



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Social Security Committee

**Thursday 5 March 2020**

**Session 5**



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**CONTENTS**

	<b>Col.</b>
<b>SUBORDINATE LEGISLATION.....</b>	<b>1</b>
First-tier Tribunal for Scotland Social Security Chamber (Procedure and Allocation of Functions)	
Amendment Regulations 2020 [Draft] .....	1
Social Security (Advocacy Service Standards) (Scotland) Regulations 2020 [Draft] .....	4

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**SOCIAL SECURITY COMMITTEE**

**7<sup>th</sup> Meeting 2020, Session 5**

**CONVENER**

\*Bob Doris (Glasgow Maryhill and Springburn) (SNP)

**DEPUTY CONVENER**

Pauline McNeill (Glasgow) (Lab)

**COMMITTEE MEMBERS**

\*Tom Arthur (Renfrewshire South) (SNP)  
\*Jeremy Balfour (Lothian) (Con)  
\*Keith Brown (Clackmannanshire and Dunblane) (SNP)  
\*Mark Griffin (Central Scotland) (Lab)  
\*Alison Johnstone (Lothian) (Green)  
\*Shona Robison (Dundee City East) (SNP)  
\*Graham Simpson (Central Scotland) (Con)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Shirley-Anne Somerville (Cabinet Secretary for Social Security and Older People)

**CLERK TO THE COMMITTEE**

Anne Peat

**LOCATION**

The Sir Alexander Fleming Room (CR3)



# Scottish Parliament

## Social Security Committee

Thursday 5 March 2020

*[The Convener opened the meeting in private at 09:14]*

10:45

*Meeting continued in public.*

### Subordinate Legislation

#### First-tier Tribunal for Scotland Social Security Chamber (Procedure and Allocation of Functions) Amendment Regulations 2020 [Draft]

**The Convener (Bob Doris):** I welcome everyone to the seventh meeting in 2020 of the Social Security Committee. I remind everybody to turn mobile phones or other devices to silent or to switch them off so that they do not disrupt our meeting.

We have one apology this morning: unfortunately, our deputy convener, Pauline McNeill, cannot be with us.

The committee dealt with agenda item 1 in private earlier, so we now move to agenda item 2, which is on subordinate legislation. The committee will take evidence on the draft First-tier Tribunal for Scotland Social Security Chamber (Procedure and Allocation of Functions) Amendment Regulations 2020, which are subject to the affirmative procedure. I remind members that both subordinate legislation instruments that we will consider were circulated to members on 31 January for their attention.

I welcome to the meeting the Cabinet Secretary for Social Security and Older People, Shirley-Anne Somerville, and thank her for coming along this morning. I also welcome, from the social security directorate, Scottish Government officials Ann McVie, deputy director of social security policy, and Jane McAteer, cross-cutting policy manager—thank you for coming along. I invite the cabinet secretary to make an opening statement.

**The Cabinet Secretary for Social Security and Older People (Shirley-Anne Somerville):** Thank you, convener, for the invitation to attend the meeting. I will keep my remarks relatively brief.

As part of our commitment to continuous improvement, we have listened to feedback and used it to make further improvements to our appeal system. We have always been clear that

people will have the right to challenge decisions made by Social Security Scotland and that the process should be as simple as possible. The new social security chamber is key to realising that right by ensuring that people have access to justice in a timely manner in line with our principles of dignity, fairness and respect.

First, the regulations that are being considered today make an adjustment, through regulation 2, to the allocation of function regulations by extending the period of assignment for the acting social security chamber president. We want to ensure that our appeals process continues to be managed effectively and, most importantly, secures for people an appropriate means of redress when challenging decisions. That is why we believe that it is appropriate to retain the expertise and experience of the current chamber president at this time to inform the challenging appeals process arising from the delivery of assistance in Scotland.

We have also taken the opportunity to make amendments to the procedure regulations that govern the operation of the chamber, partly to clarify the intent of the original drafting and partly to address more substantive points. The provisions that have been amended cover seeking appellant views on hearings, appropriate publishing of chamber decisions and procedures around case review and case dismissal.

Regulation 3(2) clarifies that, where a case has been dismissed as a result of a failure to comply with an order in relation to the conduct of proceedings, reinstatement may be sought only where there is good reason for the failure. Regulation 3(3) removes the requirement for an appellant to give views on whether an oral hearing should be held at the time of submitting a notice of appeal. That will allow an individual to give their views on hearings at a more appropriate time in the appeal process. Regulations 3(5) and 3(6) together allow the publication of summaries of chamber decisions that provide updates on matters of interest and points of law arising in decisions, without compromising the identities of individuals.

Regulation 3(7) provides that it is usually the legal member who is to undertake a review of a decision, rather than that being a free choice between the legal member or an ordinary member. Regulation 3(8) has the effect of clarifying that Social Security Scotland review requests are also treated as applications for permission to appeal, unless stipulating otherwise. That will ensure that all parties are on an equal footing.

I want to be clear that we are seeking to amend those provisions in order to further augment our rights-based approach by putting the individual right at the heart of the process and removing

barriers to challenging decisions. In the course of amending the regulations, we consulted the president of the Scottish tribunals and former members of the judicial reference group. I am pleased that the regulations were approved without comment. I thank, and acknowledge the support provided by, the Judicial Office for Scotland, whose advice and guidance was invaluable throughout this process.

I am happy to take questions from members.

**The Convener:** Thank you, cabinet secretary. I inform members that if they have any particular comments on the regulations, we will have a brief debate under agenda item 3, if required. At this point, do members have any questions for the cabinet secretary?

**Graham Simpson (Central Scotland) (Con):** I have one for clarification. The explanatory note states:

"Regulation 3(5) removes the option for a decision of the Social Security Chamber to be published."

Can you explain why a decision would not be published?

**Shirley-Anne Somerville:** The challenge is to ensure confidentiality for the individuals concerned. There is an area whereby if something was published, it might not be possible to anonymise the appellant when publishing the decision in full. We are looking at having summaries of chamber decisions to provide updates on matters of interest and points of law so that we get the information that is required while ensuring that there is no danger of the individual being recognised through that process.

**Graham Simpson:** Thank you.

**The Convener:** As there are no other questions, that concludes agenda item 2.

We move to agenda item 3, which is on the same matter. I invite the cabinet secretary to move motion S5M-20851.

*Motion moved,*

That the Social Security Committee recommends that the First-tier Tribunal for Scotland Social Security Chamber (Procedure and Allocation of Functions) Amendment Regulations 2020 [draft] be approved.—[*Shirley-Anne Somerville*]

*Motion agreed to.*

**The Convener:** I suspend the meeting briefly.

10:51

*Meeting suspended.*

10:52

*On resuming—*

### **Social Security (Advocacy Service Standards) (Scotland) Regulations 2020 [Draft]**

**The Convener:** Agenda item 4 is an evidence-taking session on the draft Social Security (Advocacy Service Standards) (Scotland) Regulations 2020, which are subject to the affirmative procedure.

I again welcome the Cabinet Secretary for Social Security and Older People, Shirley-Anne Somerville, who is accompanied by her officials Fiona Campbell, act implementation team leader, and Simon Coote, legislation and operational policy unit head, from the Scottish Government. You are all very welcome.

I ask the cabinet secretary to make an opening statement.

**Shirley-Anne Somerville:** Thank you, convener.

The Scottish Government is required by section 10 of the Social Security (Scotland) Act 2018 to make independent advocacy support available to people with a disability who need such support to engage effectively with Social Security Scotland, as part of the process of claiming Scottish social security assistance.

The 2018 act does not define disability. It is for individuals to self-identify whether they are eligible for advocacy support as provided for by the act. Those who are eligible might include deaf people and those with a sensory disability or mental health condition.

Section 11 of the 2018 act requires the Scottish ministers to develop and publish service standards that would apply to such support. Services providing advocacy support on behalf of the Scottish ministers must undertake to comply with those standards. The standards were published and the regulations covering the standards were introduced on 31 January.

The service standards apply to individual-instructed advocacy. Instructed advocacy takes place when the individual is able to tell the advocacy worker what they want as well as the actions that they would like to be taken. That means that the individual can understand the advocacy role and how the advocacy worker can represent and support them and that they can instruct their advocacy worker.

The standards are based on existing material, and an initial version was tested with a small number of services and service users in winter 2018. A short-life working group was then

established, which refined the work ahead of the public consultation that ran during autumn 2019.

Seventy-seven responses to the consultation were received. The key issues that were raised were on the application of the standards to instructed advocacy and the definition of independence.

Given that our advocacy support is for people claiming benefit entitlements, it was considered appropriate to limit the support to instructed advocacy. The service is for when an individual is able to tell the advocacy worker what assistance they require and what outcomes they are seeking. Translation, interpretation and other communication support can be provided to assist individuals to instruct an advocacy worker.

An individual with severe and/or complex communication needs who is not able to claim assistance in their own right or instruct an advocacy worker would have a person acting in a legal capacity—an appointee or guardian, for example—to make benefit claims for them.

When we have discussed what we mean by an independent advocacy service, there has been some debate around the definition of independence that has been used. For example, that point was raised at the Delegated Powers and Law Reform Committee when it considered the regulations and standards.

Section 10(4)(b) of the 2018 act makes it clear that

“advocacy services are independent if they are provided by a person other than the Scottish Ministers.”

I appreciate that that is not the definition that is used by the independent advocacy sector. However, we will be moving forward using the definition in the act. We consider that welfare rights and advice organisations, for example, could provide advocacy, as long as systems and processes are in place to ensure a separation of advocacy from other support and the avoidance of conflicts of interest. The standards set out that requirement and make it clear that the advocacy worker should only provide advocacy support.

To be clear, the standards include provision to minimise any potential conflicts of interest that could negatively impact on service users. We will monitor that aspect of the contract during its operation.

The standards document provides a definition of advocacy and sets out standards and principles. Advocacy will be provided by trained people and it will be independent, person centred, accessible and quality assured. Those behaviours apply either to a service as a whole or to the advocacy worker who provides the support.

As the committee is aware, the Scottish Government has been running a procurement exercise for the provision of advocacy support. The invitation to tender was issued last December and the closing date for returned tenders was 28 February. We have received three tenders, which are now being evaluated. We aim to identify the preferred bidder in early May.

Once the contract is awarded, the service provider and officials will agree on a mobilisation plan to ensure that advocacy support is available from the end of June, which is in advance of the delivery of the devolved disability benefits. However, I emphasise that advocacy support is not limited to claims for disability benefits. It will be available for all Scottish social security benefits if the individual needs advocacy support.

**The Convener:** Thank you very much, cabinet secretary.

I am conscious that Mr Arthur, Mr Balfour and Mr Simpson were previously on the DPLR Committee. I know that they miss it deeply and wish that they were still on it, but that is their parliamentary fate.

We will now move to questions.

**Jeremy Balfour (Lothian) (Con):** I have a couple of quick questions.

I welcome your statement, and particularly what you said about principle 2 of the advocacy service standards, which is independence. How do you see things being signposted for a claimant? Obviously, people will need to know about the advocacy service to be able to access it. How do you see that being rolled out?

In paragraph 1 on principle 2 in the standards document, you say that Social Security Scotland will not be seen as independent. There have been conversations in which it has been said that, when someone makes their initial claim, the agency may help the claimant to fill in the form. Do you see that as a legitimate advocacy role, or do you think that, if somebody said that they needed help filling in the form, the agency should signpost them to a different organisation? Clarification on that would be helpful.

**Shirley-Anne Somerville:** It is certainly not the role of the agency to provide advocacy support; it is there to provide pre-application support. If people have questions about the application or the types of information that it might be beneficial to have as they go forward with an application, or if they need assistance with filling in a form, that is what a local delivery person—or a client adviser, if things are being done by phone—is there for. They are certainly not there as advocates; advocacy is a separate and distinct role to be played by someone who is outwith the agency.

You are absolutely right that there is no point in having such a service if people do not know about it. That ties in with the work that we are doing in social security in general on ensuring that people know their rights and what is available to help them to access those rights.

Obviously, people can self-refer, but there will be a role for local delivery—for client advisers to tell people that the resource is available to them and that, if they self-declare as disabled, they will be able to access it.

We also need to do important work with wider third sector welfare rights advisers, such as Citizens Advice Scotland, so that they know that, if a person who comes to them for advice says that they are disabled, that person has a right to access advocacy as well. The Government has a responsibility to ensure that we are working well with our wider stakeholders, so that they know that the service is available and that they can encourage people who come forward to them to access it.

11:00

**Alison Johnstone (Lothian) (Green):** How will advocacy services be asked to demonstrate that they meet the required standards?

**Shirley-Anne Somerville:** It is very important that there is quality assurance and to know that people have a high quality of service available. We will, of course, monitor and evaluate the service delivery and the standards that will be addressed through the contracting process. There will, for example, be quarterly monitoring meetings. Obviously, the service provider will know what is required of it.

We will look at that issue very carefully as we move forward, because it is a brand-new service and a brand-new tendering contract is moving forward. We will, of course, consider whether there are any lessons learned as we move forward to review.

What we see as success is important. An independent advocate may provide exceptionally high-quality advocacy for an individual, but they might still not get their claim at the end of the day. That is not to say that the advocacy work was not good; it is to do with the individual's eligibility. We are very conscious of what we measure, how we measure success and what that means for the individual to ensure that we drive good practice and good behaviour, and encourage exceptionally high-quality standards.

**Alison Johnstone:** Obviously, the understanding of what success looks like is key. Will you elaborate on how involved the advocacy sector was in the development of the regulations?

**Shirley-Anne Somerville:** A great deal of work went on during the process. As I mentioned in my opening remarks, a group looked at that issue specifically. What it looked at was based on much of the advice and the standards that were out there previously. The group refined that.

We then moved forward to the public consultation exercise, in which there was feedback from people who were already involved in advocacy work on how the approach fitted and whether we were driving up standards to ensure that what everybody wanted was going to happen when we passed the regulations.

As we have moved to the tendering part of the process, there has had to be a separation of those who may tender from the tender process itself. That is a clear distinction. However, up until that point, as the standards were being developed, there was a very long, iterative process of work to what we got in response to the consultation and what was changed after the consultation to take account of some of the feedback.

**Graham Simpson:** There is a slight concern. If a contract for independent advocacy services is being awarded, how independent can those services be if they are funded by the same people whom they are helping people to make claims to?

**Shirley-Anne Somerville:** You are quite right to suggest that there should be a clear separation of those aspects. The Government's role is to ensure that the standards are there, that the tender contract has been gone through with due diligence, and that people understand how we monitor and evaluate. The decisions that result from that have absolutely nothing to do with the Government, and it cannot and should not be part of the monitoring and evaluation process. That is why success is not measured in a way that might even insinuate that there is a link between the Government, which funds the process, and what an advocate might do.

That is why it is important that the separation is very clear. The tender is there to ensure that there is a high quality of provision and the same level of service across Scotland. What happens on an individual basis has absolutely nothing to do with the Government.

**Graham Simpson:** Was it clear in the tender process that whoever won the tender would not be answerable to you or to Social Security Scotland?

**Shirley-Anne Somerville:** They are simply answerable in terms of ensuring that the standards are being met. That has nothing to do with the decisions that are made or with the advocacy support that they provide through what they say or as a result of what an individual asks them to do.



**The Convener:** There being no other questions, we move to agenda item 5. I invite the cabinet secretary to move motion S5M-21021.

*Motion moved,*

That the Social Security Committee recommends that the Social Security (Advocacy Service Standards) (Scotland) Regulations 2020 [draft] be approved.—[*Shirley-Anne Somerville*]

**The Convener:** We have an opportunity for debate, if members want a debate.

**Jeremy Balfour:** The regulations and the cabinet secretary's clarification are helpful. With regard to advocacy, I still have a slight concern about the agency being able to fill in a form with a claimant. We have heard evidence from a number of witnesses about how important it is to get the information right first time. I struggle to see how one member of an agency can give advice to somebody about a claim that they are making only for that advice to be reviewed later by a colleague.

I appreciate that there will be Chinese walls, but that leaves me with a slight concern, and the Scottish Government and the Scottish Parliament should have a look at that. The form should be filled in by the citizens advice bureau or the advice shop, rather than the agency giving advice. That said, the cabinet secretary's earlier comments have given me more reassurance.

In general, I welcome the regulations, and I hope that they will make a difference to the number of appeals in the longer term. If we get it right early on, there will be less need for appeals.

**Keith Brown (Clackmannanshire and Dunblane) (SNP):** That is a legitimate concern, but is there a difference in an advice agency that is part funded by the Scottish Government filling in a form? You could take the issue to those lengths if you are looking for a conflict of interest. The very fact that somebody works with Social Security Scotland will provide many people with reassurance about standards.

I do not dismiss the concern, but how far would you take that, and where else could you find that level of advice and advocacy if you had to purge everybody who had any connection with the Scottish Government or Social Security Scotland? I am therefore relaxed about the issue.

To go back to a previous discussion, if the people who provide the advocacy know the system inside out, the chance of having a more efficient process will be increased. That may reduce the number of appeals and shorten the process, which should be to the benefit of everybody concerned.

**The Convener:** Are there any other comments? Mr Balfour, you are welcome to come back in if you wish to do so.

**Jeremy Balfour:** I have made my point.

**The Convener:** Cabinet secretary, you have the opportunity to sum up if you wish, as there was a brief debate.

**Shirley-Anne Somerville:** I stress again that there is a difference between advice and advocacy. Advocacy workers are not there to provide advice or to recommend a course of action; they are there to support the service user in determining the actions that they wish to take. There is a very clear difference between advice and advocacy in general.

I see Jeremy Balfour's point about ensuring that the role of local delivery and client advisers in supporting clients is clear and recognised. We should also continue to support people in accessing advice from welfare rights advisers such as citizens advice bureaux if that is what they deem appropriate. I see Jeremy Balfour's point, and I am sure that we will come back to it as the local delivery staff are put in place across Scotland.

**The Convener:** That ends our short debate.

*Motion agreed to,*

That the Social Security Committee recommends that the Social Security (Advocacy Service Standards) (Scotland) Regulations 2020 [draft] be approved.

**The Convener:** I thank the cabinet secretary and both sets of officials for coming to the meeting.

*Meeting closed at 11:10.*



This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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