Dear Convener

I am writing to inform the Committee that the Scottish Government will shortly introduce a Bill which seeks to make a small number of technical provisions in relation to the Scottish social security system.

I am grateful to have had the chance to meet with you and the Deputy-Convener to explain the purpose of this Bill and why I believe it is necessary for it to be progressed to an expedited timetable. As I explained when we met, the need for this Bill has arisen from the identification of a need to create statutory offences in primary legislation in relation to the Scottish Child Payment.

This is an essential requirement which must be addressed before any awards of the Scottish Child Payment can be made. The urgency comes as a direct result of the ambitious timeframe we are working to for the introduction of this important new benefit. The timetable for implementation means that the Bill needs to secure Royal Assent and be commenced in early September, this in turn requires the Bill to complete its parliamentary passage before the end of June.

The Bill will also address a small number of other technical fixes, which I have set out below and which need to be made in order to ensure the continued effective implementation of the Social Security (Scotland) Act 2018. Rather than bringing forward separate and overlapping Bills on these issues, I believe that it is best to progress them together to allow for their scrutiny as a single package of measures.

To maximise committee scrutiny time I am working towards introduction of the Bill as soon as possible, which I currently anticipate will be by the end of March. I know the Committee will be keen to have more of an understanding of the Bill so I am providing some initial information now and would also like to offer the Committee an informal briefing with the Bill
Team as soon as the committee would find that helpful. I am also happy to meet with any Member who would like to discuss our plans further.

I propose that the Bill should deliver necessary improvements to the existing legislative framework for social security by making provisions as follows:

- to create statutory fraud offences, in relation to new types of ‘top up’ assistance created under section 79 of the Social Security (Scotland) Act 2018 (“the 2018 Act”);
- to appoint persons to act on behalf of a child in relation to their application for assistance under the 2018 Act, ensuring that the person providing care and attending to the child’s welfare is the person that Social Security Scotland will deal with;
- to enable third party applications for terminally ill clients, as an alternative in appropriate cases to the current legal requirement for the client to complete an application;
- to extend responsibility for diagnosing a terminal illness for social security purposes beyond registered medical practitioners; and
- to enable existing judges in other courts or tribunals to hear appeals in in the Social Security Chamber of the First-tier Tribunal for Scotland and in the Upper Tribunal for Scotland.

Further policy information on our proposals is provided in the attached annex and I trust you and your Members will find that they are uncontroversial. They either build on provisions already in place in relation to other benefits currently being delivered in Scotland, or they offer practical improvements to the existing legislative framework. They will enable further progress towards our overarching aim which is to have a Scottish social security system that delivers on the commitments made in our Charter, based on the principles in the 2018 Act and our core values of dignity, fairness and respect.

I acknowledge the concerns that have been raised in relation to the pressures that this timetable will place on Committee’s programme of business for the next few months and, once again, would like to express my gratitude to you for your support. Please accept my assurance that we would not be undertaking this course of action if we did not believe that it was absolutely necessary.

My officials and I would be pleased to provide any further information that Committee Members might require to help with your consideration and scrutiny of the Bill and I look forward to appearing before Committee to give evidence, in due course.

Yours sincerely

SHIRLEY-ANNE SOMERVILLE
Additional Policy Information

Statutory Fraud Offences

Section 79 gives the Scottish Ministers the power to create new forms of top-up assistance. Unlike other forms of assistance payable under Part 2 of the 2018 Act, there is no provision for the creation of fraud offences and powers of investigation. The new Scottish Child Payment is being made under the power in section 79. The Scottish Government consider it is necessary to create fraud offences and powers of investigation in primary legislation in relation to this top-up assistance. In relation to future forms of top up assistance under section 79, the power to make regulations will be provided to ensure that offences and investigations can be tailored to the assistance.

This policy approach also reflects the Scottish Government’s zero tolerance of fraud and its responsibilities under the Scottish Public Finance Manual to ensure the safe and proper stewardship of public funds. There is support amongst stakeholders for the swift implementation of the Scottish Child Payment and the Scottish Government’s proposals are entirely in line with Parliament’s previous agreement (reached when it unanimously approved the 2018 Act) to the fraud offences now in force in relation to other devolved types of assistance.

Recent discussions with stakeholders have not suggested concerns in relation to the creation of new offences for the Scottish Child Payment. Officials have made clear that due to the challenging timescales in introducing the payment in time to reach eligible families this year, the need to ensure that any instances of fraud are investigated and tackled appropriately, and the fact our proposals are in line with a recent Act, we will not hold a formal, full public consultation in relation to this issue. My officials will continue to engage widely with stakeholders at each stage in the development of this new benefit.

Appointment of persons to act on behalf of a child

The Scottish Government proposes to improve the current provision at section 58 of the 2018 Act to allow a person to be appointed to act on behalf of the child in relation to their application for assistance under the 2018 Act.

There are likely to be a number of complex family situations for some children who may be entitled to the Child Disability Payment. Someone else may be providing care and accommodation for a child on a daily basis but do not have legal rights and responsibilities - for example: a partner of the child’s parent or relatives who provide care under informal kinship care arrangements.

In these circumstances, Social Security Scotland will need to deal with someone who lacks legal rights, as this reflects the practical reality of a child’s living arrangements. Having an appointed person will give recognition to those individual circumstances, and ensure that the person providing care and attending to the child’s welfare is the person that Social Security Scotland will deal with. The Scottish Government believes that these proposed practical improvements will be supported and officials will continue to engage widely with relevant stakeholders on this issue.

Extending responsibility for diagnosis of terminal illness

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew’s House, Regent Road, Edinburgh EH1 3DG
www.gov.scot
Current provision within Schedule 5 of the 2018 Act only allows a ‘Registered Medical Practitioner’ to clinically determine whether an individual is terminally ill for the purposes of disability assistance. The Scottish Government proposes to extend this responsibility beyond registered medical practitioners. This follows feedback to the consultation on the Chief Medical Officer’s Guidance, that this responsibility should be so extended. On that basis, the Scottish Government is happy to propose this change.

Registered nurses are currently able to undertake this role for DWP administered benefits. Although DWP do not collect figures for how many nurses currently complete the relevant forms, the Scottish Government understands that the majority of these forms are completed by nurses. Making equivalent provision would, therefore, enhance the smooth implementation of the new terminal illness definition in Scotland.

**Third Party Applications for clients who are terminally ill**

The Scottish Government proposes to establish a legal basis for third parties to submit an application for disability assistance for clients who are terminally ill.

This proposal seeks to enable a streamlined, person-centred service which will be sensitive to the individual’s needs and circumstances. The requirement for this provision emerged in the course of discussions about the development of the Chief Medical Officer’s Guidance. It means that clients will not be required to complete an application themselves as doing so may cause delay, distress and have a negative impact on their care. Making this change would also reflect the current, UK position, as DWP currently allow third party applications for all terminally ill clients.

Delivering this improvement would also help avoid any risk of medical practitioners having to disclose harmful information to their patients to enable them to apply on terminal illness grounds. We understand that in some cases medical practitioners may decide to withhold harmful information from a patient on medical grounds, where they deem that this would be detrimental to their well-being. This is reflected in the current UK benefits system which allows medical practitioners to certify that a patient is terminally ill for the purposes of applying for disability benefits and to submit an application on the patient’s behalf. The Scottish Government believes this position should be replicated in the devolved, Scottish system and that it will be supported by disability stakeholders.

**Enabling more judges to hear matters in First-tier Tribunal and the Upper Tribunal**

The Scottish Government proposes to widen the current provision in the Tribunals (Scotland) Act 2014 which allows the President of the Scottish Tribunals (or the Scottish Ministers, following a request from the President of the Scottish Tribunals) to temporarily authorise judges sitting in other courts or tribunals to sit in and hear appeals before either the First-tier Tribunal or the Upper Tribunal. This must be done by way of primary legislation.

The current provisions allow, for example, the temporary authorisation of a sitting Sheriff or of a current/ former judge of the Court of Session. We are seeking amendment to the legislation to extend the list of judicial offices covered by these provisions, in order that a wider cohort of judges can be authorised to hear matters in the Scottish Tribunals to ensure we can meet need and ensure access to justice in timely manner.