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An t-Ionad Fiosrachaidh

Social Justice and Social Security Committee

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

Social Security (Amendment)(Scotland) Bill

Introduction

This is the third of five panels on the Social Security (Amendment) (Scotland) Bill. Today's session will focus on issues for unpaid carers.

The Committee will hear from:

- Fiona Collie, Heath of Policy and Public Affairs, Scotland and Northern Ireland, Carers Scotland
- Vicki Cahill, Policy and Public Affairs Lead, Alzheimer Scotland

Themes for discussion

The following suggests six themes for discussion, focusing on parts 2 to 6 of the Bill:

- Theme 1: Deadlines for applications (Part 2 of the Bill)
- Theme 2: Challenging decisions (Part 3 of the Bill)
- Theme 3: Overpayments (Part 4 of the Bill)
- Theme 4: Appointees (Part 5 of the Bill)
- Theme 5: Information for audit (part 6 of the Bill)
- Theme 6: Social security principles and aims of the Bill

Theme 1: Applications for assistance (Part 2 of the Bill)

Currently all Scottish benefit applications are accepted late if the reason they are late relates to COVID. Part 2 of the Bill would remove this.

Background

The Policy Memorandum states that it is not necessary to allow for late applications and any flexibilities are better placed in regulations than on the face of the Bill. It explains that:

"There are already a range of flexibilities specific to the forms of assistance where they apply, and which offer scope for the circumstances of the individual case to be taken into account. For example, an application can already be accepted after the initial 8-week deadline for completing an application for ADP (Adult Disability Payment) has passed, provided the applicant has a 'good reason' for being late." Policy Memorandum, para 55

Benefits which have an application deadline include:

- Best Start Grant – which has 'application windows' related to the age of the child (for example, until the child is six months old for the 'pregnancy and baby payment'). There is some flexibility if the family gets awarded a qualifying benefit up to [10 days](#) after the 'application window' closes.
- Adult Disability Payment – in order to get payments starting from the date the claim is first registered, part two of the application form must be submitted within eight weeks of part one, or [later with 'good reason'. Otherwise, the 'date of claim' will be the date that Part 2 is submitted.](#)
- Funeral Support Payment – application must be [within six months](#) of the funeral, with some flexibility provided to account for backdated award of qualifying benefits.

Some benefits allow for 'backdating'. For example Carer Support Payment can be [backdated by up to 13 weeks](#), which can allow for the time it takes to get an Adult Disability Payment decision. For example, if the cared for person is entitled to ADP at the start of March but the decision doesn't come through until May, the ADP payment can be backdated to the start of March. Their carer can't apply for Child Support Payment (CSP) until the ADP claim is decided, but when they do, the CSP can also be backdated to the start of March).

NB: These provisions relate to the initial application for benefit. There are separate provisions in this Bill which provide for late requests to challenge decisions – whether by requesting a re-determination or submitting an appeal.

Previous consideration

In week 1 (7 March), Richard Gass (Glasgow City Council) referred to the Scottish Government's argument that the COVID flexibilities for late applications were not much used, saying:

"The fact that not many folk took up that option should not be a reason not to have that provision in the future. Indeed, [it] provides security that it will not result in an unpredictable expenditure.[...] I am not saying that we should leave an open door, but we should provide for exceptional circumstances". ([Committee Official Report, 7 March 2024, col 8](#))

Last week, Claire Andrews (RNIB) thought that the repeal of s.52 provides an opportunity to look at backdating rules and allowing for late applications.

Submissions from witnesses

In the Call for Views,

- **National Carer Organisations** agreed with repealing the COVID provisions but asked for more clarity about when applications can be accepted late.
- **Alzheimer Scotland** agreed with repealing the COVID provisions, recognising the flexibilities which exist in some benefits for late application.

Members may wish to discuss:

1. Are witnesses content that the repeal of COVID measures leaves sufficient flexibility to accept late applications for benefits?

Theme 2: Challenging Decisions (Part 3 of the Bill)

Background

If someone is unhappy with the decision about their benefit entitlement, they [can ask for a redetermination](#). A different decision maker at Social Security Scotland will make a new decision. Timescales for redeterminations are set in regulations for each benefit (table below).

Table 1: Redetermination timescales

Benefit	Deadline to request a redetermination	Social Security Scotland time limit to complete redetermination
Best Start Grant Scottish Child Payment Funeral Support Payment Young Carer Grant Winter Heating Payment	31 days	16 working days
Child Winter Heating Payment	42 days	16 working days
Carer Support Payment Child Disability Payment Adult Disability Payment	42 days	56 days

In all of the above, late requests for determination can be accepted up to a year with 'good reason', and *currently*, after a year due to COVID (the Bill would change this to after a year in exceptional circumstances).

If someone is unhappy with the outcome of a re-determination, they have up to 31 days to [appeal to the First-tier Tribunal](#). This can be extended up to one year with good reason, and *currently*, after a year due to COVID. (The Bill would change this to after a year in exceptional circumstances). Further appeal rights exist up to the Supreme Court.

Late requests in exceptional circumstances

The Bill would allow requests for redetermination and appeal to be submitted after a year in exceptional circumstances (section 4). Guidance will be drafted and will include examples such as severe physical or mental illness, unstable housing, abuse or detention (Policy Memorandum para 63).

Other measures in Part 3 are:

- Allowing individuals to withdraw their redetermination request (section 5)
- Requiring Ministers to complete a redetermination (section 6)
- Allowing appeals to 'lapse' where the client consents to a more advantageous award offered by Social Security Scotland (section 7)
- Clarifying the actions that a Tribunal can take following a process appeal (section 8).

Submissions from witnesses

National Carer Organisations seek clarification on what would be considered 'exceptional circumstances,' suggesting that it should include having caring responsibilities. They also draw attention to the different deadlines for redetermination and appeal, suggesting that 42 days should be a minimum for carers.

Alzheimer Scotland welcome the flexibility on deadlines and suggest that 'exceptional circumstances' should also include examples which highlight the impact of cognitive impairment. They agree with the measures in Part 3, emphasising the need for "accessible, streamlined processes to avoid undue stress."

Previous consideration

In week 1, Erica Young (CAS) said that the changes in Part 3 of the Bill would "dramatically improve the claimant experience" and she wished to see robust co-designed guidance. ([Committee Official Report, 7 March, col 13](#)).

On **deadlines**, Jon Shaw (CPAG) proposed that redetermination deadlines should be extended and equalised across the different benefits (col 14).

Examples given of **exceptional circumstances** for a late request included health emergency, hospital stay and bereavement. Last week Craig Smith (SAMH) emphasised that there could be many legitimate reasons for being late and it would be important to take a 'generous' approach to interpreting 'exceptional circumstances'.

On **withdrawing redetermination requests**, CPAG argued that a claimant should be able to re-instate their redetermination request within a certain fixed timescale without the need to provide reasons (7 March, col 16) and both Diane Connock (Stirling Council) in week 1 and Kirstie Henderson (RNIB) last week agreed with the idea of a 'cooling off' period.

There has been general agreement about the benefit of **lapsing appeals** and most witnesses have emphasised the need for informed consent, robust guidance and access to advice before accepting the 'offer'.

The Committee has heard different views on the **need for a redetermination stage** prior to appeal. In week 1, Richard Gass proposed removing the requirement for mandatory redeterminations (7 March, col 14) and Erica Young (CAS) said going straight to appeal but allowing those appeals to lapse would be a simpler system (7 March, col 18). On the other hand, Diane Connock (Stirling Council, week1) thought that "that going straight to an appeal would potentially put a lot of our vulnerable clients off the appeals process" (7 March, col 15). Last week, Kirsty Henderson (RNIB) thought that having a time limit to complete the redetermination meant it couldn't become a 'delaying tactic.'

Craig Smith (SAMH) suggested it might be a bit soon to come to conclusions on the necessity for mandatory redetermination stage, but his preference would be to retain it.

On a narrower point, both Claire Andrews (RNIB) and Jon Shaw (CPAG) suggested there should be no need for a redetermination if a client wishes to challenge the determination resulting from a 'lapsed appeal'. (The process in the Bill would be: initial determination, redetermination, appeal, appeal lapses, redetermination, appeal). They argue that the second redetermination is unnecessary.

Members may wish to discuss:

- 2. The Bill would allow requests for redetermination to be made after a year in exceptional circumstances. Do witnesses have suggestions for what should be considered exceptional circumstances?**
- 3. Do witnesses think that the measures in Part 3 will reduce stress for clients while still giving them sufficient opportunity to challenge their benefit award?**
- 4. Are there other measures that could improve the client experience of redeterminations and appeals?**

Theme 3: Overpayments (Part 4 of the Bill)

Unpaid carers may be an appointee or guardian for the person they care for - managing social security benefits on their behalf. The Bill would make these types of formal representatives liable for benefit overpayments in certain circumstances.

The circumstances are that the representative misused the money – i.e it was not spent for the benefit of the person they represent, and either

- The overpayment was the fault of the individual or their representative,
- or
- It was an amount that a person would be expected to notice.

For example, if someone made an honest mistake leading to an overpayment, and if the representative spent the money on themselves, then they would be liable for it. If they spent the money for the benefit of the person they care for, then the person they care for would be liable.

In both these situations the 2018 Act already requires that before recovering any money, Social Security Scotland must have regard to the financial circumstances of the person who owes the money ([Section 65, 2018 Act](#)).

Part 4 of the Bill would:

- Make representatives liable for overpayments in some circumstances but only if they had misused the funds (sections 9 to 11)
- Extend what is considered to be the individual's fault to include errors caused by or contributed to by their representative - so long as the representative had not misused the funds (Section 9)
- Clarify that overpayments can be recovered from a deceased's estate and extend this to include decisions on overpayment liability taken after the individual had died (section 12)
- Introduce reviews and appeal right for decisions on overpayment liability (section 13).

Submissions from witnesses

National Carer Organisation are concerned that these provisions should not put carers or cared for people "in the position that they have to consider cutting back on essential spending items like food or energy" to repay an overpayment. They note that overpayments could arise due to an oversight. They also comment that overpayments can arise if the person being cared for dies. They say: "it may take time for unpaid carers to adjust...a compassionate approach should be taken."

Alzheimer Scotland consider it is reasonable to recover overpayments but that fair processes must be used to support vulnerable applicants. "Communication must be clear and the recovery procedures must allow for various repayment options." They agree that the estates of individuals and their representatives are liable for overpayments and welcome the introduction of the right to challenge a decision on liability.

Previous consideration

In both week 1 and last week, witnesses suggested that it could be difficult in practice to work out who has benefited from the funds and therefore who would be liable for an overpayment. For example, if money goes to a 'household pot' it might be difficult to disentangle what was spent on what.

Last week, while there was general agreement with the principle that the person who benefits from the money should be liable for the overpayment, witnesses emphasised the need for a clear framework and robust guidance, co-produced with those with lived experience.

Craig Smith said SAMH had had a lot of discussion about these provisions and that “ultimately we agree with the proposals in principle [but] I think there’s a real danger of disincentivising people to take up appointeeships.” [...] “It is a challenging one but we think the balance is right.”

Members may wish to discuss:

- 5. Appointees and other formal representatives would only be liable for overpayments if they misused the funds. They would not be liable for ‘honest mistakes.’ There is also an existing requirement to have regard to financial circumstances before seeking to recover overpayments. Do witnesses agree with making formal representatives liable in these circumstances?**
- 6. The person being cared for can already be liable for ‘noticeable’ overpayments caused by their representative. The Bill extends this to include overpayments that a person would not necessarily notice that were a result of an ‘honest mistake’ by their representative. Do witnesses agree with this?**
- 7. Following a bereavement, it is possible that the deceased’s benefits could be overpaid. Do witnesses have any comment on the ability to recover benefit overpayments from the estate of an individual who has died?**

Theme 4: Appointees (Part 5 of the Bill)

Part 5 of the Bill would make two changes to arrangements for appointees:

- Extend the situations in which a DWP appointee can act for Social Security Scotland benefits (section 14)
- Require appointees who misuse funds to repay those funds to the individual they represent (section 15).

Anyone wishing to be an appointee for someone getting a Social Security Scotland benefit must be [authorised by Social Security Scotland](#).

When someone moves from a DWP benefit to a Social Security Scotland benefit, they may already have an appointee, approved under DWP rules.

Social Security Scotland already recognises DWP appointees for those individuals who have transferred from Disability Living Allowance or Personal Independence Payment to [Child Disability Payment](#) or [Adult Disability Payment](#).

The Bill would create a regulation making power to allow this arrangement in other situations. For example:

- When someone moves from England or Wales to Scotland
- When someone has an appointee for reserved benefits (e.g. Universal Credit) and makes an application for a devolved benefit (e.g. Scottish Child Payment).

The Bill would require that “as soon as reasonably practicable”, the appointee is assessed under Social Security Scotland procedures (Section 14 inserting s.85F(3)(b) to the 2018 Act).

Submissions from witnesses

National Carer Organisations and **Alzheimer Scotland** agree with recognising DWP appointees in the Scottish social security system.

Previous consideration

Over both evidence sessions so far, witnesses have said that they do not have a lot of evidence about how the transfer of appointees from DWP to Social Security Scotland is going so far. Last week Kirsty Henderson (RNIB) said that it was important that people had clear information about what different roles entail.

Members may wish to discuss:

- 8. What experience do witnesses have of the appointee system under DWP and Social Security Scotland?**
- 9. The Bill requires DWP appointees to be authorised by Social Security Scotland ‘as soon as reasonably practicable’. What are your general expectations of how long it should take Social Security Scotland to authorise an appointee?**

Theme 5: Information for Audit

Part 6 of the Bill would give Ministers the power to require clients to provide information so they can establish estimates of error and fraud.

If the information provided suggests that an award ought to be changed, then Social Security Scotland will do a new determination which the client could then challenge through redetermination and/or appeal.

If the client fails to provide the information, then the Bill would allow for their benefit to be suspended. If further attempts to get the information fail, then entitlement could be reviewed which would either confirm eligibility or end payments.

Safeguards are:

- Regulations will set out who is exempt from being asked to provide information.
- Clients can ask for the request to be withdrawn if they have a ‘good reason’. Ministers define ‘good reason’, and their decision is final.
- Clients can have a supporter present during interviews and phone-calls.
- Disabled clients have a right to independent advocacy.

Previous consideration

In both previous evidence sessions, most witnesses expressed strong concerns about these provisions. In particular:

- Suspending benefits where there is no suspicion of fraud was called “harsh”, “draconian” and ‘not proportionate’.
- Witnesses considered that the provisions conflate fraud and error.
- Failure to engage with Social Security Scotland should not, in itself, raise a suspicion of fraud – there could be many reasons vulnerable clients do not engage.
- There should be ‘generous interpretation’ of having a ‘good reason’ to not provide information.
- These provisions do not sit well with most of the social security principles
- The audit process will create more stigma around benefit receipt.
- There was a lack of consultation.

Not everyone opposed the provisions. Diane Connock (Stirling Council) agreed with the government that “if it’s voluntary, they may struggle to get enough of the information back” although she also emphasised the need to safeguard vulnerable individuals and ensure that they were sufficiently supported to participate.

Witnesses queried what alternative options had been considered. Last week Claire Andrews (RNIB) suggested a ‘test and learn’ approach whereby a voluntary scheme is used to identify how people engage with the process and what support and safeguards are needed. She also suggested that the audit model should allow for the fact that some people aren’t going to respond.

Witness submissions

In the Call for Views, the **National Carer Organisations** asked for further information, and noted that unpaid carers would need more time to respond to requests. **Alzheimer Scotland** “recognise the important of obtaining reasonable information relating to the claimant’s award” but stress the need to support claimants in doing so.

Members may wish to discuss:

10. Do witnesses agree with suspending a person’s benefit payments if they repeatedly fail to provide information to Social Security Scotland?

11. What kinds of support would clients need to help them meet deadlines for providing information?

Theme 6: Social security principles

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

“to enhance the Scottish system of social security in line with those principles, laid out in section 1 of the 2018 Act, particularly the principles which require that ‘opportunities are to be sought to continuously improve the Scottish social security system in ways which put the needs of those who require assistance first, and advance equality and non-discrimination’ and that ‘the Scottish system of social security is to be efficient and deliver value for money.’” (PM para 5).

The full list of statutory principles is:

- a) social security is an investment in the people of Scotland,
- b) social security is itself a human right and essential to the realisation of other human rights,
- c) the delivery of social security is a public service,
- d) respect for the dignity of individuals is to be at the heart of the Scottish social security system,
- e) the Scottish social security system is to contribute to reducing poverty in Scotland,
- f) the Scottish social security system is to be designed with the people of Scotland on the basis of evidence,
- g) opportunities are to be sought to continuously improve the Scottish social security system in ways which—
 - i. put the needs of those who require assistance first, and
 - ii. advance equality and non-discrimination,
- h) the Scottish social security system is to be efficient and deliver value for money.

Previous Consideration

In general, previous witnesses agreed that, overall, the Bill does align with the principles – except for the provisions on information for audit.

The preceding themes focused on parts 2 to 6 of the Bill. They did not cover: Part 1 (new benefits), Part 7 (compensation recovery) or Part 8 (SCOSS). In addition to discussing the overarching aims of the legislation, this final theme might be an opportunity to ask whether there are any further comments on any part of the Bill.

Members may wish to discuss:

- 12. Do witnesses have any comments on specific measures in the Bill not already discussed?**
- 13. To what extent does the Bill as a whole align with the social security principles?**
- 14. Overall, in what ways will this Bill improve the client experience? Are there any provisions that would make the client experience worse?**

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14 March 2024