan should have been awarded the standard rate of the daily living component and makes a new determination pending appeal. Alan thinks he should also be entitled to the mobility component. As the Bill is currently drafted, he will have to request a further re-determination, where he risks losing the daily living component, as well as the mobility component being considered, before he can proceed to appeal. (hypothetical example)

5. This extra step introduces an unnecessary barrier and delay for the individual and will take up Social Security Scotland resources. It may also result in individuals getting stuck in a redetermination loop.



These amendments would allow Alan to proceed to appeal without having to request a further re-determination.

6. Tidying up amendments having removed the need to identify an error before a decision can be changed pending appeal (amendments 9 – 12,15, Shirley-Anne Somerville Cabinet Secretary)

Amendments as stage 2 removed the need for an 'error' to be identified in the original determination before a decision could be changed pending appeal. This required a decision maker to look for something legally wrong with the previous determination, whereas it could simply be a different view of the same facts. We are grateful to Shirley Anne Somerville for bringing further amendments to 'tidy up' after stage 2.

7. Determinations as part of an appeal (amendment 16, Shirley-Anne Somerville, Cabinet Secretary)

This amendment clarifies that the First-Tier Tribunal:

- cannot take into account any change of circumstances that have occurred since the determination was made, but
- can take into account any circumstances that existed but were not known at the time of the determination.

8. For example,

While Sorsha is waiting for her adult disability payment appeal, she suffers a considerable deterioration in her mobility that was not present when the determination was made. The First-Tier Tribunal cannot take this into account.

9. This clarification is important as means that individuals who have a change in circumstances pending appeal will know (or be directed) not to rely on the tribunal to amend their award but to either:

- make a new application (if there is no benefit in payment), or
- report the change of circumstances to Social Security Scotland who can make a new determination in light of the new information (if there is already benefit in payment).

10. Allow process appeals to progress to the Upper Tribunal (amendments 17&18, Jeremy Balfour MSP)

Process appeals are about bureaucracy rather than whether someone meets the eligibility criteria. For example, provisions in the Bill:

- will allow individuals to request a redetermination request or appeal more than a year after the relevant determination in 'exceptional circumstances'.
- allow Scottish Ministers to make regulations about when 'late applications' might be accepted.

11. It is likely these will be subject to process decisions and therefore process appeals. For example,

Astrid's Scottish child payment stopped in error when she moved from tax credits to universal credit. Astrid didn't see the letter notifying her that the Scottish child payment stopped because she was looking after her terminally ill mum. She submits a late redetermination request and receives a process decision refusing her request because it was more than a year since the determination is made.

12. These amendments introduce a right of appeal to the Upper Tribunal for Scotland in process appeals which would allow the development of case law in these areas. Case law develops precedents about how legislation should be interpreted and applied. Developing case law on process appeals could contribute to the continuous improvement of the Scottish social security system – one of the principles set out in the 2018 Act.

13. Duty to uprate benefits (amendment 1, Shirley-Anne Somerville Cabinet Secretary)

CPAG welcomes this amendment as it will ensure that all benefits, including Best Start grants will be uprated in line with inflation each year so that they retain their real-time value.

Other key issue for debate

14. Power to make provisions for late applications for assistance

Amendments brought by Shirley-Anne Somerville, Cabinet Secretary, at stage 2 introduced regulation making powers for each benefit (except short-term assistance), which, if introduced, would specify the circumstances in

which an application made after a deadline specified in the regulations may be treated as if it had been made by that deadline.

15. We have received assurances from Scottish government officials that this could have a wider application to time periods and time limits than specified deadlines. For example, backdating entitlement to a date before an application was made would be particularly beneficial for adult disability payment and Scottish child payments which do not have deadlines as such. It is difficult to make the connection between the powers in the Bill to regulations made under those powers that would allow this.

For example:

The family of a terminally ill man have been struggling to stay on top of their benefit entitlements. They didn't get round to claiming adult disability payment when their daughter reached 18 and her child disability payment stopped. Adult disability payment can only be paid from the date the application was made and not before (unless the application is made under the terminal illness rules) so there is a gap between child disability payment stopping and the application for adult disability payment being submitted where the family have lost out on money that they would have been entitled to. (Case study from the Early Warning System, May 2024)

16. We urge MSPs to seek assurance from the Cabinet Secretary that these provisions will allow regulations to make provisions for entitlement to be backdated before an application was made.

Contact

To discuss the content of this briefing further, please contact:

Kirsty McKechnie (Early Warning System (Scotland) Project Manager)

Email kmckechnie@cpagscotland.org.uk Phone 0141 641 7091