

Call For Views on Social Security (Amendment) (Scotland) Bill

SUBMISSION FROM SOCIAL WORK SCOTLAND

12th January 2024

Introduction:

Social Work Scotland is the professional body for social work leaders, working closely with our partners to shape policy and practice, and improve the quality and experience of social services, and those in receipt of those services. The work of Social Security Scotland has positively impacted on the lives of many of those in contact with our Members, and as an organisation we therefore welcome this opportunity to respond to the Call for Views on the Social Security (Amendment) (Scotland) Bill.

The reflections within this response are drawn from consultation with our membership which covers senior leaders, including Chief Social Work Officers, service and team managers from across the country in both local authorities and third sector who are involved in delivery of services to children and adults. Views primarily relate to the proposals within the Bill around the care leaver payment but also draw on experience from work with guardians and appointees. Social Work Scotland are also responding separately to the current consultation specifically around the care leaver payment.

Social Work Scotland as an organisation is supportive and appreciative of the principles underpinning Social Security Scotland. The principles which underpin our professional standards include dignity and respect for others, which align with aspects of the Social Security Scotland principles.

Consultation Questions:

Part 1 - Types of Social Security Assistance

The Policy Memorandum explains that Part 1 of the Bill (Types of Social Security Assistance) creates the legal framework that would allow new benefits for care leavers and for children to be introduced in future. This would allow the proposed 'Care Leaver Payment' to be created and allow Ministers to introduce regulations to change the way the Scottish Child Payment operates and align it more closely with other forms of assistance delivered by Scottish Ministers, such as the Best Start Grants and Best Start Foods.

Do you have any views on this part of the Bill

In particular do the provisions in Part 1 raise any concerns for you in relation to the social security principles?

Social Work Scotland have no issues with the capacity created by the Bill to create new benefits for children and care leavers. This part of the Bill is of particular interest to our members, many of whom work with individuals and families experiencing the impact of poverty, and particularly those working within the care system and with adults who are care experienced. Social Work Scotland is responding to the separate consultation of the Care Leavers Payment, the deadline for which is 26th January 2024, and would refer you to that detailed response.

Social Work Scotland is committed to the Promise, our improvement agenda for children and families, and as part of this to efforts to improve the situation of those who are, or have been, in contact with our care system. We recognise the well-researched impact of the trauma experienced by children and young people, particularly where this results in a period in care. The experience of care, even where necessary and positive, involves separation from family which in itself can have a lifelong impact; an impact which may include lower levels of resilience, and at a system level, less robust financial security and available support. Policy changes which improve the experiences of children and families and recognise of the importance of strengthening financial security and the impact of poverty are therefore welcome.

Our response to the consultation of the Care Leavers Payments also notes:

- The importance of terminology. We note that the terms 'care leaver' and 'care experienced' are used. Care leaver has a specific legal definition within the Children and Young People (Scotland) Act 2014, and we would recommend that this is utilised rather than broader term 'care experienced' which is not legally defined but the use of which can encompass anyone with experience or care, regardless of age or when this occurred, and including those currently in the care system.
- The importance of a simple, accessible process for claiming the payment, lodged within an existing benefits system.
- Flexibility in timing of the payment, to ensure it is able to be responsive to times of greatest need.
- The criticality of wrapping support around the payment

Part 2 - Applications for Assistance

The Policy Memorandum explains that Part 2 of the Bill (Applications for Assistance) repeals COVID measures that allowed late applications when the reason for delay was related to Covid-19.

Do you have any views on this part of the Bill?

In particular do the provisions in Part 2 raise any concerns for you in relation to the social security principles?

We would agree that covid measures should be repealed. Consideration of a general clause providing scope for justifiable situations where applications are late may be in keeping with the principles of Social Security Scotland.

Part 3 - Determinations and Re-determinations of Entitlement to Assistance

Part 3 of the Bill (Determinations and Re-determinations of Entitlement to Assistance) sets out changes to the rules about challenging decisions about benefits.

A determination is the point at which Scottish Ministers decide whether an individual is or is not entitled to assistance. When an individual disagrees with the determination, they have a right to re-determination.

Once a re-determination has been made, the individual has a right to appeal should they still disagree with the outcome.

[Changes to the rules about redetermination and appeal include:](#)

Do you have any view on this part of the Bill?

In particular do the provisions in Part 3 raise any concerns for you in relation to the social security principles?

This is not the area of expertise for Social Work Scotland. However, our members work with groups who experience some of the toughest adversity in our society, whose ability to manage processes can be hindered by factors beyond their control. A person-centred approach which appreciates and allows for individual capacity and understands the impact of trauma on life skills is critical where matters of appeal or redetermination are involved. We would therefore also note that ease of access to any appeals process must have within or alongside it, support to access, understand and manage such a process.

This would be in line with the principles of the Bill, putting the needs of those who require assistance first and advancing equality and non-discrimination.

Part 4 – Assistance Given in Error

Part 4 of the Bill (Assistance Given in Error) makes changes to the rules relating to overpayments and recovering 'assistance provided in error'. The Policy Memorandum explains that currently an individual is not liable for overpayments that are not their fault or they could not reasonably have known about.

Do you have any views on this part of the Bill?

In particular, do the provisions in Part 4 raise any concerns for you in relation to the social security principles?

Clarity around responsibility where an overpayment is made is important for both adults and children. In line with the principles of the Bill, we would underline the importance of understanding and taking into account, the wider context of an individual's situation in making such determinations.

We agree that the basic principle of repaying overpayments should be the baseline but with discretion and scope within that to take account of how and why such an error occurred. This is particularly the case where the error has been on the part of the agency rather than the individual, and where the individual claimant may have capacity issues.

Social Work Scotland would therefore caution care around the level of responsibility allocated to of the individual's representative. Regardless of the role they are undertaking eg as Guardian, the benefit 'belongs' to the individual, and not to the representative. Liability therefore needs to lie with them as claimant but should be waved where the error has been that of the representative. Where that representative has made a genuine error, the matter should be progressed as it would for a claimant who does not have a representative; where the representative has misappropriated funds for their own benefit, the claimant should not be held liable, and the matter progressed by referral to the police as fraud/financial abuse.

For adults subject to Welfare Guardianship where there are issues around misappropriation, this would need to be investigated and appropriate action taken. Adult Support and Protection measures may be required, and consideration of the appropriateness of the guardian's capacity to manage the role. Additionally, the Office of the Public Guardian and other partners (social work/police) may have a role in supporting financial safeguarding measures. Similar investigation would be required where parents as guardian for their child are making a claim, with specific care taken to ensure that the child does not suffer inappropriately for errors made by their parent/guardian.

As noted, we argue that the appointee and/or Welfare Guardian should be accountable if they have acted in a fraudulent manner or been found to be behaving in a financially abusive manner; they should be liable to repay the debts owed, but the onus of ensuring that this happens should not rest with the individual benefits claimant.

Social Work Scotland members have experience of working with a fraud investigator within the DWP where concerns have been raised about a guardian misusing benefits. This collaborative approach is helpful in ensuring that the intended beneficiary of the benefit does actually benefit by facilitating improved financial management either through support or by the local authority taking over financial appointeeship.

Part 5 – Appointees

The policy memorandum explains that part 5 of the Bill allows an individual who has been appointed to manage a person's DWP benefits to also manage their Social Security Scotland benefits. This should be for a short period.

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.

Do you have any views on this part of the Bill?

In particular, do the provisions in Part 5 raise any concerns for you in relation to the social security principles?

Social Work Scotland considers that it makes sense that if someone has been appointed to manage a person's DWP benefits that they are also able to manage their Social Security Benefits.

However, making this temporary complicates the process. We would argue that if appropriate checks have been undertaken for the purposes of DWP, that those should be accepted for Social Security Scotland purposes without the need for any additional action.

In relation to the misuse of funds by an appointee, please see our response to question 4 above. We agree that those funds should be repaid to the individual they represented, but that responsibility for this should lie with Social Security Scotland (SSS). As the circumstances of the individual will be such that they required an appointee to manage their finances, SSS should re-pay to that individual the funds the appointee misused and assume responsibility for reclaiming these funds from the appointee.

Part 6 – Information for Audit

The policy memorandum explains that part 6 of the Bill places new duties on clients to provide information to Social Security Scotland.

Currently Scottish Ministers can only request information to determine entitlement to assistance. The Bill would give Minister the power to require individuals to co-operate with requests for information needed to audit the monetary value of error and fraud in the

Scottish social security system as a whole. Ministers will have the power to suspend a client's benefit if they fail to meet the deadline for providing information.

Do you have any views on this part of the Bill?

In particular, do the provisions in Part 4 raise any concerns for you in relation to the social security principles?

Social Work Scotland would agree with the importance of Scottish Ministers having this power but in the spirit of the principles, note the equal importance of exploring the context for some benefit recipients and gaining an understanding of the circumstances which may lead to a non-response to an audit request.

Before that power is utilised, every effort should be made to explore if there a reason why the person might struggle to meet a deadline e.g. those with a learning disability/learning difficulty may be unable to read or properly understand correspondence, and people with mental health issues may have periods of being unable to manage correspondence. In the spirit of the principle of Social Security Scotland, how barriers to providing information are investigated and taken into account is critical. Suspension of benefits and seeking to then have those reinstated can be a challenge for both individuals and those supporting them. Social Work Scotland are aware of many situations where Social Work Services are forced to pick up financial support when benefits have been stopped to ensure basic needs such as food and accommodation are met.

Part 7 – Recovery from Compensation Payments

The Policy Memorandum explains that part 7 of the Bill will apply where a person who gets social security payments as a result of injury, accident or disease, is also awarded compensation.

The person or organisation 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.

Do you have any views on this part of the Bill?

In particular, do the provisions in Part 4 raise any concerns for you in relation to the social security principles?

Whilst appreciative of the thinking and principles behind recovery from compensation payments, no amount of money will substitute for many of the injuries or accidents which result in people claiming benefits rather than leading the lives they expected. Social Work Scotland would distinguish between a compensation payment from parties held liable for

such accident or injuries, and an individual's right to state benefits where they meet that criteria.

Part 8 Scottish Commission on Social Security

Part 8 of the Bill brings additional regulations not the scope of the Scottish commission on Social Security's scrutiny and makes changes to its governance arrangements following recommendations for an independent review.

The Scottish Commission on Social Security (SCoSS) is an independent body separate for the Scottish Government, set up to provide scrutiny of the Scottish social security system. The bill proposes to extend its scrutiny function to ensure that it is able to scrutinise administrative regulations about each form of assistance. The Bill will also remove the Commission's accounting and auditing duties, replacing them with a duty to prepare an annual report, and remove its status as a Body Corporate, ensuring that the level of governance is proportionate and that SCoSS can focus on its advisory and scrutiny roles.

Do you have any views on this part of the Bill?

In particular, do the provisions in Part 4 raise any concerns for you in relation to the social security principles?

Social Work Scotland have no comments on this part of the Bill.

For further information, please contact:

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