

SPICe**The Information Centre**
An t-Ionad Fiosrachaidh

Social Justice and Social Security Committee

**10th Meeting, 2024 (Session 6), Thursday,
28 March**

Social Security (Amendment) (Scotland) Bill

Introduction

This is the final stakeholder panel on the Social Security (Amendment) (Scotland) Bill. Today's session will hear from insurers on the issue of compensation recovery (Part 7 of the Bill).

The Committee will hear from:

- Lynne Macfarlane, Forum of Insurance Lawyers (FOIL)
- Alastair Ross, Head of Public Policy for Scotland, Wales and Northern Ireland, Association of British Insurers
- Alan Rogerson, Member, Forum of Scottish Claims Manager.

Background on Compensation Recovery

Part 7, section 17 of the Bill would apply where a person who gets social security payments as a result of injury, accident or disease, is awarded compensation for the same incident. Some of the compensation payments would be paid to Scottish Ministers.

The Financial Memorandum, (table 4) estimates that up to £5.5 million in benefits payments could be recovered from an estimated 1,385 cases per year. The amount paid to Scottish Ministers is the total amount of relevant social security assistance paid in the period between the date of the accident or injury and the settlement of the claim. (In the case of disease, the relevant period begins from when a person applies for a recoverable benefit.)

The maximum that can be recovered is five years' worth of relevant benefits. (See definition of 'relevant period' in s.94B of the 2018 Act, introduced by s.17 of the Bill. For the calculation see section 94J).

Before making a compensation payment, the compensator must get a 'certificate of recoverable assistance' from Scottish Ministers (section 94C). This certificate will set out how much should be paid to Scottish Ministers (section 94D). The compensator has 14 days to make the payment (section 94E).

Before the payment is made, the injured person or the compensator can ask for a review. The grounds for review will be set out in regulations (section 94M). There is also 30 days to ask for reconsideration (section 94N), which can be followed by appeal to the First-tier Tribunal (section 94O)). Grounds include that:

- the amount, rate or period specified in the certificate is incorrect
- the benefits listed are not ones which are recoverable
- the payment is not a compensation payment.

In the Committee's Call for Views, there was little comment on the legal provisions as they are very closely modelled on the existing system. There was however some concern about whether there might be confusion between the UK and Scottish systems.

The Forum of Scottish Claims Managers was concerned that:

"compensators are being asked to register claims for compensation twice – once with the Secretary of Sates (Section 4 of the Social Security (Recovery of Benefits) Act 1997 for UK benefits and then again with Scottish Ministers under 94C of the Draft Bill."

They therefore suggest that Scottish benefits be recovered alongside UK benefits. Similarly, the Association of British Insurers wanted to have one system in practice.

"We [...] would expect [...] an extension to the current DWP CRU to apply to social security assistance in Scotland."

The same issues were raised in the Scottish Government's consultation with insurers, insurance lawyers and personal injury lawyers. As the Business and Regulatory Impact Assessment notes:

"There was a strong preference expressed for having one unit or platform handling the generation of certificates of recoverable assistance for the whole of the UK."

"Officials are currently working with the DWP to explore the possibility of the DWP delivering a service by agreement on behalf of Scottish Ministers."

Themes for discussion

The following suggests three themes for discussion:

- Theme 1: current system
- Theme 2: options for delivery
- Theme 3: Financial Memorandum

Theme 1: Current system and policy justification

The policy memorandum explains that compensation recovery is a long-standing feature of DWP administered benefits and the provisions in the Bill are intended to create similar provisions for Social Security Scotland benefits.

“The intention is to create a Scottish compensation recovery scheme which takes an approach to the recovery of social security assistance consistent with the rest of the UK. This consistency is intended to reduce complexity for the personal injury and insurance industries while also limiting the impact on the injured person involved.” PM para 164

In the Call for Views, witnesses explained that insurers are already familiar with how the current system works.

The [Business and Regulatory Impact Assessment](#) (BRIA) accompanying the Bill summarised an engagement event with insurers, insurance lawyers and personal injury lawyers on 28 March 2023, noting that:

“All attendees agreed in principle that Scottish Ministers should have the power to recover amounts from compensation payments, similar to the UK Government. [...] Scottish Government officials have looked to emulate the UK approach, mirroring the same timescales and relevant period laid out in the UK legislation framework.”

The BRIA states that not recovering payments would still require Social Security Scotland to provide information to assist DWP recover compensation in relation to their social security benefits.

Members may wish to discuss:

1. **Can witnesses give a brief overview of how the current system of compensation recovery works?**
2. **Are witnesses content that the Bill enables the same system to be created for Social Security Scotland as currently exist for DWP benefits?**

- 3. Do witnesses have any views on the necessity of these provisions? What would be the implications of not enabling compensation recovery for Social Security Scotland benefits?**

Theme 2: Options for delivery

The Scottish Government's preferred implementation option is to have an agency agreement with DWP. This is also the strong preference of today's witnesses and of the insurers and lawyers who took part in the Scottish Government's engagement event in March which noted:

"There was a strong preference expressed for having one unit or platform handling the generation of certificates of recoverable assistance for the whole of the UK. This is because a separate system will require more guidance, training, resources and system log ins for claims handlers." (BRIA p.26).

The [Financial Memorandum](#) states:

"The Scottish Government's preferred solution is to work in partnership with the DWP to use existing technical infrastructure and processes used by its CRU in order to minimise implication costs and avoid complexity for users of the service."

The other options are not to recover payments or to have a separate Scottish system. The necessity of the provisions is discussed under theme 1. On the option of setting up a separate Scottish system, the BRIA states:

"Insurers, insurance lawyers and person injury lawyers were unable to identify any potential benefits of the alternative method of delivery whereby Scottish Ministers would create a stand-alone Scottish recovery unit. Engagement with industry representatives revealed that the introduction of a separate and distinct process for Scottish social security assistance could create duplication and confusion, as well as generate additional costs and risks in the design and delivery of a new IT system." (BRIA p.18)

Lead-in time

Even for the preferred 'agency agreement' approach, the Association of British Insurers states that:

"Insurers would need at least 12 months' notice of this change and details of the new system in order to support its smooth introduction, and provide training for claims handlers to understand the new system and the social security applicable."

Members may wish to discuss:

- 4. What are the advantages of having an agency agreement with the DWP for compensation recovery?**

5. If Scottish Government and DWP are unable to negotiate an agency agreement, is there another option that would be acceptable to the insurance industry?
6. Assuming there is an agency agreement with the DWP, what do insurers need to support them in the introduction of compensation recovery of Social Security Scotland benefits?

Theme 3: Financial memorandum

One of the aims of the Bill is value for money. Most of the savings in the Bill come from compensation recovery. The Financial Memorandum, (table 4) estimates that up to £5.5 million in benefits payments could be recovered from an estimated 1,385 cases per year. The table below, taken from the Financial Memorandum shows the estimates for recovery by individual benefit.

Table 1: Estimated compensation recovery, 2028-29

Benefit type	recovery amount	number of cases	£ per case
child disability payment	£140,000	30	£4,667
adult disability payment	£3,765,000	835	£4,509
pension age disability payment	£455,000	115	£3,957
Scottish Child Payment	£65,000	205	£317
Employment Injury Assistance	£1,105,000	200	£5,525
Total	£5,530,000	1,385	£3,993

Source: Financial Memorandum, table 4.

The Forum of Scottish Claims Managers queries some of the estimates in the Financial Memorandum saying:

“One of our members was able to analyse data of payments made to DWP CRU on cases settled in 2023 for their UK motor injury claims. The average amount paid to DWP CRU on each case was £992 and this incorporated all recoverable benefits and NHS charges. This would suggest the figures in Table 4 cannot be representative and you may wish to analyse further.”

Implementation and running costs

The preferred option is using DWP systems under an agency agreement. These costs are estimated as:

- £1.39 million to £3.78 million implementation costs
- £1.67 million to £5.0 million running costs

Scottish Government Officials have told SPICe that work on a more detailed impact analysis has started and that:

"Until a detailed impact analysis of the requirements necessary to carry out this unique function is completed in partnership with officials from the DWP

and Scottish Government, an accurate account of the costs cannot be predicted."

Members may wish to discuss:

- 7. Do witnesses think that the estimated recoverable payments of up to £5.5 million per year by 2028-29 is reasonable?**

- 8. Do witnesses have any views on wide range of costs provided for the agency agreement option?** (£1.39 million to £3.78 million implementation costs and between £1.67 million and £5.0 million running costs)

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SPICe
21 March 2024