



OFFICIAL REPORT
AITHISG OIFIGEIL

Social Justice and Social Security Committee

Thursday 26 June 2025

Session 6



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Thursday 26 June 2025

CONTENTS

	Col.
INTERESTS.....	1
DECISION ON TAKING BUSINESS IN PRIVATE	1
SCOTTISH COMMISSION ON SOCIAL SECURITY	2

SOCIAL JUSTICE AND SOCIAL SECURITY COMMITTEE
20th Meeting 2025, Session 6

CONVENER

*Collette Stevenson (East Kilbride) (SNP)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Jeremy Balfour (Lothian) (Con)
Mark Griffin (Central Scotland) (Lab)
*Marie McNair (Clydebank and Milngavie) (SNP)
*Paul O’Kane (West Scotland) (Lab)
*Liz Smith (Mid Scotland and Fife) (Con)
*Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Judith Paterson (Scottish Commission on Social Security)
Ed Pybus (Scottish Commission on Social Security)

CLERK TO THE COMMITTEE

Diane Barr

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Social Justice and Social Security Committee

Thursday 26 June 2025

[The Convener opened the meeting in private at 08:45]

09:00

Meeting continued in public.

Interests

The Convener (Collette Stevenson): Good morning, and welcome to the 20th meeting in 2025 of the Social Justice and Social Security Committee. We have received apologies from Mark Griffin.

I very much welcome Elena Whitham as a new member of the committee, and I invite her to declare any interests relevant to the work of the Social Justice and Social Security Committee.

Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP): Thanks, convener. It is good to be back on the committee. I declare a non-financial interest in the fact that I worked for North Ayrshire Women's Aid for over a decade.

The Convener: Thanks very much, Elena.

Decision on Taking Business in Private

09:00

The Convener: Our next item of business is a decision on whether to take items 5 and 7 in private. Do we agreed to take those items in private?

Members indicated agreement.

Scottish Commission on Social Security

09:00

The Convener: Our next item of business is an evidence session on the work of the Scottish Commission on Social Security. I welcome to the meeting Ed Pybus, chair, and Judith Paterson, board member, from the Scottish Commission on Social Security. Thanks very much for joining us today. I invite Ed Pybus to make some brief opening remarks.

Ed Pybus (Scottish Commission on Social Security): Thanks, all of you, for your interest in the work of the Scottish Commission on Social Security, for the support since we were set up, in 2019, and for the invitation today. It is a privilege to come here and talk about our work.

Many of you probably already know me. I am, as you say, convener, the chair of SCoSS. I have been involved with social security for the past 20 years or so. Throughout that time, I have always been looking for ways in which the system can be improved to better deliver for all of us, so it was a privilege to be asked, last August, to chair SCoSS as a small but key part of the process of continuous improvement that is embedded in the social security system in Scotland.

As you know, Social Security Scotland is now delivering 17 benefits, all of which have detailed regulations behind them—regulations that we have scrutinised and provided detailed comment on. Embedded in all our work, as in the whole of the Scottish social security system, are the social security principles, of which a key principle is that social security itself is a human right and is essential for the realisation of other human rights. When we are undertaking our work, we take that very seriously, and we take into account the existing obligations under international human rights instruments. Our work is very much founded in those human rights principles.

Our scrutiny work draws on the members' expertise in human rights but also in social security law in practice and in policy and strategy development. It also draws on the views and experiences of the stakeholders that we work with, whom we greatly thank for their time and support. We also work closely with officials to understand the intent of the regulations and discuss any areas where we would like to see clarification. We hope that our reports and the scrutiny process improve the regulations that come to Parliament and are helpful to this committee in its scrutiny role.

I have been in post for only a year, and SCoSS was set up in 2019, so most of our reports were

produced under the excellent stewardship of our previous chair, Sally Witcher, and the interim co-chairs Dr Mark Simpson and Judith Paterson, who is also here today. I express my huge thanks to them for their work in getting SCoSS established and for the work that is done. I also thank the other two commissioners, Adam Bennett and Marilyn Howard, for the work that they put in.

I think that you have the various figures in our written submission. We scrutinise regulations that set up new benefits, that amend the rules for those benefits and that uprate benefits. We have completed 36 reports, in which we have made more than 360 recommendations addressing technical legislative changes, policy decisions and matters relating to the delivery of social security. Approximately 90 per cent of the recommendations that we have made have been accepted by the Scottish Government.

This year, we published our first report under our statutory function to assess the extent to which the expectations set out in the social security charter, which embeds the principles that I spoke about, are being fulfilled. This is a proactive rather than reactive function whereby we can look more widely at how the social security system is delivering for people and how the principles in the social security charter are being upheld. It is a key part of the continuous improvement that I mentioned.

It is an exciting time for social security at the moment, as case transfer nears completion and we move away from scrutinising regulations setting up new benefits towards scrutinising amendments and changes that are being made to the existing benefits. If anything, that is even more complex than setting up the system. We also welcome the changes to our remit and governance that came in with the changes to the Social Security (Scotland) Act 2018. We intend to continue to provide robust, effective and efficient scrutiny of everything that is covered by our extended role, working with you and the Scottish Government to make sure that our expertise is contributing to the on-going development of the social security system.

It is a pleasure to be here today. We look forward to your questions and to having an on-going dialogue with the committee about how best we can use our expertise to continue to support your work.

The Convener: Thanks very much. We will now ask questions, and I invite Bob Doris to begin.

Bob Doris (Glasgow Maryhill and Springburn) (SNP): Good morning, and thank you for joining us. I want to ask a couple of questions about the independent review of SCoSS that took place in 2023, which you mentioned.

Before I ask where you are with the recommendations from that review, I should acknowledge that the review found that the work that SCoSS has done is widely recognised as having made a significant improvement to the social security system in Scotland. When I ask, "Where are you with those recommendations?", that is the context.

I understand that there were 15 recommendations. What progress has been made, to date, in implementing those?

Judith Paterson (Scottish Commission on Social Security): I will pick that up. The review was published in 2023, as you say, and SCoSS members had a chance to feed in our three years' worth of experience of delivering independent scrutiny. We were really pleased that the review was so positive about our work, as you said. It made some very wide-ranging recommendations about our remit, governance and operations. I will pick out two or three to mention specifically, but I am pleased to say that all the recommendations have now been implemented. That is all to the good, as they were all very welcome.

One of those 15 recommendations that you will know very well was that more regulations made under the 2018 act should come under our remit. That needed primary legislation, which is now in place, I am glad to say. We are happy that more regulations will be subject to independent scrutiny. We always found that, when we were getting draft regulations to scrutinise, it was very hard to separate out what was formally in our remit and what was not, because they were all tied together in one bundle. It made absolute sense to us to have all of them placed within our remit, and that has just happened.

You may have noticed that the review also said that SCoSS should not be subject to external audit. That came about as a consequence of SCoSS being set up as a body corporate, and, with hindsight, that status was not appropriate for a body the size of SCoSS with a modest budget like we have. We have been assiduously operating that external audit, but it has been quite arduous in governance terms. It is pleasing that that requirement, which was a bit outsized for our body, has been removed from this financial year.

Finally, it is important to mention that, when the review was undertaken, we were quite understaffed at SCoSS and the review recommended that we bring on board new secretariat staff and a new chair and board members, and that we review those resources regularly. I am pleased to say that, as Ed Pybus said, we now have a full complement. We have a chair and four board members—that is the maximum that we are allowed under the act—and our secretariat currently has four members of staff.

We are doing well. It is still a small team for the functions that we have, but the review recommended keeping our capacity under review, which we are doing together with the sponsor team in the Scottish Government.

Bob Doris: That is very helpful. You say that all the recommendations have been implemented, which is positive. I will not pursue the resource issue, because colleagues will do that in later questions. However, I will ask a follow-up question on one recommendation that you did not mention, just to get on the record where we are with it. Recommendation 10 says:

“SCoSS should consider reviewing their stakeholder engagement strategy once the new Chair and Board members take up post.”

Just briefly, because I know that we are short of time for our first evidence session this morning, what was the outcome of that? It would be good to know that. There was also a recommendation for a further review in 2027-28. Are you already sighting what you would like that to focus on in particular?

Judith Paterson: I will take the second question and Ed Pybus will mention where we are up to with the stakeholder engagement.

The recommendations have only just been fully implemented in the past couple of months, so, to be honest, we have not started looking ahead to the 2027 review yet. We have had an away day for the team in the past couple of weeks, and we are starting to think more widely about how we are doing. At some point we will, hopefully, start to think more specifically about suggestions for the review, but, as yet, we have not done so.

Ed Pybus: At another event, I was asked a good question about how the scrutiny process is working in Scotland and where the gaps are. I thought that it was an interesting question, and it has been at the back of my mind ever since. Over the next year, now that we have done case transfer, I will certainly think about how the whole scrutiny process works and whether there are any gaps.

The stakeholder strategy was discussed in detail during our away day. We are looking at ways in which we can engage more widely with a wider range of stakeholders. We are also looking at how we can bring that expertise into SCoSS through things such as sub-committees and expert advice. We will probably go on to touch on the report that we did on the charter. For that, we worked with external organisations to carry out engagement with people with experience. That is another aspect that we will pursue, to make sure that all the voices are getting heard in the conversation.

Paul O’Kane (West Scotland) (Lab): Good morning. My questions will focus on the content of

the annual report in terms of the funding and finance of SCoSS. From the 2023-24 annual report, we saw that expenditure would exceed the budget in 2024-25. That was not a huge overspend—it was £470,000 compared to the projected spend of £450,000. The committee is interested to know whether that has been resolved and whether there is a view about the financial sustainability of SCoSS going forward?

Ed Pybus: “Yes” is the short answer. It has been resolved. In the annual report, we noted that we would do a budget review halfway through 2023-24, recognising the challenging financial position. That resulted in the revised budget allocation of a slightly higher amount, but at year end our final budget was about £430,000, so it was below even the original projection. At the mid-point, we were not sure exactly where it would land, but, by the end of the year, we were well within the budget. The budget surplus returns to the general Scottish Government pot. So, yes, we were able to meet that.

Part of the reason for that was a vacancy in the secretariat team for a period, which reduced costs. There was also a contingency for some information technology spend—moving our website from server to server and stuff like that—which came in slightly under budget. We also budgeted for work on the charter report, which allowed us to ensure that, for example, British Sign Language versions of the report were produced, along with other accessibility stuff. We had some discretionary spend, which we managed, but overall we managed to keep within the original budget.

Paul O’Kane: Do you feel that you are now in a position where the budget planning process will be easier because—to borrow a phrase—known unknowns are perhaps lessened by where we are in the process of transfer? Are you finding that the engagement with the Government on your needs—saying, “Here is a need. How do we get to the budget figure that will work for us?”—is a communicative and open process?

Ed Pybus: It is, yes. That is a free discussion with the sponsor team. Our budget allocation for this year, 2025-26, is £550,000, and the huge bulk of our spend is on staff costs, so that is fixed regardless of how much scrutiny we need to do. The cost of our secretariat staff team is a huge part of the budget, and that does not change. We have discretionary spend on the work that we do on the charter, whether that is commissioning external research, working with partners to do engagement or producing extra reports and stuff like that. In next year’s budget, we have a bit of discretionary spend for the charter work, which will allow us to do more, but we are pretty clear what our core costs are likely to be, and the discussion

with the sponsor team has allowed us to have a budget that will meet those costs.

09:15

Paul O’Kane: That is helpful. You referred to the increase in the secretariat, and it was good to hear Judith Paterson talk about getting up to full capacity with board members and those sorts of things. Has that changed the way that SCoSS works? I have heard that you feel that you are being efficient but also that you can respond to things. Is that the secretariat’s role in particular?

Ed Pybus: Judith Paterson might want to come in on this, but, from my point of view, when I came in, I was part of that increase and expansion. I feel very privileged to have come in at a point where we have a full board and a full secretariat team. I know that a huge amount of work went on before that, and, as the organisation has grown and has been in place longer, we have been putting processes in place that allow things to work more efficiently. We are working out where we can do things more effectively. Do you want to say anything about that, Judith?

Judith Paterson: We managed to fulfil our scrutiny functions despite being low in the water with staffing, but, when we were properly staffed, it honestly made a huge difference to the things that we wanted to do an awful lot better. In particular, we did not have the resources to do stakeholder engagement, and now we do, which has made a huge difference to how effective we can be and how evidence-based our scrutiny can be. In particular, it has enabled us to embark on this important proactive part of our role, which we simply could not have done with the number of staff that we had before the review.

Paul O’Kane: It sounds as though, given the timing, with more and more people either accessing new benefits or being transferred to benefits, it is probably quite crucial that the lived experience piece is at the forefront of what you are doing.

Judith Paterson: Exactly. We are moving on to things that are perhaps less technical and more about the experience of operations—absolutely.

Liz Smith (Mid Scotland and Fife) (Con): I will ask about universalism. Mr Pybus, as you are well aware, there is a massive issue around the principle of universalism. It is very nice to say that, in theory, we want to pay out benefits to people universally. As the Government describes it, it is vitally important to our social contract with the people of Scotland that we try to provide benefits across the board. However, if you look at what the medium-term financial strategy told us yesterday, and particularly at what the Scottish Fiscal Commission is telling the Finance and Public

Administration Committee, we cannot afford it all. That is the bottom line.

When it comes to supporting those who are most in need, do you think that the principle of universalism is the right approach, or do you think we have to be a bit more careful and try to target those who are in considerable need first?

Ed Pybus: SCoSS’s remit, as defined in the legislation, is very clear: we have a pre-legislative scrutiny role; we are not in the role of policy development. Such decisions are very much for the Government to make, whether it is the United Kingdom Government or the Scottish Government. That is where our remit sits, and we do not have the space to do policy development. Also, in practical terms, if we were involved in developing policy, that would lead to regulations that we would then be scrutinising, which would feel like a circular process.

There is a huge sector engaging with the Government about what policy decisions should look like, and there are many different views on the best way to make those decisions. Once the policy decisions have been made, we look at the regulations to make sure that they are supporting those policies, but there is also a role for us in using the principles that I mentioned to guide that discussion and using a human rights approach to look at what the regulations are doing.

Liz Smith: I ask the question because you have considerable experience of dealing with the broad issues in the social security system and you have had considerable success in doing that. It is incumbent on this committee and others to listen to that experience. When it comes to advising the Government about the facts that it will have to interrogate before presenting its policy, it is very important that it is given guidance on where it can make the biggest difference, especially to people in poverty. That might involve some difficult decisions, particularly, as I say, against the backdrop that the Scottish Fiscal Commission is providing. I am just interested to know whether—

The Convener: I do not think that the question that you are asking is just about the role of SCoSS, Liz—it is wider than that.

Liz Smith: Forgive me, convener, but I think that SCoSS has considerable experience that can help us.

The Convener: We are scrutinising the role that SCoSS plays at the moment rather than its wider experience.

Liz Smith: Forgive me, but I am picking up on what is in our papers. I think that this is a very important part of the whole social security debate, and any advice that SCoSS can provide to us on that evidence would be very helpful.

The Convener: Bear in mind the fact that SCoSS has no policy role within its remit.

Liz Smith: I am not asking about the policy role; I am asking about some of the evidence that SCoSS has provided, but I will leave it there. I just think that we could benefit from SCoSS's experience if it could tell us what we should be looking at.

Ed Pybus: Those are the key issues, and, as you say, there are decisions to be made. The principles that are embedded in the act provide some of that, and those principles need to be weighed up and compared. Social security is an investment in people, a means of tackling poverty and a public service, but we also need value for money. Those principles need to be weighed up, but that is a matter of policy decisions that the Government must make, and many organisations will have a variety of views on the best way of doing that.

I assume that members are aware that the role of SCoSS is a part-time role and that SCoSS commissioners work part time. We represent a range of organisations, but, when we are working for SCoSS, we are very much focused on the clear scrutiny remit that we have rather than a wider policy role.

Elena Whitham: Good morning. I am interested in SCoSS's first report on the implementation of the social security charter. The report speaks to the many positive interactions that individuals have with Social Security Scotland, but it focuses on the issues of individuals who have communication needs and how those needs are being looked after. Will you comment on some of the significant issues that the report raises and on your interactions with Social Security Scotland and the Scottish Government to address the report's seven recommendations?

Ed Pybus: As you say, this is our first report. A lot of our work is reactive—as regulations come to us, we scrutinise them. However, the work on the charter is proactive and we have to take a decision on where we put our energy and focus when we are looking at whether the charter expectations are being met. One source of evidence is the statistics that Social Security Scotland produces, which show slightly lower satisfaction ratings across various metrics for people with communication needs. I should stress that “communication needs” is the term that the survey used to identify people, so that is why we have used that category. That highlighted that maybe there is something for us to investigate, and a role within our charter work is to investigate such issues.

It should be noted that satisfaction was still high for that group: 84 per cent of people with

communication needs expressed a positive experience. People were getting a good experience in a lot of ways, but we were interested in investigating the differences between that group and other people, because we want the system to work for everyone.

Our findings fit into three broad categories: interactions with staff; barriers that people face; and issues with the application process. As you will see from the report, generally, participants view Social Security Scotland quite well. It listens, it is respectful and it is friendly. The questions that it asks are clear and less intrusive, which is really important. That points to building a social security system that is based on the principles and those responses are an outcome of that; you have a system in which that is how people feel.

However, our report shows that there were instances in which some expectations were not being fulfilled as fully or as consistently as we would have hoped. We heard of situations in which people had to ask more than once for communication in a way that was suitable for them. There might have been delays or things took slightly longer because people had requested things in different formats. Also, issues were raised about third-party assistance, which is when someone is providing support to a person.

We acknowledge that the research that we undertook was small scale, so we commissioned research with other organisations to explore the understanding of lived experience. There is more work to be done to understand the full issues—a key part of our scrutiny work is looking at an issue and setting out where we need to go next.

It is worth noting that the feedback from people with communication needs said that their experiences were better with Social Security Scotland than with the Department for Work and Pensions, but they also highlighted some very real issues that need to be addressed.

You also asked me what has happened since our report was published. Throughout the process of our scrutinising regulations, we work closely with officials, and while we were producing the charter report we worked with officials at Social Security Scotland. We had a couple of meetings with them to share the findings and understand why the things that were raised were happening. We now have a greater understanding of why the issues were raised and they have been very interested in our feedback and are receptive to picking up those challenges.

Interestingly, although we highlighted the issue of third-party assistance in the context of people with communication needs, Social Security Scotland had already picked up on the bigger issue of how third-party support works for people

who need that assistance. Our specific evidence added to its evidence base of a problem that it was already aware of and resolving.

Details of some of the stuff around, for example, the processes that Social Security Scotland uses to communicate with claimants highlighted that, by tweaking that process, it could produce communications in different formats to make things easier for them. It has just started some work on that—in fact, it has just published a blog that goes into quite a lot of detail on the issues and how they are being addressed.

Some of the issues apply Scotland-wide. For example, there are sometimes delays in getting a British Sign Language interpreter for people, but it turns out that that issue is wider than just social security. When we flag up something, it could be detailed or it could be large scale. That is a really important aspect of our charter work.

Elena Whitham: One of the issues that struck me was that there is not enough awareness of VoiceAbility, which is an organisation that is directly engaged on supporting claimants who use Social Security Scotland. What work has been undertaken to address the gap in awareness of that service?

Ed Pybus: That was one of several issues that we have highlighted in the specific context of our charter work that is a broader issue. Again, Social Security Scotland was aware of the issue when it was raised with it. We do not know exactly where the barriers are and why people are not accessing that service, so a further piece of work needs to be done on that. We do not know whether that fits under our remit as a piece of work on the charter or is something that Social Security Scotland needs to carry out in order to understand the situation.

In our work, we did not go into that in a huge amount of detail because, generally speaking, the people with communication needs were not aware of the service or were not using it. That is what we know. Therefore, the question is, why is that the case? There will be many reasons for that. Are there specific barriers that people with communication needs face in accessing the service, or are there other barriers that mean that people are not able to access the service? That needs to be looked into in more detail now.

Elena Whitham: Okay—thanks for that.

Finally, what lessons have you learned from your first foray into interrogating the charter? What aspects of the charter will you report on next time?

Ed Pybus: On lessons learned, there are some specifics in the report. For example, as we did the analysis, we realised that we did not have a huge number of clients who had communication needs

resulting from neurodivergence, so that was an issue that we needed to flag and explore. Another thing that came up is that there are issues for people whose first language is not English, which we did not look at in the report. We have picked up on specific things that came out of the report and that leads to what we will do next.

09:30

What will we do next? Should we explore some of those issues in more detail? Should we take a broader look at parts of the charter, or should we look at another specific issue or at issues that we have already highlighted? We have a charter sub-committee that manages that and, as Judith Paterson mentioned, we had an away day last month. We will work through some of the ideas with the sub-committee.

I return to the question of resource. Our budget this year is £550,000, which is an increase on last year, and that gives us a bit more room to play with on what else we can do. The key thing that worked well on the research that we undertook was working with other stakeholders to do some of that research with us. Therefore, an aspect will be to consider how we can collaborate to maximise our resource in order to do as much as we can.

The other question to consider is how we add value to what else is happening. That is where our discussions with Social Security Scotland are interesting. What is it doing and where are the gaps? There is already discussion under way about where we might fit in with that.

Coming back to the question about wider stakeholders, we are reaching out to them to see what issues there are. We are hearing that a lot of stuff is coming up. Interestingly, one of the issues that is coming from wider stakeholders is that of third-party assistance more generally. We are starting to see a pattern, so we need to consider where we can tease out something that would be useful, that adds our expertise to the mix and that does not just duplicate what other people are doing.

The Convener: You mentioned BSL. I know that our Equalities, Human Rights and Civil Justice Committee is undertaking a BSL inquiry. I hope that a lot of good will come from its work and that it filters through into social security as well.

Jeremy Balfour (Lothian) (Con): Good morning, and thank you for coming. To follow up on that, I do not know whether this issue came up at all, but I know that it is not in your recommendations. Over the past eight years, we have debated whether the charter should have a legal basis and whether people felt that its impact would be greater if it did. Did that come up in any

of your conversations? Is it something that you might look at in future reviews of the charter?

Ed Pybus: The charter came up in a bit of our work, but that was to do with people's awareness of it, which was relatively low. The charter is there, in part, to provide a framework to make sure that stuff is happening, so we had a bit of discussion about how important it is that people know what the detail of the charter is and how important it is to use it as a framework.

In terms of the charter having legal standing, we were involved in the review. That was before I became the chair of SCoSS, so I might ask Judith Paterson whether she has anything to add. I do not know whether that issue came up. The charter is as it is. It will be reviewed—I cannot remember when the next review date is, but it will be looked at. When that happens, we will undertake a piece of work to understand what the issues are and what we want to address. There are positives and negatives with the charter having a legal basis, but we have not done that work at the moment. I do not think that that was a focus of the previous charter changes.

We have a core statutory role in reviewing the charter. If the legal standing issue comes up when it is next reviewed, we will look at all aspects of that.

Judith Paterson: It is an interesting question. Does the charter have enough teeth? For us, it feels like early days, because we have just stepped into that proactive work of looking at whether people are getting the service that they expect from the charter. With a few more years' experience, returning to that question would maybe be a good idea.

I suppose that the charter does have a legal underpinning in the sense that it is how the social security principles, which are in the Social Security (Scotland) Act 2018, are made real in practice. Therefore, it already has some legal basis, but I know that you are thinking more in terms of the charter having teeth. Maybe we need a bit more experience of how it is operating before we come back to look at that. We have not gone any further than that, have we?

Ed Pybus: No.

Jeremy Balfour: This question is for Judith Paterson, because she has a bit more experience in this area. In the regulations that you scrutinise, are there common themes that you pick up almost every time? What have you learned that would be helpful for us?

Judith Paterson: That is a great question, which makes me want to go back and carry out an analysis of all our reports, because we have produced quite a lot now. I can pick out a few

common themes in relation to what we tend to comment on in our scrutiny reports. The first relates to technical issues. I specialise and am interested in social security law, so I am well aware of how complex it is. Sometimes, it is not clear that draft regulations, which are a work in progress, completely meet the policy intention. That can be a problem, and we try to pick up on it as much as we can. That is a pretty regular issue.

I will give a recent example. There are draft regulations for the introduction of a new additional payment for carers who get the carer support payment for one person but who also care for someone else. To get the carer support payment, you need to care for 35 hours a week. To get the new payment, you will need to care for 20 hours a week. We understand that the intention is that those hours can run concurrently, but stakeholders assumed that those 20 hours would need to be on top of the 35 hours. The regulations do not make the position clear. With the help of stakeholders, we have spotted that issue. We know that such confusion could put people off from applying for what they are entitled to, so we have recommended that the regulations make the position explicit. That is an example of a technical issue.

Another issue that comes up a lot and could have important consequences is when there is a mismatch between what regulations say and what is likely to happen in practice. It is important to catch such issues before regulations are introduced, because, once something has become the law, it can be quite hard to unpick everything later on, particularly if people have already had entitlements that they were not due or have been unable to claim something.

Again, an example of that relates to carers. In the original set of regulations, there is a provision that says that, if a carer is due a backdated carer support payment—if they are due arrears—that would result in a DWP benefit being reduced, pound for pound, they can be paid the net amount that they are due, which spares the carer from having to deal with an overpayment. That is a useful provision, but, as drafted, the regulations did not calculate the amounts correctly—it was quite hard to see that, because the details were quite buried. In practice, everything would, no doubt, have happened as it was meant to happen, but there would have been a mismatch between people's rights under the law and what they were actually getting in practice. That should not happen, but it does. That was not intended, and expert scrutiny can help to pick up such issues before they become a problem. That is an important point.

As well as looking at legislation in detail, we try to think ahead about what processes might be

needed to put legislation into practice. There is always a communication plan alongside proposals, but, in some cases, we think that that plan needs to be enhanced or tailored, because a one-size-fits-all communication plan is not right in all cases. For example, older carers told us that their experience of the system that Scotland inherited was not as it should be and that there needed to be improvements. That required a tailored response, so we recommended that, and the Scottish Government accepted that recommendation.

The convener made the point that the commission is not in the policy sphere—we are not—but some policy choices might affect people's experience of the system. An issue that comes up a lot relates to the new terminology that is chosen as Scotland tries to build a system based on dignity and respect. The Government has tried to use better language to do that, but inclusive and appropriate language can sometimes still be confusing. If we pick up that issue from stakeholders, we recommend that there should be further testing of the language that is used.

Those are the broad issues that come up a lot, but there are, no doubt, others.

Jeremy Balfour: That is helpful. I know that the timescales are quite tight for you at the start of the process; you do not get that long to do your scrutiny work. Are you coping with that? Is it easier now that you are back to having a full team, or does that still give you concern?

Judith Paterson: It is easier now. Having a full team makes a big difference. We are still reviewing how we make best use of our resources. Although the situation is better, we can still be more effective. We are thinking about how to pull in more expertise. We need a certain amount of resource before we can think about how to manage pulling in external expertise, but we will think about that in the future. It is challenging when we get more than one version of a set of regulations or when new provisions come to us very late in the process. We want to do a thorough job, but we cannot do the consultation that we want to do if we get things very late in the day. However, overall, the situation is better.

Jeremy Balfour: You have had six years of scrutinising primary legislation. In relation to the future development of Scottish social security, are there any lessons that, collectively, you have learned? Without getting into policy, do you have any comments on the way in which primary legislation is produced or anything around that?

Judith Paterson: Interestingly, looking at primary legislation is not in our remit, although all secondary legislation—which is in our remit—flows

from primary legislation, so we have to be very aware of it.

In my experience, the social security principles are really important, and you can see them playing out in practice as policy is developed and legislated for. The main lesson is that the social security principles are there for a reason. That means that, as we change the system, which we must do, policies need to be developed in a considered way with the people of Scotland on the basis of evidence, as is set out in the principles. That takes time, and we should take the time that is needed to do that properly.

The principles also have something to say about improvements. Continual improvements to the system should put the needs of those who require assistance first. That is a basic but quite powerful point, which should drive how primary legislation on benefits—the big-picture framework—is developed. We should keep a strong focus on those principles.

Jeremy Balfour: Thank you for your time.

Marie McNair (Clydebank and Milngavie) (SNP): Good morning. You recently reported on three sets of regulations to do with winter heating, carers and cross-border moves. Are there any issues concerning any of those regulations that you want to highlight to the committee?

Ed Pybus: I will pick up on that. The pension-age winter heating payment regulations have thrown up some issues. We have reported on several different sets of regulations over the past couple of years. One advantage—almost—of that is that there are some issues that we have flagged up repeatedly. It is a slightly different benefit, in that it is paid automatically, although people who do not get that automatic payment can make a claim. That is quite different from most of the other benefits, so we have flagged up that that needs to be watched carefully. Are there certain groups who are not getting the automatic payment and need to make claims? Are there issues around who is making a claim and who is not? There is also a need for clear information to go out to people so that they understand what is happening.

We perhaps did not touch on this a huge amount in our report but, as Judith Paterson mentioned, the charter talks about embedding the social security principles in policy making, and it is challenging to make policy in that way when it is being made quickly. One of the challenges that has arisen around the winter heating payment relates to in-year changes to the Scottish budget that result from decisions that are made at a United Kingdom level and which, understandably, lead to a policy change. It is then very hard for that policy to be made in the way that we want to see that done—that is, in line with the charter.

09:45

That is challenging. Regulations have been submitted, but there have been further changes and new regulations, which we will also scrutinise. There is a danger that stuff is missed in that high-speed policy development in terms of our scrutiny.

I do not think that the carer support regulations have been laid yet, but there are a few things that we can comment on. There have been slight changes to the system after the safe and secure transfer of the benefit. This is the first big change that makes a big difference in Scotland, as carers will be under a different system. As Judith Paterson touched on, it is important that that is clearly communicated and that the language that is used is clear to people. One thing that came back from stakeholders is that maybe the names that have been chosen need to be looked at carefully.

Another issue that was raised by stakeholders—this takes us back to something that I touched on earlier in relation to the report—is that people for whom English is not their first language have an additional challenge. Sometimes the language around social security can be hard to understand, and that is an even harder challenge if English is not your first language. Social Security Scotland needs to think about how it will manage that.

We then need to reflect on what happens next. The challenge is how we ensure that a recommendation that we have made, and which we hope Social Security Scotland will accept, is implemented. That takes us back to the question about the charter work. We can use our previous recommendations as hooks to go back and say, “You agreed to do this. What has happened?” We can even say, “This is what we recommended and you have done it. However, it has not turned out as we wanted it to,” or, “We recommended something that you did not accept, and you were right not to accept it because it is working fine as it is”.

The cross-border regulations are quite interesting. We are moving on from case transfer, which will be mostly finished this year into early next year. However, we have almost had two systems—the DWP and Social Security Scotland—working in tandem to transfer people over. Once that finishes, we will have two separate systems. We had a few comments to make about the cross-border regulations. The overarching point is that it is incumbent on Social Security Scotland and the DWP to make it as easy as possible to move between the systems and pick up those cross-border issues. How can we make sure that the systems work well across borders for someone who happens to live in Carlisle but who cares for a disabled person who lives in Scotland, for example?

Marie McNair: You have talked about carers. Do you think that we could have an issue in the future with passporting the carer element in relation to universal credit?

Ed Pybus: I guess that that is one of the issues that we now face. Until now, the idea of a safe and secure transition has been supported across the board. When we are moving people on to a new system, let us keep the rules the same, although processes can be improved and things can be done differently. That is what happened in Scotland. The rules are the same, which allows the two systems run in tandem. The question has always been about what happens when those systems start to diverge.

A lot of the thinking that has been done around that is about what happens if changes are made to the Scottish system. Social security is never static. Those of us who have been involved in social security for as long as we have been know that it is constantly changing. There are changes on both sides.

There could be issues around passporting and the way in which the devolved benefits, particularly the disability and carer benefits, interact with the reserved benefits, particularly universal credit and pension credits. It is important to focus on the people who are using the system. What is going on behind the scenes or who is responsible for what does not matter to those who use the system, whether they are a carer or a disabled person who has a carer. They need to know what they are getting and they need to get the right payment on time. It is incumbent on Social Security Scotland and the DWP, and on the UK and Scottish Governments, to work through the issues and make sure that they are addressed.

There are very specific issues with passporting in particular, and the details get very complex. There is definitely a piece of work to be done to understand what the options are and how this can be made to work as systems start to slightly diverge. What can be done to make sure that the system is working for the people who use it?

Judith Paterson: In relation to the current proposals, I do not think that, legally, there will be a problem with passporting. I think that it is okay. The new payments are on top and different. The carer support payment itself is not changing; different components are being added to it. I think that, legally, it will be all right.

However, operationally, it will be a challenge for DWP and Social Security Scotland to manage the change and for people and their advisers to understand it. It is more of an operational challenge, I would say.

That brings up an interesting point about change. We now always need to look at whether a

change is too big for passporting to be taken for granted, and we are interested in the question of who scrutinises that. Our remit is to scrutinise regulations that are made by the Scottish Parliament. At the UK level, the Social Security Advisory Committee provides independent advice to the UK Government. However, there are regulations that sit in between—regulations that the UK Government makes to take into account changes to social security in Scotland under powers in the Scotland Act 2016. Those regulations are not in our remit, but I do not think that they are in SSAC's remit either. That could mean that there is a bit of a scrutiny gap. Sometimes the purpose of regulations might be just to change references—for example, to replace “carer support payment” with “carer allowance”—and there might not be much to look at. However, as the systems diverge and the passporting arrangements change or become more complex, there is definitely scrutiny to be done, and I am not sure who will do it.

Marie McNair: Thanks. That is really helpful.

The Convener: That concludes our questions. Thanks very much for joining us and for your contributions this morning. It is much appreciated.

Before we move into private session, I understand that this will be Liz Smith's final meeting as a member of the committee. Thanks, Liz, for all your valuable contributions. We wish you well in your new role.

That concludes our public business for today. We now move into private session.

09:52

Meeting continued in private until 11:04.

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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