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I am pleased to write to you regarding the further set of amendments to the Social Security (Scotland) Bill that the Scottish Government lodged on 31 January 2018. As with my letter of 17 January regarding the Scottish Government amendments lodged prior to the beginning of Stage 2 in earnest, I attach a short overview of the ones lodged on 31 January, describing what each set is intended to achieve.

This set of amendments covers appointees and repeat applications – both of which are technical amendments – as well as housing assistance and short-term assistance during appeal, which make more substantial improvements to the Bill. The amendments on short term assistance, in particular, respond to queries raised during the Stage 1 process. The note refers to the amendment numbers as assigned by the Scottish Parliament and published in the Business Bulletin.

I trust that this information will be of interest to the Social Security Committee. I was pleased to take part in the Committee session on 1 February, and I look forward to further discussion and scrutiny of Stage 2 amendments in the coming weeks.

Kind regards

JEANE FREEMAN

Social Security (Scotland) Bill

Scottish Government Stage 2 Amendments

Introduction

The Scottish Government lodged a further set of amendments to the Social Security (Scotland) Bill on Wednesday 31 January 2018 and this paper provides a short overview of those. The amendment numbers refer to those assigned by the Scottish Parliament and published in the daily Business Bulletin¹.

Housing assistance

The Scottish Government has previously stated its intention to introduce amendments to bring forward a new type of 'housing assistance' under Part 2, chapter 2 of the Bill to mitigate two areas of UK government cuts to support for housing costs within Universal Credit – the 'bedroom tax' and the removal of support for housing costs for 18-21 year olds. These proposals have broad support from a range of stakeholders including Shelter, Scottish Federation of Housing Associations, Chartered Institute of Housing and COSLA. Amendments 152 and 153 allow for this.

Although mitigation of the 'bedroom tax' through Universal Credit can mostly be effected by regulations, using the Universal Credit flexibility provided by section 29 of the Scotland Act 2016, there is a very small group of persons for whom that approach will not fully work because the extra Universal Credit that they would receive would mean that their payment would exceed the DWP benefit cap. The amendments will allow Scottish Ministers to meet the manifesto commitment and introduce regulations to create a specific additional payment for this group, that pays them the amount they lose as a result of the benefit cap through their UC award. It should be noted that the current mitigation of the bedroom tax via Discretionary Housing Payments will continue in the meantime.

Recent changes to the qualifying rules for housing support through Universal Credit have resulted in certain 18 to 21 year olds being denied housing assistance. The Scottish Government took immediate steps to put in place a temporary measure using the Scottish Welfare Fund. The amendments put in place allow Scottish Ministers to introduce regulations to create a specific form of assistance for this group of 18-21 year olds to ensure a more permanent arrangement is in place.

Amendment 153 would allow Ministers to introduce other forms of housing assistance, but with a specific requirement for the two forms of assistance described above.

Amendments 161 and 165 allow Scottish Ministers to introduce regulations to allow for the delivery of any form of housing assistance to be undertaken by local authorities. This is specifically intended to ensure that the support the Scottish Government provides for 18-21 year olds can continue to be delivered by local

¹ <https://bb.parliament.scot/Legislation>

authorities, as it is at the moment under the temporary arrangements using the Scottish Welfare Fund. It is likely that the form of assistance around the benefit cap will be delivered by agreement with DWP, since DWP remains responsible for payment of Universal Credit, but that would be enabled by an Agency Arrangement with DWP and needs no provision in the Bill.

Amendment 162 is a technical amendment, to clarify that local authorities can choose to pay Discretionary Housing Payments (DHPs) to landlords, including provision for cases where the local authority paying the DHP is itself the landlord.

Amendments 163 and 164 address stakeholder concerns that the Bill currently gives local authorities discretion whether or not to operate a DHP scheme. They require local authorities to operate a scheme, though applications to it can be refused if all grants the authority has received from Ministers have been spent and the local authority does not wish itself to provide additional funding for its DHP scheme.

Appointees

Amendment 159 will allow the agency to appoint individuals or organisations to act on behalf of a person who appears to be eligible for Scottish social security assistance but who is unable to act personally in their own affairs due to mental or physical incapacity. This power may also be used when someone has died. This will ensure that people who lack capacity are able to access and receive the Scottish social security assistance that they are eligible for.

The criteria for making appointees are set out in the amendment and the detail on how the process will work will be set out in operational guidance. This will allow additional development work to be undertaken and consultation with key stakeholders, including people with experience of the current system.

The agency will also have the power to review and, where appropriate, terminate appointments it makes, for example because of a conflict of interest or suspected abuse.

Where a person has a Power of Attorney, executry confirmation or a court order (such as guardianship) that allows them to assume responsibility for progressing social security claims and managing payments, the agency will deal with that person and will not be able to appoint someone.

Amendments 157 and 158 provide that appointees can be placed under a duty to notify changes of circumstances, as provided for by section 31 of the Bill.

Short term assistance during appeal

During Stage 1 of the Bill, stakeholders such as Carers Scotland, CPAG, Scottish Commission for Learning Disability and Patients' Advocacy Services amongst others sought clarification on a number of areas in relation to short term assistance during appeal. Amendments 154 and 155 provide greater detail on short term assistance and moves that detail into a schedule to maintain a similar approach to the way the other assistance types under Part 2 chapter 2 are treated.

Short term assistance to be paid at same rate as the original payment level

Paragraph 2 of the new schedule makes clear the policy intent that short term assistance will maintain payments at the original level until the re-determination or appeal to the First-tier Tribunal has been determined.

Short term assistance where permission to appeal sought

Section 18 provides that short-term assistance has to be available to support people challenging a determination until the appeal has been determined by the First-tier Tribunal, at least. Paragraph 1(2)(c) of the new schedule ensures that short-term assistance will be available when the First-tier Tribunal is considering whether to grant permission for an appeal that has been lodged after the 31 days when an appeal can be made without permission. This is an addition to what is currently provided for in section 18(4) of the Bill.

Repeat applications

Amendments 156 and 160 will allow an individual to make, and the agency to determine, more than one application from the same person for assistance in respect of an event.

The Bill, as currently drafted at section 20, provides that, where an individual has applied for assistance for a specific event or period and a determination has been made that they are not eligible for support, the individual cannot make another application. The intention was to prevent repeated or persistent applications, all of which could potentially continue to re-determination and appeal.

The restriction on the number of applications was raised as an issue by a number of stakeholders, particularly COSLA and CPAG, in relation to Funeral Expense Assistance (FEA) and Best Start Grant (BSG), but it may be relevant to other assistance types in the future. Both assistance types have reasonably lengthy application windows and it is possible that an individual's entitlement to the benefit may change during the window. For example, a woman may be pregnant and apply for BSG before she has had confirmation of eligibility for low income benefits from DWP (such as Universal Credit). If she does not receive confirmation until later during the application window, her application would be premature and she would be ineligible for assistance. At present, a second application would not be permitted.

The amendments will allow the agency, when making a determination, to assess whether the person's eligibility could change at a later date and to include this in the decision letter so that the applicant is aware. This would allow the applicant to re-apply when their circumstances have changed within the application window. The amendments at the same time retain a mechanism for preventing repeat applications where a person could not become eligible. The content of the amendment has been discussed with CPAG and COSLA as part of our process of stakeholder engagement in the lead up to Stage 2 of the Bill.

Scottish Government
5 February 2018