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Dear Collette

## **Social Security (Amendment) (Scotland) Bill**

I welcomed the opportunity to give evidence to the Committee on the Social Security (Amendment) (Scotland) Bill (“the Bill”) on 18 April and to set out the priority I place on the continuous improvement of the Scottish system of social security.

During the session, I undertook to provide by correspondence more detail about the Scottish process to approve appointees undertaken by Social Security Scotland and a full comparison to the process followed by the Department for Work and Pensions (DWP). My officials reached out to DWP officials to confirm our understanding of the DWP appointee process as it applies to adults with incapacity before setting out the following comparison. It is worth noting, however, that my officials were advised that DWP is currently reviewing its processes.

DWP’s legislation allows an appointment to be made where the individual is simply ‘unable for the time being to act.’ The DWP process involves a face-to-face visit from a trained officer who will carry out an assessment of the client’s abilities and of the suitability of the proposed appointee and make a decision on whether appointment is appropriate. There is little transparency around the criteria or content of assessments, nor is there any requirement to consider the views of others involved in the wellbeing or care of the client.

While there is a review process every 5 or 8 years, the length of review period is not determined by need, or person-centred. Once in place there is no statutory right to challenge the DWP appointment. Although there is an informal process, stakeholders have highlighted the difficulty for individuals in changing unsuitable DWP appointees at present.

The DWP appointee process has been criticised by stakeholders for lacking sufficient safeguards to protect client’s rights in line the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and the European Convention on Human Rights. The Scottish Government adopted a different approach to making appointments as a result of

advice from the Disability And Carers Benefits Expert Advisory Group (DACBEAG) and stakeholder feedback, which led to a suite of amendments to the original appointee provisions during the passage of the Social Security Administration and Tribunal Membership (Scotland) Act 2020.

An appointment under section 85B(7) of the 2018 Act is only appropriate where Social Security Scotland has confirmed the client is an adult and on the balance of probabilities meets the definition of 'incapable' set out in the Adults with Incapacity (Scotland) Act 2000, and there is no other person or organisation who has legal authority to act on behalf of the individual and is willing to do so. The provisions which came into force from 24 January 2022, introduced:

- A legislative requirement to consider the views or wishes and feelings of the of the client (insofar as practicable);
- A legislative requirement to consider the views of anyone with an interest in their welfare or financial affairs where practicable;
- A person-centred review period with mandatory requirement for review at least every 5 years;
- The right for the client, or anyone with an interest in their welfare or financial affairs to request a new appointment or termination of an existing appointment;
- The right to apply to the First-tier Tribunal for Scotland for a review of appointment decisions;
- Detailed statutory guidelines setting out the appointment processes, to be made publicly available, prepared and reviewed in consultation with key stakeholders;
- A requirement to have regard to safeguarding principles drawn from the UNCRPD when preparing the guidelines; and
- The requirement for appointees to take into account guidance provided to them by Social Security Scotland.

Due to these significant legislative and procedural differences between the two systems, a DWP appointee cannot automatically be treated as equivalent to an appointee under the 2018 Act. Part 5 of the Bill proposes powers for Scottish Ministers to make regulations which set out circumstances where a DWP appointee may temporarily be treated as if they were appointed by Scottish Ministers, as well as a power to require the 2018 Act criteria for making appointments to be applied as soon as reasonably practicable after. This will allow individuals to be paid quickly, whilst thereafter ensuring the appointment is appropriate.

Separately, you will recall that I answered a question about the current legislation being too inflexible because it requires appeals to be made on a specific form. This question seems to have arisen from evidence provided by Rights Advice Scotland at a Committee session on 28 March, focussed on the client experience of Social Security Scotland's re-determination and appeals process rather than an evidence session about the Bill. I would like to take this opportunity to provide further information and context on the submission of an appeal form.

The challenge process has been designed to ensure that it is as accessible as possible for anyone who disagrees with a determination made about their devolved benefit. Section 47 of the Social Security (Scotland) Act 2018 makes provision that the form that has been provided must be submitted.

We have co-designed with stakeholders and our client experience panels easy to navigate re-determination and appeal forms which can be accessed online or requested by phone from Social Security Scotland. The forms ensure Social Security Scotland receives all the information needed for an appeal. Although my official stated in evidence on 18 April that the legislation does not technically require a specific paper form for re-determinations, collecting all of the information in these forms minimises the burden on the client. Using other forms would likely mean that information would be missed and lead to delays for clients.

In the case of appeals, an appeal form is automatically included in all re-determination notices. The client completes the form and returns it to Social Security Scotland, and it will then be passed to the Tribunal along with any information used by Social Security Scotland to make the original determination.

Clients can also contact Social Security Scotland by telephone and talk to an adviser about support to complete re-determination or appeal forms. An adviser can help a client to complete forms over the phone or they can make an appointment for the client to get face-to-face support in their local area or in their home. If someone sends in a re-determination or appeal on an alternative form, Social Security Scotland will contact them in order to support them to fill in the form over the telephone, or Social Security Scotland can send them a new form by post if that is the client's preference.

Yours sincerely

**Shirley-Anne Somerville**