SOCIAL SECURITY COMMITTEE

AGENDA

19th Meeting, 2017 (Session 5)

Thursday 5 October 2017

The Committee will meet at 9.00 am in the Mary Fairfax Somerville Room (CR2).

1. Decision on taking business in private: The Committee will decide whether to take item 4 in private.

2. Social Security (Scotland) Bill: The Committee will take evidence on the Bill at Stage 1 from—

   Bill Scott, Director of Policy, Inclusion Scotland;
   Morna Simpkins, Scotland Director, MS Society;
   Steven McAvoy, Senior Welfare Rights Adviser, ENABLE Scotland;

   and then from—

   Craig Smith, Policy Officer, Scottish Association for Mental Health (SAMH);
   Peter Hastie, Campaigns, Policy & Public Affairs Manager, MacMillan Cancer Support;
   Hugh Robertson, Industrial Injuries Advisory Council.

3. Social Security (Scotland) Bill (in private): The Committee will review the evidence heard earlier in the meeting.

4. Social Security (Scotland) Bill: The Committee will consider whether it wishes to take any further action to give it increased time to consider the Social Security (Scotland) Bill.
The papers for this meeting are as follows—

**Agenda Item 2**

SPICe Briefing Note SC/S5/17/19/1
SPICe Briefing - Primary and Secondary Legislation SC/S5/17/19/2
Scottish Government Illustrative Regulations and Policy Narrative for Best Start Grant SC/S5/17/19/3
Scottish Government Policy Position Paper SC/S5/17/19/4
Written Submissions - panel 1 SC/S5/17/19/5
Written Submissions - panel 2 SC/S5/17/19/6

**Agenda Item 4**

PRIVATE PAPER SC/S5/17/19/7 (P)
Social Security Committee
19th Meeting, 2017 (Session 5), Thursday 5 October 2017
Social Security (Scotland) Bill – Briefing Note

1. Introduction and Summary

This paper provides information to support the Committee’s oral evidence session on the Social Security (Scotland) Bill (“the bill”). For further background information see:

- a separate SPICe paper on primary and secondary legislation, as requested by members (included in these meeting papers – Paper SC/S5/17/19/2)
- SPICe briefing SB 17-57 The Social Security (Scotland) Bill
- the SPICe summary of the Call for Views (Paper SC/S5/17/16/5, from page 41 of the papers for the Committee’s meeting on 14 September)
- A Scottish Government position paper on disability and employment-injury assistance (included in these meeting papers – Paper SC/S5/17/19/4).

This paper also refers to the Scottish Government’s illustrative best start grant regulations (included in these meeting papers – Paper SC/S5/17/19/3).

The Committee will take evidence from:

- Inclusion Scotland (“Inclusion”)
- Enable Scotland (“Enable”)
- the MS Society
- the Scottish Association of Mental Health (SAMH)
- MacMillan Cancer Support (“MacMillan”)
- the Industrial Injuries Advisory Council (IIAC)

Five witnesses responded to the Committee’s Call for Views. These responses are included in the papers for this meeting. Members may wish to refer to the individual submissions for alternative or additional areas to discuss with witnesses. SAMH and Enable are also members of Disability Agenda Scotland, who also responded to the Call for Views. Glasgow Disability Alliance (GDA) also submitted a response to the Call for Views, collating their members’ views of the bill, particularly the provisions for disability assistance.

The IIAC did not respond to the Call for Views. Hugh Robertson has been a member of IIAC since 8 April 2015. He is a Senior Policy Officer at the TUC, and also sits on a number of international committees looking at occupational diseases.¹

Possible areas for discussion with the witnesses include:

- whether the bill as drafted provides sufficient detail of the entitlement conditions for disability assistance
- how disability benefit assessments should be undertaken

¹ For more details see https://www.tuc.org.uk/person/hugh-roberston
• terminal illness rules for disability assistance
• whether provision for “appointees” needs to be made in the bill
• the provisions in the bill allowing devolved benefits to be paid in cash or kind
• the proposals for employment-injury assistance
• how the role of the IIAC might be replicated in the Scottish system.

The remaining sections of this paper give further information on these areas, drawing primarily on witness submissions in response to the Call for Views.

2. Entitlement conditions for disability assistance

The provisions setting the eligibility criteria that regulations must set for disability assistance are very similar to restrictions already imposed by the Scotland Act 1998. The exception is a requirement for separate provision to be made for terminally ill applicants, discussed in Section 4 below. The separate SPICE paper on primary and secondary legislation (SC/S5/17/19/2) gives further details on the bill provisions, and how they compare to the current primary legislation.

The MS Society response to the Call for Views called for “further details about the operation of [disability and carer’s assistance] to be published as a priority.” The Scottish Government position paper (SC/S5/17/19/4) now clarifies that:

“from the point at which the Scottish Government commences the delivery of Disability Assistance, it will take as is the existing Personal Independence Payment, Disability Living Allowance, Attendance Allowance and Severe Disablement Allowance.”

SAMH argued that “key principles should be placed within the bill itself rather than regulations.” The people Inclusion consulted were “very concerned” by the lack of detail of eligibility criteria in the bill. Enable argued that the purpose of benefits and a framework for their operation should be placed on the face of the bill. They summarised their concerns around the bill as follows:

“the primary concern of the bill should not be to simplify the system, but to make it fit for the purpose which it has been created to deliver.”

Both SAMH and Inclusion mentioned a recent change to the PIP regulations made by the UK Government, to reverse the effect of two Upper Tribunal decisions. They argued that more detail should be added to the bill to prevent the Scottish Government from being able to make this kind of change through regulations.

Inclusion’s members were also concerned that “eligibility for disability assistance could be dependent on the individual being in receipt of another type of assistance.” The provision of the bill they refer to is schedule 4, para 6. Inclusion felt that if this is only intended to apply to severe disablement allowance, this should be clarified in the bill.

Enable suggested that whatever criteria are set, the eligibility conditions for disability assistance should include an “exceptional circumstances” rule similar to the reserved

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2 The Social Security (Personal Independence Payment) (Amendment) Regulations 2017 No. 194. See also a House of Commons debate pack: Changes to Personal Independence Payment regulations
employment and support allowance. They explained that this should allow assistance to be awarded where refusal:

“would mean the person applying for assistance would struggle to cope with the additional costs of their disability without support”.

Some of the other comments made in response to the Call for Views on disability assistance eligibility criteria are set out in Paper SC/S5/17/16/5 (page 55).

3. Disability benefit assessments

The bill does not provide details of how assessments will be carried out. Paper SC/S5/17/19/2 gives details of the provisions in reserved legislation. Submissions to the Call for Views made a wide range of suggestions around assessments, summarised in Paper SC/S5/17/16/5, (pages 54 - 55).

A number of respondents to the Call for Views (including Inclusion) called for the bill to be amended to prevent private sector contractors from carrying out assessments (a commitment that the Scottish Government has made, and which was generally welcomed). But the Scottish Government position paper states its view that:

“Using legislation to place a ban on profit making companies creates the risk that the unintended consequences of that ban will make it harder, not easier, for us to deliver the support that people need.”

The MS Society expressed disappointment that “rules around assessment are not addressed in the bill”. SAMH argued that “principles governing assessments” should be added to the bill. SAMH also made detailed comments on how assessment processes could better take account of the impact of an applicant’s mental health.

Alzheimer Scotland’s submission to the Call for Views pointed out that:

“people with dementia and carers have previously indicated that if the sharing of information between institutions across health and social care (and any other relevant organisation) would help to streamline and simplify the process, they would welcome the option to consent to this.”

Disability Agenda Scotland “would like to see the Scottish Social Security Agency… having primary responsibility for gathering additional evidence.” Enable gave detailed suggestions around how evidence might be gathered, and argued that:

“a specific medical assessment is rarely the best way to assess any claimant’s disability, and… particularly unsuited to assessing those with a learning disability who can be particularly vulnerable to negative decisions in any process that involves communicating their difficulties.”

GDA made similar points. In addition to arguing for less face to face assessments, they highlighted that some of their members “suggested that questions should be tailored to the individual’s condition and circumstances”.

The Scottish Government position paper suggests that policy is still being developed, but that:

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3 See Reg 29(2)(b) of The Employment and Support Allowance Regulations 2008 No. 794
“subject to consent from the individual, the agency may use existing information to aid decision making and where possible, to reduce the need for face to face assessments before making awards.”

4. Terminal illness rules

The bill provides a separate route to eligibility for disability assistance if the applicant has a “terminal illness”. This is not defined on the face of the bill. Whilst MacMillan did not comment on this point, both Marie Curie and MND Scotland argued that the definition should not take account of life-expectancy. The current definition (in reserved primary legislation) is that the person:

“suffers from a progressive disease and the person's death in consequence of that disease can reasonably be expected within 6 months.” (s.82(4) Welfare Reform Act 2012 c. 5)

MacMillan argued that the devolved system should continue to allow multiple channels for applications from terminally ill people, citing the example of their ability to make a short phone call to protect the date of claim and then complete paper application forms themselves. MacMillan’s submission also argued that there should be continued monitoring of processing times, and that claims from terminally ill applicants should continue to be fast-tracked.

5. Appointees

As mentioned above, MacMillan was keen to see their role in submitting claims for disability benefits continue. The reserved system provides that someone making a claim on behalf of a terminally ill person:

“is to be regarded as making the claim despite its being made without that person's knowledge or authority.” (s. 82(5) Welfare Reform Act 2012 c. 5)

In other cases, the DWP can decide to appoint someone else to act on behalf of a claimant (known as an “appointee”), if the claimant is considered not to be able to manage their claim, or is a child under 16. The Scottish Government position paper:

“recognises that people may wish to have another person apply on their behalf and is making arrangements for this.”

It is unclear if this will be included on the face of the bill. Enable explicitly called for provision for appointees to be included in the bill.

GDA picked up on the wording of schedule 4 paragraph11, which permits the regulations to provide for payment of disability assistance to someone else who is to use it for the applicant’s benefit, at the discretion of Scottish Ministers. As GDA put it:

“There was confusion about the purpose of this and concern that it might compromise the principles of dignity and respect.”

Given that the Scottish Government intends to introduce the reserved disability benefits exactly as they currently operate (see above), it may be that this is intended to ensure that similar provisions to those in the current regulations are permitted by the bill.4 However, this is not clear from the bill documents.

4 See for example Reg 34 of The Social Security (Claims and Payments) Regulations 1987 No. 1968
6. Benefits in cash or in kind

The bill provides that any kind of devolved assistance “may or may not take the form of money”. The SPICe bill briefing sets out more detail of the provisions around providing assistance in cash or in kind. See also the summary of Call for Views responses in Paper SC/S5/17/16/5 (pages 52 – 53).

Inclusion has suggested that they will pursue an amendment to ensure that any disability assistance is solely be in the form of money, and that “in regard to other benefits it must be for claimants to choose whether they prefer in-kind support to a cash entitlement”. Enable argued that it:

“should be clear from the outset that a cash transfer non means tested, non taxable benefit(s) will be created that is/are intended to cover the additional costs of disability.”

Most respondents to the Call for Views who commented favoured cash as the default position. The illustrative best start grant regulations (see Paper SC/S5/17/19/3) are currently drafted to make cash payment the default position for that type of assistance. Only if the individual is offered assistance in an alternative form and accepts this can payment in kind be given. See schedule 1 para 7 of the illustrative regulations, at page 22 of Paper SC/S5/17/19/3.

The bill does not require this form of wording to be used, as currently drafted. The Scottish Government (in its position paper on disability and employment-injury assistance):

“want to make clear that assistance provided is currently intended only to be in the form of money and that our intention will always be that any other form of assistance would always be a choice for the individual, not a decision of the Scottish social security agency.”

Given this intention, it is not clear why the bill has been drafted to leave open the possibility of these types of assistance not being provided as money at all.

7. Employment-injury assistance

The Scottish Government has proposed to make no immediate changes to the current industrial injuries benefits at the point of devolution. The current scheme is described in SPICe briefing SB 17-52 Scotland Act 2016: industrial injuries benefits and severe disablement allowance.

SAMH were one of the few respondents to the Call for Views who mentioned employment-injury assistance. They argued that the decision not to list Post-Traumatic Stress Disorder as an industrial disease⁵ should be re-visited. They also made several other suggestions, including a wider review of eligibility criteria as they relate to stress and mental health. The Scottish Government position paper acknowledges this concern, but highlights that IIAC have considered this issue and not found sufficient evidence to recommend changing the criteria.

Other witnesses focused on disability assistance, but many of their points might also apply to employment-injury assistance in the devolved system. Members may wish

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⁵ To qualify for industrial injuries benefits, a claimant must have had an “industrial accident” or suffered an “industrial disease” - linked to their occupation by the regulations.
to explore with them the extent to which they feel that the points made in their submissions also apply to employment-injury assistance under the bill.

**8. The role of the IIAC**

The remit of IIAC is both distinct to, and much narrower than, that of the Social Security Advisory Committee (SSAC). It is set out in primary legislation, and is to provide additional scrutiny to that of the UK Parliament. This includes considering draft regulations before they are laid, and proactively recommending changes to the regulations to the DWP. SPICe briefing SB 17-52 has more information about IIAC.

IIAC provides advice to the Secretary of State about industrial injuries benefits, including:

- drafting reports to lay before Parliament on proposed changes to the scheme
- making recommendations about additions to the list of prescribed industrial diseases relating to certain occupations
- scrutinising regulations relating to industrial injuries benefits.

The majority of the current members of IIAC are professors or doctors specialising in occupational medicine. The remaining members include representatives of trade unions and employers’ organisations, several legally trained. IIAC is supported by a small secretariat of DWP staff.

Whilst IIAC does not undertake its own research, it analyses existing sources of research on the risk of contracting a disease as a result of a particular occupation. In the absence of sufficient research it can organise its own calls for evidence. IIAC reports can be either command papers (if they recommend a change to the legislation) or position papers (if they do not recommend a change). Changes to the regulations can result from IIAC’s scrutiny remit, unprompted by the UK Government.

Witnesses (particularly IIAC) may have views on whether there is a need for these functions, and if so how they should be replicated in the devolved system. The Scottish Government position paper highlights that the Disability And Carers Benefit Expert Advisory Group has been commissioned to consider options to replicate IIAC’s function. The paper can be read as suggesting that some form of devolved replacement is likely to be created, as it states that the criteria around mental health:

“would be considered when the Scottish equivalent of the Industrial Injuries Advisory Council has been established.”

**Jon Shaw**

SPICe Research

29 September 2017

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Note: Committee briefing papers are provided by SPICe for the use of Scottish Parliament committees and clerking staff. They provide focused information or respond to specific questions or areas of interest to committees and are not intended to offer comprehensive coverage of a subject area.

The Scottish Parliament, Edinburgh, EH99 1SP [www.parliament.scot](http://www.parliament.scot)

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6 [Social Security Administration Act 1992 c. 5](http://www.parliament.scot/s5/17/19/1) (Part XIII and Schedules 6 and 7)
Social Security Committee

19th Meeting, 2017 (Session 5), Thursday 5 October 2017

Social Security (Scotland) Bill – Primary and Secondary Legislation

1. Introduction and summary

As requested by members, this paper compares reserved social security legislation and the proposed approach in the Social Security (Scotland) Bill ("the bill"). It considers the balance between placing provisions in primary legislation, secondary legislation and guidance.

As the policy memorandum to the bill ("PM") points out:

“The UK Government has not developed a common process for applications, determination or notification of entitlement to different types of assistance that applies, even at a high level, to all of the benefits that will be devolved to Scotland.” (para 186)

As such, and to (slightly) reduce the complexity of this paper, this paper considers only disability living allowance (DLA)\(^1\) and personal independence payment (PIP).

Members may also find this useful as context for the oral evidence session with representatives from disability organisations.

Overall, no clear picture emerges of whether there is more detail in reserved primary legislation than in the bill. However, reserved legislation does give more detail of the structure and entitlement conditions of disability benefits than the bill as drafted. Also, particularly around administrative processes, the reserved system relies on detailed regulations. In a number of areas the bill provides neither detail on the face of the bill, nor provision to make regulations under it.

The Scottish Government has now published illustrative regulations for best start grants (a type of "early years assistance" under the bill). These are also included in the papers for this meeting (Paper SC/S5/17/19/3). Whilst the context is very different, they give an idea of the Scottish Government’s current thinking around how the combined provisions in primary and secondary legislation (for a different type of devolved assistance) might look.

It should be noted at the outset that the Scottish Government has deliberately not placed more detail on the face of the bill. The PM argues that a flaw of the reserved system’s approach is that:

\(^1\) Broadly speaking, the legislative provisions for attendance allowance are the same as those for DLA, with the exception of the lack of a separate mobility component or an equivalent to the DLA lowest rate care component. This is because before DLA was introduced in 1991, attendance allowance was available to working age adults and children, as well as over 65s, and mobility allowance was a separate working-age benefit.
“primary legislation has to be read alongside further rules in subordinate legislation. In the Scottish Government’s view, this approach makes the equivalent UK social security legislation confusing, difficult to follow and open to different interpretations. The Scottish Government believes that the clearest approach to setting out the rules relevant to a particular type of assistance is to put the rules together in a single piece of subordinate legislation.” (para 9)

Not all respondents to the Call for Views on the bill accepted this argument, as set out in the following extract from the SPICe summary of responses (Paper SC/SS/17/16/5, from page 41 of the papers for the Committee’s meeting on 14 September):

**Argyll and Bute Council** were of the view that:

“It is still perfectly possible for the detailed regulations set out in Scottish Statutory Instruments to be fully comprehensible on a standalone reading even though they cross reference to the main Act.”

**Professor Mullen** approached the question as one of priorities, arguing that:

“The arrangements for scrutinising delegated legislation set out in the Bill will not provide for an adequate degree of scrutiny either of policy or the technical adequacy of social security legislation and, however valuable clarity in the terms of legislation may be, it cannot outweigh the principle that the Parliament must effectively scrutinise legislation.”

2. The reserved system – a complicated picture

The Scottish Government wishes to make social security legislation more user-friendly, and this ambition was welcomed by a number of respondents to the Committee’s Call for Views. Table 1 below sets out the main current primary legislation underpinning DLA and PIP, and the broad areas that it covers. It also gives abbreviations used in the remainder of this paper.

**Table 1 – main reserved primary legislation underpinning DLA and PIP**

<table>
<thead>
<tr>
<th>Act</th>
<th>Provisions made</th>
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</thead>
<tbody>
<tr>
<td>Welfare Reform Act 2012 c. 5 (WRA 2012)</td>
<td>Entitlement conditions for PIP – including assessments and provision to abolish DLA (ss. 76-95). Also amended the other acts listed in this table, making reference to PIP.</td>
</tr>
<tr>
<td>Social Security Administration Act 1992 c. 5 (SSAA 1992)</td>
<td>Makes provision for the whole social security system, including claims for benefit, evidence requirements, rules preventing certain benefits from being paid at the same time, overpayments and offences, uprating, and independent scrutiny.</td>
</tr>
<tr>
<td>Social Security Act 1998 c.14 (SSA 1998)</td>
<td>Makes provision for the whole social security system, including decisions, changing decisions, appeal rights, and medical examinations for DLA.</td>
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</tbody>
</table>
One difficulty with navigating the reserved legislation is that, partly due to the development of the system over time, each benefit has more than one ‘parent’ Act. The last systematic review of social security legislation consolidated entitlement conditions for benefits into SSCBA 1992, and administrative processes into SSAA 1992. Some older regulations still remain in force, but are now treated as made under these Acts.

When social security decision-making was reformed to abolish the independent function of adjudication officers, SSA 1998 replaced parts of SSAA 1992. When new benefits were subsequently introduced, the entitlement conditions were set out in the Acts that introduced them. For example, the PIP entitlement conditions are set out in WRA 2012. However, references to their administration were inserted into the existing primary legislation. This includes rules about claims for PIP (SSAA 1992) and appeal rights (SSA 1998).

Adding a further layer of complexity, some administrative provisions for DLA and PIP are very similar, but set out in different sets of regulations, which are made under the same powers in the same parent Acts. Annexe C to this paper lists some of the main secondary legislation relating to DLA and PIP, and abbreviations for them used elsewhere in this paper.

Like the proposals in the bill, procedural rules for appeal tribunals in the current system are now made under different primary legislation, as part of a unified structure of tribunals. As such, this paper does not discuss them further.

3. Detail in primary and secondary legislation

Annexe A to this paper is a table giving an at-a-glance comparison of the provisions in part 2 of the bill and the level of detail in the current primary legislation relating to DLA and PIP. It also provides brief comments on the reason for the assessment.

No clear picture emerges around the legislation underpinning administrative processes, in terms of which primary legislation gives more detail. However, a notable difference is that in sections where the bill gives more detail than reserved primary legislation, there is often not a specific regulation-making power. These are areas in which the reserved system frequently has detailed provisions in regulations. Section 6 of this paper discusses this issue further.

In relation to eligibility criteria, sections 11 to 18 and the schedules to the bill establish the different types of devolved assistance. These all delegate broad powers to set the eligibility conditions for devolved assistance in regulations. Other sections in part 2 of the bill which delegate broad powers are:

- 34 (Determination on basis of ongoing entitlement)
- 35 (Determination without application)
- 43 (Power to make provision about [fraud] investigations).

It looks likely that regulations will make extensive provision in these areas. Section 4 of this paper looks at the example of the entitlement conditions for DLA and PIP,

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2 See the Tribunals, Courts and Enforcement Act 2007 c.15 and the Tribunals (Scotland) Act 2014 asp 10.

3 The illustrative best start grant regulations (Paper SC/S5/17/19/3) do not currently make any provision under sections 34, 35 and 43, but the accompanying document is clear that the policy is still under development.
particularly those relating to the level of disability or impairment. This is one area in which the bill provides less detail than the current primary legislation.

Section 5 of this paper explains the legislative provisions for assessing whether someone qualifies for disability benefits.

4. Disability benefit entitlement conditions

Notwithstanding the general picture, one area in which there is clearly more detail in the reserved primary legislation is the entitlement conditions for disability benefits. For example, aspects of eligibility for the DLA care component which are almost entirely contained within s.72 SSCBA 1992 include:

- the rates of the component and criteria to qualify for them, in terms of the level of disability and length for which it must last (see below)
- the length of time for which the above conditions must be satisfied (see below)
- the definition of “terminal illness” and rate to be paid to terminally ill claimants
- the exclusion from entitlement to the care component of those for whom the UK is not the “competent state” for sickness benefits under EU law.

There is also provision (supplemented by regulations) for payment to cease if the claimant is in hospital or residential care, and introducing age rules affecting entitlement to DLA.

Whilst in some areas the PIP primary legislation leaves more to the regulations (see below), it once again contains a clear indication of the approach taken to all of the areas listed above.

The bill includes specific regulation-making powers in some of these areas, but it generally does so without giving a clear indication of how they will be used.

As an example of the differences between the reserved acts and the bill, the conditions relating to what level of impairment can give rise to an award of a disability benefit (referred to below as “disability conditions”) are now considered.

**Disability conditions – DLA**

The disability conditions for DLA are almost entirely contained in primary legislation. For example, to qualify for the care component at the middle rate, one of the following four statements must apply to the claimant:

“(b) he is so severely disabled physically or mentally that, by day, he requires from another person–

(i) frequent attention throughout the day in connection with his bodily functions; or

(ii) continual supervision throughout the day in order to avoid substantial danger to himself or others; or

(c) he is so severely disabled physically or mentally that, at night,–

(i) he requires from another person prolonged or repeated attention in connection with his bodily functions; or

(ii) in order to avoid substantial danger to himself or others he requires another person to be awake for a prolonged period or at frequent intervals for the purpose of watching over him.” (s.72(1) SSCBA 1992)
If one of the conditions in sub-paragraph (b) and one of the conditions in sub-paragraph (c) apply, the claimant is instead entitled to the highest rate of the care component.

No further detail is given in regulations, save that provision is made for entitlement to the middle rate for some claimants receiving regular renal dialysis (Reg 7 of the DLA Regs), and that “attention” must be “required to be given in the physical presence of the severely disabled person.” (Reg 10C of the DLA Regs).

This approach has led to the development of a very substantial body of caselaw, considering the ordinary and natural meaning of the words quoted above. For example, it was not until 2006 that clear authority established functions of the brain as “bodily functions”. This allowed prompting in connection with communication and social interaction at school to potentially help a child to qualify for DLA.\(^4\) Regulation 10C of the DLA Regs was in fact introduced in 2000 as a way to reverse the effect of a court decision which had held that attention given to someone over the telephone could potentially allow someone to qualify for DLA.\(^5\)

**Disability conditions – PIP**

The definition of terms through court and tribunal decisions was something that the UK Government attempted to avoid when introducing PIP. The primary legislation gives less detail, with the qualifying criterion for the standard rate of the daily living component (equivalent to the DLA middle rate care component) being that:

“(a) the person's ability to carry out daily living activities is limited by the person's physical or mental condition;” (s.78(1) WRA 2012)

The equivalent criterion to the highest rate care component is identical, save that the claimant’s ability must be “severely limited” (s.78(2) WRA 2012).

10 daily living activities (each containing a number of “descriptors” which describe different difficulties with the activity) relating to daily living are prescribed in the PIP regulations, along with definitions of terms used, points’ scores and thresholds for entitlement.\(^6\) This more detailed approach is signposted from provisions in WRA 2012.

Both pieces of reserved primary legislation also establish that there are to be two components to the benefit, and how many rates it is paid at.

**Disability conditions in the bill**

In contrast, the bill does not set how many rates of disability assistance will be introduced. There is a requirement in the bill that eligibility (unless the applicant is terminally ill) must depend on the applicant having:

“(a) a physical or mental impairment that—
   (i) has a significant and not short-term adverse effect on the individual’s ability to carry out normal day-to-day activities, or

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\(^4\) The case in question was *R(DLA) 1/07*

\(^5\) The case was *Foley v Chief Adjudication Officer*, a Court of Appeal decision which is not publicly available online (but is referred to here: https://www.disabilityrightsuk.org/how-we-can-help/benefits-information/law-pages/case-law-summaries/attendance-allowance-and#Indirect)

\(^6\) Whilst the Schedule as amended in March 2017 is not yet available from legislation.gov.uk, CPAG have published a factsheet setting out the PIP activities, descriptors and definitions.
(ii) otherwise gives rise to a significant and not short-term need”
(schedule 4, para 1(1))

This is very similar to the restriction to the definition of a devolved “disability benefit”, already included in the Scotland Act 1998.7

**Length of time for which disability conditions must be satisfied**

As set out in the quote above, the bill provides that applicants will not normally qualify for disability assistance if their needs are “short-term”. No further detail is given on the face of the bill.

In contrast, the reserved primary legislation sets out that a claimant’s needs must normally last for nine months for DLA (s.72 and s.73 SSCBA) or a year for PIP (s78, s.79 and s.81 WRA 2012) to qualify. It also provides an exemption from these provisions for claimants who are terminally ill.

5. **Provision for disability benefit assessments**

An area which a number of responses to the Committee’s Call for Views touched on was disability benefit assessments – with a common call for the bill to be amended to prevent private sector assessments for devolved disability benefits. This part of the paper looks at how much detail of assessment processes is provided in legislation.

The Minister for Social Security has set out her thinking about disability benefit assessments in her [statement to Parliament on the Social Security Agency in April 2017](#), and committed to return with further details “in the autumn.” Further details of the Scottish Government’s current thinking are set out in Paper SC/S5/17/19/4.

The only mention of assessments in the bill is currently that:

“the information which the Scottish Ministers may request an individual to provide… includes the results of an assessment, including one which the individual has not undergone at the time the request is made.” (s.30(3))

The DLA legislation does not provide much more detail, either in primary or secondary legislation. Broad provision is made allowing any evidence required to be requested from claimants (s.5 SSAA 1992 and 1987 C&P Regs). There is separate provision permitting DLA claimants to be asked to attend medical examinations by “approved healthcare professionals” (s.19 SSA 1998). This includes a provision that:

“If the person fails without good cause to comply with the request, the Secretary of State shall make the decision against him.” (s.19(3) SSA 1998)

None of the legislation relating to the form of claims or evidence requirements indicates to the reader that a major source of evidence used in determining DLA entitlement is the lengthy self-assessment claim form.8

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7 The definition of “disability benefit”, inserted by s.22 of the Scotland Act 2016, is:

“a benefit which is normally payable in respect of—

(a) a significant adverse effect that impairment to a person’s physical or mental condition has on his or her ability to carry out day-to-day activities (for example, looking after yourself, moving around or communicating), or
(b) a significant need (for example, for attention or for supervision to avoid substantial danger to anyone) arising from impairment to a person’s physical or mental condition;

and for this purpose the adverse effect or need must not be short-term.”
(Section F1, Head F of schedule 5 to the [Scotland Act 1998 c. 46](#))

8
The PIP provisions provide more detail. The primary legislation permits (but does not mandate) regulations to be made requiring claimants to provide evidence, or:

“requiring a person to participate in such a consultation, with a person approved by the Secretary of State, as may be determined under the regulations (and to attend for the consultation at a place, date and time determined under the regulations).” (s.80(4)(c) WRA 2012)

Whilst the PIP regulations set out that a claim can be refused if a person fails to attend such a consultation without good reason, the requirement to attend is again a matter of administrative discretion. None of the reserved legislation sets out who should carry out assessments, save that the person must be “approved”, and (only in relation to DLA) the types of healthcare professionals who can be approved by the Secretary of State for this purpose (s.39 SSA 1998).

It is perhaps worth noting that the increased number of face-to-face assessments for PIP appears to be simply a Government policy decision, given the fundamental similarity in the wording of the legislative provisions for DLA and PIP.

6. Areas in which regulations made under the bill will not make provision

The DPM states the Scottish Government’s view that it:

“would make the law more accessible to tell the whole story of how a person qualifies for assistance, and what they qualify for, in one place.” (para 11)

In the evidence session on 21 September, a concern was raised around the sections of the bill which do not contain any powers to make regulations. Annexe B to this paper lists the sections in part 2 of the bill without any delegated powers provisions. Some of these sections do put more detail on the face of the bill than the equivalent reserved statutes (see Annexe A). However, where there is more detail in the bill than in the reserved primary legislation, the reserved system often makes detailed provision via regulations. In contrast, the bill contains no regulation-making powers at all in a number of these areas.

There are some provisions which may not need further legislative detail, and it is not necessarily the case that the current reserved system makes more provision in regulations. For example, the equivalent offences to those created by sections 39-42 of the bill are entirely contained in primary legislation.

The illustrative regulations and administrative processes

The devolved social security system will obviously require a number of detailed administrative processes to function. The bill as drafted does not require many of these processes to be set out in legislation at all. To give one example, no provision is made for regulations to set out the evidence required from applicants, or the form of an application. The required form of applications must be “publicised” (s.20(2)).

The illustrative best start grant regulations (Paper SC/S5/17/19/3) simply state that:

“(2) For the avoidance of doubt, a thing that purports to be an application is not an application unless it is—
(a) made in the form, and
(b) accompanied by the evidence,

8 The current form runs to 42 pages and can be downloaded from gov.uk: https://www.gov.uk/government/publications/disability-living-allowance-for-children-claim-form
required under section 20(1) of the Social Security (Scotland) Act 2018.”

The accompanying document (pages 3 – 4) states that multiple channels to apply will be available, and accessible information on these provided. It notes the need to develop processes around the form of claims and evidence required. But it states that the Scottish Government “do not envisage that they will be included in regulations.” It suggests that the evidence required might instead be notified to applicants by listing it on the claim form itself.

Whilst these illustrative regulations are clearly stated to be a work in progress, they do not currently tell the “whole story” of entitlement to this type of assistance.

**Implications of not including processes in the regulations**

Not including these processes in the regulations means that they will not be subject to any parliamentary scrutiny (unless covered by the annual report on the charter). Also, it appears that the only route of challenge for an applicant who fails to follow required administrative processes will be a complaint or a request for judicial review.

The evidence requirements for disability assistance will obviously be very different to those for best start grants. The Scottish Government position paper (Paper SC/S5/17/19/4) does not indicate what details the regulations might include of evidence required, but there is no regulation-making power in the bill that mentions evidence requirements or assessments.

This makes it unclear how an applicant could challenge a requirement to take part in a face-to-face assessment. This is because assessments are only mentioned in the context of being “information” that Ministers may request from applicants in the bill (see Section 5 above). Failure to provide information can lead to a summary refusal of assistance, and the regulations do not need to say any more about this. It appears that the only prospect of a successful challenge to a decision to require someone to attend a face-to-face assessment would be judicial review. ⁹

The position paper does suggest that, in spite of a lack of regulation-making powers in the bill, the regulations “will set out the form of applications and notifications.” It is unclear at present what these might look like (if not similar to the best start grant regulation quoted above, which essentially adds nothing to the wording of the bill itself).

**Jon Shaw**

**SPICe Research**

**29 September 2017**

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⁹ In contrast, a PIP claimant can argue that they have a “good reason” for their failure to attend an assessment at an appeal tribunal – see regulations 8-10 of the PIP Regs.
Annexe A – Comparison of provisions in the bill and reserved primary legislation

The table below sets out where equivalents to provisions in Part 2 of the bill can be found in reserved primary legislation, and an assessment of which approach gives more detail in primary legislation. Brief further comments are also provided, in some cases highlighting further provision made by regulations.

<table>
<thead>
<tr>
<th>Policy area</th>
<th>Bill provisions</th>
<th>Reserved provisions</th>
<th>Comparison of primary legislation</th>
<th>Further information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duty to give assistance</td>
<td>s.8</td>
<td>N/A</td>
<td>N/A</td>
<td>No equivalent reserved provision.</td>
</tr>
<tr>
<td>Prescription of liabilities</td>
<td>s.38</td>
<td>N/A</td>
<td>N/A</td>
<td>Amends other devolved legislation. Amendments were made by s.108 WRA 2012 to English debt recovery law.</td>
</tr>
<tr>
<td>Appeal rights</td>
<td>s.22, s.27</td>
<td>s.12 SSA 1998</td>
<td>Different legislative approach</td>
<td>The bill sets time limits on its face, but reserved regulations set out the form of decision notices, and detail of appealable decisions. No regulation-making power in the bill and all determinations appear to be appealable.</td>
</tr>
<tr>
<td>Duty to notify changes</td>
<td>s.31, s.32</td>
<td>s.5 SSAA 1992</td>
<td>Different legislative approach</td>
<td>Reserved regulations do go into more detail than primary legislation, but overall tell the user of the system little more about what it may be relevant to report than the provisions in the bill. The bill links these provisions more closely to criminal offences.</td>
</tr>
<tr>
<td>Determinations and decisions</td>
<td>s.33</td>
<td>s.8, Sch 2 and Sch 3 SSA 1998</td>
<td>Different legislative approach</td>
<td>Reserved act sets out decisions which are and are not appealable. The bill leaves some administrative actions as not part of the decision-making process in law at all (see section 6 above), but makes all determinations appealable.</td>
</tr>
<tr>
<td>Policy area</td>
<td>Bill provisions</td>
<td>Reserved provisions</td>
<td>Comparison of primary legislation</td>
<td>Further information</td>
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<tr>
<td>Recovery of overpayments</td>
<td>s.37</td>
<td>s.71 SSAA 1992</td>
<td>Different legislative approach</td>
<td>The bill provides that a debtor’s financial circumstances must be considered, whilst regulations under s.71 make detailed provision about ways of recovering benefits and maximum deductions.</td>
</tr>
<tr>
<td>Withdrawing claims</td>
<td>s.21</td>
<td>s.1 and s.5 SSAA 1992</td>
<td>More detail in the bill</td>
<td>Detail of when claims can be amended or withdrawn is in reserved regulations (no regulation-making power in the bill).</td>
</tr>
<tr>
<td>Evidence requirements</td>
<td>s.30</td>
<td>s.5 SSAA 1992</td>
<td>More detail in the bill</td>
<td>The reserved system leaves the detail for regulations. There is no regulation-making power in the bill.</td>
</tr>
<tr>
<td>Notices of determinations</td>
<td>s.22</td>
<td>s.8 SSA 1998</td>
<td>More detail in the bill</td>
<td>Additional detail is given in the reserved regulations around explanations of decisions and which decisions must be given in writing. There is no regulation-making power in the bill.</td>
</tr>
<tr>
<td>Re-determinations</td>
<td>s.23, s.24,</td>
<td>s.9 and s.12(3A) SSA 1998</td>
<td>More detail in the bill</td>
<td>Additional details of situations in which decisions can be revised are set out in reserved regulations. Regulation-making powers in the bill only allow setting of time-limits.</td>
</tr>
<tr>
<td></td>
<td>s.25, s.26</td>
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<tr>
<td>Awards without applications</td>
<td>s.35</td>
<td>s.1(1) SSAA 1992</td>
<td>Similar level of detail</td>
<td>No limit to situations that may be prescribed in regulations. Reserved regulations do not allow an award of DLA or PIP to be made without a claim.</td>
</tr>
<tr>
<td>Offence of giving false information</td>
<td>s.39</td>
<td>s.111A and s.112 SSAA 1992</td>
<td>Similar level of detail</td>
<td>Reserved act is more complex in its structure, as there are two different offences of different seriousness, and provision for civil penalties which is not replicated in the bill.</td>
</tr>
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<tr>
<td>Policy area</td>
<td>Bill provisions</td>
<td>Reserved provisions</td>
<td>Comparison of primary legislation</td>
<td>Further information</td>
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<tr>
<td>Offences around reporting changes of circumstances</td>
<td>s.40, s.41</td>
<td>s.111A and s.112 SSAA 1992</td>
<td>Similar level of detail</td>
<td>Reserved act is more complex in its structure, as there are two different offences of different seriousness, and provision for civil penalties which is not replicated in the bill.</td>
</tr>
<tr>
<td>Offences involving organisations</td>
<td>s.42</td>
<td>s.115 SSAA 1992</td>
<td>Similar level of detail</td>
<td>Reserved act is more complex due to the wider range of offences and penalties.</td>
</tr>
<tr>
<td>Length of awards</td>
<td>s.34</td>
<td>s.71 SSCBA 1992 (DLA) s.88 WRA 2012 (PIP)</td>
<td>More detail in reserved act (for PIP).</td>
<td>Primary legislation states that the default position for PIP is a fixed-term award. Both DLA primary legislation and the bill allow either fixed-term or indefinite awards. The bill has a regulation-making power where the reserved primary legislation does not (and for PIP refers to guidance).</td>
</tr>
<tr>
<td>Entitlement conditions</td>
<td>s.14, Sch. 4</td>
<td>Part 3, SSCBA 1992 (DLA) Part 4, WRA 2012 (PIP)</td>
<td>More detail in reserved acts</td>
<td>Most entitlement conditions for DLA are on the face of SSCBA 1992. PIP provisions leave more to regulations, but still say more about the structure of the regulations than the bill. See also Section 4 above, which gives further details.</td>
</tr>
<tr>
<td>Claims or applications</td>
<td>s.19, s.20</td>
<td>s.1 SSAA 1992</td>
<td>More detail in reserved acts</td>
<td>Specific reserved provisions in the acts allowing claims to be made on behalf of terminally ill people without their knowledge or consent, and relating to the requirement to state a national insurance number.</td>
</tr>
<tr>
<td>Policy area</td>
<td>Bill provisions</td>
<td>Reserved provisions</td>
<td>Comparison of primary legislation</td>
<td>Further information</td>
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</tr>
<tr>
<td>Date of claim and backdating</td>
<td>s.34(2)(a) and Sch 4 para 7</td>
<td>s.1 and s.5 SSAA 1992 s.76 SSCBA 1992 (DLA) s.88 WRA 2012 (PIP)</td>
<td>More detail in reserved acts</td>
<td>Whilst primary legislation prevents backdating of DLA or PIP, regulations make provision for the date on which incorrectly made claims are treated as made. The bill does not make clear the Scottish Government’s policy intention.</td>
</tr>
<tr>
<td>Assessments of eligibility</td>
<td>s.30</td>
<td>s.19 SSA 1998 (DLA) s.80 WRA 2012 (PIP)</td>
<td>More detail in reserved acts</td>
<td>Detail of when assessments can be carried out sketched out in reserved primary legislation, with detailed provision in regulations. See Section 5 above for details.</td>
</tr>
<tr>
<td>Changing decisions during an award</td>
<td>s.10, s.35</td>
<td>s.10 SSA 1998</td>
<td>More detail in reserved acts</td>
<td>Reserved act allows someone to apply for an award to be changed, establishes a default effective date from which a decision is changed (“superseded”), and allows regulations to prescribe exceptions to this.</td>
</tr>
<tr>
<td>Liability for overpayments</td>
<td>s.36</td>
<td>s.71 SSAA 1992</td>
<td>More detail in reserved acts</td>
<td>Reserved act sets out when payments not made under an award can be recovered, and prevents recovery of “official error” overpayments.</td>
</tr>
<tr>
<td>Fraud Investigations</td>
<td>s.43, s.44</td>
<td>Part 6 SSAA 1992</td>
<td>More detail in reserved acts</td>
<td>Lots of detail of investigatory powers in reserved act. Both SSAA and the bill allow regulations to create offences in relation to investigations.</td>
</tr>
<tr>
<td>Rates of benefit</td>
<td>Sch 4 paras 8 and 9</td>
<td>ss. 72-3 SSCBA 1992 (DLA) ss.78-9 WRA 2012 (PIP)</td>
<td>More detail in reserved acts</td>
<td>The number of rates at which DLA and PIP are paid is set out in reserved primary legislation (but not how much these rates are).</td>
</tr>
</tbody>
</table>
Annexe B – Sections with no delegated powers in part 2 of the Social Security (Scotland) Bill

<table>
<thead>
<tr>
<th>Section</th>
<th>Heading</th>
<th>Section</th>
<th>Heading</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Duty to give assistance</td>
<td>9</td>
<td>Meaning of “determination of entitlement”</td>
</tr>
<tr>
<td>10</td>
<td>Later determination supersedes earlier</td>
<td>19</td>
<td>Duty to make determination</td>
</tr>
<tr>
<td>20</td>
<td>Application for assistance</td>
<td>21</td>
<td>Withdrawal of application</td>
</tr>
<tr>
<td>22</td>
<td>Notice of determination</td>
<td>25</td>
<td>Notice of re-determination</td>
</tr>
<tr>
<td>26</td>
<td>Notice where re-determination not made timeously</td>
<td>27</td>
<td>Right to appeal to First-tier Tribunal</td>
</tr>
<tr>
<td>28</td>
<td>Time for appeal</td>
<td>29</td>
<td>First-tier Tribunal’s power to determine entitlement</td>
</tr>
<tr>
<td>30</td>
<td>Obligation to provide information on request</td>
<td>31</td>
<td>Duty to notify changes of circumstances</td>
</tr>
<tr>
<td>32</td>
<td>Lifting of duty to notify changes of circumstances</td>
<td>33</td>
<td>Decisions comprising determinations</td>
</tr>
<tr>
<td>36</td>
<td>Liability</td>
<td>37</td>
<td>Consideration for debtor’s circumstances</td>
</tr>
<tr>
<td>38</td>
<td>Prescription of liability (amends other primary legislation)</td>
<td>39</td>
<td>Offence of trying to obtain assistance by deceit</td>
</tr>
<tr>
<td>40</td>
<td>Offence of failure to notify</td>
<td>41</td>
<td>Offence of causing a failure to notify</td>
</tr>
<tr>
<td>42</td>
<td>Individual culpability for offending by an organisation</td>
<td>44</td>
<td>Code of practice on investigations</td>
</tr>
</tbody>
</table>

Sources: Social Security (Scotland) Bill [as introduced] SP Bill 18 Session 5 (2017), Social Security Scotland) Bill Delegated Powers Memorandum SP Bill 18–DPM

Section 44 (investigations) is the only one of the above sections that mandates Parliamentary scrutiny once the bill is enacted, in that the code of practice must be laid before Parliament when it is produced and whenever it is updated.
Annexe B – Some important pieces of secondary legislation for DLA and PIP

<table>
<thead>
<tr>
<th>Benefit</th>
<th>Regulations</th>
<th>Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>DLA</td>
<td><strong>The Social Security (Disability Living Allowance) Regulations 1991 No. 2890</strong> (DLA Regs)</td>
<td>Main entitlement provisions that are not set out in primary legislation, detailed effect of stays in hospitals and care homes. For PIP there is detail of the entitlement conditions and evidence requirements, including assessments.</td>
</tr>
<tr>
<td>PIP</td>
<td><strong>The Social Security (Personal Independence Payment) Regulations 2013 No. 377</strong> (PIP Regs)</td>
<td>Replacement of DLA by PIP.</td>
</tr>
<tr>
<td></td>
<td>Note that March 2017 changes to the assessment criteria made by <strong>SI 2017/194</strong> are not yet shown in the online version.</td>
<td></td>
</tr>
<tr>
<td>PIP</td>
<td><strong>The Personal Independence Payment (Transitional Provisions) Regulations 2013 No. 387</strong> (PIP(TP) Regs)</td>
<td></td>
</tr>
<tr>
<td>DLA</td>
<td><strong>The Social Security (Claims and Payments) Regulations 1987 No. 1968</strong> (1987 C&amp;P Regs)</td>
<td>Includes:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• claims</td>
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<tr>
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<td></td>
<td>• backdating</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• evidence requirements</td>
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<td></td>
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<td>• payment arrangements</td>
</tr>
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<td></td>
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<td>• access to Motability scheme</td>
</tr>
<tr>
<td>PIP</td>
<td><strong>The Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 No. 380</strong> (2013 C&amp;P Regs)</td>
<td>Includes:</td>
</tr>
<tr>
<td>DLA</td>
<td><strong>The Social Security and Child Support (Decision and Appeals) Regulations 1999 no. 991</strong> (1999 D&amp;A Regs)</td>
<td>Includes:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• decisions which can and cannot be appealed</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• grounds to revise decisions (equivalent to re-determinations)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• grounds to supersede decisions</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• effective date from which decisions are superseded</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• electronic communications</td>
</tr>
<tr>
<td>PIP</td>
<td><strong>The Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 No. 381</strong> (2013 D&amp;A Regs)</td>
<td></td>
</tr>
<tr>
<td>Both</td>
<td><strong>The Social Security (Payments on account, Overpayments and Recovery) Regulations 1988 No. 664</strong> (PAOR Regs)</td>
<td>Rates of recovery, offsetting overpayments against other payments.</td>
</tr>
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</tr>
<tr>
<td>Both</td>
<td><strong>The Social Security (Overlapping Benefits) Regulations 1979 No. 597</strong> (OB Regs)</td>
<td>Preventing combinations of benefits from being paid at the same time.</td>
</tr>
</tbody>
</table>
SOCIAL SECURITY (SCOTLAND) BILL
POLICY PAPER

EARLY YEARS ASSISTANCE (BEST START GRANT) ILLUSTRATIVE REGULATIONS AND POLICY NARRATIVE

Introduction

The Scotland Act 2016 devolved new social security powers to Scotland. Our paper Creating a Fairer Scotland: A New Future for Social Security in Scotland, which was published in March 2016, set out the Scottish Government’s vision and key principles for the future of social security using these devolved powers and intention to establish an agency within the Scottish Government family to deliver the devolved benefits. The enabling legislation for this, the Social Security (Scotland) Bill, was laid before the Scottish Parliament on 20 June 2017 and is currently undergoing Stage 1 of the Parliamentary scrutiny process.

A series of position papers has been provided to the Committee, setting out current policy thinking on key matters to be examined during stage 1 of the Bill. Alongside these, illustrative regulations are being provided to give an idea of how we intend to use the powers in the Social Security Bill to take forward the Best Start Grant (BSG) (Early Years Assistance in the Bill). The illustrative regulations do not have any status beyond offering an example to inform the debate.

The position papers already provided can be found at:


Consultation

The Social Security in Scotland Consultation ran from July to October 2016. The section on BSG received over 100 responses from both organisations and individuals. BSG policy and operational policy is being informed by the views of potential users, for example, we have talked to parents and involved them in user testing. Going forward, we will be taking into account views from the Experience Panels. We have also established a Best Start Grant Reference Group that brings together a range of stakeholders from the public and third sector, to support and inform the development of the BSG.

The illustrative regulations reflect the product of discussions to date but are not the final position on BSG policy. The basic framework of the three BSG payments and the amounts of the payments are well established. We are still developing policy on the detail of the payments and how they will be implemented, although major changes that have an impact on financial planning would need careful consideration.

There will be a public consultation on a further set of BSG regulations, updated to reflect the impact of any changes to the Bill, stakeholder views and developments in the service design, in spring 2018.
Policy Objectives

Following the devolution of the Sure Start Maternity Grant (SSMG) in the Scotland Act 2016, Scottish Ministers will use powers to create new benefits set out in the Social Security Bill to introduce a more comprehensive benefit, the BSG.

The policy objectives of the BSG cash payments are to improve children’s wellbeing and life chances, providing support to low income families at key transition points in early years. In combination with Healthy Start Vouchers (HSV), devolved alongside the SSMG, BSG will help mitigate the effects of child poverty and material deprivation. The support will help improve outcomes for children including reducing health inequalities and closing the attainment gap:

- **HSV** – will help to pay for milk, fruit and vegetables to help mothers and children get the nutrition they need.
- **Maternity and New Baby Payment** – will help with expenses in pregnancy or of having a new child, for example a pram or additional heating. This lessens the financial burden on lower income families when they are expecting a child.
- **Nursery/Early Learning Payment** – will help with costs during nursery and early learning years to support child development, for example travel costs, changes of clothes for messy play, trips out and toys for home learning.
- **School Payment** – helps with the costs of preparing for school, for example a school bag, educational toys, after school activities such as swimming or football, or helping with the cost of school milk or school trips.

Prior to launch, there will be a detailed communication strategy, to ensure that applicants and the services that they come in to contact with and might seek support from are aware of the new benefit, their entitlement and how they can access it. BSG cash payments and HSV will be applied for on a single application form and administrated alongside each other by the Agency. Where we refer to BSG in this document we mean the three cash payments – maternity and new baby, nursery and early learning and school payments. Regulations for HSV will be made separately under the Social Security Act 1988 so the Social Security Bill provisions will not apply to HSV. However, the regulations for HSV will seek to align with the relevant sections of cross cutting policy, for example residence etc so that they can be administered alongside each other with a seamless service to applicants.

**Format of the Illustrative Regulations**

The intention is that regulations will contain all relevant provisions for that type of assistance, including cross cutting provisions such as those for residence and re-determinations. In the case of the BSG, the illustrative regulations are set out 3 schedules, one for each of the BSG payments. This is to allow for the reader to identify the relevant grant and see all of the provisions for it in one place. Some aspects, for example residence, will be repeated across the schedules.
PART 1 - INTRODUCTORY AND INTERPRETATION

This section specifies the date of commencement and definitions used in the regulations, such as the definition of a partner and how days will be counted. The full text is at Annex A. Interpretation also includes a section on applications.

Applications

Illustrative regulations:

**When an application is to be treated as made**

3.—(1) An application is to be treated as made on the day it is received by the Scottish Ministers.

(2) For the avoidance of doubt, a thing that purports to be an application is not an application unless it is—

(a) made in the form, and

(b) accompanied by the evidence, required under section 20(1) of the Social Security (Scotland) Act 2018.

The aim is to make it as easy as possible for people who are entitled to BSG to take up their entitlement. In order to make the system accessible for people with a range of needs and preferences and to maximise take up, there will be multiple application channels for the BSG. Information on how to apply for devolved benefits will be fully and widely accessible in whatever form users need. The detail of these is still to be determined in conjunction with users. One of the key differences between our social security delivery and the existing system will be the strong local presence across Scotland. Local agency staff will provide pre-claims advice and support to people on the benefits it delivers and related support they may be entitled to.

In order to streamline the application process, the BSG and HSV will be promoted and be capable of being applied for together. Each BSG payment is treated as a one off grant, without any continuing entitlement which means that there is no requirement to notify the Agency of a change in circumstances under Section 31 of the Bill. Where the Agency has verified information from a previous application for HSV or BSG, the intention is that it should be used, where practical and with the applicant’s permission, to inform any later determination on HSV or BSG payment. This is in order to reduce the burden of application. However, we anticipate that the time lapse between determinations on HSV and individual BSG payments will often mean that applicants are asked to make an updated declaration for each BSG payment.

**Evidence** Evidence requirements and processes to underpin collection to establish whether applicants meet eligibility conditions, are under development. This includes opportunities for using existing data sources, including data sharing with DWP and HMRC. Processes for requesting and collecting any additional evidence required to
make a decision will also be required. Evidence requirements will be specified on the form but we do not envisage that they will be set out in regulations. This enables the Agency to easily keep step with changes in technology, culture and practice and to amend the application process to take account of users’ needs and preferences.

**Valid Application** There will be certain conditions that need to be met to determine that a valid claim has been made, for example the form in which it is made and evidence required to support the claim. Relevant processes for this and for situations where the form does not meet the requirements will be set out once service design is further progressed. We do not envisage that they will be included in regulations, to allow for a flexible and responsive system.

**Second Application** Section 20 of the Bill precludes two applications being made in respect of the same life event. We anticipate that there may be situations where two applications might legitimately be made for the same BSG payment (life event), for example where the applicant has applied at the beginning of an application window and does not meet the eligibility requirements but applies again later in the window, outside the allowed time to request a re-determination, and meets the criteria at that point. We are considering options for providing for this sort of situation.

**Date of Application** Applications will be assessed based on the eligibility of the applicant on the date of application. The date of application is the date on which a completed application is received by the Agency. For example, the date on which an online application is submitted and received, rather than started and the date on which a paper application is opened and logged rather than the date of signature or posting.

Once service design is further progressed, there may be some further regulations in this area that smooth application processes for applicants and increase efficiency of the social security system by reducing the need to handle applications repeatedly. For example, it may be possible to make provision for situations where an award of qualifying benefit is received after the date of the BSG application but backdated.

**Notification of a Determination** - Section 22 of the Social Security Bill sets out required content of a notice of determination:

- The determination,
- Reasons for it,
- The right to a re-determination
- The right to appeal to a tribunal

We do not propose to set out further detail on this in regulations. The policy intent is for applicants to have a lasting record of the determination on their application or re-determination that they can use e.g. to discuss with an adviser or to check their rights to re-determination. We need to do more work on the options for meeting this need and will engage with users and welfare rights organisations to come up with a final solution.
The Potential Role of the Charter

The Bill places a statutory duty on Scottish Ministers to develop a Social Security Charter that reflects the key principles set out in section 1 of the Bill. These principles are derived from key aspects of the human right to social security. This idea of a publicly accessible charter, communicating in clear terms what people are entitled to expect from the new system, received strong support both in response to the Consultation on Social Security in Scotland and in wider public and stakeholder engagement. We have since committed to developing the charter in partnership with the people of Scotland, starting from a ‘blank sheet of paper’ and have made express provision for this on the face of the Bill.

The specific nature and content of the charter will therefore be a product of this co-design process. Subject to the outcome of the co-design process, it is also possible that the commitments to be made in the charter might include specific matters such as various timeframes relating to processing claims and similar indicators.
SCHEDULE 1
Maternity and New Baby Payment

Illustrative regulations:

Eligibility conditions

1. An individual who applies for a maternity and new-baby grant in respect of a child is eligible for the grant if—
   (a) the application is made before the deadline set by paragraph 2;
   (b) no-one else has received, or is due to receive, a maternity and new-baby grant or sure start maternity grant in respect of the child (but see paragraph 3);
   (c) when the application is made, the individual is habitually and lawfully resident in Scotland;
   (d) at least one of these statements is true—
      (i) when the application is made the individual is, or has been, more than 24 weeks pregnant with the child;
      (ii) when the application is made the individual is the partner of an individual who is, or has been, more than 24 weeks pregnant with the child;
      (iii) the individual has parental responsibility for the child on the day the application is made;
   (e) at least one of these statements is true—
      (i) the individual or the individual’s partner has (or they both have) been properly awarded, for the day on which the application is made, assistance of a kind mentioned in regulation 8,
      (ii) when the application is made, the individual is under 18 years of age,
      (iii) on the day that the application is made, either (or both) the individual or the individual’s partner is 18 or 19 years of age and a dependent of an individual who has been properly awarded, for that day, assistance of a kind mentioned in regulation 8.

Eligibility will be determined via a series of tests carried out on the date of application. The eligibility conditions are:

(a) The application is received within the relevant application window.
(b) No equivalent payment of an SSMG or BSG has been or is due to be made.
(c) The applicant is habitually resident in Scotland.
(d) The applicant is or is the partner of someone who is going to or has had a baby, or meets the responsibility test for the child.
(e) The applicant meets the test for financial circumstances i.e. an award of a qualifying benefit has been made or is a parent who is under the age of 18 or still a dependent of their parent who meets the test for financial circumstances.

These are explained below:

a) Application Windows – To be valid, the application date must be in the relevant window but it can fall at any point in that window. For the Maternity and New Baby Grant this is between the mother reaching 24 weeks of pregnancy to 6 months after the birth of child. This extends the application window by three months by comparison with DWP to allow more time for parents to apply. Where there is a
change of responsibility for the child during the first year of its life, the window is extended to 12 months.

b) No award has already been made - SSMG recipients are excluded from receiving a BSG Maternity or New Baby Grant for the same child. Each payment will only be made once per life event unless there is a change in the responsible person (for example the child moves to live with a kinship carer) to someone not named on the first claim, within the application window. In this case, as second payment can be made where the applicant meets the test of being responsible for the child. Usually, this will mean that, where parents split up, a second payment will not be made.

c) Residence - The current policy intention is that eligibility will depend on applicants being habitually resident in Scotland. This is in line with common practice in jurisdictions across the Common Travel Area (CTA) and in the European Union. We do not propose attaching any residency conditions to the child. This achieves consistency with DWP’s approach and mitigates the possibility of gaps in eligibility or double claiming. In practice, residence conditions attached to each of the qualifying benefits may be sufficient to establish Scottish residence and we do not anticipate a significant evidence burden on applicants, especially where they are coming to Scotland from other CTA jurisdictions, in line with the reciprocal approach that is currently taken.

We are aware that some stakeholders believe that ordinary residence is the correct residency threshold for devolved benefits, especially those that are passported from a qualifying benefit. We are open to exploring the benefits and risks of this approach further.

d) Life events and responsibility

The applicant needs be:

- more than 24 weeks pregnant or have been more than 24 weeks pregnant (i.e. have already had the baby). There is no requirement in regulations to seek advice from a health professional as a condition of the grant but applicants will be encouraged to do so if they have not already. Where there is a still birth, a payment will be made regardless of whether the application was made before or after the date of the still birth, within the application window, in order to provide support for mothers who may have incurred expenses and are coping with the loss of a child;

Or/

- the partner of someone in the situation above. Partner and family is outlined in the Interpretation section;

Or/
have taken on parental responsibility for the child at some point before the date of application.

**Parental responsibility for the child** - The definition of responsibility for a child is set out in the Interpretation section. We have sought to align with DWP’s approach so that the two systems work well together. We considered an alternative approach using a transfer of parental rights and responsibilities in order to simplify the regulations but our initial assessment is that the complexity of family situations does not make this a good fit and that it would be difficult to align with DWP’s approach.

**Illustrative regulations:**

**Meaning of parental responsibility**

7.—(1) An individual is to be regarded as having parental responsibility for a child on a day if—

(a) one of the following statements is true—

(i) the individual is a parent of the child;

(ii) either the individual or the individual’s partner is (or both of them are), on the day in question, an appointed guardian of the child;

(iii) the child is, on the day in question, placed with the individual or the individual’s partner (or both of them) by an adoption agency (as defined by section 119 of the Adoption and Children (Scotland) Act 2007);

(iv) either the individual or the individual’s partner has (or both of them have) responsibilities for the child on the day in question by virtue of an order of a kind mentioned in paragraph (2);

(b) paragraph (3) or (4) applies to the individual on the day in question; and

(c) on the day in question the child is not being looked after by a local authority within the meaning of section 17(6) of the Children (Scotland) Act 1995.

(2) The following are the kinds of order referred to in paragraph (1)(a)(iv) —

(a) an adoption order under section 28 of the Adoption and Children (Scotland) Act 2007;

(b) a kinship care order within the meaning of section 72(1) of the Children and Young People (Scotland) Act 2014;

(c) a parental order under section 54 of the Human Fertilisation and Embryology Act 2008;

(d) any order granted in a part of the United Kingdom other than Scotland which is equivalent in effect to an order mentioned in subparagraphs (a) to (c).

(3) This paragraph applies to an individual if—

(a) the individual; or

(b) the individual’s partner,

is in receipt of child benefit in respect of the child.

(4) This paragraph applies to an individual if—

(a) the child normally lives with the individual; and

(b) either—

(i) no-one is in receipt of child benefit in respect of the child; or

(ii) the statement in paragraph (1)(a)(iv) is true.

(5) An individual is to be taken to have acquired parental responsibility for a child on the first day that the individual can be regarded as having parental responsibility for the child in accordance with paragraph (1).
Our intention is to provide a BSG to adoptive parents and kinship carers. The effect of the illustrative regulations is that, while adoptive parents and those who have been awarded a kinship care order can qualify for the BSG, kinship carers who have not sought to formalise the arrangement do not. Kinship carers who have an order in place will not be required to be in receipt of child benefit.

Guardians and people who have taken on responsibility for a child via parental orders in relation to surrogacy arrangements and orders under human fertilization and embryology legislation will also qualify.

While we understand that some children living with other family members who do not have an order in place may benefit from a BSG payment and will continue to look at how individual groups can be reached as our system develops, we need a simple robust check that the applicant is responsible for the child.

We do not propose to pay a BSG to children where relevant costs are met by the local authority, either in residential accommodation or where they are placed with foster parents. Responsibility for the child is a developing area of policy and we will keep it under review as the National Review of Care Allowances and Independent Care Review progresses.

e) Financial Circumstances

As a proxy for being on a low income, BSG payments will be made to people who have been correctly awarded a qualifying DWP or HMRC payment:

Illustrative regulations:

<table>
<thead>
<tr>
<th>Meaning of references to specified kinds of assistance</th>
</tr>
</thead>
<tbody>
<tr>
<td>8. References to a kind of assistance specified in this regulation are to the following—</td>
</tr>
<tr>
<td>(a) income support;</td>
</tr>
<tr>
<td>(b) state pension credit;</td>
</tr>
<tr>
<td>(c) income-based jobseeker’s allowance;</td>
</tr>
<tr>
<td>(d) working tax credit;</td>
</tr>
<tr>
<td>(e) child tax credit;</td>
</tr>
<tr>
<td>(f) income-related employment and support allowance;</td>
</tr>
<tr>
<td>(g) universal credit;</td>
</tr>
<tr>
<td>(h) housing benefit.</td>
</tr>
</tbody>
</table>

These are listed in the Interpretation section and, while based on DWP eligibility for SSMG, simplify tax credit entitlement and allow for working people to apply for their BSG payment before a child is born rather than waiting until they are in receipt of a child tax credit after the child is born. The monthly variations in UC may mean that it
is not clear to the applicant whether they are in receipt of UC in the current month at the time that they apply for the BSG. We are considering possible solutions for this.

**Young Parents** Parents who are themselves under the age of 18 will not be required to meet the condition of being in receipt of a qualifying benefit. Where the applicant is 18 or 19 and still in approved education or training they will be treated as a dependent of their parent, as set out in the interpretation section. They can apply in their own right but use their parent’s qualifying benefit award as evidence of low income.

**PART 2 – ASSISTANCE TO BE GIVEN**

Illustrative regulations:

<table>
<thead>
<tr>
<th>Value of grant</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. The value of a maternity and new-baby grant is—</td>
</tr>
<tr>
<td>(a) the amount specified in paragraph 5, and</td>
</tr>
<tr>
<td>(b) any amount that falls to be added to that by way of a multiple-pregnancy supplement (see paragraph 6).</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>The basic amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.—(1) The amount referred to in paragraph 4(a) is—</td>
</tr>
<tr>
<td>(a) £600 if sub-paragraph (2) applies in relation to the child in respect of whom the grant is to be given, or</td>
</tr>
<tr>
<td>(b) £300 if it does not.</td>
</tr>
<tr>
<td>(2) This sub-paragraph applies in relation to the child (subject to sub-paragraph (3)) if, on the day the application for the grant is made—</td>
</tr>
<tr>
<td>(a) there is no-one under 16 years of age living in the same household as the individual to whom the grant is to be given; or</td>
</tr>
<tr>
<td>(b) if there is, that person is (or all of those persons are) one of the following—</td>
</tr>
<tr>
<td>(i) the child;</td>
</tr>
<tr>
<td>(ii) a sibling of the child born as a result of the same pregnancy that resulted in the child’s birth;</td>
</tr>
<tr>
<td>(iii) a parent of the child.</td>
</tr>
<tr>
<td>(3) Where more than one child is born, or is to be born, as a result of the same pregnancy—</td>
</tr>
<tr>
<td>(a) sub-paragraph (2) applies in relation to only one of the children; and</td>
</tr>
<tr>
<td>(b) it is for the Scottish Ministers to decide which.</td>
</tr>
</tbody>
</table>

**Value of Grant**

For the maternity and new child payment, the value will be £600 to a first child and £300 to second and subsequent children.

**Second and subsequent children**

In order to determine whether a child is a first or a subsequent child in a family, we propose the same approach as for the SSMG. That is, where there is a child in the family of 16 or under, any other child born in to the family will be treated as a subsequent child. Subsequent children will be paid a £300 birth payment rather than
£600. Where the parent is themselves a child, they are excluded from this rule e.g. where a 15 year old is living with her mother and becomes pregnant, she would be entitled to a £600 payment.

There will be no upper limit on the number of children who can receive a BSG in any one family.

Illustrative regulations:

**Multiple pregnancy supplement**

6.—(1) A supplement of £300 is to be added to the value of a maternity and new-baby grant in respect of a child born, or to be born, as a result of a multiple pregnancy.

(2) But sub-paragraph (1) is subject to sub-paragraphs (3) and (4).

(3) The supplement is to be added to the grant in respect of only one of the children born, or to be born, as a result of the pregnancy, and it is for the Scottish Ministers to decide which child’s grant to supplement.

(4) Sub-paragraph (1) does not apply if the individual to whom the grant is to be given—

(a) has not applied for a maternity and new-baby grant in respect of all of the children born, or to be born, as a result of the pregnancy; or

(b) is not eligible for a maternity and new-baby grant in respect of any of those children.

**Multiple Pregnancy Supplement**

For multiple births, the normal BSG award is made and, in addition, there is a multi-birth supplement to recognise the additional costs of a multiple birth. This table illustrates the effect:

<table>
<thead>
<tr>
<th>No. of children in multiple birth</th>
<th>BSG Payment</th>
<th>BSG Multi Birth Supplement</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>£600 (first birth)</td>
<td>£300</td>
<td>£1200</td>
</tr>
<tr>
<td></td>
<td>£300 (second birth)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>£600 (first birth)</td>
<td>£300</td>
<td>£1500</td>
</tr>
<tr>
<td></td>
<td>£300 (second birth)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>£300 (third birth)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 but where there is already a child within the family</td>
<td>£300 (second birth)</td>
<td>£300</td>
<td>£900</td>
</tr>
<tr>
<td></td>
<td>£300 (third birth)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Form in which the Grant is Given

Illustrative regulations:

**Form in which grant is given**

7.—(1) A maternity and new-baby grant is to be given as money (subject to sub-paragraph (2)).

(2) If—

(a) the Scottish Ministers offer to give an individual some or all of the value of a maternity and new-baby grant in a form other than money; and

(b) the individual accepts the offer,

the grant is to be given in the form offered.

We anticipate that the majority of payments will be made in the form of a payment in to a bank or credit union account. The intention is that no other form of payment will be imposed on an applicant without their consent but the applicant cannot choose an alternative to cash unless it is offered.

**Appointees** There are likely to be some situations where the Agency will want to make an appointee to act on behalf of an applicant, for example where the applicant is under the age of 16 or does not have capacity to act on their own behalf. We are looking at how this can be achieved.

**SCHEDULES 2 AND 3**

**Nursery and Early Learning Grant and School Age Grant**

Schedules 2 and 3 follow the same pattern as the first schedule but with the relevant dates and amounts for the payments. For the Nursery and Early Learning Payment, the payment is £250 and the application window is the day of the child’s second birthday to 6 months after its third birthday. The long nursery and early learning window is to capture the two common ages for starting nursery, depending on whether parents qualify for a funded nursery place when the child is 2 or 3. Where a child is not taking up a place at nursery, it allows a parent to take up the payment at a point relevant to their child's development and any other childcare arrangements.

For the School Age Payment, the payment is £250 and the application window is the 1st of June in the year that the child would normally start school (start of Autumn term) until the end of February in the year following the date of normally starting school.

There is no requirement to take up a place at nursery or school to qualify for the payments. While it will not suit every case, we do not propose to vary the dates for the school payment where a parent decides to defer the school start date, in order to avoid further complexity.
CROSS CUTTING POLICY AREAS

Redeterminations

The policy intent for re-determinations is to provide a right for individuals to challenge a determination, should they disagree with it. The re-determination process will see the Agency put aside the original determination and a different officer will go through the entire process of making a new determination rather than just examining whether the original decision was right or not. The individual will be able to ask for a re-determination without having to supply further evidence, but the Agency will take into consideration any new evidence provided. If the individual is still dissatisfied with the re-determination outcome, they are able to take their claim to the First-tier Tribunal.

The re-determinations approach is to focus on getting the decision right, have clearly published procedures and timescales for challenging decisions with meaningful redress as well as having processes in place for the Agency to put things right quickly where there has been an error. However, the detailed service design and modelling work to co-design the new processes for challenging decisions; working with Experience Panels, users and stakeholders is still to be undertaken. Once this has been done, we will be in a position to share relevant timescales for requesting and processing re-determinations as set out in Section 24 of the Bill.

Deductions, Fraud and Overpayments

Policy on deductions, overpayment and fraud for BSG will follow wider policy for the Social Security Agency. We are considering whether there are any specific requirements in relation to BSG.

We are taking a considered approach to overpayment recovery. This approach will ensure the individual's rights are respected throughout the process, while also ensuring the proper stewardship of public funds by making certain that the right payments are made at the right time to the right people. This will be done by minimising errors and detecting and correcting any errors that do occur quickly. However, it is reasonable to anticipate some errors will be made by both the Agency and individuals in receipt of assistance.

Where overpayments are made as a result of agency error, they will not be pursued unless under exceptional circumstances, such as a very large and obvious overpayment. Also, before overpayment recovery is pursued, officials must have regard to the individual’s financial circumstances, but they will also take account of other circumstances they consider relevant. The key principles guiding recovery decisions will be that no-one is placed into undue hardship and that people should at all times be treated with dignity and respect. We are currently considering safeguards, such as the concept of a ‘minimum income floor’, which would determine whether Ministers would seek recovery of an overpayment.
We have been clear that a zero-tolerance approach to social security fraud will be taken. Equally important, however, is that individuals will be treated with dignity and respect. Therefore, while suspicions of fraud will be treated sensitively under a presumption of innocence, action should be taken when fraud has actually occurred.

**IMPACT ASSESSMENTS**

Relevant impact assessments are being developed for the BSG and will be consulted on alongside draft regulations early next year.

The BSG is likely to have a significant positive impact on children and on equalities groups because of the increase in value of the maternity payment and the introduction of the two additional £250 payments. In combination with action to increase take up, for example extending application windows, simplifying eligibility criteria and integrating administration with HSV. This could mean that nearly 60,000 more Scottish children benefit each year from a BSG payment than do from the SSMG.

BSG will help parents and people who have become responsible for a child to buy, for example, the equipment they need and to support their child’s transition to early learning and childcare and school. This in turn will help decrease the financial pressures on the household, which can have negative effects on maternal health, mental health, parenting skills and family relationships, as well as have potential to decrease material deprivation.

The proposed eligibility for BSG is effective in reaching groups who share equalities characteristics. The qualifying benefits capture:

- almost 90% of people in the bottom three income deciles, both in and out of work
- 97% or workless households
- More than 80% of households with no full time work (i.e. one or more working part time)
- Potentially more than 90% of lone parent households
- More than half of families with three or more children.

In addition to ensure that vulnerable children are supported, the policy proposal:

- introduces an exception to the requirement to be on a qualifying benefit for young parents under the age of 18, potentially removing a barrier to application for young people who are in need of support.
- has not placed a limit on the number of children who can qualify in any one family. Larger families have been harder hit by welfare reforms and are more likely to be in poverty. Black and ethnic minority families are more likely to have larger families.
Includes payments to qualifying kinship carers and allows for a second payment for the same life event if the child is adopted or moves to live with a kinship carer within an application window.

We are continuing to look at how we can improve the reach of the BSG to vulnerable children for example the children of young care leavers and of women prisoners, where they are being cared for by someone else in their mother’s absence. Good communication, building on third sector networks will be particularly important to reach groups who are not always in touch with mainstream services.

FINANCIAL EFFECTS AND IMPLEMENTATION

Current estimates are that, in steady state, around 63,000 BSG payments will be made each year, benefiting around 50,000 families at a cost of around £20m.

The transfer of the social security powers will require the implementation of new infrastructure and systems to support their delivery. Administrative costs form part of wider financial planning for the new Agency. To ensure a safe and secure transition, the Scottish Government will implement the various benefits on a phased basis, with BSG the first to be delivered, by Summer 2019.

Scottish Government
Social Security Directorate
28 September 2017
These illustrative regulations have been prepared to assist the Parliament in considering SP Bill 18 Social Security (Scotland) Bill [as introduced] Session 5 (2017). The terms of this draft do not reflect settled Scottish Government policy. A further draft will be prepared for consultation purposes.

ILLUSTRATIVE SCOTTISH STATUTORY INSTRUMENTS

2019 No.

SOCIAL SECURITY

The Early Years Assistance (Best Start Grants) (Scotland) Regulations 2019

Made - - - - ***
Coming into force - - ***

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SCHEDULE 3 — School-age grant

[Illustrative draft]
These illustrative regulations have been prepared to assist the Parliament in considering SP Bill 18 Social Security (Scotland) Bill [as introduced] Session 5 (2017). The terms of this draft do not reflect settled Scottish Government policy. A further draft will be prepared for consultation purposes.

PART 1 — Eligibility
PART 2 — Assistance to be given

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 15 of the Social Security (Scotland) Act 2018 and all other powers enabling them to do so.

In accordance with section 55 of that Act, a draft of these Regulations has been laid before and approved by a resolution of the Scottish Parliament.

PART 1
Introductory

Citation and commencement

1. These Regulations may be cited as the Early Years Assistance (Best Start Grants) (Scotland) Regulations 2019 and come into force on *** 2019.

Overview

2.—(1) Part 2 makes provision about the interpretation of the schedules.

(2) Schedule 1 makes provision about the early years assistance that is to be given in connection with having, or expecting to have, a new baby in the family (referred to in these Regulations as “maternity and new-baby grant”).

(3) Schedule 2 makes provision about the early years assistance that is to be given in connection with a child aged between 2 and 3½ years (referred to in these Regulations as “nursery and early learning grant”).

(4) Schedule 3 makes provision about the early years assistance that is to be given in connection with a child reaching the age at which children in Scotland usually start school (referred to in these Regulations as “school-age grant”).

PART 2
Interpretation

When an application is to be treated as made

3.—(1) An application is to be treated as made on the day it is received by the Scottish Ministers.

(2) For the avoidance of doubt, a thing that purports to be an application is not an application unless it is—

(a) made in the form, and

(b) accompanied by the evidence, required under section 20(1) of the Social Security (Scotland) Act 2018.

Calculations involving months

4.—(1) Where a day (“day 1”) is described as falling a specified number of months before or after another day (“day 2”), the date of day 1 is to be calculated as follows.

(2) Count backwards or forwards (as the case may be) the specified number of months from the month in which day 2 falls.

[Illustrative draft]
These illustrative regulations have been prepared to assist the Parliament in considering SP Bill 18 Social Security (Scotland) Bill [as introduced] Session 5 (2017). The terms of this draft do not reflect settled Scottish Government policy. A further draft will be prepared for consultation purposes.

(3) If the month arrived at in accordance with paragraph (2) has—
   (a) more days; or
   (b) the same number of days,
as the month in which day 2 falls, day 1 falls on the same day of the month as day 2.

(4) If the month arrived at in accordance with paragraph (2) has fewer days than the month in which day 2 falls, day 1 falls on the last day of the month arrived at.

Meaning of birthday, for children born on 29th February

5. In a non-leap year, the birthday of a child born on 29th February is to be taken to be 28th February.

Meaning of partner

6. An individual is to be regarded as the partner of another individual on a day if, on that day, they are members of the same household and—
   (a) married to each other;
   (b) in a civil partnership with each other; or
   (c) living together as though they were married to each other.

Meaning of parental responsibility

7.—(1) An individual is to be regarded as having parental responsibility for a child on a day if—
   (a) one of the following statements is true—
      (i) the individual is a parent of the child;
      (ii) either the individual or the individual’s partner is (or both of them are), on the day in question, an appointed guardian of the child;
      (iii) the child is, on the day in question, placed with the individual or the individual’s partner (or both of them) by an adoption agency (as defined by section 119 of the Adoption and Children (Scotland) Act 2007);
      (iv) either the individual or the individual’s partner has (or both of them have) responsibilities for the child on the day in question by virtue of an order of a kind mentioned in paragraph (2);
   (b) paragraph (3) or (4) applies to the individual on the day in question; and
   (c) on the day in question the child is not being looked after by a local authority within the meaning of section 17(6) of the Children (Scotland) Act 1995.

(2) The following are the kinds of order referred to in paragraph (1)(a)(iv) —
   (a) an adoption order under section 28 of the Adoption and Children (Scotland) Act 2007;
   (b) a kinship care order within the meaning of section 72(1) of the Children and Young People (Scotland) Act 2014;
   (c) a parental order under section 54 of the Human Fertilisation and Embryology Act 2008;
   (d) any order granted in a part of the United Kingdom other than Scotland which is equivalent in effect to an order mentioned in sub-paragraphs (a) to (c).

(3) This paragraph applies to an individual if—
   (a) the individual; or
   (b) the individual’s partner,
is in receipt of child benefit in respect of the child.

(4) This paragraph applies to an individual if—
These illustrative regulations have been prepared to assist the Parliament in considering SP Bill 18 Social Security (Scotland) Bill [as introduced] Session 5 (2017). The terms of this draft do not reflect settled Scottish Government policy. A further draft will be prepared for consultation purposes.

(a) the child normally lives with the individual; and
(b) either—
   (i) no-one is in receipt of child benefit in respect of the child; or
   (ii) the statement in paragraph (1)(a)(iv) is true.

(5) An individual is to be taken to have acquired parental responsibility for a child on the first day that the individual can be regarded as having parental responsibility for the child in accordance with paragraph (1).

Meaning of references to specified kinds of assistance

8. References to a kind of assistance specified in this regulation are to the following—
   (a) income support;
   (b) state pension credit;
   (c) income-based jobseeker’s allowance;
   (d) working tax credit;
   (e) child tax credit;
   (f) income-related employment and support allowance;
   (g) universal credit;
   (h) housing benefit.

Meaning of dependent

9. An individual (“person A”) is to be regarded as the dependent of another individual (“person B”) on a day if—
   (a) person B has been awarded, for that day, a kind of assistance specified in regulation 8; and
   (b) the assistance awarded to person B for that day was awarded on the basis that person A is a dependent of person B.

Name
A member of the Scottish Government

St Andrew’s House,
Edinburgh
*** 2019
These illustrative regulations have been prepared to assist the Parliament in considering SP Bill 18 Social Security (Scotland) Bill [as introduced] Session 5 (2017). The terms of this draft do not reflect settled Scottish Government policy. A further draft will be prepared for consultation purposes.

SCHEDULE 1

Maternity and new-baby grant

PART 1

Eligibility

Eligibility conditions

1. An individual who applies for a maternity and new-baby grant in respect of a child is eligible for the grant if—
   (a) the application is made before the deadline set by paragraph 2;
   (b) no-one else has received, or is due to receive, a maternity and new-baby grant or sure start maternity grant in respect of the child (but see paragraph 3);
   (c) when the application is made, the individual is habitually and lawfully resident in Scotland;
   (d) at least one of these statements is true—
      (i) when the application is made the individual is, or has been, more than 24 weeks pregnant with the child;
      (ii) when the application is made the individual is the partner of an individual who is, or has been, more than 24 weeks pregnant with the child;
      (iii) the individual has parental responsibility for the child on the day the application is made;
   (e) at least one of these statements is true—
      (i) the individual or the individual’s partner has (or they both have) been properly awarded, for the day on which the application is made, assistance of a kind mentioned in regulation 8,
      (ii) when the application is made, the individual is under 18 years of age,
      (iii) on the day that the application is made, either (or both) the individual or the individual’s partner is 18 or 19 years of age and a dependent of an individual who has been properly awarded, for that day, assistance of a kind mentioned in regulation 8.

Deadline for applying

2. — (1) The deadline for an individual to apply for a maternity and new-baby grant in respect of a child is as follows.
   (2) The deadline is the end of the day that falls 6 months after the day the child is born if the individual—
      (a) is, or has been, more than 24 weeks pregnant with the child; or
      (b) is the partner of the individual described in paragraph (a);
   (3) Otherwise, the deadline is the end of the day of the child’s first birthday.

Exception to condition in paragraph 1(b)

3. — (1) For the purpose of determining the entitlement of the person referred to in this paragraph as the applicant, the eligibility condition in paragraph 1(b) is to be ignored in the circumstance described by the sub-paragraphs which follow.
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(2) An individual (“the first grant recipient”) has been, or is due to be, given a maternity and new-baby grant or a sure start maternity grant in respect of the child.

(3) After the first grant recipient applied for a maternity and new-baby or a sure start maternity grant in respect of the child, another individual (“the applicant”) acquired parental responsibility for the child.

(4) The applicant—
(a) is not, and has not been within 12 months of the application being made, the partner of the first grant recipient, and
(b) is not the partner of an individual who is, or has been within 12 months of the application being made, the partner of the first grant recipient.

(5) When the applicant applied for a maternity and new-baby grant in respect of the child, no-one other than the first grant recipient had been, or was due to be, given a maternity and new-baby or a sure start maternity grant in respect of the child.

PART 2

Assistance to be given

Value of grant

4. The value of a maternity and new-baby grant is—
(a) the amount specified in paragraph 5, and
(b) any amount that falls to be added to that by way of a multiple-pregnancy supplement (see paragraph 6).

The basic amount

5.—(1) The amount referred to in paragraph 4(a) is—
(a) £600 if sub-paragraph (2) applies in relation to the child in respect of whom the grant is to be given, or
(b) £300 if it does not.

(2) This sub-paragraph applies in relation to the child (subject to sub-paragraph (3)) if, on the day the application for the grant is made—
(a) there is no-one under 16 years of age living in the same household as the individual to whom the grant is to be given; or
(b) if there is, that person is (or all of those persons are) one of the following—
(i) the child;
(ii) a sibling of the child born as a result of the same pregnancy that resulted in the child’s birth;
(iii) a parent of the child.

(3) Where more than one child is born, or is to be born, as a result of the same pregnancy—
(a) sub-paragraph (2) applies in relation to only one of the children; and
(b) it is for the Scottish Ministers to decide which.

Multiple pregnancy supplement

6.—(1) A supplement of £300 is to be added to the value of a maternity and new-baby grant in respect of a child born, or to be born, as a result of a multiple pregnancy.

(2) But sub-paragraph (1) is subject to sub-paragraphs (3) and (4).
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(3) The supplement is to be added to the grant in respect of only one of the children born, or to be born, as a result of the pregnancy, and it is for the Scottish Ministers to decide which child’s grant to supplement.

(4) Sub-paragraph (1) does not apply if the individual to whom the grant is to be given—

(a) has not applied for a maternity and new-baby grant in respect of all of the children born, or to be born, as a result of the pregnancy; or

(b) is not eligible for a maternity and new-baby grant in respect of any of those children.

**Form in which grant is given**

7. — (1) A maternity and new-baby grant is to be given as money (subject to sub-paragraph (2)).

(2) If—

(a) the Scottish Ministers offer to give an individual some or all of the value of a maternity and new-baby grant in a form other than money; and

(b) the individual accepts the offer,

the grant is to be given in the form offered.

**PART 3**

**Interpretation**

8. In this schedule—

“born” includes stillborn and “birth” is to be construed accordingly;

“child” includes stillborn child;

“sure start maternity grant” refers to that grant as provided for by—

(a) the Social Fund Maternity and Funeral Expenses (General) Regulations 2005; or

(b) the Social Fund Maternity and Funeral Expenses (General) Regulations (Northern Ireland) 2005.

**SCHEDULE 2**

Nursery and early learning grant

**PART 1**

**Eligibility**

1. An individual who applies for a nursery and early learning grant in respect of a child is eligible for the grant if—

(a) the application is made in the period that—

(i) begins on the child’s 2nd birthday; and

(ii) ends at the end of the day that falls 6 months after the child’s 3rd birthday;

(b) no-one else has received, or is due to receive, a nursery and early learning grant in respect of the child (but see paragraph 2);
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(c) when the application is made, the individual is habitually and lawfully resident in Scotland;
(d) the individual has parental responsibility for the child on the day the application is made;
(e) at least one of the following statements is true—
   (i) the individual or the individual’s partner has (or they both have) been properly awarded, for the day on which the application is made, assistance of a kind mentioned in regulation 8,
   (ii) when the application is made, the individual is under 18 years of age,
   (iii) on the day that the application is made, either (or both) the individual or the individual’s partner is 18 or 19 years of age and a dependent of an individual who has been properly awarded, for that day, assistance of a kind mentioned in regulation 8.

Exception to condition in paragraph 1(b)

2.—(1) For the purpose of determining the entitlement of the person referred to in this paragraph as the applicant, the eligibility condition in paragraph 1(b) is to be ignored in the circumstance described by the sub-paragraphs which follow.

(2) An individual (“the first grant recipient”) has been, or is due to be, given a nursery and early learning grant in respect of the child.

(3) After the first grant recipient applied for a nursery and early learning grant in respect of the child, another individual (“the applicant”) acquired parental responsibility for the child.

(4) The applicant—
   (a) is not, and has not been within 12 months of the application being made, the partner of the first grant recipient, and
   (b) is not the partner of an individual who is, or has been within 12 months of the application being made, the partner of the first grant recipient.

(5) When the applicant applied for a nursery and early learning grant in respect of the child, no-one other than the first grant recipient had been, or was due to be, given a nursery and early learning grant in respect of the child.

PART 2
Assistance to be given

Value of grant

3. The value of a nursery and early learning grant is £250.

Form in which grant is given

4.—(1) A nursery and early learning grant is to be given as money (subject to sub-paragraph (2)).

(2) If—
   (a) the Scottish Ministers offer to give an individual some or all of the value of a nursery and early learning grant in a form other than money, and
   (b) the individual accepts the offer,
the grant is to be given in the form offered.
These illustrative regulations have been prepared to assist the Parliament in considering SP Bill 18 Social Security (Scotland) Bill [as introduced] Session 5 (2017). The terms of this draft do not reflect settled Scottish Government policy. A further draft will be prepared for consultation purposes.

**SCHEDULE 3**

School-age grant

**PART 1**

Eligibility

1. An individual who applies for a school-age grant in relation to a child is eligible for the grant if—
   (a) the application is made within the period described in paragraph 2;
   (b) no-one else has received, or is due to receive, a school-age grant in respect of the child (but see paragraph 3);
   (c) when the application is made, the individual is habitually and lawfully resident in Scotland,
   (d) the individual has parental responsibility for the child on the day the application is made;
   (e) at least one of the following statements is true—
      (i) the individual or the individual’s partner has (or they both have) been properly awarded, for the day on which the application is made, assistance of a kind mentioned in regulation 8,
      (ii) when the application is made, the individual is under 18 years of age,
      (iii) on the day that the application is made, either (or both) the individual or the individual’s partner is 18 or 19 years of age and a dependent of an individual who has been properly awarded, for that day, assistance of a kind mentioned in regulation 8.

**Period within which application must be made**

2.—(1) An application for a school-age grant in respect of a child must be made within the period—
   (a) beginning on 1st June in the relevant year, and—
   (b) ending at the end of the last day of February in the following year.
   (2) In sub-paragraph (1), “the relevant year” means—
      (a) if the child’s birthday is in January or February, the calendar year in which the child’s 4th birthday falls,
      (b) otherwise, the calendar year in which the child’s 5th birthday falls.

**Exception to condition in paragraph 1(b)**

3.—(1) For the purpose of determining the entitlement of the person referred to in this paragraph as the applicant, the eligibility condition in paragraph 1(b) is to be ignored in the circumstance described by the sub-paragraphs which follow.
   (2) An individual (“the first grant recipient”) has been, or is due to be, given a school-age grant in respect of the child.
   (3) After the first grant recipient applied for a school-age grant in respect of the child, another individual (“the applicant”) acquired parental responsibility for the child.
   (4) The applicant—
These illustrative regulations have been prepared to assist the Parliament in considering SP Bill 18 Social Security (Scotland) Bill [as introduced] Session 5 (2017). The terms of this draft do not reflect settled Scottish Government policy. A further draft will be prepared for consultation purposes.

(a) is not, and has not been within 12 months of the application being made, the partner of the first grant recipient, and
(b) is not the partner of an individual who is, or has been within 12 months of the application being made, the partner of the first grant recipient.

(5) When the applicant applied for a school-age grant in respect of the child, no-one other than the first grant recipient had been, or was due to be, given a school-age grant in respect of the child.

PART 2
Assistance to be given

Value of grant

4. The value of the school-age grant is £250.

Form in which grant is given

5.—(1) A school-age grant is to be given as money (subject to sub-paragraph (2)).
(2) If—
   (a) the Scottish Ministers offer to give an individual some or all of the value of a school-age grant in a form other than money, and
   (b) the individual accepts the offer,
the grant is to be given in the form offered.
SOCIAL SECURITY DIRECTORATE
Social Security Policy Division

SOCIAL SECURITY (SCOTLAND) BILL
POLICY POSITION PAPER

DISABILITY ASSISTANCE AND EMPLOYMENT-INJURY ASSISTANCE

Introduction

This paper is one of a series of papers in which the Scottish Government is happy to set out and provide an update on its position on various matters relating to the Social Security (Scotland) Bill. The purpose of this paper is to set out the Scottish Government’s current position on Disability Assistance and Employment-Injury Assistance and related matters.

Our position on Disability Assistance

The Scottish Government has made clear it will use opportunities presented by devolution to take a different approach to providing social security for disabled people. We want to make sure that the process from start to finish is clear and accessible, treats people with dignity and respect and that people understand how and when their claim will be dealt with.

We will protect disability assistance ensuring that it continues to be non-means tested. Reflecting the results of the consultation and engagement with stakeholders, we have already identified a number of areas that can be redesigned so that they better meet the needs of individuals. We will co-design these, and the end to end process from application to award, with people with experience of the current system.

We are aware of calls from stakeholders and others to set out more detail in relation to the administration of Disability Assistance. Our approach will not only allow for all of the detail to be set out in secondary legislation, making it more coherent and easier to understand, but more importantly it will also allow us to listen to those with experience and consult with experts to deliver improvements over time. In addition to what is set out in the powers in section 14 and schedule 4, the Scottish Government will set out the form of applications and notifications. The Scottish Government recognises that people may wish to have another person apply on their behalf and is making arrangements for this.

The Scottish Government considers that its actions and commitments to date demonstrate an intent to provide an approach that better meets the needs of individuals. Commitments to date include:

- that any child in receipt of DLA will be given an automatic award of that DLA to age 18 to allow for continuity for families (currently age 16);
- the introduction automatic awards in certain circumstances;
- longer term or lifetime awards for people whose condition is unlikely to improve; and
- maintaining the level of the disability benefits paid to individuals and raising them annually by at least the rate of inflation.
However, the first, over-riding priority must be to ensure a smooth transition for people receiving DWP disability benefits. This means, from the point at which the Scottish Government commences the delivery of Disability Assistance, it will take as is the existing Personal Independence Payment, Disability Living Allowance, Attendance Allowance and Severe Disablement Allowance. We have, and will, continue to engage with the Ill Health and Disability Benefits Stakeholder Reference Group on issues associated with the transfer of Disability Assistance.

Our position on Employment-Injury Assistance

As with Disability Assistance, the first and guiding priority is to ensure a smooth transition for people receiving industrial injury scheme benefits, these include:

- Industrial Injuries Disablement Benefit
- Constant Attendance Allowance
- Exceptionally Severe Disablement Allowance
- Reduced Earnings Allowance
- Retirement Allowance
- Unemployability Supplement (closed to new cases)
- Industrial Death Benefit (closed to new cases)

We will protect Employment-Injury Assistance to ensure that it remains non-means tested, no-fault and non-contributory. The Scottish Government has committed to maintaining the level of Employment-Injury Assistance paid to individuals and raising it annually by at least the rate of inflation. We have, and will, continue to engage with stakeholders on the Industrial Injuries Advisory Group on issues associated with the transfer of Employment-Injury Assistance.

The current UK Industrial Injuries Advisory Council will not be allowed to advise Scottish Ministers after these benefits transfer. The Scottish Government is therefore considering how it might replicate their expertise in Scotland to provide advice and recommendations to Scottish Ministers on prescribed diseases and other relevant matters. Officials have engaged with the current Council on this, and have sought their views on functions, remit and associated issues relevant to establishing a similar role in Scotland. The Disability and Carer’s Benefits Expert Advisory Group have been commissioned to consider and make recommendations to Scottish Ministers as to how this expertise can be replicated in Scotland.

The Scottish Government is aware that some stakeholders have called for provision to ensure Employment-Injury Assistance adequately supports people whose mental health has been significantly and directly impacted by their employment. Establishing causation to an occupation in such cases is complex and it is a matter that has been considered by the current Industrial Injuries Advisory Council. As yet, they have not found sufficient evidence to support a recommendation to include mental health conditions in the list of prescribed diseases. That said, we are aware that a few European countries do have provision within their schemes for mental health conditions to be considered, and this is something that would be considered when the Scottish equivalent of the Industrial Injuries Advisory Council has been established.
Type of assistance

The Bill provides that Disability Assistance and Employment-Injury Assistance are types of ‘assistance (which may or may not take the form of money)’. We want to make clear that assistance provided is currently intended only to be in the form of money and that our intention will always be that any other form of assistance would always be a choice for the individual, not a decision of the Scottish social security agency.

Assessments

The Scottish Government intends to make the assessment process fairer, focusing on standards and quality rather than case volumes. The first step in achieving this is a commitment that profit making companies will not be involved in carrying out assessments for disability benefits. We will ensure that whoever undertakes assessments on behalf of the agency will provide a flexible service, including offering home visits if required and that the assessments process works effectively across all conditions. The new Scottish Agency will be built on a culture of dignity and respect and this will flow through to the culture and attitude of assessment staff. To ensure this, assessors will be appropriately and consistently trained to carry out their role effectively.

We intend to reduce the number of face to face assessments and reassessments being carried out unnecessarily. We are exploring potential to make better use of existing information within the health and social care sector and other public bodies. This will mean that, subject to consent from the individual, the agency may use existing information to aid decision making and where possible, to reduce the need for face to face assessments before making awards. Any systems developed would need to have robust safeguards to protect information about an individual’s condition or diagnosis. This will help the agency to make better decisions, getting them right the first time.

The Scottish Government is aware that some MSPs have called for provision to be included in the Bill to rule out the use of profit making companies within the assessments process. We can deliver on our commitment in full, without express provision in the Bill. Our priority is to put in place a system that works in the best interests of the people who need it. Using legislation to place a ban on profit making companies creates the risk that the unintended consequences of that ban will make it harder, not easier, for us to deliver the support that people need.

The Disability and Carer’s Benefits Expert Advisory Group have been commissioned to consider and make recommendations to Scottish Ministers as to how we can improve assessments in Scotland.
Developing a new approach to Disability Assistance and Employment Injury Assistance

Taking an enabling approach in the Bill allows us to continue to engage extensively with experts, organisations and individuals. We have recruited over 2,400 people with direct experience of the current system to help design a new and better social security model for Scotland as part of the Experience Panels. This includes individuals who have significant experience of ill-health and disability benefits. The Experience Panels have provided information on their experiences of the current system, and their priorities for improvement, as part of the About Your Benefits and You research. Over 1,000 people have responded to this survey, and over 250 participants took part in a total of 34 focus sessions across Scotland over the summer. Going forward, the panel members will be involved in a meaningful way. The detailed service design and modelling work to co-design the new processes for Disability Assistance and Employment-Injury Assistance, working with Experience Panels, users and stakeholders is still to be undertaken.

This approach will also allow the independent Disability and Carer’s Benefits Expert Advisory Group to provide recommendations and advice to Scottish Ministers on the policy and practice options, including, but not limited to reform of assessment, award periods, automatic awards and lifetime awards, eligibility criteria, and accessibility. We will continue to engage and seek input from the Disability Stakeholder Reference Group and the Industrial Injuries Advisory Group.

We have bold aspirations for the medium and longer term. For example, we want to ensure that disability assistance works as effectively as possible with other devolved services such as health and social care and housing and to continue to explore the potential for a disability assistance that is responsive to people's needs at different stages of their lives. The Bill provides us with the flexibility to substantially reshape and improve how Disability Assistance and Employment-Injury Assistance is delivered in future.

Timeline

We have committed to having a Scottish social security agency delivering all of the devolving benefits by the end of this parliamentary term. The timetable and process set out for the full transfer of our new Social Security powers will help ensure that we get delivery right, and that those who depend on this vital support do not miss a payment.

Scottish Government
Social Security Directorate
October 2017

All enquiries in relation to this paper should be sent to:

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Written Evidence:
Social Security (Scotland) Bill

Our voices ● Our choices

1 Background

1.1 Inclusion Scotland is a network of disabled peoples’ organisations and individual disabled people. Our main aim is to draw attention to the physical, social, economic, cultural and attitudinal barriers that affect disabled people’s everyday lives and to encourage a wider understanding of those issues throughout Scotland.

1.2 Inclusion Scotland and its membership have been involved in work surrounding Scottish social security issues since the time of the Smith Commission onwards. We consulted widely with disabled people last year on the “Future of Social Security” and, within the limited time available, have done our best to gather their views on the Bill currently before the Committee.

2 General Comments

2.1 Inclusion Scotland welcomes the publication of the Social Security (Scotland) Bill and believes that it provides an opportunity to consider what the purpose of the new Scottish social security system should be.

2.2 Based on New Policy Institute estimates approximately 48% of all those currently living in poverty are disabled people and their families\(^1\). Therefore we believe that, as well as the Principles set out in the Bill, the over-arching purpose of Scottish social security benefits should be to relieve poverty and to contribute to all people living in Scotland having an adequate income.

2.3 Inclusion Scotland also welcomes the Scottish Government’s commitment to a human rights based approach to social security. This will mark a clear departure from UK policies of recent years which have focussed on the affordability of benefits over the ability of benefit recipients to maintain a decent standard of living which enables them to meet basic costs (e.g. food, fuel, housing) and participate fully in society.

2.4 That said we are concerned that the Social Security Bill seeks to establish many of the rules on entitlement in regulations rather than in primary legislation. One of the strengths of regulations is that they are relatively simple to change in the event that they are found not to be working as intended. However that ability to easily change regulations is also one of their biggest drawbacks in terms of the rights of disabled people and other claimants.

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\(^1\) Disability and Poverty, Aug. 2016, New Policy Institute for JRF
http://www.npi.org.uk/files/3414/7087/2429/Disability_and_poverty_MAIN_REPORT_FINAL.pdf
2.5 For example, as it stands, the entitlement criteria for disability benefits are not set out on the face of the Bill. The disabled people we consulted on this were very concerned that this would provide this, or a future Government, with the ability to reduce the scope of entitlement via a change in regulations.

2.6 This fear is based on the fact that the UK Government recently made changes to the scope of entitlement to the Personal Independence Payment (PIP) mobility component via changes to regulations. In doing so they denied entitlement to over 150,000 disabled people with mental health issues and/or learning difficulties who the courts had already ruled to be entitled. In contrast such a change would not have been possible to entitlement to Disability Living Allowance (DLA) because the entitlement criteria for that benefit are set out in primary legislation.

2.7 Inclusion Scotland appreciates that a balance has to be struck between what is contained in primary legislation and what is perhaps better left to regulations. Nevertheless in the current Bill that balance seems to be weighted in favour of Ministerial power over claimants’ rights. We believe that this could at least be partially resolved by the Schedule relating to disability benefits being amended to set out clear entitlement criteria.

2.8 Inclusion Scotland welcomes Ministerial commitments to use the Super-Affirmative Procedure when introducing new Social Security Regulations. Nevertheless even using this procedure regulations will be subject to far less scrutiny and consultation than is the case with primary legislation. This may result in unintended consequences which could potentially be disastrous for disabled people and other claimants.

2.9 Given that so much of the legislation will be set out in regulations Inclusion Scotland continues to believe that both secondary legislation and how the social security system is performing should be subject to external independent scrutiny and review. This could be accomplished via the establishment of a Scottish Social Security Advisory Committee which would be available to provide expert advice to Ministers and Parliament.

3 Principles

3.1 Inclusion Scotland welcomes the set of Principles set out in the Bill particularly those in regards to Social Security being an investment in the people of Scotland and that dignity and respect for individuals will be at the heart of the new Scottish system. However in common with the SHRC, EHRC, CPAG, the Poverty Alliance and others we believe that some of the Principles should be strengthened to ensure that Human Rights are embedded and enshrined in Scottish Social Security legislation.

3.2 Disabled people tell us that they are not treated with “dignity and respect” within the current UK benefits system. They are instead regularly subjected to indignity and total disrespect – being treated as fraudulently trying to obtain benefits to which they are in fact genuinely entitled and subjected to a never ending series of “assessments”.

3.3 Britain, lacking a written constitution also lacks a definition of what is meant by dignity and respect. The UK Human Rights Act supposedly guarantees the right to dignity and respect but the European Convention on Human Rights (ECHR) on which it is based is silent on
the issue of social security. The European Court of Human Rights has therefore proven reluctant to interfere in national governments’ decisions in this area.

3.4 Conversely Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) states that to maintain dignity an adequate standard of living must go beyond physical necessities for survival to include goods, services, activities and housing in keeping with cultural norms. Articles 19 and 28 of the UN Convention on the Rights of Persons with Disabilities (UNCRPD) add that disabled people should receive assistance with disability-related expenses and independent living. The European Charter also sets much more specific standards for benefits.

3.5 Therefore we would suggest that either the Scottish Government incorporates the UNCRPD and/or the ICESCR into Scottish legislation or it amends the current Bill to include a clear definition of the rights conveyed by the “dignity of individuals” being “at the heart of the Scottish social security system”.

3.6 In line with the above we believe that there needs to be a statutory requirement (either in the Principles or elsewhere) that benefits will be uprated annually. There is a requirement in UK legislation that DLA, PIP, Attendance Allowance, Carers Allowance, Industrial Injuries Disablement Benefit and Severe Disablement Allowance are uprated annually. Therefore a failure to include a similar requirement in Scottish social security legislation would be a retrograde step providing Scottish disabled people and carers with fewer rights than their UK equivalents.

3.7 Disabled people we spoke to also believe that Principle 4 (“The Scottish Government has a role in making sure that people are given the social security assistance they are eligible for”) is too weak. They believe that the Scottish Government should instead have a duty to make sure that people receive all the Scottish social security benefits they are eligible for and a role in ensuring that they are made aware of other reserved benefits that they may be entitled to.

3.8 Disabled people also want to see rights to advocacy support in accessing benefits, independent advice and accessible information on Social Security built into Social Security legislation.

3.9 Without advocacy support many learning disabled people, mental health service users, and others, are currently unable to access and negotiate their way through the benefits system. Without a right to independent advice on entitlement people cannot exercise whatever rights they may have on paper. Finally if accessible formats are not used to convey information on benefits entitlement, and decisions, disabled people remain unaware of their rights. These are all well-known issues which currently prevent disabled people from receiving benefits to which they would otherwise be entitled and it is imperative that the new Scottish system addresses them.

3.10 Inclusion Scotland welcomes Principle 5 (“The Scottish social security system will be designed with the people of Scotland, and based on evidence”) but would point out that consultation and involvement are not the same as co-production. For the Scottish social security system to work for disabled people they, and their representative organisations,
must be at the heart of policy, planning and decision-making rather than relegated to a rubber-stamping role.

4 The Social Security Charter

4.1 When we engaged with disabled people last year they were generally supportive of a Social Security Charter which would set out their rights to benefits in a simple, easily understandable, way. However it appears that the Charter planned will not be about rights but instead set service standards for the delivery of social security which cannot be relied on by individuals.

4.2 As such disabled people at our recent engagement event on the Bill were dismissive of the Charter. One person summed up the general mood by asking, “What is the point of the Charter if it can't be upheld?” Others deplored the Charter’s lack of teeth and asked who would monitor whether the Charter was effective or not? Disabled people were insistent that the Charter should either contain enforceable rights or should tell people how to go about enforcing their rights if the Social Security Agency failed to deliver on them.

4.3 Inclusion Scotland would agree with the Poverty Alliance that an additional sub-section should be added to Part 1 Section 2 which states that “the Charter should set out how people can exercise their rights in order to claim their entitlements”. We would also add “and to uphold their human rights (for example their right to be treated with dignity and respect)”.

5 Cash or Kind Benefits?

5.1 Inclusion Scotland are extremely concerned over the repeated use of the phrase “which may or may not take the form of money” contained next to each of the benefits listed under Chapter 2. Having fought and won the battle to see cash entitlement being the default position of support from the Scottish Welfare Fund we are extremely disappointed in having to revisit this issue for all of the devolved benefits.

5.2 At present all of the devolved disability benefits (PIP, DLA and Attendance Allowance) are paid solely in the form of money. It is true that many recipients of the Higher/Enhanced Rate of the Mobility component of DLA/PIP choose to use their benefits to lease Motability vehicles but at no point do they relinquish their underlying entitlement to a cash payment.

5.3 When we consulted on “in kind” support last year, and again very recently, disabled people were vehement in rejecting any notion that their entitlement to cash benefits could be taken away by the Scottish Government. A disabled person at our recent event on the Bill summed up the opposition to this proposal -

“This would be a terrible idea and take away the independence of disabled people. It is a form of control and taking away the individual’s decision on what to do with the money they receive”.

5.4 Payment in kind results in stigma and reduces individual choice, thereby also reducing accessibility for some disabled people for whom one-size-fits-all products may not be
suitable. As such it not only fails to uphold but instead negates the right to dignity and respect due to claimants. We therefore oppose this aspect of the Bill and will be seeking an amendment guaranteeing that disability benefits will continue in the form of solely monetary assistance. In regards to other benefits it must be for claimants to choose whether they prefer in-kind support to a cash entitlement and it should never be a “Hobson’s choice” imposed on them by Government.

6 Time limits

6.1 We have already set out why we believe entitlement criteria need to be set in statute rather than regulations. However there are other aspects of entitlement which we also believe need to be addressed. Thus where time limits for claimants responding to determinations or to supply information are addressed similar time-limits have not been set out for Ministers. Inclusion Scotland are therefore seeking time limits for making determinations and re-determinations to be set out on the face of the Bill. We believe this is essential as regulations can more easily be amended to increase such time limits thus reducing claimants’ rights and future service standards.

6.2 We also believe that the one month time limit for seeking a redetermination/appeal should be amended to 3 months. This is because it is already extremely difficult for some disabled people (for example learning disabled people, BSL users, mental health service users, etc.) to get advocacy support and welfare rights advice in place in such a short time period. Many CABs and Local Authority welfare rights teams now have appointments systems where a wait of two weeks is not uncommon and the provision of advocacy support is patchy at best.

7 Re-determination

7.1 Inclusion Scotland are concerned that the process of re-determination set out in the Bill, whilst a significant improvement on Mandatory Reconsideration, retains some of its negative features. The current system of Mandatory Reconsideration is badly discredited as it leads to long delays and acts as a barrier to obtaining a fair hearing.

7.2 Recently evidence has emerged that the DWP has set a target that 80% of Mandatory Reconsiderations for ESA should result in the original DWP decision being upheld. This means that they are not an objective re-evaluation of the claimant’s entitlement as decision-makers hands are being fettered by the imposition of an arbitrary target.

7.3 Disabled people we engaged with recently, whilst supportive of time limits being applied and that benefits would continue in payment for those already in receipt, were opposed to a two stage system of first re-determination and then appeal. Instead they believed that claimants should only have to fill in a single form saying that they wished to appeal. Thus if a re-determination upheld the original decision their case would then automatically go forward to an appeal hearing.

7.4 Before Mandatory Reconsiderations were introduced the DWP had a system of automatic review of the vast majority of cases which had been appealed. This ensured that the decision (determination) was looked at again, usually by another official other than the
original decision-maker. This allowed DWP to identify failures and address them thus reducing, over time, the number of cases that had to go to a full tribunal appeal hearing.

7.5 We believe that this system of reviewing/re-determining decisions had merit and should be applied in Scotland. This would allow the new Social Security Agency to review and correct their own errors whilst protecting claimants’ rights to a fair and impartial appeal hearing should the error fail to be corrected.

8 Recovery of Assistance

8.1 Disabled people do not believe that claimants should be penalised by being made to repay assistance incorrectly paid to them due to official error (mistakes made by Social Security Agency staff).

8.2 Although reassurance was offered by officials that Scottish Government did not intend to seek recovery of such over-payments other than in “exceptional circumstances” this is not what is stated in the Bill. Instead the Bill states (at Chapter 4, Para 36):

36. Liability (1) An individual is liable to pay the Scottish Ministers the value of any assistance that was given to the individual as a result of a mistaken decision under section 33(1).

8.3 This is clear and unambiguous language and gives Ministers the power to recover any and all overpayments. Thus commitments provided by Ministers or even within the Bill’s Policy Memorandum are irrelevant as a court would be obliged to apply the law as stated in the primary legislation. If Ministers do not intend to seek recovery of such over-payments then they do not need this power and this paragraph should be amended to make it clear that over-payments due to official error will not be recovered.

9 Assessments – use of private sector

9.1 Inclusion Scotland believes that the Bill should be amended to state that private contractors will have no role in the assessment of disabled people’s entitlement to disability assistance. Whilst we accept that the Minister is sincere in her commitment not to use the private sector we wish to ensure that a future change in Government policy, or portfolios, does not result in this commitment being easily reneged on.

10 Schedule 4 – Disability Assistance

10.1 Inclusion Scotland are concerned that Schedule 4, Chapter 2, paragraph 6 states that eligibility for disability assistance could be dependent on the individual being in receipt of another type of assistance. The policy intent behind this proposal is not explained so it is difficult to identify why it is needed (currently entitlement to DLA, PIP and Attendance Allowance does not depend on entitlement to any other form of assistance). If this provision relates only to the Scottish version of Severe Disablement Allowance this should be stated, otherwise we would oppose its inclusion in the Schedule.
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23/8/17
Social Security Committee - Call for Evidence on the Social Security (Scotland) Bill

MS Society Scotland Response
23 August 2017

The MS Society is here for people with MS, through the highs, lows and everything in between. Across Scotland more than 11,000 people live with Multiple Sclerosis. MS is often painful and exhausting and can cause problems with how we walk, move, see, think and feel. Once diagnosed, MS stays with you for life, but treatments and specialists can help you to manage the condition and its symptoms.

The below response is informed by input from people affected by MS including responses to a survey carried out with our supporters in August 2017.

Question 1:

The MS Society has concerns about the approach being adopted. The approach is understandable, as from the Scottish Government’s perspective it makes it easier to create flexibility and adapt rules depending on how the system develops. However, it raises significant and legitimate concerns about scrutiny and accountability.

The Policy Memorandum accompanying the Bill states “taking this approach should improve Parliament’s ability to scrutinise executive action” this seems entirely counter intuitive. In leaving the Bill as an enabling framework it means a significantly reduced opportunity for Parliamentary scrutiny of the actions and structures that the legislation will enable. This is concerning. Whilst we don’t doubt the commitment of the Scottish Government to create a system which meets the expectations raised by the rhetoric used, we do have concerns that by not placing provisions in primary legislation that this could be eroded over time. As the question above states “Parliament cannot change regulations, only approve or reject them.” It is unclear therefore how this increases transparency or scrutiny.

Understandably, expectations have been raised about the opportunities and possibilities presented by the devolution of elements of social security. Across Scotland many people with MS have been impacted by recent benefits changes, in particular the transfer from DLA to PIP. The expectation amongst the MS community is that in Scotland we will be able to create something fairer, more respectful and accessible. Much of what will make this a reality and help tackle the perceived inequities in the current system, such as rules around assessments, are not addressed in the Bill. This could lead to a certain amount of scepticism from people who are expecting to see reasonably radical change from the legislation. It may also lead to a loss of interest in the process due to the positioning of changes within regulations. The impetus for engagement may be lost, and with it crucial voices needed to create a system which meets the needs of the people of Scotland.
We welcome assurances from the Scottish Government that draft guidance and regulations will be produced at an early stage and hope that Parliamentarians will be able to see these whilst scrutinising the legislation from Stage 1 onwards.

Question 2:

The seven proposed principles that will guide the social security system rightly focus on the needs of the individuals who rely on it. The MS Society welcomes the focus on dignity and human rights, part of which is the focus on the Scottish Government’s role in making sure that people are given the social security assistance that they are eligible for. At present many people do not claim all the benefits they are entitled to, partly due to stigma. In 2015 we surveyed people with MS on the experience of the disability benefits system and found that nearly 1 in 3 respondents didn’t claim the benefits they are entitled to due to stigma. We welcome the use of principles to underpin the Bill and believe this brings it into line with similar approaches used in other recent legislation.

While these principles go some way to ensuring that people with MS do not lose out on the vital support they need, it stops short at a guarantee that the financial support people with MS will receive is adequate. The seven principles promote the notion that people living with a disability should receive the benefits that they are eligible for. However we believe there are additional measures needed in order for the Scottish Government to meet their aspirations of adhering to human rights provisions as it relates to disabled people. Article 28 of the UN Convention on the Rights of People with Disabilities (CRPD) states that disabled people have the right to an adequate standard of living and social protection. This article is the bedrock of the guarantee by signatory countries ensuring that disabled people are able to enjoy their right to life on an equal basis with others. The MS Society therefore calls on the Scottish Government to take a further step towards securing the equality of disabled people as envisaged by the CRPD, by including a further principle in its Social Security framework:

‘The Scottish social security system will ensure that levels of financial support are adequate and allow people to live independently and with dignity’.

Principle 4 encompasses eligibility. We would welcome the extension of this beyond eligibility to include ‘entitled to’ and would be keen to see an amendment to this effect.

Principal 7 talks about “value for money”. One respondent to our survey commented that “(it is) difficult to measure value for money when helping disabled people. Value to the individual is more important.” Wording around value for money may need to be tightened up to clarify that it means that the administration side of the system provides value of money to the people of Scotland, not at the expense of people accessing the system.

Question 3:

In our response to the Scottish Government’s consultation last year we supported the idea of having both a set of principles and a charter. We are pleased to see both of these included in the Bill. The language used in the charter must be accessible and we are keen to see it promote inclusion, fairness and transparency. It is our understanding that the charter will be co-produced with people on the experience panels. We support this
approach and would like to see further opportunities for others to contribute to the drafting of the charter, including those with fluctuating conditions such as MS.

Question 4:

**Accountability and Liability**
At present the rules focus on the liabilities of the citizens accessing the system rather than on the accountability of the state. We feel there is an imbalance here and that the Bill needs to be clearer on the measureable liabilities of the state and expectations citizens should have of it to deliver social security.

**Timescales**
Presently the rules don’t outline timescales within which people can expect action when engaging with the system. The concern being that if these are not on the face of the Bill then they become more difficult to enforce and can be changed more readily which could be to the detriment of people using the service. The nature of fluctuating conditions like MS mean that the impact of the condition can be very suddenly and keenly felt meaning that reliance and need for access to the social security system can change rapidly if they suffer a relapse. Legally enforceable timescales can help to manage expectations and allow for people to make adequate arrangements. In instances such as relapses, where need changes rapidly, there could be improved provisions for a fast tracked access. This could be added within section 18 covering short-term assistance.

**Improvement and Review**
The policy memorandum states "The Scottish Government is committed to continuously improving the delivery of social security". The Bill places a duty on Ministers to review the charter after five years but little beyond that in terms of reviewing the system itself. We would welcome an amendment placing a duty on Ministers to review the system as a whole after a set period of time. The committee may also wish to consider whether such a duty should go further and ask the Scottish Government to create an independent body, or expand the function of a current body such as the Disability and Carers Benefits Expert Advisory Group, to continuously review elements of the legislation and its implementation. Any ongoing review should engage with a wide range of voices including those with fluctuating conditions such as MS whose condition can lead to particular challenges for the system to manage.

Question 5:

The areas that are of most interest to our supporters are those of disability assistance and carers allowance. The schedules on these tell us nothing of how the system will operate for people with MS. It is therefore difficult for us to comment further on this section. We would welcome further dialogue when more information becomes available and would call for further details about the operation of these benefits to be published as a priority.

Question 6:

The proposal for short-term assistance is welcome. Under the present system the impact of having your benefit removed whilst going through the appeal process can have a devastating effect on the life of the individual.
The case of our supporter David Trotter gives an example of the impact this can have. David has MS and saw his benefits drastically reduced during the transfer from DLA to PIP. This led to him losing his motability car, despite him having a long term condition that impacts upon his mobility. Losing his motability car meant that David had to significantly reduce his hours at work and pushed him into financial difficulties. The stress of the situation saw his MS deteriorate leading to increased disability. The appeal process lasted 5 months and ultimately a short hearing overturned the decision and reinstated David’s benefits at the higher level he had received on DLA. The effects of the incorrect original award are still being keenly felt by David, financially, emotionally and physically.

We hope that what is proposed in the Bill will ensure the situation David experienced can be consigned to history, we would be happy to provide further information on this area.

**Question 7:**

Respondents to our supporter’s survey were overwhelmingly in agreement with these proposals and were keen to see them utilised.

**Question 8:**

Carers play a vitally important role in supporting people with MS. In a recent study carried out by the MS Society of people with MS that identified themselves as having a care need we found that 89.7% said that in the past 12 months they had received unpaid care and support from family or friends. This demonstrates the breadth of the impact of carers.

We welcome the proposals to increase the level of Carers Allowance to the level of Jobseeker’s Allowance. We see this as the first step in improving the financial settlement for carers and recognise that the Scottish Government intends to develop a Scottish carers benefit in the long term.

The issue of uprating is not addressed on the face of the bill and we would reiterate the point raised by a number of other charities that this should done in line with percentage increases applied to the National Minimum Wage. Added to this we would like to see steps taken to ensure that people do not fall into a ‘carers benefit trap’ whereby they need to make stark choices between working additional hours and losing carers benefits. The work of carers removes a significant burden from formal health and social care services and needs to be supported and respected accordingly.

Finally, we welcome the commitment by the Scottish Government to actively consider the introduction of a Young Carers Allowance.

**Question 9:**

No response
Inclusion within the Bill of measures to ensure the new system endeavours to understand the needs of people with lifelong and fluctuating conditions would be welcome and provide reassurance to people with MS. We would encourage the Scottish Government to provide further information on what steps it intends to take to learn from the problems in the current system to understand the often unique issues faced by people with fluctuating conditions in accessing the benefits they need to live independent lives.

An important area which is not covered within the Bill is that of support and advocacy. On a number of occasions our supporters have noted the difficulties they have faced accessing disability benefits in the past and that they lacked the adequate knowledge and support to do so in a timely manner. By making support available to someone as they look to enter the system for the first time there is an increased likelihood they will receive the award they are entitled to and the opportunity to reduce the stress that the individual may experience when applying to the system. This should be a central tenet of accessibility, along with making sure the people are able to enter the system in a manner which is most appropriate to an individual, i.e. options to access via phone, online, face to face, via a conduit.

Further to this, the Bill should make provisions for improved advocacy support for people going through the appeals process to ensure that people are receiving the award they are entitled to and not missing out due to a lack of knowledge of the system. We would refer the committee to the response from our colleagues at the ALLIANCE into the importance of independent advocacy.

Finally, we would ask the committee to consider whether what is on the face of the Bill at present meets the aspirations of the parliament for a fairer, more respectful and accessible system of social security? Does the Bill rely too much on the present system of welfare support as a systematic starting point on which to place adaptations? Or will the structure of the Bill allow for the fundamental change which many in Scotland are keen to see? Does the Bill create a system that will fully meet the needs of people with an often fluctuating and complex condition such as MS?

We look forward to continuing to engage with the Scottish Government and the Scottish Parliament to ensure this important piece of legislation creates a system that meets the needs of people with MS.

**About multiple sclerosis**

- MS affects more than 11,000 of in Scotland
- MS is often painful and exhausting and can cause problems with how we walk, move, see, think and feel
- MS is unpredictable and different for everyone
- Multiple sclerosis (MS) is a condition of the central nervous system.
- In MS, the coating around nerve fibres (called myelin) is damaged, causing a range of symptoms.
• Symptoms usually start in your 20s and 30s and it affects almost three times as many women as men.
• Once diagnosed, MS stays with you for life, but treatments and specialists can help you to manage the condition and its symptoms.
• We don't know the cause and we haven't yet found a cure, but research is progressing fast.

About the MS Society
• The MS Society is here for people with MS, through the highs, lows and everything in between
• We have a free helpline - 0808 800 8000 and information can be found on our website www.mssociety.org.uk
• We’re driving research into more – and better – treatments for everyone
• Together we’re strong enough to stop MS

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About ENABLE Scotland
People who have a learning disability in Scotland are more likely than average to be reliant on social security due to a combination of high rates of unemployment, part-time working and low pay. Many carers of a person with a learning disability are also reliant on social security whilst others are currently unable to access benefits which recognise their caring role.

ENABLE Scotland is the largest charity in Scotland dedicated to creating an equal society for every person who has a learning disability. We provide a wide range of support services for over 2000 people who have learning disabilities and their families in Scotland. Together with our 5000 members, ENABLE Scotland campaigns for an equal society for every person who has a learning disability.

ENABLE Scotland’s welfare rights advice service has assisted people who have learning disabilities, their families and carers across Scotland to claim over £4,764,316.43 in social security entitlements since established in 2013. This service has been crucial to our members and families who find navigating the complexities of the social security system a real challenge; a consequence of which has been many missing out on what they are entitled to. Our service includes appeal representation at both Lower and Upper Tribunal Social Security Appeal Tribunals and so we are greatly aware of the importance that the legislative framework will have on individuals accessing devolved benefits.

ENABLE Scotland has responded to the Scottish Government consultation on a new future for social security and has previously commented on The Future Delivery of Social Security in Scotland via the then Welfare Reform Committee in written and oral evidence submissions to their call for views on the subject. ENABLE Scotland is pleased to have been invited to provide oral evidence on the subject in October and looks forward to engaging with the Committee further.

Opportunities presented by the Social Security Bill
It is our position that devolution of parts of the social security system provides an excellent opportunity to reframe the narrative around the social security system. It has to be clear that the social security system is about empowering citizens, facilitating participation and recognising everyone’s contribution and value to society. Further, it provides an opportunity to examine and influence the culture and ethos embedded in the social security delivery system.

Furthermore, devolution should be seen as an opportunity:

- To implement a connected and responsive social security system that facilitates complete and streamlined access to all personal entitlements including ‘passported’ entitlements such as blue badges and concessionary travel scheme.
- To improve access to the social security system by embedding a properly funded advice sector, including specialist provision for disabled people, access to which is routinely offered the opportunity to access this by professional points of contact.
- To improve the claim and decision making processes for disability benefits to improve accuracy of decision making, reduce administrative and assessment costs and ensure that claimants are treated with respect at all stages of the process.

Key Points about the Social Security Bill, in its current form:

- Getting the right balance between primary and secondary legislation.
- Strengthening the Scottish Social Security Charter - defining a route to recourse in the event that charter commitments are breached.
- Amending ‘Types of Assistance to be Given’ to ensure in-kind service alternative is positioned as a choice to be made by the person seeking assistance.
- The absence of provision for overpayments not to be recovered when they occur due to official error.
- The absence of provision for Uprating of social security entitlements.
Consultation Questions

1) The Bill aims to provide a framework for the creation of the Scottish social security system. In addition the Scottish Government has chosen to put most of the rules about the new benefits in Regulations. It believes that putting the rules in Regulations will make things clearer and less confusing. Parliament cannot change Regulations, only approve or reject them. The Scottish Government intends to develop Regulations with external help. Do you have any views on this approach?

While the Scottish Government has set out the rationale for a short Bill; that it is intended to be a high level, enabling Bill, its shortness means a lot remains unclear about the new system and in some ways, makes it difficult to comment on key aspects. We recognise that a lot of the detail will be in secondary legislation, including regulations and guidance. However, there remains a number of key issues which need to be strengthened, and protected by being enshrining in the primary legislation and that it is clear in the primary legislation that they can be enforced and how.

We are also concerned that the lack of scrutiny of secondary legislation could lead to unintended consequences or things being missed including elements that could have financial implications for the Scottish Government but also for individuals and their families.

Whilst we understand the temptation to leave much of the detail of the devolved benefits to Regulations which we understand will be affirmative, it is our preference that the Bill sets out:

- the benefits/scheme that will be created
- the purpose(s) of the benefit/scheme and;
- the broad framework for how their operation

We are concerned that currently the Social Security (Scotland) Bill does not do this.

Whilst we accept that legislating in this area will be difficult given the complicated interaction between what will be devolved, what will be reserved and potential financial implications; we are clear there must be sufficient detail within the primary legislation to give individuals a reasonable idea of what they might be expect to be entitled to should the need for assistance arise.

Example: “John is 23 and has a learning disability. He has his meals delivered by a private company as his disability means he finds it hard to cook. John is struggling with the cost of these meals”.

In this example it would be our preference that the primary legislation make it clear that there is the existence of a cash transfer, non means tested, non taxable disability benefit that exists to help with the additional costs that arise due to disability and that John might be able to access this. The Regulations could then provide further detail. We do not believe that the Bill, in its current form, does this.

We also do not agree that leaving the detail of the operation of benefits to Regulations will automatically simplify or make the process clearer. It is our experience that the reading of primary and secondary legislation in social security is primarily the work of the judiciary, advice agencies and decision makers (although in the main even decision makers rely on internal guidebooks and their interpretation of legislation than the legislation itself).

Claimants will typically rely on other sources of advice that have been created with reference to the legislation. With this in mind, the primary concern of the Bill should not be to simplify the system but to make it fit for the purpose which it has been created to deliver.

Finally, we are concerned that the bulk of operational legislation being left to Regulations may lead to a potential lack of scrutiny. With this in mind, we will be suggesting amendments and additions to the Social Security (Scotland) Bill but also suggesting that a Scottish version of the Social Security Advisory Committee is created to independently scrutinise legislation.

For practical reasons, scrutiny by this new independent body would not be necessarily for all Regulations made in relation to the Bill but could be selected by the body or a Parliamentary Committee.
2) The Bill proposes that the Scottish social security system will be based on the following seven principles:

- Social security is an investment in the people of Scotland.
- Social security is a human right. It is essential to accessing other human rights.
- Respect for the dignity of individuals is at the heart of the Scottish social security system.
- The Scottish Government has a role in making sure that people are given the social security assistance they are eligible for.
- The Scottish social security system will be designed with the people of Scotland, and based on evidence.
- The Scottish social security system should always be trying to improve. Any changes should put the needs of those who require social security first.
- The Scottish social security system is efficient and delivers value for money.

**Q.** What are your views on these principles and this approach? Please explain the reason for your answer.

**Q.** Are there other principles you would like to see included?

ENABLE Scotland views the devolution of parts of the social security system as an excellent opportunity to reframe the narrative around the social security system. It has to be clear that the social security system is about empowering citizens, facilitating participation and recognising everyone’s contribution and value to society. Further, it provides an opportunity to examine and influence the culture and ethos embedded in the benefits delivery system.

ENABLE Scotland would comment that there should be more in the Bill about the purpose of social security. The Social Security (Scotland) Bill should at first instance set out that the social security system is about empowering citizens, facilitating participation and recognising everyone’s contribution and value to society.

ENABLE Scotland welcomes the Scottish Government’s conscious decision to use the terminology ‘social security’ in place of ‘benefits’. Further, we welcome commitments to address the stigma attached to accessing social security entitlements.

Research by ENABLE Scotland evidences the difficult journey parents of children who have learning disabilities go through, not only navigating the complexities of the social security system, but also being confronted by upsetting deficit-focused forms and processes.

*Claiming DLA is difficult - the forms are horrendous and it is so upsetting having to justify every bit of support your child needs and having to write in minute detail all the things your child can’t do. Then feeling you are viewed as a waster for claiming financial support for your child. (Parent of child with genetic condition and associated learning disability)*

ENABLE Scotland would like to see the social security system reframed to look more positively at disability in terms of, ‘what the person can do with support’ and how benefits payments could support participation and remove barriers. Notwithstanding, we recognise that it is difficult to design a disability claim process that is not deficit focused. We are however clear in our opinion that these parents’ experiences could have been greatly improved with proper support through the claim process to help them understand why they were being asked these questions. Parents and individuals should feel reassured that this is money that they are entitled to and that can be used to improve their or their child’s life.

ENABLE Scotland broadly supports the principles as outlined in the Bill. ENABLE Scotland would urge that the language of these should be strengthened. Specifically, ‘The Scottish Government has a role in making sure that people are given the social security assistance they are eligible for’ should be framed as a duty or responsibility, i.e.; ‘The Scottish Government has a duty to make sure that people are given the social security assistance they are eligible for.’

Beyond these points, ENABLE Scotland’s primary concern is how the principles might be implemented in practice. Further detail on this point is provided

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3) The Bill proposes that there will be a publicly available social security ‘charter’. This will say how the Scottish Government will put the seven principles above into practice. It will also say what is expected from people claiming benefits. A report on the charter will be produced by the Scottish Government each year.

Q. Do you agree with the idea of the charter? Please explain the reason for your answer.
Q. Is there anything specific you would like to see in this charter?

We support the commitment to write a charter for the Scottish Social Security System. However, one issue with the Bill as drafted is it does not include any reference to recourse in the event that commitments (from the state) are breached. At the moment, as drafted, there is a risk that the Charter provides little more that a vehicle to report on performance to Parliament. To have real meaning applicants should have an avenue to complain and have legal redress if commitments in the future charter are breached by the social security agency.

We would ask that consideration be given to the inclusion in the act of a section similar to Rule 2 of The Tribunal Procedure which sets out the overriding objective for the operation of social security appeals. This rule sets out the basic principles which Tribunal judges should follow (especially when exercising discretion in judgements) and the failure to apply it can be used by individuals as a means to challenge a negative decision.

The inclusion of such a section in the act could potentially give tangible rights to individuals in relation to the principles.

4) The Bill proposes rules for social security which say:
   - how decisions are made and when they can be changed
   - how to apply and what information people have to provide
   - how decisions can be challenged
   - when overpayments must be repaid
   - what criminal offences will be created relating to benefits.

Q. Do you have any comments on these rules?

ENABLE Scotland would emphasise that devolution of these entitlements creates a strong opportunity to create a cultural shift in the delivery of social security. It is necessary that this culture moves from one of mistrust where claims must be scrutinised to prevent misuse of public funds to one that recognises the fact that the vast majority of claimants are making genuine claims for social security that they are entitled to.

ENABLE Scotland wish to see those delivering social security properly trained and supported to ensure high accuracy of decision making and customer service. All staff, including decision making staff, should be equipped with the skills and competencies to be able to support the person to give an accurate representation of themselves and their life; and to recognise where someone needs extra support negotiating the social security system; making appropriate referrals to advocacy or social security advice services rather than issuing a negative decision at first instance.

ENABLE Scotland suggest that devolution of these benefits provides an opportunity to redesign the evidence gathering process to ensure that evidence is gathered in the best and most cost effective way. ENABLE Scotland feel that a specific medical assessment is rarely the best way to assess any claimant’s disability and that it is in fact particularly unsuited to assessing those with a learning disability who can be particularly vulnerable to negative decisions in any process which involves communicating their difficulties. Benefit specific medical assessments tend to produce snap shots of a claimant’s life rather than a long term picture and people with a learning disability may underplay their difficulties or not understand the questions asked.

It is our opinion that the best evidence will usually come from the people who know the claimant best such as GP’s, consultants, support workers or family members and that these are often the sources of evidence where opinions should be sought.

We would also recommend that the evidence gathering process be amended in order to produce information which makes it easier for decision makers to make accurate decisions. The current medical evidence templates sent to medical professionals are inadequate and often do not prompt those completing them to ask themselves the right questions about their patients or the people they support when completing them.

We strongly recommend that these templates be redesigned and that consideration be given to other methods of evidence gathering such as phone calls that would allow those supplying evidence to respond in a more open way with a dialogue between them and decision makers rather than being restricted to yes no answers or limited capacity to respond.
ENABLE Scotland wish to raise the following specific points on these parts of the Bill:

- **The existence of a mandatory reconsideration process:**
  ENABLE Scotland strongly oppose mandatory reconsiderations being replicated in the devolved social security system as they are a barrier to claimants accessing their right to appeal.

  It is ENABLE Scotland’s experience that claimants can become confused and feel that they have had their appeal when a reconsideration is refused, find the process overwhelming and so withdraw from the process.

  It is our preference that upon a negative decision that a claimant can lodge an appeal directly with the Tribunal Service, the new Scottish delivery agency can then conduct an internal review and if the decision remains unchanged then the Tribunal Service will proceed on the basis that the claimant wishes to proceed with an appeal.

  At the point the internal reconsideration is refused then claimants should be issued with a standard letter advising them that it will be assumed that they wish to proceed with an appeal unless the Tribunal Service is notified otherwise. This will give claimants who only wish to have an internal review the opportunity to withdraw from the process at this point should they wish.

- **Section 26:**
  This section allows claimants to establish appeal rights where a decision has not been reached on their reconsideration request within a still to be specified timescale.

  Whilst we support the idea of time limits being placed on decision makers to reconsider decisions, we feel that such a system risks confusion/anger with claimants who will have been waiting on a reconsideration that they might never receive should they proceed to appeal. They will then have to go through another administrative process to reach the appeal stage.

  Whilst it is our preference that mandatory reconsiderations do not exist at all, we would suggest that section 26 should place a duty instead on decision makers to pass appeals directly to the First-tier Tribunal where time limits have not been met.

- **Section 28 (3):**
  This section allows for the First-tier Tribunal to accept a late appeal “only if it is satisfied that there is a good reason for the appeal not having been made sooner”.

  We feel that this section should be amended to allow appeals to be accepted where the First-tier Tribunal accepts that it is reasonable to do so. Our concern is that the terminology used in this section unnecessarily limits the scope of the First-tier Tribunal to accept appeals that are late and that this section in its current format could potentially give rise to appeals/legal challenge over the definition of “good reason”.

  Amending this section to read that an appeal can be accepted late where reasonable to do so, allows the First-tier Tribunal to use its existing overriding objective to decide if an appeal should be admitted late.

- **Section 28 (4):**
  This section allows for decisions to be sent to claimants in writing or by email. Given that such decisions will bring time limited appeal rights we strongly suggest that decisions are always sent in writing even if they are also sent electronically.

  It is our reading that ‘the individual is taken to have received the information 48 hours after it is sent’ is the window after which the person is considered informed, therefore the 31 day time limit for appeal starts 48 hours from when the determination is issued.

  We would urge the committee to clarify that this as it was not immediately clear from current drafting.

- **Decision/review/supersession:**
  We are concerned that there is a lack of clarity within the Bill on the different types of decision that can be made in relation to a request for assistance and the significant impacts that these can have on entitlement.
The issue of a decision being on an original claim, a review, supersession and the material date of its affection has given rise to much case law in the reserved system and it is our desire to avoid this confusion in the devolved system.

- **Section 30 (2):**
  This section allows for a decision that a claimant does not satisfy the eligibility rules to be made where they fail to provide information that has been requested. Whilst we accept that it may be reasonable for decision makers to request information from claimants in order to process a claim, we would suggest that such a decision risks any subsequent challenge becoming a two stage process where a claimant proceed to appeal.

  We would suggest that in circumstances where a claimant fails to provide information a decision is made on the evidence that is available. Whilst this decision may still be negative, it means that any subsequent review/appeal could deal with the decision as a whole rather than a staged process where it first must be decided if section 30 (2) should have applied.

  It our experience that claimants disengage with requests for information, not because they do not wish to provide the information, but because they are struggling to understand or cope with what is being asked of them. We hope Scottish Government, in line with their stated principles, will address in Regulation and Guidance, a more supportive approach to evidence gathering, as outlined in our opening remarks.

- **Overpayments:**
  ENABLE Scotland is concerned that the Bill does not include provision for overpayments not to be recovered when they occur due to official error. We call for such a provision to be included within the Bill and that definitions be made as clear as possible to guard against the number of appeals over these issues we have seen in the reserved system.

- **Fraud:**
  Whilst ENABLE Scotland understands that powers will have to exist to allow authorities to deal with cases involving fraud, we would query the decision to position legislative basis for dealing with fraud within the Social Security (Scotland) Bill.

  Given that levels of fraud for the entitlements being devolved are of minimal levels, it does not appear to make sense to give the issue of fraud such prominence within the Bill. This is especially important given the principles outline how a claimant should expect to be treated.

  We suggest that separate legislation is used to deal with those claimants who are suspected of claiming fraudulently.

5) **The Scottish Government will take over responsibility for some current benefits.** The Bill does not explain how they will work in detail. This will be set out in Regulations at a later date. The current benefits which will be run by the Scottish Government are:

   - disability assistance (including disability living allowance, personal independence payment, attendance allowance and severe disablement allowance)
   - carer’s allowance
   - winter fuel payments
   - industrial injuries disablement benefit
   - cold weather payments
   - funeral payments
   - sure start maternity grants

Q. What are your thoughts on the schedules in the bill in regard to these benefits?

- **Disability Assistance:**
  ENABLE Scotland feel that the Social Security (Scotland) Bill should be clear from the outset that a cash transfer, non means tested, non taxable benefit(s) will be created that is/are intended to cover the additional costs that arise due to disability.

  This will set in primary legislation the crucial foundations underpinning current DLA, PIP and Attendance Allowance and provide a clear policy intention for success/failure to be measured against.

  ENABLE Scotland is concerned about current drafting at s.14(1) of the Bill as it relates to disability assistance (which may or may not take the form of money). This provision needs to be qualified so that
the recipient has the choice of a cash benefit in the first instance or how to use the cash, but can have the choice of an in-kind service only if they would prefer.

What is crucial is that any “disability assistance” created under the Social Security (Scotland) Bill avoids the pitfalls of incoherent criteria and poor assessment/decision making. Furthermore in relation to ‘disability assistance’, ENABLE Scotland would suggest that an equivalent of Regulation 29(2)(b) of the Employment and Support Allowance Regulations should be considered.

Regulation 29(2)(b) is an exceptional circumstance regulation which allows decisions makers/tribunals to make an award of the benefit even where the person does not meet the usual criteria. In the case of ESA (a benefit which measures fitness to work) it can be applied where there is evidence to suggest the person would be at risk where they not to be awarded the benefit.

A similar regulation could be created within any ‘disability assistance’ where negative determination against prescribed criteria would mean the person applying for assistance would struggle to cope with the additional costs of their disability without support.

- **Carers assistance:**
  Carers Allowance is an earnings replacement benefit for those unable to work, or who work reduced hours, due to their caring responsibility. It can also bring about an underlying entitlement that can increase other benefits for those who have caring responsibilities but receive an overlapping benefit.

  ENABLE Scotland feel that on Carers Assistance, the Bill and subsequent regulations needs to be drafted to make it clear that a Carers Assistance will exist that is an earnings replacement benefit. The Bill should also make clear that those in receipt of an overlapping benefit, such as State Pension, will be “treated as entitled” to Carers Assistance for the purposes of passported entitlements, such as carers premium; as is the current position with Carers Allowance.

  The provision to provide “carers assistance” in a form other than cash should also be removed from the Bill. Whilst ENABLE Scotland would welcome any additional support for carers it must be clear that Carers Allowance, or what replaces it, is a cash transfer benefit.

**6) The Bill proposes that a new type of short-term assistance will be introduced. This will be for someone who is challenging a decision to stop or reduce a Scottish benefit.**

  Q. What are your views on this proposal?

  ENABLE Scotland welcomes the proposal for a new type of short-term assistance for someone who is challenging a decision to stop or reduce a Scottish benefit. This is recognition of the costs and stress people face while awaiting a decision.

  ENABLE Scotland recommends that the Committee look to the example of Northern Ireland and the system of supplementary payments that have been created to militate against welfare reform related losses.

**7) The Bill includes the power for the Scottish Government to be able to top up ‘reserved’ benefits (ones controlled by the UK Government), but does not say how these will be used. The Scottish Government also has the power to create new benefits. This is not included in the bill.**

  Q. Do you agree with these proposals?

  ENABLE Scotland accepts that the detail of topping up reserved benefits is left to Regulation, with the understanding that this will provide flexibility to respond to any subsequent changes that are made to reserved benefits by the UK Government.

  We note that there is nothing within the Bill to allow the creation of new benefits and assume this is to ensure that any new benefits that would be created would require primary legislation and so would be open to a greater deal of consultation and scrutiny.

  On that basis we would welcome this approach as any new benefits that would be created would require a significant amount of work to ensure that they have a clear policy purpose they are intended to meet.

**8) The Bill proposes that carer’s allowance should be increased as soon as possible to the level of jobseeker’s allowance (from £62.10 to £73.10 a week).**
Q. What are your thoughts on this proposal?

ENABLE Scotland welcomes any increase in entitlement for those in receipt of Carers Allowance.

10) Q. Is there anything else you want to tell us about this Bill?

- **Appointees**: At present there is nothing specific within the Bill to allow for Appointees to make and manage claims on behalf of another individual. This should be amended.

- **Uprating**: At present there is nothing to confirm that benefits will be uprated. Although we can understand why the specifics may be left to Regulations, we would urge that the Bill requires details to confirm that this will happen.

- **Review of legislation**: Given the changing landscape of reserved benefits and the fact that the devolution of benefits will be a significant undertaking, we recommend that a clause is inserted into the Bill that the primary legislation is reviewed by Parliament after a fixed period.

- **No detriment policy**: The devolution of some benefits whilst others remain reserved has significant potential for claimants to lose financial support due to unintended consequences. We call for this principle to be included within the Bill to ensure it is a significant part of the framework of design for any subsequent Regulations.

- **Embed specialist advice provision**: ENABLE Scotland’s research with families revealed more than 55% parents found it difficult to access benefits for their disabled child. Only 30% of parents had received any advice or assistance with accessing benefit entitlements for their child.

ENABLE Scotland is clear that specialist advice is fundamental to support people who have learning disabilities and their families to navigate the complexities of the intertwined devolved and reserved parts of the Social Security System; and access their full entitlements.

People who have learning disabilities and their families should have access to specialist welfare advice and be routinely offered the opportunity to access this by professional points of contact; for example named person professionals.

To deliver on this, consideration should be given to the inclusion of a right to advice, and to advocacy, within the Social Security (Scotland) Bill.

- **Automaticity**: ENABLE Scotland see an opportunity to ensure that the principle of automatic entitlement, introduced at s.35, is applied to passported entitlements to create streamline access to all entitlements. Many people currently receive passported entitlement via their social security entitlements. These include; the concessionary bus travel and blue badge schemes, the Scottish Welfare Fund and free dental treatment. We want to see this continued and enhanced in the new social security system, with the removal of separate processes to access these entitlements. Our members are clear that a streamlining of functions would support better delivery of social security to people across Scotland and allow for greater automaticity of passported entitlements connected to benefits i.e. entitlement to the National Concessionary Travel Scheme.

ENABLE Scotland looks forward to continuing our work with the Committee to see the Social Security (Scotland) Bill produce the best possible outcomes for disabled people and carers.

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SAMH response to Social Security Committee consultation on Social Security Bill (Scotland)

Introduction

SAMH is the Scottish Association for Mental Health. Around since 1923, SAMH operates over 60 services in communities across Scotland providing mental health social care support, homelessness, addictions and employment services, among others. These services together with our national programme work in See Me, respectme, suicide prevention, sport and physical activity inform our public affairs work to influence positive social change.

SAMH welcomes the opportunity to respond to the Committee’s call for views on the Social Security Bill (Scotland). In preparing our response we held a focus group with SAMH service users in Perth, in addition to focus groups held to gather evidence for our response to the Scottish Government consultation preceding the publication of the Bill.

SAMH is a member of Disability Agenda Scotland (DAS) and fully endorses the DAS submission to the call for views.

Summary

SAMH wants to see:

- A statement of purpose for disability benefits within the text of the Bill, or subsequent regulations, coproduced by people currently supported by the social security system.
- A commitment from the Scottish Government on the nature of consultation and timescales for regulations.
- Key principles for Disability Assistance placed in primary legislation. This should include a definition of disability, eligibility for benefits, timescales for determination and principles for assessment.
- The reversal of recent changes to PIP regulations by the UK government which make it harder for people with mental health problems to qualify for the higher rate of PIP.
- Applications for Disability Assistance from people whose primary condition relates to mental health to be conducted by assessors who are experienced in mental health.
- The majority of assessments to be paper based.
- The Bill or subsequent regulations to provide for automatic access to free travel as part of the initial benefit award, not requiring additional applications by the person in receipt of PIP or a Scottish replacement benefit.
- Industrial Injury Disablement Benefit (IIDB) or its replacement benefit to adequately support people whose mental health has been significantly and directly impacted by their employment.

1 DWP Changes to Personal Independence Payment Regulations February 2017
An additional principle setting out the social security system’s role in promoting health and mental wellbeing added to part 1 of the Bill

Clarity in the Bill or regulations over processes for individual recourse where the principles and obligations in the charter are breached by the state

Consultation on the development of the charter, and wider development of the social security system, to include a proportionate number of people accessing benefits due to their mental health

Regulations for Notification of Change of Circumstance (part 2 section 31) must be inclusive and not stigmatise or punish people who have made a mistake in the notification process due to their mental health

The Social Security Agency, not the applicant, to be principally responsible for the collection of supporting evidence to help determine an application

Clarity from the Scottish Government over provisions to share information between public bodies, with the consent of the applicant, to assist in determining an application.

Short Term Assistance provisions to include people waiting for determinations, mandatory reconsideration, and intentional or unintentional delays in payments of reserved benefits

Scottish Government to use its top-up powers to reverse cuts to Employment And Support Allowance Work Related Activity Group (ESA, WRAG) and equivalent Universal Credit (UC) ‘Limited Capability for Work’ group

A legal right to advocacy for people engaging with the Scottish Social Security System to be included in the Bill. The Mental Health (Care and Treatment) (Scotland) Act 2003 provides a precedent

The Bill to guarantee no award will be reduced following re-determination or appeal

Tribunals to include a panel member with lived experience of the social security system, incorporating good practice from the Mental Health Tribunal for Scotland

In the long term, Disability Assistance to include increased automatic entitlement, longer and life time awards and the introduction of a single whole of life disability benefit

The Purpose of Disability Benefits

The bill provides a unique opportunity to restate the purpose of social security for people with mental health problems and other disabilities. We believe the central function of non-income related disability benefits should continue to be compensating disabled people for the additional costs of living they face. The Extra Costs Commission by Scope found that people with a disability spend on average £550 a month on disability.2 Beyond this, disability benefits have key roles in tackling health inequalities and facilitating the full engagement of disabled people in their local communities. We would like to see a statement of purpose for disability benefits within the text of the Bill, or subsequent regulations. This statement should be coproduced by people currently supported by the social security system, including those sitting on the Experience Panels.

Q1 and Q5: Framework of Bill & Schedules

While SAMH understands the Scottish Government’s rationale, as set out in the policy memorandum, for placing the majority of rules on new benefits in regulations, we have serious concerns over the implications this approach has on opportunities for effective scrutiny. It is

2 Extra Costs Commission 2015 Driving down the extra costs disabled people face - Final report
welcome that the Bill (Part 5 Section 55) requires regulations covering new benefits to be subject to the affirmative procedure. But even under this procedure, Parliament can only accept or reject, not amend. This limits opportunities for Parliament and stakeholders to influence their development. We will say more about this later in our response.

Disability Assistance

Schedule 4 of the Bill sets out the scope of disability assistance regulations. This includes eligibility criteria, liabilities, and award level and type. We believe key principles should be placed within the Bill itself rather than regulations. At a minimum these should include:

- A definition of disability. We recommend the definition from the Equalities Act 2010
- Maximum timescales for determination of entitlement. We note that the Bill already includes maximum timescales for re-determination by Scottish Ministers
- Eligibility Criteria
- Principles governing assessments

As the Committee will know, the UK Government recently used regulations to overturn an Upper Tribunal ruling that people who find it hard to leave the house because of anxiety, panic attacks, and other mental health problems should be able to receive the higher rate of PIP. This type of action highlights the need for caution when relying heavily on regulations rather than primary legislation.

If the Bill proceeds as currently drafted the Scottish Government must soon set out how it will consult upon future regulations. It is crucial that consultation is public and includes a broad spectrum of stakeholders and people who are or have been in receipt of disability benefits.

The Scottish Government should also consider creating an advisory body, equivalent to the Social Security Advisory Committee, to provide ongoing advice to the Government and Social Security Committee regarding the continued development of the Scottish Social Security System and subsequent regulations.

As mentioned above, recent changes to PIP regulations around mental health and travel came into force on 16 March 2017. These stigmatising changes will stop at least 160,000 disabled people with mental health problems across the UK getting the financial support they deserve. The Scottish government should reverse this change as soon as practicably possible.

Assessment for Disability Benefits and Mental Health

The Bill provides no detail on proposals for assessing applicants’ eligibility for disability benefits. Research from SAMH has highlighted significant problems with the manner in which face to face assessments for PIP (as well as ESA Work Capability Assessments) work for people with mental health problems. These include a lack of understanding of the impact of mental health by

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4 DWP Changes to Personal Independence Payment regulations February 2017
5 Disability Benefits Consortium Over 30 charity chief executives call on Minister to rethink damaging PIP changes March 2017
6 SAMH Personal Independence Payment – What’s the problem? 2016
7 SAMH Fit For Purpose 2015
assessors; face to face assessments’ inability to accurately assess the impact of fluctuating conditions; and stigmatising attitudes and behaviours by some assessors.

A SAMH service who took part in a focus group in preparation for this submission told us:

“The process itself [of applying and being assessed for PIP] personally has had a massive effect for the worse on my health when I’m trying to get better and I am trying to work towards getting back into society, their attitude and the worry and the stress and the poverty compounds all of that.”

We welcome the Government’s intention to reduce face to face assessments for disability benefits.8,9 Where possible assessments should be paper based, but where face to face assessments do have to take place they should be at a location accessible to the applicant and undertaken by an assessor with professional experience in mental health, if this is the primary reason for their application.

**Travel costs**

Social isolation has a detrimental impact on mental health. Consequently the cost of travel can act as a barrier to someone’s engagement with their local and wider community as well as preventing engagement with services, such as those provided by SAMH. Currently, people who receive the mobility component of PIP or DLA are entitled to road tax discounts, while anyone on any rate of PIP is entitled to concessionary fares and free travel on buses.

The Policy Memorandum for the Bill (paragraph 127) states that the Scottish Government is committed to retaining all existing passporting arrangements for PIP, DLA and AA when responsibility for the benefits transfers to Scotland. SAMH welcomes this commitment but would like to see a further commitment guaranteeing free access to public transport as a right for all eligible to disability benefits under Scottish jurisdiction. The process for gaining free travel should be automatic and part of the initial benefit award, not requiring additional applications by the person in receipt of PIP or a Scottish replacement benefit. There may be benefit in looking at the Young Scot card, which gives holders discounted travel, as a possible model.

The decision mentioned above by the UK Government to deny people with mental health problems the higher rate of PIP highlights a lack of understanding of the impact mental health can have on someone’s ability to travel unsupported. It is crucial that the emerging Scottish social security system takes full account of the impact of mental health on a person’s ability to travel and engage with services and their wider community.

**Employment-Injury Assistance**

Current employment injury assistance (principally Industrial Injury Disablement Benefit or IIDB) does not adequately support people whose mental health has been significantly and directly affected by their employment. The devolution of IIDA provides the opportunity to redress this, while retaining the benefit’s purpose as a means of compensation for workplace harm. We propose the following:

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8 Scottish Parliament Ministerial Statement - Social Security Minister Jeane Freeman 27th April 2017
9 Page 26 paragraph 126 [add full reference]
• Re-examine findings from the 2004 Industrial Injuries Advisory Council (IIAC) ruling on PTSD, particularly in relation to whether PTSD should be included as a prescribed disease.10
• Co-produce guidance for decision makers and medical examiners on eligibility on grounds of stress related conditions. This should include full participation from third sector mental health organisations; representative medical bodies (e.g. RCGP and Royal College of Psychiatrist); trade unions; and people with lived experience of mental health.
• Ensure that the impact of non-work related factors on a claimant’s mental health is not automatically a barrier to eligibility, where work can also be shown to be impacting the person’s health.
• Ensure that where someone is claiming IIDA on the grounds of their mental health, medical decision makers have a psychiatric background and adequate training.
• Create links between the benefit and the Scottish Government’s employability programmes
• Conduct a full review of eligibility criteria of IIDA (or successor benefit) to determine if the current list of prescribed illness is fit for purpose
  o This review should include full consideration of mental health and of whether individual diagnoses should be included in a new list of prescribed illnesses, if such a list is retained.
  o The review should also use international learning, particularly from Denmark, Finland, Italy, Sweden and Switzerland where psychological harm related to work placed injuries is compensated for

Question 2: Principles

SAMH welcomes the principles set out in the Bill, particularly the inclusion of social security as a human right. But it is not clear from the Bill what legal status the principles will have, or if people engaging with the social security system will have avenues for redress where the state breaches these principles. The UK is a signatory to the UN Convention on the Rights of Persons with Disabilities (CRPD) which places a legal duty on the state to enable persons with disabilities to live independently.11 Key to the realisation of this right, and human rights more generally, is their implementation, monitoring and accountability of state parties. The Bill provides no detail of how the principles will be realised in practice beyond providing the basis for the charter.

SAMH calls for an additional principle setting out the social security system’s role in promoting health and mental wellbeing. We suggest:

“The Scottish social security system has a role in promoting improved health and mental wellbeing for all individuals accessing the system”.

Question 3: Charter

SAMH welcomes the proposed charter as a tool to ensuring that the Scottish Government’s stated principles are understood by members of the public as well as by staff administering social security benefits in Scotland. The Bill does not include any reference to recourse in the event that commitments (from the state) are breached. For the charter to have real meaning, applicants should

11 UN Convention on the Rights of Persons with Disabilities
have an avenue to complain and have legal redress if the social security agency breaches if commitments in the future charter.

The charter must be developed through consultation with a wide group of stakeholders including people with lived experience of disabilities and the benefit system. As such we welcome the list of prescribed groups in Section 3 (part 3) of the Bill who must be consulted during the preparation of the first charter. SAMH would also draw attention to the fact that as of April 2017, 37.7% of all people in receipt of PIP in Scotland have a mental or behavioural disorder as their main health condition. This is significantly higher than any other group. Consultation on the development of the charter, and wider development of the social security system, must include a proportionate number of people accessing benefits due to their mental health. We have made enquiries regarding the proportion of people on Experience Panels who have mental health problems and have not yet received a response: this may be something that the Committee wishes to investigate.

**Question 4: Rules for the Social Security System**

**Notification of change of circumstance**

Part 2 Section 31 of the Bill empowers Scottish Ministers to develop regulations that place duties on applicants to notify the Agency of changes in their circumstances. Regulations can also be placed which mean that failure to notify changes may be an offence under Section 40 of the Bill.

Changes in circumstances can be challenging for people with mental health problems, as can engaging with official systems and processes. Regulations need to be developed that are inclusive and do not stigmatise or punish people who have made a mistake in the notification process, due to their mental health. Communication processes must also be inclusive as possible with a variety of options available that do not rely on constant internet access or costly phone calls.

**Evidence**

Chapter 3 Section 20 of the Bill sets out provisions for Scottish Ministers to make regulations to determine what evidence applicants are required to provide to support an application. The section also states that Ministers must publicise these requirements. SAMH believes the Agency should be principally responsible for the collection of supporting evidence to help determine an application. While SAMH agrees that it is appropriate for the detail of specific evidence to be outlined in regulations, we are concerned that the Bill places all responsibility on the applicant to provide supporting evidence.

In announcing the Social Security Agency, the Minister for Social Security stated to parliament on 27th April:

“...I have begun to explore the potential to use the existing information and expertise of the health and social care sector.

I want a genuine partnership to access only the already known information which is relevant to social security decisions, with appropriate consents and robust safeguards.

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And in doing so, to limit the time health and other professionals spend dealing with the negative impact of the current UK system on individuals, so our skilled and professional health and social care staff can focus on the role they have trained to do – care for and support their patients’ and clients’ health and social care.\textsuperscript{13}

Unfortunately there is nothing in the Bill about sharing information between public bodies to support accurate decisions on awards. We know that the current system, where responsibility for collecting additional and supporting evidence for PIP lies with the applicant, is inappropriate for many people with mental health problems. Citizen Advice Scotland reports that their clients have difficulties obtaining additional evidence and can face fees and a lack of clear advice from the DWP. CAB advisors found evidence could be gathered from mental health providers with ease in only 23\% of cases, with difficulty in 59\% of cases, and with great difficulty in 18\% of cases.\textsuperscript{14}

In our view responsibility for the collection of evidence should lie with the Social Security Agency, after the applicant gives consent. The applicant should be given adequate guidance and opportunity to choose who they think would be the most appropriate person or people to provide evidence. This could be a specialist doctor, GP, community nurse, support worker or even friend or family member, depending on the nature of the evidence required. Where entitlement is automatic based on an applicant’s condition, the relevant person/ professional should only have to confirm the diagnosis.

**Question 6: Short Term Assistance**

SAMH welcomes the proposals to create a benefit to provide short term assistance. However neither the Policy Memorandum nor the Bill make clear whether eligibility for short term assistance will also include people waiting for determinations, mandatory reconsideration or suffering, intentional or unintentional delays in payments of reserved benefits. We believe people in those circumstances should be eligible for short term assistance from the Scottish system to mitigate both the financial and psychological harm that delayed payments can cause. As the Committee will be aware, and as SAMH service users have told us, there are significant issues with the 6 week wait for initial payment of Universal Credit (UC), resulting in real financial hardship and negatively impacting applicants’ mental health. We believe short term assistance payments should be used to mitigate this.

**Question 7: Top Up Powers**

Part 3 (Section 45-46) of the Bill outlines provisions for Scottish Government Ministers to set out regulations to top up reserved benefits. It does not include specific policy aims and rules over entitlement and assessment. SAMH believes top ups to reserved benefits should occur where the Scottish Government determines provision of the reserved benefit is inadequate to meet its purpose, as a whole, rather than at an individual applicant level.

A case in point is the Employment and Support Allowance, Work Related Activity Group (ESA WRAG). SAMH and others across the disability sector were deeply disappointed with the UK Government’s recent decision to cut by £30 Employment and Support Allowance for those in the Work Related

\textsuperscript{13} Scottish Parliament \textit{Ministerial Statement - Social Security Minister Jeane Freeman} 27\textsuperscript{th} April 2017

\textsuperscript{14} CAB Scotland \textit{Burden of Proof: The role of medical evidence in the benefits system} 2017
Activity Group and the equivalent ‘Limited Capability for Work’ group.\textsuperscript{15} This cut, which brings the value of ESA WRAG down to that of JSA, takes no account for the additional costs of disability or of the barriers to work caused by people’s health, or indeed of the fact that people in the WRAG group have been assessed as being unfit for work. Over half of people receiving ESA in Scotland do so on the basis of a mental health problem,\textsuperscript{16} so it’s clear this unjust cut disproportionately affects people with mental health problems.

We would like the Scottish Government to use its top-up powers to reverse this damaging and stigmatising cut at the earliest practical opportunity.

Question 10: Other issues

Independent Advocacy

The Scottish Government funded the Welfare Advocacy Pilot Project between March 2015 and August 2016, which found that advocacy support throughout the assessment process of both ESA and PIP\textsuperscript{17}:

- Reduced the stress and anxiety for applicants
- Increased applicants’ confidence about communicating and their understanding of the process
- Positively impacted the behaviour of assessors
- Increased the accuracy of assessment outcomes.

Almost three quarters of people supported by the project had a mental health problem as their primary health condition. Nine out of ten of those participating received a positive result from their claim.\textsuperscript{18}

The benefits of advocacy are clear. SAMH believes that everyone engaging with the Scottish Social Security System should have a legal right to advocacy. The Mental Health (Care and Treatment) (Scotland) Act 2003, which provides that everyone with a mental health problem in Scotland is entitled to advocacy, is a precedent for this.\textsuperscript{19} It is vital that the Scottish Government commits to resourcing independent advocacy services to meet need.

Determination of eligibility and Tribunals

Chapter 3 of the Bill sets out the process of challenging a determination, firstly through ‘redetermination’ then appeals to first and second tier tribunals. We welcome the proposal that a re-determination should have strict timescales for Scottish Ministers to adhere to (unlike mandatory reconsiderations at the UK level) and that the process should be based on treating the applications as new rather than re-examining the original decision. However, we are concerned that people who

\textsuperscript{15} Disability Benefits Consortium \url{Open Letter to Government on Second Chance to stop ESA cut} November 2016
\textsuperscript{16} NOMIS \url{benefit claimants - employment and support allowance – February 2017 dataset} [accessed August 2017]
\textsuperscript{17} Alliance \url{Welfare Advocacy Support Project evaluation report} 2016
\textsuperscript{18} Alliance \url{Welfare Advocacy Support Project evaluation report} 2016
\textsuperscript{19} \url{http://www.legislation.gov.uk/asp/2003/13/contents}
appeal may have their entitlement and award reduced after re-determination. Previous research with SAMH service users has highlighted high levels of anxiety associated with the appeals process.\(^{20}\) Fear that an award will be reduced will be an added disincentive to challenge award decisions. We would like the Bill to guarantee no award will be reduced following re-determination or appeal.

**Tribunals**

SAMH would like the Scottish Government to incorporate good practice from the Mental Health Tribunal for Scotland.\(^{21}\) The primary role of the Tribunal is to consider and determine applications for compulsory treatment orders (CTOs) under the 2003 Mental Health Act and to consider appeals against compulsory measures.

A key feature of the Mental Health Tribunal is that every sitting is presided over by three members: a legal member (who acts as Convener), a medical member and a general member. The general member is someone with lived experience of a mental health disorder, a carer or someone with qualifications in social care that include a mental health specialism (e.g. a mental health social worker).\(^{22}\) The role of the general member is invaluable, providing a lived experience perspective to the tribunal. We would like to see a similar provision in future social security tribunals, with every tribunal including someone with lived experience of the social security system personally or professionally. Provisions for this should be set out in regulations to Chapter 3 of the bill.

**Long term aspirations – Disability Assistance**

SAMH recognises that the Social Security Bill is only one, albeit crucial, step in the creation of a Scottish Social Security system. We welcome the creation of the Experience Panels and the Expert Advisory Group on Disability. This consultation allows us the opportunity to set out a number of longer term aspirations for devolved disability assistance. These are derived from the DAS response to the Scottish Government’s A New Future for Social Security consultation.\(^{23}\)

- Greater automatic entitlement built into the social security system would assist people to access the support they are entitled to, and would save some resource and also the impact on people, compared to the current system.
- Indefinite or extended awards should be made in all cases where the person’s condition is highly unlikely to improve, is degenerative or terminal. This should include people with mental health problems where appropriate.
- The introduction of a single whole of life disability benefit, replacing DLA, PIP and AA. This would provide more consistent criteria across the benefits and the life of a person. It would be fairer as arbitrary changes to entitlement and levels of support would no longer occur due to age.

Craig Smith, Public Affairs Officer

SAMH, August 2017

\(^{20}\) SAMH [Personal Independence Payment – What’s the problem?] 2016
\(^{21}\) Mental Health Tribunal For Scotland [accessed August 2017]
\(^{22}\) Mental Health Tribunal For Scotland: Panel Members [accessed August 2017]
\(^{23}\) DAS Disability [Agenda Scotland (DAS) A New Future for Social Security: Consultation on Social Security in Scotland – consultation submission] (October 2016)
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“Beating Cancer: Ambition and Action”
The Scottish Government Cancer Plan “Beating Cancer: Ambition and Action” published in March 2016 committed the new Social Security system to “giving a rounded assessment of people’s needs, streamlining the administrative process, and seeking to fast track for those that qualify and are living with a terminal illness such as cancer.”
Macmillan Cancer Support wants to work with the Scottish Government to deliver these aims in the new Social Security system:

Innovative Benefits Services
Macmillan Benefits Services currently provide the opportunity of face to face support for people affected by cancer through 22 partnerships that cover 27 of the 32 local authorities throughout Scotland. As an example of that work, the first 6 months of 2016 saw the services provide support to over 8000 people with financial gains of over £20 million. It is essential moving forward that we ensure face to face provision is an option for those cancer patients requiring benefits and financial advice.

Recent work at the Spinal Unit based at the Queen Elizabeth Hospital in Glasgow showed that there is a real opportunity to change how decisions are made for people with long term conditions working closely with nurses, physios and consultants to provide supporting letters of how the person’s injury impacted on their life, resulting in a quicker decision based on expert opinion. Macmillan believes a similar exercise could be extended to people affected by cancer, saving time and money for the new system.

Improving the Cancer Journey – Deprived Communities
The 2016 SNP Manifesto and the Scottish Government Cancer Plan in March 2016 – both commit to the spread of Link Workers to improve the health of the population. Link Workers are vital to ensure an Holistic Needs Assessment for people to ensure their care is properly co-ordinated, and signposting to existing vital services always takes place. (The joint Macmillan/Scottish Government Transforming Care After Treatment programme is demonstrating how vital an holistic needs assessment is for cancer patients).

The Cancer Plan commits to “Invest £9 million over 5 years to support access to health and social care services during and after treatment, via for example, Link Workers to provide support in the most deprived communities and initiatives such as Macmillan’s Improving the Cancer Journey”. Macmillan believes this roll-out will have a beneficial impact on the well-being of people with cancer in the most deprived areas – and will ensure benefits and financial advice – as well as housing and other social needs – are recognised whilst tackling health conditions of the population. Too often these services are unconnected, and we need to ensure that Health & Social Care Integration also dovetails with the work of the new Social Security Department’s services.

Vocational Rehabilitation
Macmillan Cancer Support is clear that running alongside a successful new Social Security system must be a successful back to work programme for people with long term conditions including cancer. We do not want to see a system that (through good intentions) could write-off the ability of people to survive cancer and return to work, both during and after their treatment.
As the retirement age rises to 68, more and more working age people will be diagnosed with cancer— we need a new Social Security system that is closely integrated with vocational rehabilitation services linked to both healthcare systems and an understanding by employers across Scotland of their responsibilities.

**ESA WRAG**

Macmillan Cancer Support has campaigned vigorously to keep the ESA WRAG payment for cancer patients. At their most vulnerable moments after treatment ends, cancer patients need support to start their journey back into the workplace. There is a clear distinction between people on JSA and those receiving ESA WRAG. Claimants in the WRAG have, by definition, been assessed to have only a ‘limited capability’ for work and cannot be reasonably required to work. Instead, they need to be given time to recover and properly supported to return to work if and when they are ready and able. The removal of the £29pw payment is causing huge hardship to cancer patients and making it harder to support them returning to work. With the new powers of Work Able Scotland, together with a drive toward better vocational rehabilitation, Macmillan believe the new Scottish Social Security System should re-instate the weekly payment to cancer patients who will not receive this payment to help them return to work.

**PIP waiting times and statistics**

Macmillan believes people living with and beyond cancer should receive PIP in a timely manner to help them cope with the often immediate support and financial needs they face following their cancer diagnosis and treatment.

Following campaigning by Macmillan in 2014, we were pleased when the UK Government committed to publishing quarterly statistics on end-to-end clearance times for PIP normal and special rules claims, as this has increased transparency about the time people living with cancer are waiting for their claims to be processed so that any problems can be identified and addressed quickly. We are also pleased to see that waiting times have largely met the 11 week wait for normal rules claims and 7 days wait for special rules claims for terminally ill, which Macmillan also called for, which is the maximum amount of time we believe these claims should take. It is vital that when the Scottish Government takes on responsibility for PIP, it continues to publish this data on waiting times and commits to ensuring that people living with cancer can access their PIP payments in a timely way.

Macmillan believes that the availability of good data on benefits claims is vital to ensure that people are receiving the benefits they need when they need them. We would therefore welcome any additional information that the Scottish Government could publish in addition to that already published by their Westminster counterparts.

**Personal Independence Payment (PIP) 28-day rule**

Last year, following successful campaigning by Macmillan and others, the Westminster Government confirmed that they would be amending regulations to ensure that when people who are terminally ill transfer from Disability Living Allowance (DLA) to Personal Independence Payments (PIP) they will no longer have to wait 28 days or more to receive any increased payment. This will help ensure people with cancer who are terminally ill can access vital support at a time when they need it most.

We were pleased that the UK Government listened to our concerns and agreed to make this much-needed change; however, we know this delay in accessing increased support is also experienced by people with cancer who don’t have a terminal illness.
We believe it is vital that the Scottish Government ensures that terminally ill people in Scotland continue to benefit from this change when PIP is devolved and believe it should explore whether this could be extended so that everyone moving from DLA to PIP whose daily living and/or mobility needs have increased can access vital additional funds without delay.

3-month qualifying period for PIP
When PIP was introduced in 2013, Macmillan successfully campaigned against the Westminster Government’s proposal to extend the qualifying period for the benefit from three to six months. We were against this as we know that many people living with cancer and claiming PIP have significant needs and increased costs because of their cancer diagnosis and treatment and need to receive financial support to help them with these as soon as possible. We were pleased when the Westminster Government acknowledged Macmillan’s concerns and agreed to retain the three-month qualifying period when PIP replaced DLA. It is vital when the Scottish Government takes on responsibility for PIP that the qualifying period is no greater than three months.

Paper-based PIP special rules application
The impact of cancer and its treatment can be varied, wide ranging and severe. It is therefore important that people affected by cancer are able to access the benefits to which they are entitled as easily and equitably as possible. It is therefore imperative to offer multiple channels of access for people affected by cancer and professionals supporting them with claims. For example, Macmillan has worked with the Department for Work and Pensions to implement a paper-based pilot for claims made under PIP special rules. This allows Macmillan professionals to complete a paper-based PIP 1 form for special rules applications and return it with a DS1500 form, rather than make a lengthy application call. In addition, a shorter call can be made in order to protect date of claim – meaning that any subsequent award will be payable from the date of the call, rather than the date the form is received.

We would welcome the Scottish Government continuing this approach when it takes on responsibility for PIP. We would also be keen to discuss other opportunities to increase the channels available to people affected by cancer for other benefits.

Attendance Allowance forms
At present, Macmillan’s UK-wide Support Line is accredited by the DWP to send out Attendance Allowance and Disability Living Allowance (for children) forms directly to cancer patients. This improves the customer experience for people affected by cancer as it means they don’t need to call up separately to request a claim form. This simplifies and speeds up the claims process and is beneficial for the DWP too as it reduces the number of calls requesting claim forms that they need to handle.

Macmillan would welcome this continuing when Attendance Allowance and Disability Living Allowance (for children) is devolved to the Scottish Government and would be keen to work with government to explore whether there are opportunities to do this with other benefits.