OFFICIAL REPORT
AITHISG OIFIGEIL

Social Justice and Social Security Committee

Thursday 7 December 2023

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

Thursday 7 December 2023

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SOCIAL JUSTICE AND SOCIAL SECURITY COMMITTEE

32nd Meeting 2023, Session 6

CONVENER

*Collette Stevenson (East Kilbride) (SNP)

DEPUTY CONVENER

*Bob Doris (Glasgow Maryhill and Springburn) (SNP)

COMMITTEE MEMBERS

*Jeremy Balfour (Lothian) (Con)
*Katy Clark (West Scotland) (Lab)
*John Mason (Glasgow Shettleston) (SNP)
*Roz McCall (Mid Scotland and Fife) (Con)
*Marie McNair (Clydebank and Milngavie) (SNP)
*Paul O'Kane (West Scotland) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Camilo Arredondo (Scottish Government)
Kelly Donohoe (Scottish Government)
Mark Griffin (Central Scotland) (Lab)
Shirley-Anne Somerville (Cabinet Secretary for Social Justice)

CLERK TO THE COMMITTEE

Claire Menzies

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Social Justice and Social Security Committee

Thursday 7 December 2023

[The Convener opened the meeting at 09:00]

Decision on Taking Business in Private

The Convener (Collette Stevenson): A very good morning, and welcome to the 32nd meeting in 2023 of the Social Justice and Social Security Committee. We have no apologies.

Our first item of business is a decision on whether to take agenda item 5 in private. Are we agreed?

Members *indicated agreement.*

Scottish Employment Injuries Advisory Council Bill: Stage 1

09:00

The Convener: Our next agenda item is an evidence session on the Scottish Employment Injuries Advisory Council Bill, or the SEIAC bill for short. It is a member's bill that was introduced by Mark Griffin MSP on 8 June 2023 and which is currently at stage 1. We have already heard from four panels of witnesses and from the Scottish Government on the bill.

I welcome Mark Griffin MSP; Neil Stewart, senior clerk with the Scottish Parliament non-Government bills unit; and Ailidh Callander, senior solicitor with the Scottish Parliament legal services office. Thank you for joining us.

Mark, I believe that you would like to make a short opening statement.

Mark Griffin (Central Scotland) (Lab): Thank you, convener. I appreciate your welcome and the committee's five weeks of evidence taking on the bill. I appreciate the in-depth look that you are giving it.

I will go into the motivation that lies behind the bill and give the committee a flavour of why I am here in the first place. I started thinking about the bill back when we were in the middle of the pandemic. I was thinking particularly about key workers who caught Covid in the course of their work, some of whom developed long Covid and have not been able to go back to work at all. The motivation was really about how we could get long Covid on to the list of prescribed diseases in order to support those key workers, who did not have the luxury of being able to self-isolate, and how we could support them through the new employment injury assistance, which is about to be delivered by the Scottish Government now that the benefit has been devolved.

However, when I looked deeper into the current scheme, which is industrial injuries disablement benefit, the failings in that system became apparent to me, and it was clear that it is more than just people with long Covid who are in desperate need of support. You have heard evidence about the range of people who are being missed out and left behind by the current system, and about the gendered nature of the entitlement as it stands, in that only 7 per cent of applicants through the prescribed route are women. It is a social security entitlement that essentially fails half of the population.

The current system is also outdated in terms of the types of employment that it covers. It does not reflect modern workplaces in the 21st century.

Essentially, it supports the male-dominated heavy industry that existed in the 1960s and 1970s. You have heard compelling evidence from trade unions and workers' representatives about the types of people who are being missed out, including firefighters, shift workers, care workers and footballers with head injuries. As I said, women are completely ignored by the current system. That is why, taking a step back from the long Covid aspect, I felt that a whole-systems approach was more appropriate and important, and that is how I have come to this point today.

The timing of the introduction of the bill and of the proposed council is important, because the Government and the Parliament will need concrete evidence on what the new benefit should look like, so the council will need to be in place to advise on modernising the benefit before it is fully devolved and delivered. The Scottish Government's agency agreement with the Department for Work and Pensions says that it must have a business case and a plan in place for how it will deliver the new benefit by the end of March 2025. That is not very far away: it is less than a year and a half away. The Parliament and the Government really need to get on with the job of delivering what the new entitlement will look like.

In the evidence session last week, the cabinet secretary welcomed the wealth of work that we have collated. A lot of work has gone into the bill and the consultation before it. There is no need to reinvent the wheel; there is a ready-made proposal that the Government could adopt. There is a real risk that, running up to the March 2025 deadline, the Government could end up duplicating a lot of that work and having to do so in a hurry, which would probably cost it a lot more money.

The cabinet secretary and I have an outstanding meeting that we need to put in the diary. When we meet, I will say to her that there is a line in the bill that relates specifically to commencement. I am more than happy to discuss and negotiate with the Government what it thinks the best date for commencement is, and whether it would prefer to commence the bill by regulations and leave it entirely within its gift to choose the date. I am absolutely open to the Government on timing. However, as I said, we are fast running out of time.

The cabinet secretary also said that she thought that an advisory council is perhaps one piece of the jigsaw of employment injury assistance. I fundamentally disagree with that. I do not think that the council would be one piece of the jigsaw. It would be the body of expertise and lived experience that would design the jigsaw. It would advise the Government on designing it and putting it together; it would not just be a single piece of the jigsaw.

Members will see from the bill that the council would have the capacity to commission its own independent research. The membership criteria are clear. The council would draw on medical expertise, workers and their representatives and, crucially, those with lived experience of employment injuries and illnesses. There would be a balance of employers and employees on the council.

Finally, the crucial point is that the bill would deliver the Government's aspiration to be a fair work nation. The Fair Work Convention supports the proposal, because one of the key planks of the ambition to be a fair work nation is giving workers effective voice. It is about giving workers—those with lived experience and real, in-depth knowledge of injuries and illnesses at work—their seat at the table and a voice in designing the new benefit and ensuring that it is what it could and should look like: fit for modern Scotland, 21st century workplaces, and the illnesses and injuries that workers get today and will get into the future.

I look forward to questions. Thank you for the time, convener.

The Convener: Thank you very much. I invite members to ask questions.

Roz McCall (Mid Scotland and Fife) (Con): Good morning, everyone, and thank you for coming along.

I want to talk about timing, which Mark Griffin has already alluded to reasonably succinctly in his opening statement. As you are aware, the Scottish Government wrote to the committee on 6 November and said that it will shortly consult on EIA, but we are still some years away from its delivery. The cabinet secretary could not give a lead-in time from consultation to benefit introduction, and she did not give a timescale. You have highlighted that time is running out.

On the timescale, can you elaborate a little more on why the bill should be supported in the absence of any policy on EIA or commitment to a firm timetable for its introduction and/or reform? Why not wait for the consultation?

Mark Griffin: I am a bit frustrated. It feels like I have been waiting for the consultation since 2019. The Parliament and the committee have been told almost on an annual basis that the consultation will come this year. I think that the Government told the committee that it would come this year, and the cabinet secretary said last week that it would potentially come next year. We have been waiting and waiting, and that is frustrating.

Introducing the bill in the absence of a developed policy of what employment injury

assistance looks like is crucial, because we would want to have the expertise of the council. We would want to have the medical expertise, the trade union expertise and, more important, the lived experience of those who have been injured or have become ill because of their work and are not being supported by the current system. We want the council to be in place to advise on the development of the policy and the new entitlement in advance of the Government taking over full responsibility for the benefit.

On the timescale, the Government has its agency agreement with the DWP, and the DWP has said that there will be no extension to that. It has been fairly firm and robust with the Government that the Government must take over responsibility for the benefit by the end of March 2026.

The Government needs to have a business plan in place, as per the agency agreement, by the end of March 2025. That is less than a year and a half away. By that time, the Government will need to have set out its plans in full, including its business plan for how it will transfer the existing case load over to the new benefit and what the new benefit will look like in terms of levels of payment, entitlement and everything else.

It is important that, before that happens, we get the expertise in place to advise on how all of that is done. We are less than a year and a half away from that point, so we are running out of time.

Roz McCall: Thank you. I appreciate that.

Bob Doris (Glasgow Maryhill and Springburn) (SNP): Mr Griffin, I know that there is frustration over the timing of when the Scottish Government will bring forward its detailed proposals. I understand and appreciate that. However, we need to get it right.

Last week, at committee, Dr Sally Witcher, the former head of the Scottish Commission on Social Security, said, in relation to going ahead now with proposals such as your own that

"we will not know what expertise we will need to scrutinise"

any new benefit that is put in place

"and ensure that it is designed and delivered as effectively as possible."——[*Official Report, Social Justice and Social Security Committee,* 30 November 2023; c 32.]

I think that Dr Witcher was suggesting—I hope that I am not taking her comment out of context; I do not think that I am—that the timing was too early in relation to going now with such a proposal.

Secondly, I would like your reflections in order to help the committee's deliberations in coming to its conclusions. The cabinet secretary indicated that there would be an advisory panel in place with experts on it to advise on what any new benefit entitlement would look like. As you will see, the committee is wrestling with whether or not that is needed at this time.

Mark Griffin: Yes, I saw the comments from Sally Witcher last week. She welcomed the proposal and caveated that with her thinking on whether the timing was right.

For me, there are two aspects to the council. There is the council being there in advance and being able to advise the Government on the creation of the entitlement, and there is the further role that it would have in scrutinising regulations that the Government brings forward and commissioning research into emerging illnesses and injuries.

With regard to employment injury assistance, I think that the membership criteria that I have set out in the proposed bill cover what that would look like.

The cabinet secretary's commitment to creating an advisory group is a welcome development and a step in the right direction, but that is simply a group that will make recommendations, which we have had in the past. We previously had the disability and carers benefits expert advisory group, which was set up and then disbanded before its recommendations had been implemented. DACBEAG was a working group that was set up to advise on employment injury assistance, among other benefits. It recommended that the council be set up, but that recommendation was never accepted or advanced before the group was disbanded.

I am concerned, therefore, that, although a working group is a step in the right direction, it is not set up in statute. The group can be disbanded just as easily as it was set up, and the membership criteria are not set out in primary legislation, so it is not as defined as Parliament might like it to be. It would potentially not be gender balanced. There is a whole range of questions about what that working group may or may not look like on which we, as a Parliament, do not have clarity. Crucially, it would not be protected—it would not be independent of Government or set up by statute, and it could be disbanded as easily as it was created.

09:15

Bob Doris: There are two aspects. Whether there is any value in an advisory group advising Government ahead of a new benefit being finalised, launched and rolled out is a separate matter from an advisory group making expert recommendations to Government about who qualifies for any new benefit. I will therefore separate those for a wee second.

Given all the caveats that Mr Griffin has made about wanting reassurance about what any Government advisory group would look like, would he accept that it would be possible for the Scottish Government to draw on expertise from across the country and all the areas required to inform what any new employment injury assistance would look like? I know that his preference would be to set that up by statute, but that would not be required for that function to be fulfilled.

Mark Griffin: What you describe is possible but not preferable, because it would not be independent of Government. Some of the advisers that could potentially be recruited to such an advisory group would be employed by the public sector and not directly, but indirectly, by the Government.

It is much more preferable to have an independent body set up by statute that has no fear or favour and that can make recommendations on that basis, and that cannot be disbanded at the whims of Government if the Government does not like the answers that it gets.

It is also the case that there has been nothing preventing the Government from having that in place for the past four years. It seems a bit strange that the Government is only now coming forward with a proposal for a potential working group at the point of the introduction of a member's bill in a similar area.

Bob Doris: The final point that I will make is that we heard last week that the reason for some of the delay was the prioritisation of the Scottish child payment in this Parliament, which led to slippage elsewhere. I suspect that the Government's proposal is being introduced now given the tight timetables that Government is on, which Mr Griffin mentioned. Now would be the time to do it. Nonetheless, I take on board the points that Mr Griffin made.

Mark Griffin: I heard the cabinet secretary's comments about the Scottish child payment. However, since the introduction of the Scottish child payment—from the very first announcement—the consultation on employment injury assistance has been promised almost on an annual basis.

The work on the Scottish child payment has not come out of the blue. The Government has known about it and the work on it has been on-going, but the Government has still continued to promise, almost annually, to start the consultation. It is not as though the Government promised that the consultation would arrive before the Scottish child payment and then had to push everything back; it has still promised the consultation almost annually while the Scottish child payment has been being developed and put in place.

Bob Doris: Thank you. Our committee will, of course, pursue that.

The Convener: I want to touch quickly on a point that you mentioned earlier, when Roz McCall was asking questions in relation to the Minister for Disabled People, Health and Work. The minister noted the importance of keeping on track and said that a formal request would be required if the agency agreement for IIDB were to be extended further. Do you have any additional information on that?

Mark Griffin: I am going only on the agency agreements that are in place between the Government and the DWP and on the DWP's assertion that it would not countenance a further delay, which the Government was looking for. In essence, the 2026 deadline is a hard deadline, which the DWP does not have the capacity to go beyond.

The Convener: Thank you for confirming that.

Marie McNair (Clydebank and Milngavie) (SNP): Good morning, everyone.

Mr Griffin, I respect your long-standing interest in the matter. Your bill raises a number of wider issues that need to be considered. Before I get to the theme that the committee wants me to cover, given your long-standing interest in industrial injuries, I want to ask you about something that Ian Tasker said during his evidence. He said that political decisions on eligibility have been

"part of the problem over the years, as successive Governments have just ignored industrial injuries benefit."——[*Official Report, Social Justice and Social Security Committee*, 23 November 2023; c 28.]

Why do you think that UK Governments have, for decades, refused to allow women and men who are injured in the workplace to seek benefit?

Mark Griffin: That has been partly a failure of Government—of my party and of others—and partly a failure of the way in which the Industrial Injuries Advisory Council has been set up. It works at the behest of the DWP. That is why it was important in my proposal to give the Scottish employment injuries advisory council an independent research-commissioning function, so that what it could or could not do was not at the behest of the Government or the civil service and it would have that independent power to commission research and make its arguments almost undeniable when making recommendations to the Government. I hope that there will be a much stronger relationship between the Scottish council and a more responsive Scottish Government and Scottish Parliament, to address the calls for change in the system as it is devolved. To me, those are undeniable.

Marie McNair: If Labour is returned at the next general election, will it make reforms, do you think? Additional consequentials would then come over, which would help us to reform our benefit.

Mark Griffin: I do not know what the UK Labour manifesto will contain. All that I can say is that, in the devolution to Scotland of that entitlement, I want a much stronger advisory council, with its own research power, to be in place to make that argument.

As you said, changes at a UK level would lead to consequentials. However, the Scottish Fiscal Commission has projected that the budget for that entitlement is due to fall, which creates headroom in the budget that has been transferred. There is capacity to make changes specifically on entitlement. However, to focus purely on the Scottish Government and Scottish Parliament aspects of that, I hope that the new council would have a better relationship to start with and that its greater powers to commission research independently would make a difference.

Marie McNair: Thanks for that. When it comes to your bill, you have already covered a number of my questions. The bill would prevent SCOSS from considering a draft regulation on EIA. Does the proposed membership of SEIAC include enough expertise on the wider social security issues to enable it to replace SCOSS's scrutiny role entirely?

Mark Griffin: The committee will see that a lot of the legislation has been drafted as a mirror image of the legislation that created SCOSS. A lot of the membership criteria are the same—off the top of my head, I think that those are in section 97 of the bill that set up SCOSS. There is a mirror image of a lot of the membership requirements. Given the strength of SCOSS and its expertise and experience, I hope that the Government will appreciate that a lot of similar expertise and experience will be recruited into the SEIAC membership.

The bill also mirrors the current situation whereby, at the UK level, IIAC scrutinises regulations on industrial injuries and disability benefit and the Social Security Advisory Committee does so for all other social security regulations.

It is a mirror of what is in place at the UK level.

Marie McNair: Close the Gap said that the membership should be gender balanced. Do you agree with that?

Mark Griffin: Absolutely. That is why schedule 3 of the bill links to the Gender Representation on Public Boards (Scotland) Act 2018. That would achieve the gender balance requirements that are crucially important to starting the work on addressing the failures of the current system when it comes to women.

Marie McNair: Given that, do you anticipate any strain in achieving gender balance when it comes to securing the right expertise?

Mark Griffin: That is why we have given flexibility in the membership. We have said that there should be a range—between six and 12—to give the council the flexibility that it needs to recruit a range of members while maintaining the balance on gender and between employers and employed members, with the membership criteria that we have set out. That gives the flexibility to recruit people with the level of expertise that we need.

You will have seen from five weeks of evidence that passionate people with a lot of expertise are desperate to get around the table and start doing the work, so I do not think that there will be a shortage of volunteers.

Marie McNair: Thank you. I really appreciate your answers.

The Convener: I will come in on that quickly. You touched on the membership, which would be fairly small given the wide variety of issues that the council would be dealing with. How would you expect it to get the required level of expertise, given some of the scientific and social security issues? How would the council be able to widen the net, if you like?

Mark Griffin: As I said, under the bill, the council would have a membership of between six and 12 people. The current UK advisory council has 17 members, so the proposed council would potentially be two thirds the size of the UK advisory council. However, we would not expect every single category in the membership conditions to be met by a single individual—there would be crossover, and there would be people with a range of skills and multiple areas of expertise.

A council of 12 could comfortably meet the membership conditions. Going beyond that number would potentially be overcostly, given the proportion of benefit spend that the council would be scrutinising. With a bigger membership, the costs could potentially run a bit higher than we would want.

The Convener: Touching on the wider role that SEIAC could play, witnesses have suggested that it could have a more preventative role in helping to improve occupational health in the workplace. To what extent is that possible, given that a statutory body could not be given functions that relate to reserved areas?

Mark Griffin: We were really careful about reserved and devolved issues. I absolutely would

not want the legislation, if the bill was passed, to go to the Supreme Court—I do not plan on going there in my lifetime. Therefore, I was careful to make sure that the bill did not stray into the territory of the preventative role, which is reserved and is with the Health and Safety Executive.

That said, the work that the council would do would have a preventative role in itself. The research that it would commission would fill the current data gaps in Scotland, and filling data and knowledge gaps and improving awareness and education would have a preventative role. The council would be mandated to have at least one public meeting every year, at which it would publicise its work and improve education on the issues, which would improve prevention.

If the council made recommendations that were accepted by Government and that increased entitlement, given that the budget for employment injury assistance will be demand led, I imagine that, if the Government saw that demand-led budget creeping up, it would look into the issue to see why and would probably take preventative action of its own.

Although the council would not have any direct impact on preventative work, because of the issues around reservation that you mentioned, a lot of its work would, in itself, lead to greater prevention of illness and injury in the workplace.

The Convener: Thanks very much. I will bring in Bob Doris.

Bob Doris: I have a supplementary on the convener's questions, but I first want to ask briefly about something that you said in your last answer, Mr Griffin, just for a bit of clarity. You mentioned increasing entitlement and recommendations. Do you mean recommendations on changing the eligibility criteria to increase entitlement, or do you mean scientific and wider evidence that the threshold has been met and that certain conditions and categories in the workforce should receive the benefit? Are you talking about changing the eligibility criteria or about scientific and wider expert evidence that the eligibility criteria and threshold have been met?

Mark Griffin: I was talking about prescription. If the council made a recommendation on prescribing certain illnesses or injuries in certain occupations and the Government decided to accept that recommendation and implement it, which then led to a bigger call on the budget, the Government might look at that and consider that there was a bit of preventative work to do in, say, the fire service, the health service or whichever area the spend had been driven by.

09:30

Bob Doris: That was not the focus of my question. Other members will ask about whether we can address IIAC's fundamental flaws without changing the eligibility criteria; that is for others to explore. I am interested in the preventative role. I am slightly conflicted, not in relation to the need for a preventative role, but about whether this is the right bill at the right time. However, the bill includes lots of really good things, which I do not think should be lost.

One issue that has come up is the gap that exists with regard to granular data at workplace level. I do not think that the work that the Health and Safety Executive does is sufficient in that regard. Reporting under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 is not the only way in which such data can be gathered. There is a gap there, and it is an area where devolved and reserved responsibilities overlap. Of course, trade unions are important, as are occupational health and others.

The committee will have to make recommendations. The essence of my point is that I do not want those recommendations to be bound by constitutional debates. If the evidence suggested that the preventative role should be exercised in relation to aspects of employment law or health and safety law, would any expert body feel empowered to make recommendations on reserved matters? I would like to know your views on that. For completeness, I would also like to know whether you think that the committee should recommend that employment law and health and safety law should simply be devolved to this Parliament, because that would mean that all those powers would sit in one place.

Mark Griffin: The member will know from the vote that we had in Parliament in November that there is no disagreement between me and him on devolving employment law, but we are looking specifically at the bill.

Bob Doris: It is good that you have agreed that it would be helpful for the bill if employment law were devolved to this Parliament. For completeness, can I check what your view is on the devolution of health and safety law?

Mark Griffin: I might not have explained myself properly. I do not disagree with the need for employment law to be devolved, but I do not think that that is necessarily applicable to the bill.

On the wider aspect, with the bill, we are seeking to set up a council that would scrutinise regulations on employment injury assistance. Although, under the bill, the council would have a specific power to work with others—in its evidence, the HSE said that it regularly works with

the Scottish Government and public bodies in Scotland, so it would have that ability—

Bob Doris: I apologise for cutting across you, but it is worth noting that the Health and Safety Executive would not come to give oral evidence to the committee. Also, the HSE's written evidence is pretty incomplete and insubstantial, although it mentions the fact that it has a pretty close working relationship with IIAC. Therefore, it would need to have a pretty close working relationship with SEIAC or whatever was put in place in Scotland. However, the HSE is pretty much silent on that and will not give a view on it, so I am a bit dissatisfied.

My line of questioning is not about criteria and eligibility for a new benefit; it is about the preventative work. If research and evidence at a granular level were to make a compelling argument for employment law or health and safety legislation to be changed on preventative grounds, should the proposed body not have the power to make pretty strong recommendations on that? Would it not be helpful if those powers sat in the Scottish Parliament? That is the essence of my questioning.

Mark Griffin: There is a specific provision in the bill that gives the council the power to work with other bodies—including the HSE—as it sees fit. Although the HSE has not given oral evidence, it said in its written evidence that it regularly works with the Scottish Government and with other public bodies in Scotland, so it seems that it would be capable of working with the new council and would be willing to do so.

The HSE has observer status on IIAC. It would be open to members to propose an amendment at stage 2 that would mean that HSE would have observer status on SEIAC, too. We could look at that, but the bill already includes a power for the new council to work with others, including the HSE. However, the council would not have a preventative role in and of itself, because of the restrictions to do with reservations.

Bob Doris: I am a bit confused, Mr Griffin. I will ask my question one more time, after which I will not pursue the point. We are talking at cross-purposes, which was not my intention.

I want to capture something really good about the proposed legislation, irrespective of whether it is in your bill or in anything that the Scottish Government might introduce instead. If the Scottish Parliament, as a statutory body, identifies deficiencies in the workplace where we could do more to prevent ill health or disease, and if that overlaps with employment law and health and safety legislation, should the body be able to make recommendations on such legislation?

I will not ask again whether that should sit within the Parliament's competence, because we were not getting anywhere on that point, but should the body be able to make recommendations in relation to those two matters?

Mark Griffin: As the bill stands, and as it is set up, the council would not have the power to interfere on preventative work because of the reservations.

Bob Doris: Could it make recommendations, though?

Mark Griffin: Anyone could make recommendations, but whether it would be within the council's power to do so is a different matter. I would argue that I have been very clear about staying within the bounds of the devolution settlement; I do not want the bill's provisions to end up before the Supreme Court. We have focused mainly on the powers that are within the competence of the Scottish Parliament. That is not to say that we do not agree on the need for further devolution, which could lead to greater enhancements to health and safety at work. However, I am operating within the constraints that the Presiding Officer and the Parliament have set for me on drafting this piece of legislation.

Bob Doris: I will not test the convener's patience any further. Thank you.

The Convener: Thank you very much, Bob. I invite Paul O'Kane to come in.

Paul O'Kane (West Scotland) (Lab): Good morning, Mr Griffin. I am keen to understand the opportunity for reform, which we have already mentioned. Last week, the Scottish Government, through the cabinet secretary, argued that the bill would not deliver a reformed benefit, and we have already heard discussion to that effect today. Will you explain how setting up SEIAC would address the desire for reform that was expressed by the stakeholders from whom we heard?

Mark Griffin: This bill, in and of itself, would not deliver a reformed benefit; it would be up to the Government to do that. However, if the Scottish Government were to consider the devolution of an inherently unfair and discriminatory system, in creating a new benefit, which you would hope would be in line with the Parliament's progressive ambitions on devolution, it would surely want the people who were sitting round the table advising it on the new benefit to have lived experience—that is, people who have been left behind and discriminated against by the current system. That is where many of the stakeholders who are desperate for change are putting their argument. The best thing to do would be to set up the council, have it exist independently of the Government and get those people round the table

to advise the Government on the set-up of the new benefit.

As I said, we are running out of time. There is less than a year and a half for the Government to put in place its plans for the new entitlement. To my mind, the best approach would be to have the experts and the people with lived experience design the new benefit from the get-go. Last week, the cabinet secretary said that she felt that an advisory council was a part of the jigsaw of EIA. To me, that is completely wrong. The advisory council would design the jigsaw, set it up and ensure that it best meets the needs of the people of Scotland who are becoming ill or injured in the course of their work.

Paul O'Kane: Let us turn to the stakeholder engagement that you have undertaken in preparing the bill. We have heard clear evidence on the importance of stakeholders' lived experience and about its range, breadth and depth. Which areas might contribute to the expert advice that would go into the creation of the benefit?

Mark Griffin: A whole range of occupations have been ignored. The Fire Brigades Union has presented really strong evidence of firefighters suffering from cancers at much earlier ages than the rest of the population because they are being exposed to contaminants. There is clear evidence that shift workers, particularly female shift workers, have a higher incidence of breast cancer and other cancers. There is a strong campaign, which is supported across the parties, on footballers with head injuries. The current system completely ignores a range of workers who have been affected by asbestos, and there is a strange rule that people need to have worked with asbestos itself, which ignores those who worked every day in buildings with asbestos and those who have handled overalls that were covered in asbestos dust.

A whole swathe of workers who have become ill, been injured or died as a result of just going to their work has been completely ignored for the past 50 or 60 years. The devolution of the benefit represents a real opportunity to start to address that, but we will be able to do so only if we get people with lived experience in the room and on the council—which must be independent of Government—from the get-go, so that they can make recommendations on setting up the benefit.

Paul O'Kane: I want to return to the comparison between a non-statutory working group and your proposal. Last week, the Government said that we will have a non-statutory working group. You touched on some of this in your exchange with Mr Doris, but it would be useful for us to hear you compare that working group with your proposed council. Why is having that on a statutory footing so important in ensuring that recommendations are acted on and implemented?

Mark Griffin: It is key that the council is set up through primary legislation that this Parliament passes, because that will protect its status. Even if the council makes a recommendation that a Government of whatever colour strongly disagrees with, it will not be at risk of being disbanded. A working group that is set up by Government can be disbanded just as easily as it was created. We have seen working groups set up and disbanded without their recommendations being implemented. It is crucial that we set out clearly in statute that the body will be independent of Government, and also the membership requirements of the body, so that it is not subject to change at the whim of Government and it cannot just be ignored.

We also need to consider who will be on the body. It is likely to include some public sector workers, some of whom will be employed directly or indirectly by Government. If the body is a Government working group, they might feel that they are curtailed by their employment status. It is important to give them the protection that will be afforded by the body's independence if it is a statutory body this is created by Parliament through legislation.

Paul O'Kane: Your contention is that the Government would be able to abolish a working group on a whim, which would mean that we would lose the richness and diversity of representation. We heard the trade unions speak about the importance of having that worker representation. I also note Marie McNair's point about gender balance being locked in under the Gender Representation on Public Boards (Scotland) Act 2018.

Essentially, you are saying that, without a statutory underpinning, the body would be much looser. Rather than the expertise that sits on it being chosen by the Government, you believe that it is important to lay out the requirements in statute so that there is a clear path to people being represented on it.

Mark Griffin: Absolutely. We need the membership to be clearly defined. It is important to look at the comparator body in the UK system. Although, as I said to Marie McNair, the set-up and the relationships of IIAC are not ideal, at least it has worker voices on it, and it was set up by primary legislation, so it cannot be disbanded.

Normally, we devolve things so that the decision makers are closer to the people who are affected and to be more progressive. In this case, the benefit has been devolved but we are cutting out lived experience. We will cut out workers' involvement and trade union involvement if we do

not establish a council. We need to fill that gap, irrespective of whether we do that now or later.

Let us not reinvent the wheel. As I said in my opening statement, and as the cabinet secretary has said, a lot of work has been done on the proposal. We could end up in a situation in which the Government replicates that at pace right up to the deadline, spending a lot more money in the process, rather than our just working together on the bill when it comes to stage 2 to get something that we can all agree on.

09:45

The Convener: I invite John Mason to ask a question.

John Mason (Glasgow Shettleston) (SNP): You will not be surprised to hear that, as usual, I will ask about finances.

I will start with the financial memorandum. In the two areas that I am particularly interested in—research and information technology—I note that the figure for IT and website set-up costs is £50,000, with maintenance at £7,000 a year, while the figure for research is £30,000 a year. I just wonder whether all the figures look a little bit low. What can you say about them? Why do you think they are the right ones?

Mark Griffin: The estimates in the financial memorandum are just that: financial estimates. They are based on bodies of a similar size and nature that have been created. Indeed, the detailed work that we have done on the IT costs is based on similar set-up costs for the patient safety commissioner for Scotland.

I think that the figures stand up. There has been an element of confusion—if I can call it that—about the IT set-up costs in the previous evidence sessions; we are not talking about the IT set-up costs for the benefit itself or for the costs for transferring paper and microfiche from huge warehouses down south to up here. Instead, we are purely talking about the IT set-up costs for a very small body, with, as I have set out, three or four members of staff. Therefore, when it comes to the IT set-up costs, I think that, when we look at comparators such as other bodies of a similar size, we will see that the estimates are absolutely robust. I would stand by them.

Research is a different area, but, again, we have provided three separate examples of the costs of research done by other similar bodies. Having just checked the financial memorandum, I would point out that it says specifically:

> "The nature and length of research commissioned would be a matter for the Council, so it could vary significantly."

I appreciate that we have given three examples—and the figure of £30,000 is closely related to the three examples that we have given—but, as the council is set up and sets its own work plan, that figure "could vary significantly", as the financial memorandum says.

It was good to hear the cabinet secretary say last week that the £30,000 figure is perhaps too low, because it seems as though the Government is open to the negotiation that would inevitably take place. The council would independently set its work and research plans and then negotiate its budget with Government. It is likely that that is where we would end up, but, as I have said, it was good to hear that the Government seems to be open to having that discussion about what it would view as an adequate and realistic research budget. We have sourced and referenced the costs of similar bodies, but we have also clearly caveated that by saying that the costs "could vary significantly".

John Mason: You would not get an awful lot of research for £30,000, would you?

Mark Griffin: It would depend on what research the council was carrying out. It could be looking at existing research on, say, cancers in firefighters, on which the Fire Brigades Union has already commissioned a strong body of research. For that particular work, the council could rely on existing research, and the figure would more than cover the costs of interrogating it. I go back to my earlier point that the council would set its own research and work plan independently and would negotiate on that basis with the Government as to what it felt that its costs in a particular year would be.

John Mason: Okay. I accept the point that the financial memorandum and your figures only have to cover this particular bill. However, I would point out that, with regard to women being disadvantaged under the present system, which has already been mentioned and which I think we will agree on, industrial injuries such as cancer in firemen and stress in teachers, those things are all missed out at the moment. What would happen if the council got set up and recommended that all those things be included but there was no money in the Scottish budget to pay any extra benefit? We would still be stuck with whatever the figure is—£84 million or thereabouts. What would happen then?

Mark Griffin: The council would purely make recommendations; it would not control the Scottish Government's budget. It would be for the Scottish Government to decide whether to accept the recommendations and then to decide whether to find the funding. Governments make choices on priorities every single day of the week. It would be up to the Government of the day to decide whether to accept the recommendations on the basis of costs. The council would investigate, commission the research and make

recommendations. It would then be for the Government to decide on those and how they were funded.

John Mason: When they were before us, the trade unions certainly had an expectation that there would be an expansion of issues considered, and that would almost inevitably lead to an expansion of benefits paid. Is there any point in having the council if it makes a range of recommendations and the Government says no to them?

Mark Griffin: No, but SCOSS makes recommendations on social security provisions and it is for the Government to decide whether to accept them on the basis of costs. You will be aware that SCOSS has made recommendations that the Government has refused to action on the basis of costs.

Further, there is already headroom in the budget. The Scottish Fiscal Commission has said that the budget is likely to fall from £78 million to £74 million, if I remember rightly. That is because of the current system and the way in which it is set up. As I said, in essence, the industrial injuries disablement scheme supports men who worked in heavy industry in the 1960s and 1970s. As those men are, sadly, passing away, entitlement is dropping off, and the budget is falling, year on year, because of that. As we have not updated the list of prescription or entitlement, that will not change and the budget will continue to fall.

To my mind, there is already headroom in the budget to make changes. However, as I said, it would not be for the council to decide on Government budgeting. It has no role in setting the Government's annual budget. The Government of the day will make decisions based on the argument that the council makes and based on political pressure. When it comes to budget day, every single year, trade unions and other campaigning organisations will apply pressure that their priorities should be reflected over any others. It will be for the Government of the day to decide. The council cannot tie the hands of whichever Government is in office when it comes to setting its budget.

John Mason: On the timing for setting all of this up, the Government seems to be clear that stage 1—which you have rightly said is coming along quite soon—will be purely about transferring the payment from the UK to Scotland. There will be no changes for the first few years, then, after a few years, maybe the Scottish system will change. If that is the timescale that we are looking at, is it worth spending money on a council at this point?

Mark Griffin: The cabinet secretary said last week that she did not know what the new benefit would look like. If the cabinet secretary herself does not know what the new benefit will look like, I would say that the Government needs expert advice, which is what the council will provide.

The bill would put the council in place in advance of devolution of the benefit. Through its expertise and lived experience, the council will be best placed to tell the Government what the new benefit should look like. We are not simply devolving industrial injuries disablement benefit and introducing it like for like. The Government is changing the name and, I expect—

John Mason: Is it not the case that, to start with and for the first few years, only the name will have changed?

Mark Griffin: That will be the choice of the Government, which can choose to change or not to change it. That is not for anyone but the Government or Parliament to decide.

Katy Clark (West Scotland) (Lab): It is proposed that the council be given powers to request information from a very wide range of organisations. Can you justify that? Why are such extensive information-seeking powers proposed?

Mark Griffin: We modelled the information-requiring powers on those in the Freedom of Information (Scotland) Act 2002. We felt that it was a good place to start. We also listed other organisations.

It is important to give the council teeth so that it can go after information and fill the data gaps that currently exist, to support its work. That said, I hope that it would have good working relationships with the organisations that are covered by the Freedom of Information (Scotland) Act 2002, so that it is able to get information voluntarily and does not have to require it.

That was the initial thinking behind the provisions in the bill. They were modelled on the 2002 act, which we felt worked well. I know that you are doing work on freedom of information legislation, which might be updated at some point in the future.

Katy Clark: Indeed. I lodged a final bill proposal this morning, but that is for a different discussion.

The 2002 freedom of information legislation enables designation of more bodies. Do you envisage there being provision to extend the range of bodies that are covered, if experience requires it?

Mark Griffin: The landscape of public bodies changes almost annually and with every Government, so we have put regulation-making powers in the bill to allow ministers to designate additional bodies as they are created.

The Convener: I invite Bob Doris to ask the final set of questions.

Bob Doris: I have some technical questions, to complete our scrutiny.

It is proposed that SEIAC be established as a body corporate with a duty to audit its own accounts. I could not previously have told you this, but in researching for your bill, I found that that is unusual for advisory NDPBs. Other bodies do not do it that way, but SEIAC would. Why the difference?

Mark Griffin: Again, that relates to how the bill was drafted. The closest comparator that we had when we were drafting it was the creation of SCOSS. We mirrored a lot of its provisions, but I appreciate that, since the bill was introduced, legislation has been proposed to change SCOSS's status and it has given evidence that the current system is overly burdensome. I am open to amendments at stage 2—if we get that far—to change reporting requirements, given the new body of evidence that we have received from SCOSS.

Bob Doris: Thank you for putting that on the record. If I ask you that question again, Mr Griffin, I will avoid the acronym and just say "non-departmental public bodies". It is much easier to say than putting those letters together.

The bill includes minimum timescales for scrutiny and requirements to consult, regardless of whether regulations are substantial or minor and technical. Why do you think that that is proportionate? SCOSS does not have such requirements. The minimum timescale in the bill is four months—a one-month lead-in and three months after that. I am also conscious that we are not quite sure what the new benefit will look like, what the eligibility criteria will be or what types of regulations might be seen from time to time.

We are all a little bit in the dark. Why are those minimum timescales in the bill? Might they be burdensome when a new body has to be fleet of foot and move quickly? You mentioned that you tried to mirror SCOSS as much as possible, but SCOSS does things in a different way. Why is there a difference?

Mark Griffin: That reflects evidence that SCOSS has given to committees, in which it has—I do not know whether "complained" is the right word—raised concerns about the notice periods that it gets from Government and the time that it has to report on regulations. The provisions reflect some of SCOSS's early work that suggests that a greater lead-in time is needed.

However, we have been careful to include a provision that says that, when any regulation that is made by the Government is considered to be urgent, the responsibility to consult or timescales will be waived. The bill reflects issues with working practice that SCOSS raised but still gives the flexibility to be, as you say, fleet of foot if the Government feels that regulations need to be introduced urgently.

Bob Doris: That is helpful. The member has mentioned SCOSS a lot, and I understand why he would do that. SCOSS also considers itself to be fiercely independent of the Government.

In my earlier line of questioning, I tried to separate a non-statutory advisory group that would advise Government on what the new benefit should look like from a statutory body that would make recommendations to Government about which groups, individuals and conditions would qualify for the benefit. One suggestion that we heard was that, although SCOSS does not have the expertise to do that, a sub-group of SCOSS could have that expertise. That would have the advantage of not requiring that a new body be set up. That group would be statutory and independent, but it might be less costly. Did you consider that?

10:00

Mark Griffin: We did, but, given the nature of the entitlement that we are looking at, which is about giving workers who have been injured or have become ill at their work support through the social security system, it is important for workers with lived experience that the body is given permanence and has a statutory underpinning. As a sub-committee of SCOSS, the body could simply be disbanded whenever SCOSS felt the need for that to happen.

Bob Doris: What if the sub-group was put in statute, though? I want to give the bill a good hearing, but I need to make sure that I look at all the potential options for the best way to do this, and the suggestion of a sub-group of SCOSS is one of them. If that sub-group was specified and entrenched in statute and could operate independently, that might not be your desired outcome, but would it still be progressive?

Mark Griffin: That would require primary legislation like the bill, so it would take a lot longer and would push a lot closer up to the deadline that the Government has for taking over responsibility for the benefit. We would need to mirror the provisions in the bill on membership, the balance of employers and employees, and ensuring that the body included lived experience, so I guess that we would still need primary legislation to implement that. I am not sure how much financial saving there would be from creating a sub-group of SCOSS with essentially the same purpose and function, and it would probably take longer to get to the same point as we would reach by passing the bill.

Bob Doris: That is helpful. I am not sure about the issue; I am just trying to make sure that the committee looks at all the potential options. Clearly, the bill presents us with one specific option.

I appreciate the evidence that you have given this morning.

The Convener: That concludes the evidence session. I thank all our witnesses for attending. The committee's next step will be to report to the Scottish Parliament on the bill in the coming weeks.

I briefly suspend the meeting to allow us to set up for the next agenda item.

10:02

Meeting suspended.

10:04

On resuming—

Subordinate Legislation

Social Security Information-sharing (Scotland) Amendment Regulations 2024 [Draft]

The Convener: The next item of business is consideration of a Scottish statutory instrument. The instrument is laid under the affirmative procedure, which means that Parliament must approve it before it can come into force. I welcome Shirley-Anne Somerville, the Cabinet Secretary for Social Justice, and her officials from the Scottish Government, who are Camilo Arredondo, solicitor, and Kelly Donohoe, cross-cutting benefits policy official. Thank you for joining us.

Following this evidence session, the committee will be invited under the next agenda item to consider a motion on approval of the instrument. I remind everyone that the Scottish Government officials can speak under this item but not in the debate that follows.

I invite the cabinet secretary to make a short opening statement.

The Cabinet Secretary for Social Justice (Shirley-Anne Somerville): The primary focus of Social Security Scotland is to ensure that people receive the assistance that they are entitled to, putting the person first and treating them with fairness, dignity and respect, in line with the key principles of the Social Security Scotland charter. However, the Scottish Government recognises that, in undertaking that role, Social Security Scotland engages with some of the most vulnerable people in Scotland. Inevitably, that will lead to instances in which it becomes apparent that a person might be at risk of harm. To adequately support people in that situation, we must have a clear and robust process in place.

As such, and in keeping with our commitment to support the wellbeing of the people whom we engage with, in March 2022 a public consultation was launched seeking views on creating a specific legal gateway for Social Security Scotland to make to the relevant authorities referrals concerning risk of harm. The consultation responses demonstrated overall support for the proposal.

It is important to make a distinction between cases in which a person might be at risk of harm and those in which there is an immediate threat or risk to life. Situations in which immediate threat or endangerment to life are observed are reported to Police Scotland under the common law duty of care. The regulations that we are considering today cover sharing of information when a person

is at risk of harm, with harm variously being defined, depending on the sharing, to include significant neglect; physical, mental or emotional harm; or the likelihood of their causing self-harm.

Child and adult protection services in local authorities are governed by legislation that is underpinned by Scottish Government national guidance on child protection and by a code of practice for adult support and protection. Those allow referrals to be made by Government agencies and third sector organisations that engage with vulnerable people and which may have cause to refer concerns of harm. In July 2022, the code of practice was updated to include Social Security Scotland as one of the agencies, in recognition that the agency is a key partner with a role to play in supporting vulnerable people.

Referrals in which a risk of harm has been identified are currently being made by Social Security Scotland under an interim process while the regulations are being considered. The agency has a safeguarding team that is staffed by qualified health and social care professionals, who review all concerns that are raised and, where appropriate, make referrals using a gateway in health legislation.

However, that legislation covers sharing of information that is related only to physical and mental harm and does not cover financial abuse. The regulations will enable the sharing of information relating to harm that is caused by financial abuse.

Furthermore, for the purposes of transparency, I consider it appropriate to create a bespoke and explicit legal gateway to cover safeguarding referrals from the agency. Additionally, in drafting the regulations, officials identified that, where a person is an adult with incapacity under the Adults with Incapacity (Scotland) Act 2000 and has a power of attorney, a legal guardian or is subject to an appropriate order, the public guardian has authority to investigate concerns of financial or property abuse. The drafting therefore includes referrals to the Office of the Public Guardian when that is suspected.

The process of preparing the regulations has involved significant engagement with relevant parties, including the Information Commissioner's Office, local authorities, health and social care officials, information governance policy leads, social work leads and data protection officials.

The regulations make provision for Social Security Scotland to make referrals only where there is concern about risk of harm. That is to ensure that there is no interference with the investigating powers or decision-making processes of local authorities. It remains for local authorities to make risk assessments and to evaluate additional help that is required by the individual.

For the avoidance of doubt, the sharing for which the regulations provide will ensure that such a referral will have no impact on the assessment of a person's application for assistance; that only information that is relevant to the risk of harm that has been observed will be shared; that consent from the individual who is being referred will be sought in most instances—although I have included provisions for cases to be referred in which consent cannot reasonably be obtained; that no information concerning a referral of concern of a risk of harm will be held on a person's file relating to their application for assistance; and that such a referral will be stored in a separate restricted access file, in line with data protection laws.

The aim of the regulations is to support vulnerable people who are identified as being at risk of harm by referring them to the appropriate authority for help and support, which—as I am sure the committee will agree—is a positive action for the people who need it most.

The Convener: Thank you, cabinet secretary. We move to questions. Our questions will be directed to you, but you are, of course, welcome to invite an official to respond, should you wish to do so.

Roz McCall: Good morning, cabinet secretary. What training and guidance are in place to ensure that data sharing is proportionate? You alluded to this in your opening statement, but can you give us a more detailed idea of what you think is proportionate?

Shirley-Anne Somerville: All staff have mandatory data protection training, which is refreshed annually. Staff training on identifying vulnerable people who are at risk of harm has been delivered alongside guidance and a process that ensures that staff can raise concerns quickly and effectively. All concerns that are identified are discussed with a line manager and then forwarded to the safeguarding team that I mentioned in my opening remarks. As I said, that dedicated safeguarding team comprises experienced professionals who are responsible for considering referrals and reporting to the appropriate authority. The team is overseen by the deputy director for health and social care and the chief medical adviser. That experience and knowledge inform the proportionality of the information sharing.

The process has many levels and it involves many checks and balances with a view to ensuring that all staff are trained and that information is shared sensitively within the agency and, in particular, the safeguarding team, which has a great deal of experience.

Bob Doris: Good morning, cabinet secretary. I suspect that the regulations have been designed with a view to bringing about quality changes in practice that will make a difference to vulnerable individuals. What changes in practice do you envisage may come about? How will that be monitored?

Shirley-Anne Somerville: At present, as I mentioned in my opening remarks, concerns about risk of harm are referred to local authorities under the National Health Service (Scotland) Act 1978. However, as I mentioned, that does not cover scenarios of financial harm or financial abuse, which is an important aspect of the system that we develop in the regulations. As well as filling those gaps, the regulations absolutely maintain our commitment to supporting some of the most vulnerable people we engage with. Although we have had an interim process in place, it is important that we set out our approach in a clear and transparent fashion.

Monitoring is extremely important, given the sensitivity of the information and the importance that the agency and the Government overall attach to ensuring that we deal with it sensitively, appropriately and thoroughly. A new system of records is being developed to record statistics. Given the sensitive nature of the information in question, it is not held in the main system for all staff to see; it is held in a sensitive way such that only the staff who are dealing with the issues in question will be able to see it. They will be able to monitor that and report up to the executive team as required.

Bob Doris: That is really helpful. If I appeared distracted during your reply, that is because I wanted to check the name of a project. [*Interruption*.] That was not very professional. I will tell you why I was looking at my phone. Last week, I invited to Parliament members of a project called "Financially Included", but its name had escaped me. It deals with economic abuse of women; it supports women to escape such abuse and put their finances back on track having suffered it.

I was very interested to hear what you said about that kind of abuse and exploitation. Can you say any more about how that could help women in particular? You could do that now, or perhaps you could contact the committee after the meeting. I am conscious that economic abuse is a key issue in the 16 days of activism against gender-based violence. If you want to address that now, it would be quite nice to get it on the record this morning. I apologise for that distraction, but I wanted to check that I had my details right about the question that I was about to ask.

10:15

Shirley-Anne Somerville: I thought that I had lost you halfway through my answer, Mr Doris, but that is fine. I have met and visited the offices of the project that you mentioned. I noticed that you had that event and I had hoped to come down to meet them again. I was impressed by the work that the project does and I am pleased to see it recognised in the Parliament.

While I was on that visit, we spoke in great detail about the real concern that we should all have to ensure that abuse is seen in the widest sense, including financial abuse. That is why I was clear in my opening remarks about the need for us to recognise all abuse, including financial abuse. It is a clear concern for many different demographics. The committee will be aware that particular concerns have been raised about older clients and financial abuse towards them. Mr Doris rightly mentioned aspects around domestic abuse and financial control being part of that. I hope that the regulations will be able to assist those women in those types of situations, if agency staff come across that.

The Convener: I invite John Mason to ask his questions.

John Mason: How should clients be informed that their information might be used in this way?

Shirley-Anne Somerville: One of the reasons for having the regulations is to make sure that we are not working under the interim measures that I spoke about and that we are transparent about what is in place. There are data protection and privacy notice statements on the gov.scot website and they make it clear that we will share information. The website also includes mention of safeguarding, which clearly states that information will be shared in very specific circumstances when there are safeguarding concerns.

As all committee members will be aware, the sharing of information is an exceptionally sensitive matter, and a great deal of care must be taken to ensure that it is done lawfully. That is why those statements are made as people go through application processes. When it is not possible to ask a client for their consent for their information to be shared, the regulations still allow for that to happen. That is important because, as was mentioned in the discussion with Mr Doris, there may be coercion or other reasons why a client cannot give their consent at that time. We are still obliged to ensure that we share the information with all the care and sensitivity that the committee would expect the agency to show at that point.

John Mason: My reaction to that is positive, because there is a problem out there that we need to address.

Can you say anything about how the regulations might interact with power of attorney? Would the person who holds the power of attorney be the one who is informed or consulted? Of course, there is a risk that they will be the person who is carrying out the abuse.

Shirley-Anne Somerville: I will bring in one of my officials on that.

Kelly Donohoe (Scottish Government): For clarification, are you asking about power of attorney potentially being held by the person who is committing the abuse against the client?

John Mason: To be frank, I think that that happens, because there are few checks on people with power of attorney. In a sense, that is a separate issue, but we could be talking about either situation.

Kelly Donohoe: In most circumstances, the provisions in the regulations include situations where the power of attorney is with the person committing the abuse against the individual, in which case that would also be one of the points for referral. If it was financial abuse or property abuse that the power of attorney holder was alleged to be committing against the client, that would mean a referral to the public guardian under the new provisions. If it was neglect or physical and emotional abuse that the power of attorney holder was alleged to be committing against the client, there would be a referral to the local authority under the new provisions.

As for a case in which someone else was suspected of committing abuse against the individual, I would have to seek advice from Camilo Arredondo on that, but I do not think that we would seek consent from the power of attorney holder, even though they were standing in the shoes of the client.

Camilo Arredondo (Scottish Government): That is right. Power of attorney is regulated under the Adults with Incapacity (Scotland) Act 2000, the overseeing body for which is the Office of the Public Guardian in Scotland. Under the regulations, there is a route for sharing with the public guardian in all cases in which a power of attorney holder is involved with a client, whether they are the person who is accused of financial abuse or whether someone else is potentially causing the harm that requires the referral. The exact intricacies of who would be informed would depend on the case in hand, but the regulations set out a means of referring matters to the Office of the Public Guardian and the local authority. That will provide for individual situations.

Depending on the exact circumstances, that will provide a method of getting that information to a relevant authority, which will then carry out further investigations and take any further actions as appropriate. The regulations essentially provide a power to share with a relevant authority. It will be for that authority to use its own legislation and powers to carry out the investigation in more detail, depending on what is required. I hope that that makes sense.

John Mason: Okay. Thank you.

The Convener: I invite Katy Clark to ask her questions.

Katy Clark: The regulations apply to

"a person with whom they"—

that is, Social Security Scotland—

"come into contact".

Who, other than clients, would the organisation come into contact with? How would those people be informed about the use of their information?

Shirley-Anne Somerville: It might be best if I give an example. In a situation in which an application is being made for child disability payment, contact will clearly have been made with a parent or carer, and a member of our local delivery team might have genuine concerns not necessarily about the child but about the parent or carer. There might be, say, mental health concerns of whatever kind, or a fear that there is domestic abuse. It is very important that, when we talk about dignity, fairness and respect, we apply those things not just to the client but to everybody whom the agency comes into contact with. In that example, the local delivery staff member will be able to come back and go through the processes that we have talked about in order to assist the carer or parent who might be in difficulty, even though they are not technically the client. Perhaps such examples help to bring out the importance of looking at the situation that presents itself to a member of staff as they are going through a case.

Katy Clark: Can you say any more about how that information will be used and how the person will be informed? What will be the processes in that respect? Will they be similar to what you have just outlined?

Shirley-Anne Somerville: Indeed—they would be the same types of processes. There will be an attempt to achieve consent, but if, for the reasons that we have gone into already, such consent is not appropriate or cannot be given, what we are talking about can still be done.

Katy Clark: Thank you.

The Convener: Roz McCall has a question.

Roz McCall: I apologise for this, cabinet secretary, but I want to go back to Mr Mason's question about how clients will be informed. According to your initial answer, everybody signs up to the initial agreement that there will be

information sharing, but the fact is that many people who are in circumstances of stress will agree to a lot of things without fully understanding what they actually mean. In cases in which there can be no explicit consent because of the circumstances that have already been highlighted, how will the individual know that all this is happening, in effect, in the background?

Shirley-Anne Somerville: They may not know that a safeguarding concern has been raised and delivered to the local authority or the Office of the Public Guardian. As Camilo Arredondo pointed out, it will be up to those organisations to deal with that as they usually would. Again, that is specifically about allowing a member of the agency's staff to ensure that any concerns that they have are dealt with in an appropriate process within the agency. There is the legal ability for a concern to be handed over to the relevant authority, which can then use its own powers and usual manner of investigation to look into it. It would be for those authorities to determine what to do with that information and how to deal with the individual concerned.

Roz McCall: Again, please excuse my ignorance on this, but we could have a situation in which the first thing that the client knows is when somebody from social work turns up at the door.

Shirley-Anne Somerville: In a case where the agency believes that that is the only way that it can be done, yes. For example, the agency may fear that it would make the harm worse and allow a perpetrator of abuse to have more power and control, or more avenues for abuse, if the information is handled in another way. There is a sensitivity around dealing with the information and obtaining consent while also being very careful about how that is done. If it is not done sensitively, that could make an exceptionally difficult situation a lot worse.

The Convener: Paul O'Kane is next.

Paul O'Kane: Good morning, cabinet secretary. We have probably covered some of this, but are there other situations in which explicit consent would not be given but the information would be shared? I am thinking about some of the existing adult or child protection legislation and about interventions that may have to be made with other relevant authorities even though someone has not explicitly given their consent, in order to protect the public.

Shirley-Anne Somerville: Consent is not required where a person lacks capacity to act. An example that might be helpful is referrals to the Office of the Public Guardian where people are covered by the Adults with Incapacity (Scotland) Act 2000. As I mentioned, they cannot give consent.

I have probably touched on the other areas in previous answers. As I said, the regulations provide exemptions to allow for the sharing of information specifically where it is felt that there is "reasonable cause" to suspect that the individual is at risk of harm. That is the important aspect that we always come back to in this respect. I hope that that provides another example of how such a matter would be dealt with.

The Convener: I invite Marie McNair to conclude our questioning.

Marie McNair: Thank you, convener, but I believe that my question was covered in the cabinet secretary's opening remarks.

The Convener: Okay. We move to agenda item 4, which is formal consideration of motion S6M-11172.

Motion moved,

That the Social Justice and Social Security Committee recommends that the Social Security Information-sharing (Scotland) Amendment Regulations 2024 [draft] be approved.—[*Shirley-Anne Somerville*]

The Convener: I invite contributions from members.

John Mason: The regulations are definitely a step in the right direction. There is potentially a problem with financial abuse, and anything that we can do to tighten up the system and protect people is very much to be welcomed.

The Convener: Does anyone else want to comment?

Roz McCall: I am totally behind the understanding that underpins the change, and I think that it is important. I will always have a concern that the individual or the client may, in a lot of cases, be circumvented in certain ways. I accept whole-heartedly the attempt to move forward, and it is important that we do so, but there will always be a little question mark at the back of my mind, as the individual still needs to be at the heart of everything that we do.

The Convener: I invite the cabinet secretary to sum up and respond to the debate.

10:30

Shirley-Anne Somerville: I have very little to add, convener. To respond to Roz McCall's point, I note that the set of regulations is an attempt to ensure that the individual remains at the heart of everything that we do. The existence of a threat of harm to an individual is the reason why we would take the approach, which we recognise is a very serious step, of using the regulations. I hope that I can reassure Roz McCall that the intent is to ensure that we protect some of the most vulnerable people in our society, some of whom,

simply because of their circumstances, may not be able to give their explicit consent. The reason why we are seeking to make the regulations is very much based on the need to protect those individuals.

The Convener: The question is, that motion S6M-11172, in the name of Shirley-Anne Somerville, be agreed to.

Motion agreed to,

That the Social Justice and Social Security Committee recommends that the Social Security Information-sharing (Scotland) Amendment Regulations 2024 [draft] be approved.

The Convener: The committee will report on the outcome in due course. I invite the committee to delegate to me, as convener, authority to approve a draft of the report for publication. Do members agree to do so?

Members *indicated agreement.*

The Convener: I thank the cabinet secretary and her officials. That concludes our public business. We will move into private session to consider our remaining agenda items.

10:31

Meeting continued in private until 11:01.

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