

Social Security (Amendment) (Scotland) Bill

Business and Regulatory Impact Assessment

The majority of provisions included within the Bill are designed to create efficiencies and enhance the administration of the Scottish social security system, with a focus on measures to improve client experience and to deliver value for money.

Further information about the background and the policy intention of the Bill is set out in the Policy Memorandum which accompanies the Bill. An overview of the provisions included in the Bill and their specific policy aims are set out below.

Taking a regulation-making power for childhood assistance

New enabling powers are provided within the Bill, allowing the Scottish Ministers to make regulations for childhood assistance, which will help towards meeting some of the costs associated with having a child in the family. Scottish Ministers intend to use the new powers for childhood assistance in due course as a new legislative footing for Scottish Child Payment (SCP) to allow better alignment of Social Security Scotland benefits.

SCP is currently delivered under section 79 of the 2018 Act⁷ as a ‘top-up’ where an individual is receiving a qualifying UK Government benefit.⁸ Placing the payment on a new legislative footing will offer the opportunity for greater alignment across the five family payments (including the Best Start Grants and Best Start Foods) and will afford flexibility in the way the payment is delivered in the future.

Financial support for people with care experience

A provision will be included in the Bill allowing Scottish Ministers to create, by way of regulations, financial support for people with care experience. The current intention is that these powers will be used initially for a payment called the Care Leaver Payment (CLP).

The CLP will fulfil the commitment made in the Promise Implementation Plan published in March 2022 to ‘provide some additional financial security for young people with care experience and will help reduce some of the financial barriers that young people face whilst moving on from care and into adulthood and more independent living’.

Amendments to Coronavirus (COVID-19) measures introduced in 2020

In 2020, due to the coronavirus (COVID-19) pandemic, sections 52A and 52B were amended into the 2018 Act by the Coronavirus (Scotland) Act 2020.

Section 52A means requests for re-determinations must be considered valid beyond the maximum period of one year prescribed by the 2018 Act, where the reason for

⁷ [s79, Social Security \(Scotland\) Act 2018](#)

⁸ [Who should apply - mygov.scot](#)

delay was related to COVID-19. Section 52A also allows for appeals to be brought beyond the maximum prescribed period of one year, where the Tribunal gives permission on the basis of being satisfied that the reason for the delay was related to COVID-19. Section 52B allows a late application to be treated as being made within the prescribed period for a given benefit under Chapter 2 of the 2018 Act, where the reason for delay was related to COVID-19.

The provisions in the Bill will give Social Security Scotland discretion to accept late requests for re-determination beyond the one-year prescribed period on the basis of 'exceptional circumstances', rather than only COVID-19. The provisions in the Bill will repeal section 52A of the 2018 Act and allow appeals to be brought, with the permission of the Tribunal, beyond the one-year prescribed period on the basis of 'exceptional circumstances', rather than only COVID-19. Provisions in the Bill will remove section 52B from the 2018 Act and revert application periods to existing pre-COVID deadlines.

Withdrawing a request for re-determination

Under the 2018 Act, where a determination of entitlement to assistance is made, an individual has a right to a re-determination. If a client asks for a re-determination, the Scottish Ministers are under a statutory duty to make a new determination. A client cannot subsequently withdraw their request for re-determination, even if their circumstances have changed since making their request, or if they have otherwise changed their mind.

The Bill includes provision enabling clients to withdraw a re-determination request if they no longer wish to challenge the decision. This policy builds on the person-centred, rights-based approach already adopted for challenge rights in line with the Scottish social security principles and the Social Security Charter ('the Charter').⁹

Completing re-determinations beyond the period allowed

Where a re-determination is not completed by the Scottish Ministers in the timescales set out in the relevant regulations, the re-determination becomes out-of-time and the client is notified that they have a right to appeal to the First-tier Tribunal (Social Security Chamber) without waiting for the re-determination to be made. The Scottish Ministers are, at that point, no longer under a duty to make the re-determination. However, in practice, they continue to consider the re-determination request.

Provisions are included in the Bill so that the Scottish Ministers remain under the duty to make the re-determination beyond the period allowed, unless the client opts to exercise their right to appeal. This will offer legal clarity in terms of what happens in practice when a re-determination runs late.

⁹ [Social Security Scotland - Our Charter](#)

Making a new determination of entitlement whilst there is an ongoing appeal

Under the 2018 Act, Scottish Ministers cannot make a new determination after a valid appeal has been brought, even if an error has been identified, or new evidence received, which shows that a client has been underpaid, or not received an award that they were entitled to. The appeal must continue unless it is withdrawn by the client.

In instances where the Scottish Ministers recognise that an individual should have received a higher, or more advantageous, award, the provisions in the Bill allow a new determination to be made after an appeal has been lodged and the appeal to stop as a result. The new determination can only be made if the client agreed, and will come with challenge rights.

Appeals to First-tier Tribunal against process decisions

The 2018 Act provides at section 61 that individuals can appeal to the First-tier Tribunal for Scotland against certain decisions made by the Scottish Ministers on the process of applying for benefits, or the process of challenging determinations.

The provisions in the Bill set out the powers of the Tribunal to uphold or set aside decisions in process appeals, and the effect of a Tribunal decision in a process appeal. The Bill also sets out further circumstances in which a process appeal may be raised, to include the new types of process introduced by the Bill.

Overpayment liability and challenge rights

Under the 2018 Act, a client has a statutory liability to repay any overpayment made in error, except where they did not cause or contribute to that error, and if it was the sort of error a person could not reasonably be expected to have noticed.

The provisions in the Bill set out that liability extends to clients who have a representative acting on their behalf, except where the representative uses the assistance for a purpose which is a breach of their duties or responsibilities, in which case the representative will be personally liable.

Currently, where Social Security Scotland determines that an overpayment has occurred, it makes a new determination on a client's entitlement to benefit. Although this new determination will bring re-determination and appeal rights if the client wants to challenge the decision, there is not any formal right to challenge the decision that an individual is liable to repay the overpayment.

The provisions in the Bill also introduce a right to a review (followed by a right to appeal to the First-tier Tribunal for Scotland (Social Security Chamber)) against a finding of liability for an overpayment. The further review and appeal provisions in part 6 of the Tribunals (Scotland) Act 2014 will also be available.

Recognising Appointments made by a Minister of the Crown

Where a person lacks capacity to manage their own financial affairs, the Department for Work and Pensions (DWP) and Scottish Ministers both have provisions that allow them to appoint a person or organisation, known as an appointee, to act on that person's behalf.

Due to differences in the law and the processes that govern appointments in Scotland and the rest of the United Kingdom, a DWP appointee – which is an appointment made by a Minister of the Crown – cannot automatically be treated as equivalent to an appointee under the 2018 Act.

The Bill will introduce powers for Scottish Ministers to make provision in regulations prescribing circumstances in which a DWP appointee may be treated as though they had been appointed by Scottish Ministers to act on a client's behalf, pending an assessment by Social Security Scotland.

Liability of appointees

Currently, there is no provision within the 2018 Act with the effect that an appointee will be liable to account to the individual for any mismanagement of the individual's property (either in relation to children or adults). There are provisions respectively, in terms of the Children (Scotland) Act 1995 and the Adults with Incapacity (Scotland) Act 2000, which make other types of representatives liable to the individual for mismanagement of their property.

The Bill provides that an appointee will be liable to account to the individual for whom they were appointed, for their use of the individual's funds outwith their authority or power, or after having received intimation of the termination or suspension of their authority or power to intervene. They are to be liable to repay the funds to the account of the individual. No liability will be incurred where the appointee acted reasonably and in good faith in their use of the individual's funds.

Information for audit of the social security system

Social Security Scotland need to produce effective measurements and estimates of the extent of client error, official error, and fraud as assurance that the social security system is efficient and delivering value for money in line with the Scottish social security principles.¹⁰

Currently Scottish Ministers can only request that people provide information for the specific purpose of determining an individual's entitlement to social security assistance. Provisions in the Bill will give Scottish Ministers powers to require individuals to provide information when reasonably requested to do so, in order to review their entitlement for the purposes of audit. Safeguards will be built in to

¹⁰ [s1\(h\), Social Security \(Scotland\) Act 2018](#)

ensure that where a person has good reason they might be exempted from the process.

Recovering Scottish social security assistance from awards of compensation

A person affected by accident, injury, or disease due to the fault of a third party may be entitled to compensation. Depending on the nature of their accident, injury, or disease they may also be entitled to social security assistance. The Scottish Government believes that a third party's legal obligation to fully compensate those they have harmed should not be subsidised by Scotland's social security system.

The provisions in the Bill allow the Scottish Government to recover relevant forms of Scottish assistance from awards of compensation, avoiding the risk of a person being 'doubly compensated' for the same incident. The policy on compensation recovery is consistent with the responsibilities in the Scottish Public Finance Manual¹¹, and aligns with the Scottish social security principle that the Scottish social security system is to be efficient and deliver value for money.¹²

Changes to the remit and status of the Scottish Commission on Social Security

The Scottish Commission on Social Security (SCoSS) reviews certain social security policies, by way of consideration of draft regulations, and provides the Government and the Scottish Parliament with scrutiny reports on each piece of legislation it reviews.

The provisions in the Bill expand the types of regulations that SCoSS is able to review, and replace the requirement for SCoSS to prepare accounts for external audit, with a requirement to submit an annual report on their work to Scottish Ministers. The Scottish Ministers will then share this report with the Scottish Parliament.

The Bill also removes the status of SCoSS as a body corporate. SCoSS will continue to be recognised as an advisory non-departmental public body which better reflects how it operates in practice.

Rationale for Government intervention

The principles which underpin the Scottish Social Security system are set out in Part 1 of the 2018 Act¹³. These core principles, endorsed unanimously by the Scottish Parliament, deliberately correspond to some of the fundamental aspects of the right

¹¹ [Scottish Public Finance Manual - gov.scot \(www.gov.scot\)](http://gov.scot/www.gov.scot)

¹² [s1\(h\), Social Security \(Scotland\) Act 2018](#)

¹³ [s1, Social Security \(Scotland\) Act 2018 \(legislation.gov.uk\)](#)

to social security, as set out in key human rights instruments such as the International Covenant on Economic, Social and Cultural Rights,¹⁴ the Universal Declaration of Human Rights,¹⁵ and the European Social Charter.¹⁶

In particular, the principles state that –

“Opportunities are to be sought to continuously improve the Scottish social security system in ways which –

- (i) put the needs of those who require assistance first, and
- (ii) advance equality and non-discrimination”

and

“the Scottish social security system is to be efficient and deliver value for money”

Social Security Scotland's Charter¹⁷, co-designed with people with lived experience of the social security system in Scotland, translates these principles into more concrete actions. The Charter commitments include undertaking to listen, learn and improve, to embed the social security principles and Charter in the policymaking process, and to allocate resources fairly and efficiently.

The Scottish Government recognises the importance of continuously seeking to realise those commitments. The Bill aims to make changes to the 2018 Act with the benefit of experience of delivering services through Social Security Scotland.

The Scottish Government considers that social security is a human right¹⁸ and a shared investment to help tackle poverty and build a fairer, more equal society. The National Performance Framework¹⁹ was created to explain the Scottish Government's aims for Scotland, the values that guide our approach and the national outcomes we are committed to achieving.

The majority of the proposals in the Bill are cross-cutting in nature and promote a person-centred, human rights-based approach to social security. The policy intention is to create efficiencies, remove barriers and empower people interacting with Social Security Scotland.

The Bill will contribute positively to advance the national outcomes of:

- **Communities:** We live in communities that are inclusive, empowered, resilient and safe.
- **Human Rights:** We respect, protect and fulfil human rights and live free from discrimination.

¹⁴ Article 9, [International Covenant on Economic, Social and Cultural Rights](#)

¹⁵ Article 22, [Universal Declaration of Human Rights](#)

¹⁶ Article 12, [European Treaty Series no. 163 – European Social Charter \(Revised\)](#)

¹⁷ [Social Security Scotland - Our Charter](#)

¹⁸ [s1\(b\), Social Security \(Scotland\) Act 2018](#)

¹⁹ [National Performance Framework | National Performance Framework](#)

- **Poverty:** We tackle poverty by sharing opportunities, wealth and power more equally.

The Scottish Government published a strategy document titled “Equality, opportunity, community: New leadership – A fresh start” on 18 April 2023 which set out the First Minister’s vision for Scotland and the outcomes the government aims to achieve by 2026.²⁰

The Bill will contribute positively to two of the three indicators set out: Equality and Community. Firstly, Equality, through tackling poverty. Social Security Scotland makes payments which contribute to reducing inequality and which help protect people from the harms which flow from living in poverty.

The second objective, Community, will be advanced through this Bill by prioritising public services in a way which is person-centred, with a focus on tackling inequalities and ensuring that people are empowered to access and challenge their social security entitlement.

Consultation

Within Government

Within government and social security agencies consultation has taken place with:

Scottish Government:

- Social Security Policy Division
- Scottish Government Legal Directorate
- Social Security Programme
- Care Experience and Whole Family Wellbeing Division
- Mental Health and Incapacity Law Division
- Communities Analysis Division
- A Good Childhood - Children and Young People Unit, Directorate for Children and Families
- A Good Childhood – Caregivers, Directorate for Children and Families
- Keeping The Promise Team, Directorate for Children and Families
- Children and Families Analysis Team, Education Analytical Services, Learning Directorate
- Redress, Relations and Response Division, Children and Families Directorate

Social Security Scotland:

- Social Security Scotland Operational Policy
- Social Security Scotland Fraud and Error Resolution
- Social Security Scotland Analysis and Insights

²⁰ [Equality, opportunity, community: New leadership - A fresh start - gov.scot \(www.gov.scot\)](https://www.gov.scot/equality-opportunity-community-new-leadership-a-fresh-start)

UK Government:

- Department for Work and Pensions (DWP)
- HM Revenue and Customs (HMRC)

This engagement has allowed for consideration of the practicalities of the proposals and has provided an assurance that the provisions included at introduction can be implemented in future.

Public Consultation

Most of the provisions in the Bill were consulted on as part of a public consultation titled Scotland's Social Security system: Enhanced Administration and Compensation Recovery²¹, which ran for a total of 12 weeks from 4 August to 27 October 2022.

The Scottish Government ran a series of events whilst the consultation was open aimed at driving engagement and increasing the number of responses received. This included two online events for stakeholder organisations interested in responding.

The consultation received a total of 34 responses, most of which were submitted on behalf of organisations. An independent analysis of the responses carried out on behalf of the Scottish Government²² found that there was widespread support for most of the proposals included in the consultation. Concerns raised about the proposals in the consultation were considered during policy development and influenced the provisions included in the Bill.

A question was posed in the consultation paper to gather views on the potential impacts of the proposals on businesses and organisations. Three respondents provided an answer to this question.

The main perceived impact of the Bill on businesses and third sector organisations was the potential additional strain the proposals could place on the capacity of third sector organisations that deliver welfare rights advice, financial inclusion advice and mental health support. Two respondents suggested that additional resources could be required in organisations that support those with lived experience of the social security system, particularly in the face of other ongoing challenges such as the cost-of-living crisis.

There was however the opposing view that, through making improvements to the social security system, the Scottish Government could reduce pressure on third sector organisations and free up resource to focus on supporting people in other ways.

²¹ [Scotland's social security system: enhanced administration and compensation recovery - consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/consultations/2022/08/01/Scotland's-social-security-system-enhanced-administration-and-compensation-recovery-consultation-2022-08-01/consultation-gov.scot/consultation-gov.scot)

²² [Social security system - enhanced administration and compensation recovery: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/consultations/2022/08/01/Social-security-system-enhanced-administration-and-compensation-recovery-consultation-analysis-2022-08-01/consultation-analysis-gov.scot/consultation-analysis-gov.scot)

A recognised limitation of the public consultation was that very few responses were received from stakeholders in the legal and insurance sectors with an interest in the policy about compensation recovery. The Scottish Government sought to engage with potentially impacted stakeholders, who may have experience of the UK compensation recovery scheme, to gain insight and further scope out the design of the new scheme.

A targeted engagement event with stakeholders from the insurance and personal injury industry was held in March 2023. The purpose of this virtual event was to communicate the proposal and provide reassurance that the Scottish Government's preferred approach to the recovery of social security assistance is one which offers consistency across both UK and Scottish Governments.

There has not yet been a formal consultation on the policy or provisions regarding care experience assistance. The Scottish Government will shortly launch a full public consultation seeking views on the proposed assistance, which will include reference to the powers taken in the Bill in regard to care experience assistance. In addition, further consultation on the detailed rules for the assistance itself will be undertaken before the regulation-making power being taken in the Bill is exercised.

A public consultation was not conducted on the provisions about information for audit of the social security system. The Scottish Government is clear that this provision is high priority, fundamental to the functioning of the Scottish social security system and aligns with the practice of other government departments. Stakeholder engagement will inform the processes used to capture information for audit to ensure that they are clear, user-friendly and accessible. The secondary legislation which will specify the detail of the process will also be subject to the full suite of necessary impact assessments in the course of its development.

Business

The majority of the provisions in the Bill are not anticipated to have an impact on services provided by private business.

It was deemed appropriate to consult directly with businesses about the policy on compensation recovery due to the potential impacts on industry. Compensation recovery is a longstanding feature of the UK social security system with the current UK scheme administered by the Compensation Recovery Unit (CRU) as part of the Department for Work and Pensions (DWP).

The Scottish Government recognises that consultation with business and considering the potential impacts of not only any new compensation recovery scheme developed, but also the interactions between any new scheme and the existing UK scheme, is key to the success of this policy.

To better understand the potential impacts on businesses of the proposal about compensation recovery, Scottish Government officials contacted representatives of the Association of British Insurers (ABI), the Association of Personal Injury Lawyers (APIL), the Forum of Insurance Lawyers (FOIL), the Law Society of Scotland, the

Forum of Scottish Claims Managers, the British Insurance Brokers' Association (BIBA), the International Underwriters Association, the Faculty of Advocates, Motor Accident Solicitors Society (MASS) and the Lloyd's Market Association.

An initial engagement event was held virtually in March 2023 and attended by representatives from a variety of businesses who could potentially be impacted by a new scheme for compensation recovery. Table 1 below sets out their roles, organisations and membership of industry bodies:

Table 1: Attendees of compensation recovery engagement event March 2023

Role	Organisation	Member of Industry Body
Senior Associate Solicitor	Balfour and Manson LLP	Association of Personal Injury Lawyers (APIL)
Legal policy manager	APIL	
Head of Public Policy	Association of British Insurers (ABI)	
Partner	Digby Brown Solicitors	APIL
Partner	DWF Solicitors	Forum of Insurance Lawyers (FOIL)
Insurance Manager	Stagecoach Group Plc	Forum of Scottish Claims Managers (FSCM)
Senior Claims Manager Large Loss	Aviva Insurance	FSCM
Large Loss Specialist	NFU Mutual	FSCM
Head of specialist claims	Zurich Insurance	FSCM
Head of Motor Insurance	Zurich Insurance	FSCM
Insurance Manager	Edinburgh City Council	FSCM

Further information about the engagement with businesses can be found in the section titled Scottish Firms Impact Test.

Options

When developing the provisions within Social Security (Amendment) (Scotland) Bill, the Scottish Government gave consideration to the following options:

Option 1 – Do nothing

Under this option existing legislation would remain in place and primary legislation would not be brought. No changes would be made to current processes and policies if this position was adopted. If this approach were the preferred option, the Scottish Government would fail to live up to the commitments made in the Scottish social security principles and Social Security Scotland's charter to continuously improve the Scottish social security system and put the people who use it at its heart.

Option 2 – Non-regulatory changes

Under option 2 the Scottish Government would seek to implement changes to operational processes and guidance without introducing legislation. If this were to be the preferred option the improvements and changes that could be made would be limited and constrained.

The majority of the proposals included in the Bill could only be enacted through primary legislation. If the Scottish Government chose this approach then Scottish Ministers would not have the powers to recover the costs of Scottish social security assistance from awards of compensation, nor would they be able to introduce a formal challenge route for overpayment liability or create new forms of financial assistance such as childhood assistance. If option 2 were adopted the Scottish Government would also not be able to deliver the recommendations made by Glen Shuraig in their independent review of SCoSS.

For the proposal on requesting information for audit, Scottish Government officials identified and explored different options, including conducting a literature review comparing international best practice, to obtain the relevant information from Social Security clients. Statistical officials advised that compulsory participation in the audit exercise was required in order to deliver robust data from which estimates could be extrapolated. A non-regulatory solution would not be suitable for this proposal as participation must be mandatory to protect the integrity of the data and avoid a self-selecting sample.

For proposals where a non-regulatory route is an option, the policy impact of this option is likely to be limited. The process for completing re-determinations beyond the period allowed could be clarified in public-facing guidance and in operational guidance which could facilitate greater public understanding of the process for re-determinations when they run late. However, other proposals relating to re-determinations and appeals including the withdrawal of re-determination requests, providing a new determination once an appeal has been lodged, confirming the scope of process appeals, and creating flexibility beyond a year for re-

determinations in exceptional circumstances could not be delivered without legislative changes. The scope for improving the challenge process is therefore considerably reduced under this option.

Option 3 – Legislative change

This option would take the primary legislation forward as planned to amend or repeal sections of the 2018 Act, as well as seeking to create new provisions in that Act.

Option 3 is the Scottish Government’s preferred approach as it will have the greatest policy impact. Primary legislation will allow Scottish Ministers to: deliver new types of social security assistance; place challenge rights for overpayment liability on the same footing as other forms of challenge; recover social security assistance from compensation awards; recognise DWP appointees in certain circumstances; request information from individuals in order to produce effective measurements and estimates of the extent of client error, official error, and fraud; and expand and improve on the rights-based approach of the Scottish social security system.

Primary legislation will enable the Scottish Government to fulfil its obligations to continuously improve the Scottish social security system and to ensure that the system is efficient and delivering value for money.

This approach also supports the Scottish Government’s commitment to “Keep The Promise” by 2030 and would ensure a consistent, national approach is taken to providing financial assistance to people with care experience.

Sectors and Groups Affected

The proposed measures will affect people using the services of Social Security Scotland, their appointees and representatives, and people with care experience.

Personal injury lawyers and compensators (including the insurance industry) will be impacted by the compensation recovery proposal specifically.

The following bodies will also be impacted by the proposals:

- Welfare rights advice services and advocacy services;
- Social Security Scotland
- The Scottish Commission on Social Security;
- Scottish Courts and Tribunals Service (SCTS);
- First-tier Tribunal for Scotland (Social Security Chamber);
- The Judiciary

The Bill contains regulation making powers for Scottish Ministers to create two new forms of social security assistance: childhood assistance and care experience assistance. The current intention is that the regulation making power relating to childhood assistance will enable a future change to the legislative footing of SCP while the care experience assistance powers will initially be used to create a scheme to support people leaving care.

The Bill also introduces powers for Scottish Ministers to make provision in regulations prescribing circumstances in which a DWP appointee may be treated as though they had been appointed by Scottish Ministers to act on a client's behalf, pending an assessment by Social Security Scotland.

There is unlikely to be any immediate significant impact on any sector or groups as a result of these regulation making powers, however there is likely to be impacts in future when Scottish Ministers lay regulations. The impact of any such changes will be quantified as part of the regulation making progress and impacts assessed at that point as required.

Benefits

Option 1 – Do nothing

No benefits have been identified by the Scottish Government if the option to do nothing was pursued and the status quo maintained. There would be no improvements to challenge rights processes and any existing ambiguity would be retained. Scottish Ministers would not have additional flexibility to make changes to the way Scottish Child Payment is delivered in future and would continue to be limited by delivering the payment using 'top-up power'. Individuals would not have appeal rights if they disagree with an overpayment liability decision.

Under this option Scottish Ministers would not have the power to deliver financial assistance to people with care experience. Whilst there is already a package of support in place for people with care experience, including access to Continuing Care and Aftercare support and the Care Experience Bursary, the issues and financial barriers faced by those with care experience would continue to exist for the intended cohort. If action is not taken by Scottish Government to address these issues, there is potential for further issues to arise, which could cause additional pressure on the system at different points including housing support, social security support and mental health support.

SCoSS would retain their existing role as set out in the 2018 Act, as well as the requirement for external audit and their status as a Body Corporate. Dubiety would remain over whether ScoSS should comment on regulations outwith their formal scope leading to inconsistency about which regulations are considered by ScoSS. ScoSS would continue to be externally audited which is considered to be an arduous and disproportionate requirement.

If the Scottish Government decided to do nothing in relation to compensation recovery, Scottish Ministers would be unable to recover social security assistance such as Adult Disability Payment (ADP), Child Disability Payment (CDP), Pension Age Disability Payment (PADP) and Scottish Child Payment (SCP) from compensation awards. However the Scottish Government would still be required to supply information to other UK Government departments about assistance paid to injured parties while they were waiting for their settlement. This information must be shared because of the overlap between devolved disability assistance and 'passported' disability elements of certain reserved benefits known as 'premiums,' which DWP will likely recover. Failure to provide this information would cause disparity in recovery between Scotland and the rest of the UK and could impede the DWP in fulfilling its legislative duties.

If this approach were adopted, injured parties would receive payments from Scottish Ministers as well as compensation from liable third parties for the same accident, injury or disease, resulting in double compensation as they would receive payment to meet the same need twice.

Additionally, members of the insurance industry may benefit financially as they would not be liable to repay any amounts received by the injured party in relation to accident, injury or disease to Scottish Ministers. This is because regardless of the total amount of compensation agreed between compensator and the injured person, under the UK legislation, the compensator (insurer) is required to pay the full amount owed to the DWP. An example of this is shown below:

An award of compensation totalling £50,000 is agreed and broken down as follows: £30,000 in respect of general damages (pain and suffering), £10,000 in respect of loss of earnings and £10,000 in respect of loss of mobility.

A certificate of recoverable benefits lists Income Support totalling £15,000 and Disability Living Allowance (mobility component) totalling £12,500 received with the specific period.

The compensator cannot reduce any part of the general damages award as it is protected. Through the offsetting action, they can reduce the amount awarded for loss of earnings and loss of mobility to zero and pay this to the DWP. However, the insurer would still be obligated to pay the remaining £7,500 outstanding to DWP. As this is not the case for Scottish social security assistance, insurers can potentially financially benefit from this approach.

Under option 1 third parties could not be held liable in cases where the person entitled to social security assistance had not benefitted from the money. In cases where the entitled person has benefitted from the payments, the protections afforded under section 64 of the 2018 Act make recovery of an overpayment from that person unrealistic.

Option 2 – Non-regulatory changes

Fewer immediate costs would be generated by adopting this approach but the benefits achieved would be limited and many of the proposals could not be realised without primary legislation.

There would be fewer resource impacts and updates required to systems, guidance and communication. Adopting this approach would impact on welfare rights organisations and SCTS through failure to provide additional flexibility or clarity to existing processes. The social security system would not be more accessible or more person-centred as there is limited scope to implement improvements without amending the legislation.

As the majority of the proposals could not be delivered through non-regulatory changes this approach is not considered to be a viable option or one that delivers any significant benefits.

Option 3 – Legislative change

Most of the measures in the Bill require legislation so this option will allow these proposals to be taken forward. The Bill will enable the Scottish Government to make changes in light of their experience of delivering social security assistance.

The proposal about withdrawing a request for re-determination will allow Social Security Scotland to stop working on re-determinations if clients no longer wish to continue with their challenge. It is anticipated that this will enhance efficiency and speed of processing for re-determinations, reducing the risk of re-determinations going out-of-time. However it is challenging to quantify savings for Social Security Scotland as it depends on the point at which re-determination requests are withdrawn.

There will be potential savings generated for SCTS by the proposal to introduce a mechanism for Scottish Ministers to make a new determination of entitlement after an appeal has been lodged and the appeal to stop as a result.

A process exists in DWP to 'lapse' an appeal which is where DWP change the decision in the client's favour after an appeal was lodged but before it is heard at tribunal. The Scottish Government considered the DWP data on lapsed appeals in order to forecast how many appeals might be stopped for Scottish Government benefits. The data on lapsed appeals in the reserved system is constantly fluctuating for PIP and is extremely limited for other reserved benefits. For initial decisions (UK wide) following a PIP assessment between April 2013 and December 2022, 15.6% of appeals lodged were lapsed by DWP, and the decision changed.

Considering only people residing in Scotland, with their PIP claim administered by DWP, 13.7% of appeals lodged were lapsed by DWP over the same period. Based on this data, if approximately 14% of appeals to the Social Security Chamber were stopped as a result of this proposal then this could lead to a reduction in direct costs

associated with appeal hearings, primarily Tribunal members' fees. A 14% reduction in appeal hearings could amount to estimated savings for SCTS of between approximately £900,000 and £1 million per year from 2025-26, based on current appeal rate assumptions.

These indicative savings are based on several assumptions, including that stopped appeals would be communicated to the Tribunal sufficiently ahead of any scheduled hearings that cancellation fees would be unlikely to be incurred. Another assumption is that administrative input by SCTS would still be required ahead of any appeals stopping and that there would therefore be no impact on staffing requirements.

The main benefit of the proposal to clarify that liability extends to clients who have a representative acting on their behalf (except where the representative uses the assistance for a purpose which is a breach of their duties or responsibilities, in which case the representative will be personally liable) will be ensuring that Social Security Scotland will be able to recover money that was overpaid, in line with their wider duty to steward public funds responsibly. This proposal also provides protection for vulnerable individuals in the rare cases where the representative does not use the money to the benefit of that individual.

The benefits to businesses and organisations of the proposal to recover social security assistance from compensation recovery will depend on the eventual delivery method adopted. Scottish Government officials are currently working with the DWP to explore the possibility of the DWP delivering a service by agreement on behalf of Scottish Ministers. In the alternative, Scottish Ministers would require to set up a new standalone Compensation Recovery Unit (CRU) to carry out this function.

The Scottish Government has engaged with industry bodies representing the insurance sector, personal injury lawyers and insurance lawyers to better understand the potential impacts of the different delivery options. This engagement has highlighted that insurers and their instructed lawyers have a well-established set of procedures in place with the DWP CRU. The recovery of Scottish social security assistance through the DWP CRU would be their preferred option as there is an existing, successful infrastructure and process for the payment of monies recovered by the DWP CRU. The main benefit from the insurance sector's perspective would be to continue with an established and well-understood system minimising potential disruption and additional training.

Insurers, insurance lawyers and personal injury lawyers were unable to identify any potential benefits of the alternative delivery method whereby Scottish Ministers would create a standalone Scottish recovery unit. Engagement with industry representatives revealed that the introduction of a separate and distinct process for Scottish social security assistance could create duplication and confusion, as well as generate additional costs and risks in the design and delivery of a new IT system.

Costs

Option 1 – Do nothing

Under this option there are generally no direct costs arising for Scottish Government, Social Security Scotland or other businesses or organisations. However some of the potential benefits and savings identified under option 3 would not be realised.

Adopting the ‘do nothing’ approach would mean that the potential savings for SCTS arising from making a new determination of entitlement after an appeal has been lodged and stopping the appeal would not be realised.

Under this option Scottish social security assistance could not be recovered from compensation awards. The amounts forecast to be recovered in the coming years are shown in the table below:

Table 2: Forecasted recovery amounts and number of cases

Benefit Type	Data	2025/26	2026/27	2027/28	2028/29
Child Disability Payment	Recovery Amount	£30,000	£80,000	£125,000	£140,000
	Number of cases	10	15	25	30
Adult Disability Payment	Recovery Amount	£770,000	£2,165,000	£3,345,000	£3,765,000
	Number of cases	240	505	760	835
Pension Age Disability Payment	Recovery Amount	£100,000	£279,000	£423,000	£455,000
	Number of cases	35	75	110	115
Scottish Child Payment	Recovery Amount	£15,000	£45,000	£65,000	£65,000
	Number of cases	70	140	205	205
Employment Injury Assistance	Recovery Amount	£55,000	£365,000	£815,000	£1,105,000
	Number of cases	15	80	150	200
Total	Recovery Amount	£970,000	£2,935,000	£4,770,000	£5,530,000
	Number of cases	365	820	1,255	1,385

Recovery of compensation will be limited to accidents, injuries and diseases that happen after the provisions come into force, resulting in increasing case numbers each year before reaching a plateau.

Table 2: notes

- These are **estimates only** and there is a significant degree of uncertainty which should be acknowledged.
- Number of cases have been rounded to nearest 5. Recovery amounts have been rounded to nearest £5,000. Figures may not sum due to rounding.
- Calculations in this table have been made by using DWP figures for Scotland to calculate a proportion of claims in the total caseload for which a recovery is made. It is assumed that this proportion of recoveries will continue into the future, so it has been applied to the forecast caseload for Social Security Scotland (including new applications and cases migrated from the DWP) to estimate the number of Scottish recovery cases.
- Amount recovered has been estimated by considering the average amount of money recovered by the DWP. It is assumed that the average amounts will remain at the same level into the future. We have also included an assumption for inflation applied to reflect up-rating of benefits.
- An additional and uncertain assumption made to estimate the amount of time it is expected to take for claims to settle has been applied to account for the policy that only incidents that have occurred since the policy becomes active (assumed to be early 2025) being eligible for recovery. This is not underpinned by data due to it not being available; as such, there is a higher degree of uncertainty in this element of the estimate which should be acknowledged.
- That assumption forms part of a calculation which also uses DWP Compensation Recovery Unit performance statistics. The use of performance statistics assumes the types of claims for which a recovery is made is consistent across benefits.
- The table only includes compensation recovery for cases that would be administered by Social Security Scotland.

The Chief Executive of Social Security Scotland is subject to the specific Accountable Officer responsibilities outlined in Part 2 section 15 of the Public Finance and Accountability (Scotland) Act 2000 relating to regularity of payments and value for money. The Accountable Officer's statutory accountability is to the Scottish Parliament and includes an obligation to understand the error and fraud levels prevalent in Social Security Scotland caseloads. They are also reasonably expected to take steps to address any potential loss to the public purse.

For the proposal to request information for the purpose of auditing the social security system there are currently provisions in place that allow Social Security Scotland to undertake estimation work in relation to official error but they cannot undertake evaluation that would meet the requirements under the specific Accountable Officer responsibilities outlined in Part 2 section 15 of the Public Finance and Accountability (Scotland) Act 2000.²³ If option 1 were pursued, robust and reliable audit and reporting mechanisms could not be introduced and Social Security Scotland would not be able to provide adequate assurance that payments are correct, and where they are not, to accurately quantify rates of overpayment, underpayment and fraud.

Under option 1 Social Security Scotland would not incur costs or resourcing requirements as a result of development and improvement work, but by not implementing changes to make challenge processes more accessible and flexible, there would likely be resource and cost impacts over time.

Option 2 – Non-regulatory changes

There would be few immediate costs under this option but the majority of the proposals within the Bill could not be progressed without primary legislation.

Option 2 would involve Social Security Scotland making some light-touch reviews to public-facing communications for the limited improvements that could be made without legislative change. This is unlikely to have a significant impact on costs or resources for Social Security Scotland or for welfare advice organisations offering support to Social Security Scotland clients.

Option 3 – Legislative change

The Bill is likely to result in costs for the Scottish Government, Social Security Scotland, SCTS, the insurance sector and firms of solicitors. There may also be an impact on welfare rights advice services and advocacy services due to changes arising from the Bill.

The costs on the Scottish Government and Social Security Scotland are considered in detail in the Financial Memorandum for the Bill and as such the focus of this impact assessment will be on the potential costs to businesses and organisations arising from the Bill.

The potential costs incurred by SCTS as a result of the proposals included in the Bill are set out below with reference to the relevant proposal.

The costs to SCTS as a result of the proposal to allow appeals to be brought, with the permission of the Tribunal, beyond the one-year prescribed period on the basis of 'exceptional circumstances' are anticipated to be very low. The provision in the 2020 Act to allow late appeals for reasons related to COVID-19 was never utilised

²³ [Public Finance and Accountability \(Scotland\) Act 2000 \(legislation.gov.uk\)](https://legislation.gov.uk)

beyond a calendar year. In addition, cases will need to evidence exceptional circumstances and will therefore be very low in number. As a result, the Scottish Government expects that use of this measure will be so rare as to be insignificant in terms of ongoing running costs for SCTS.

The proposal to introduce a right to a review (followed by a right to appeal to the First-tier Tribunal for Scotland (Social Security Chamber)) against a finding of liability for an overpayment is likely to generate some additional running costs for SCTS. This proposal formalises an existing non-statutory process and is not expected to have a significant impact on the overall number of appeals heard by the Tribunal .

Since February 2022 there have been an average of less than 2 cases per month where people have challenged Social Security Scotland's decision using the current informal process. While it is reasonable to assume, based on wider trends within the devolved social security system, that only a proportion of challenges made would reach the appeal stage, the Scottish Government has based its forecast on 100% of challenges going to the appeal stage in order to estimate the potential costs to SCTS.

Based on an assumption that 2 cases per month will arise and assuming 100% of these go to the appeal stage, additional running costs for SCTS might be expected to be £19,000 per year. The Scottish Government currently knows of no reason to expect this number to increase significantly as a result of the process being formalised but there is a degree of uncertainty around the effect that it may have, and it should be recognised that running costs for SCTS may increase further if uptake increases.

The proposal to recover Scottish social security assistance from compensation awards has the potential to generate additional costs for SCTS, as the Bill will create a right of appeal against disputed certificates of recoverable assistance. The Scottish Government estimates that between 5 and 10 additional appeals per year are likely as a result of the introduction of appeals for recovery of value of assistance from compensation payments. This is not enough to have a significant impact on SCTS' running costs, likely less than £10,000 per year, although it is anticipated that members training will be required in order to administer this new type of appeal.

The Scottish Government considers that the proposal to give Scottish Ministers powers to require individuals to provide information when reasonably requested in order to review their social security entitlement for the purposes of audit may result in a very small increase in the number of appeals. It is anticipated that there could be a small increase in the number of unscheduled reviews which could occur if people do not participate in the process without good reason. These could in turn lead to appeals; however, these numbers are expected to be small enough – in single figures – to have no impact on the overall running costs of SCTS.

The costs to SCTS arising from the Bill should be considered in conjunction with the potential savings to SCTS of £900,000 to £1 million a year previously outlined as a benefit of Option 3.

The proposal to recover Scottish social security assistance from compensation awards could have potential costs for the insurance industry, in particular insurers, insurance lawyers and personal injury lawyers. The costs to businesses and organisations of this proposal will depend on the eventual delivery method adopted: whether the DWP deliver a service by agreement on behalf of Scottish Ministers or if Scottish Ministers set up a new standalone CRU.

The representatives from the insurance industry that have provided insight and feedback to the Scottish Government during policy development have, without exception, voiced their preference for a Scottish compensation recovery service to be delivered by DWP CRU on behalf of Scottish Ministers. There are likely to be costs to insurers and personal injury lawyers should this delivery method be adopted but they are anticipated to be significantly lower than if a new Scottish standalone CRU was created.

The costs highlighted by the insurance industry for this delivery method include ongoing training costs to train staff on Scottish social security assistance and potential implementation costs for changes to computer systems. Scottish Government officials received feedback that costs relating to any required changes to computer systems were likely to be incurred before the commencement of recovery of Scottish social security assistance. The insurance industry would require sufficient notice of any deadlines for the implementation of system changes but this was not considered a major concern by industry representatives.

Of greater concern to representatives of the insurance industry were the potential costs to business if a new standalone Scottish CRU were to be created.

Insurers, insurance lawyers and personal injury lawyers all highlighted during engagement the potential for duplication and confusion if a new CRU were created and a dual system operating. They advised that any potential confusion could be exacerbated in a situation where an injured party is resident in Scotland but suffers an accident in another part of the UK.

The costs to the insurance industry of adopting this delivery method for the recovery of Scottish social security assistance from compensation awards would include additional IT expenditure and overheads for insurers as well as additional and separate training requirements for staff handling claims. Insurance industry representatives anticipate that significant capital expenditure would be required to implement a separate Scottish system of compensation recovery.

It was also felt that this delivery method would lead to additional administration interacting with a different CRU and that there may also be a requirement for transitional arrangements between DWP CRU and a new standalone Scottish CRU. It was highlighted that were a Scottish CRU to be created it could take many months to test systems, train staff and prepare for implementation.

Insurance industry representatives also advised that there could be unintended consequences if the Bill seeks to change the rules on legal liability or significantly

alters the benefits landscape. They warned that increased costs may be an inflationary factor for insurers to consider in the pricing of cover for customers in Scotland.

The Scottish Government's intention is to create a Scottish compensation recovery scheme which takes an approach to the recovery of social security assistance consistent with the rest of the UK. This consistency is intended to reduce complexity for the personal injury and insurance industries while also limiting the impact on the injured persons involved.

It is expected that the changes made to the re-determinations and appeals processes and the introduction of formal challenge rights for overpayment liability decisions as a result of the Bill could cause additional requests for information and support from existing advice and advocacy services. During the passage of the Bill the Scottish Government will continue to engage with advice services to increase understanding of the changes being introduced and to support them to provide independent and informed advice for people receiving, or enquiring about, social security payments. The Scottish Government does not anticipate that the Bill should require a significant change to their operations or resources.

Regulatory and EU Alignment Impacts

The Bill does not have regulatory or EU alignment impacts as the focus of the Bill is the social security system in Scotland.

Intra-UK Trade

The Bill is not likely to impact on intra-UK trade.

International Trade

The Bill is not likely to impact on international trade and investment.

EU Alignment

The Bill is not likely to impact on the Scottish government's policy to maintain alignment with the EU since the scope of the Bill is the Scottish system of social security.

Scottish Firms Impact Test

Scottish Government officials have had a number of discussions with third sector groups who represent the interests of those in receipt of SCP and also provide welfare rights advice via the five family payments reference group. The continuing

feedback has been that they would like to see changes made to SCP, many of which are not possible within the confines of the current legislative footing. Many of the same organisations also contributed to the public consultation providing similar feedback. Further engagement about childhood assistance will be undertaken as part of the regulation making process which will be subject to further parliamentary scrutiny and impact assessments.

Details on any schemes created under the regulation-making power relating to care experience assistance including eligibility criteria, processes and delivery model are still to be determined. This will be developed through engagement and consultation with care experienced people and those with experience of delivering similar payments and support. Once determined, the detail will be set out in regulations, which will be subject to further parliamentary scrutiny and impact assessments.

There has been engagement with a range of stakeholders throughout the development of the policy proposals around re-determinations and appeals to understand the impact on the third sector and the groups they represent. Scottish businesses, including the third sector, were given the opportunity to respond to the public consultation on these specific proposals.

It is expected that the Bill could cause additional requests for information and support from existing advice and advocacy services, which may benefit these businesses through increased demand. However there may also be a cost to these businesses in ensuring their staff are trained in and familiar with the new regulations. The Scottish Government will continue to engage with advice services to increase understanding of the changes being introduced to operational processes and procedures prior to their implementation and to support them to provide independent and informed advice for people receiving, or enquiring about, social security payments. It is not anticipated that this should require a significant change to their operations.

As part of the engagement event held with representatives from insurers, insurance lawyers and personal injury lawyers on 28 March 2023, Scottish Government officials explained the reasons behind Scotland being out of alignment with the rest of the UK in relation to the recovery of compensation. Following on from this, an initial proposal of what a Scottish compensation recovery scheme would entail was presented.

Discussion was focused around five key questions:

1. What are your views on the proposal that the Scottish Government should have the powers to recover social security assistance from compensation payments?
2. What do you expect in terms of impact on your organisation and/or industry with the proposed recovery of Scottish social security assistance from compensation payments?
3. What would you like us to consider in the potential development of a recovery scheme for Scottish benefits?

4. Using the UK scheme as a model, in your view, what aspects work well?
5. Is there anything that you think could be improved upon?

The feedback received was positive in that all attendees agreed in principle that Scottish Ministers should have the power to recover amounts from compensation payments, similar to the UK Government. When asked about their thoughts on the initial proposal and potential impact on attendees' organisations and industry, there was a strong preference expressed for having one unit or platform handling the generation of certificates of recoverable assistance for the whole of the UK. This is because a separate system will require more guidance, training, resources and system log ins for claims handlers. This feedback aligns with Scottish Government officials' initial thoughts in relation to having the DWP recover compensation on behalf of Scottish Ministers as this approach is the most cost effective and limits complexity for all parties involved.

The main concerns raised was in relation to any potential diversions from the UK approach and the impact this would have on settlement times. Consequently, Scottish Government officials have looked to emulate the UK approach, mirroring the same timescales, heads of compensation and relevant period laid out in the UK legislation framework.

Another concern raised was regarding the proposed recovery of SCP as a loss of earnings benefit in relation to accidents, injuries or disease. Attendees discussed the issues with the recovery of the UK reserved benefit Universal Credit (UC) which is made up of various elements. Officials were able to confirm that SCP is not made up of different components and therefore not comparable to UC.

There was some discussion around heads of damage within the Scottish jurisdiction in that 'cost of care' does not exist and is not available for compensators to offset amounts owed. This prompted further investigation where officials sought advice from Scottish Government Legal Directorate (SGLD). Although it was acknowledged that there is not a clear head of damages specifically for cost of care, this is an aspect of the general rule that a person who is liable in damages for personal injury is liable to reimburse the injured party for losses and expenses occasioned by the injury such as loss of wages, care costs, additional accommodations costs or additional transport costs. It was agreed that the head of damage 'services rendered' is not the same as 'cost of care' and the daily living component of ADP and the care component of CDP would not fit under this head of damage. As a result the Bill has been drafted to include the same three heads of compensation as detailed in the Social Security (Recovery of Benefits) Act 1997²⁴.

After the Bill was announced in the Programme for Government 2023-24 was published on 5 September 2023, Scottish Government officials contacted the attendees to gather further insight into the impacts, benefits and costs to the

²⁴ [Social Security \(Recovery of Benefits\) Act 1997 \(legislation.gov.uk\)](https://legislation.gov.uk)

insurers, insurance lawyers and personal injury lawyers of the proposal about compensation recovery in the Bill.

Additionally, an article was included in the Scottish Government Business Communications Bulletin in September 2023 seeking views from all businesses on this proposal.

Further engagement is planned with business, and the insurance sector, in particular about the compensation recovery proposal and potential delivery methods during the passage of the Bill.

Competition Assessment

The proposal to recover social security assistance from compensation awards does not have any appreciable negative impact on competition within the insurance and personal injury market. The effect of the legislation for this proposal will bring Scotland back into line with the rest of the UK with regards to the recovery of social security assistance from compensation. As most insurance providers operate within the whole of the UK, the compensation recovery mechanism is long-standing and an accepted part of the settlement process. Furthermore, the proposal will have no impact on competition by limiting the number or range of suppliers as the legislation will apply to all providers of insurance and potential compensators equally. There will be no reduction on insurance providers' incentives to compete vigorously. Consequently, consumers will not have their choice of insurance providers limited by the proposal.

The other proposals within the Bill are not anticipated to impact or negatively limit the number or range of suppliers as these provisions are intended to improve existing processes or introduce new processes within a government agency (Social Security Scotland). As a result, there are no anticipated impacts on competition.

In terms of choices and information available to consumers, which in this case are clients of public services and their representatives, these should be increased as the proposals have been developed to improve the social security system and create greater flexibility for clients.

The Scottish Government does not expect there to be any significant impact on the operational business of local authorities or health boards as a result of introducing this Bill.

Consumer Assessment

There will be no change to the information gathered by Social Security Scotland from those claiming SCP as a result of the introduction of the regulation-making power for childhood assistance. Future changes made to SCP using that power could require the collection of additional information if it were necessary to manage claims in a different way to current arrangements.

Any schemes for care experience assistance created by way of regulations will have their own processes, delivery vehicles and systems. Details on any schemes will be set out in regulations following engagement and consultation. Careful consideration will be given to data protection, confidentiality and privacy matters.

Further impact assessments, including a further Business and Regulatory Impact Assessment and a Data Protection Impact Assessment, will be conducted for any regulations made as a result of the regulation-making powers in the Bill.

The proposal in the Bill to extend the deadlines in which a person can request a re-determination or an appeal in exceptional circumstances, may have an impact on the storage and use of consumer data. It is anticipated that this proposal may result in a very small increase in the number of re-determinations received by Social Security Scotland, and appeals received by the Tribunal.

Social Security Scotland's current retention policy is to retain a client's record for 7 years after a case is closed. The Scottish Government do not anticipate there being a significant number of people that will request a re-determination or an appeal 7 years after their case is closed, although there remains a very low risk of clients asking for a re-determination or an appeal after 7 years, in which case it may be more challenging to process.

The proposal to request information for the audit of the social security system will use personal data already held by Social Security Scotland for the alternative purpose of selecting a subset of cases for review for audit. Once selected most new information gathered will be of the same type as that collected routinely when deciding a person's entitlement to the benefit in question.

However, where a person has been selected for audit, and they have good reason, they may request that Scottish Ministers deselect them from further participation in the exercise. The reasons provided are likely to be about their personal circumstances and will not necessarily be the type of information routinely held by Social Security Scotland in processing of that social security assistance. A formal decision about this would be made and the person advised on whether they had been removed from the sample or not. This particular data is only likely to be needed temporarily until the person is either exempted or the audit exercise concludes.

Social Security Scotland has robust existing processes and systems in place to manage personal data and mitigate any associated risks.

The proposal to create a right of challenge against a finding of liability to repay an overpayment brings this type of dispute into line with other challenges against Social Security Scotland decisions. The personal data involved will be the same type of data as that recorded by Social Security Scotland when determining the individual's entitlement.

This may include data on their health condition, financial circumstances or residence. The Social Security Scotland privacy notice explains that Social Security

Scotland has implemented appropriate technical and organisational measures to ensure a level of security appropriate to the risk of processing personal data.

The proposal to recover social security assistance from compensation awards means that information already held by Social Security Scotland such as name, address, date of birth, national insurance number, type, period received and rate of benefit received, will also be used to ascertain the amounts that should be repaid by compensators to Scottish Ministers.

This proposal will require the collection, storage and use of additional information so that accurate decisions can be made on whether the potential provisions for compensation recovery apply. Information relating to the cause of the illness or injury as well as the dates of when the incident occurred would be used to calculate any amounts owed to Scottish Ministers.

A similar process using the same information required is already in place, this is detailed in the Personal Injuries (NHS Charges) (Amounts) (Scotland) Regulations 2006. NHS Scotland, through Scottish Ministers and Scottish Government Health Directorates, has a power to recover the cost of ambulance and hospital treatment required by injured parties from payments of compensation when a third party is liable for the accident, injury or disease.

Information available to consumers on services and their rights in relation to these will also be impacted by the proposals in the Bill. Changes will be required to Social Security Scotland's public facing guidance and client letters to inform them of increased flexibility and additional options when making challenges.

Test Run of Business Forms

The proposal in the Bill to recover social security assistance from compensation awards requires Scottish Ministers to provide a certificate of recoverable assistance on request to the injured person or any individual who they think will receive a compensation payment in respect of the injured person. A certificate of recoverable assistance is a certificate which specifies, for each form of recoverable social security assistance, the amount of assistance which has been, or is likely to be, received during the relevant period. In practice, Social Security Scotland acting on behalf of Scottish Ministers will issue the certificate of recoverable assistance. The Scottish Government will continue to work closely with Social Security Programme to explore delivery methods for recovering assistance from compensation awards and develop associated forms.

The compensation recovery proposal included in the Bill does not require new forms to be introduced by business. Depending on the eventual delivery method decided upon there is the possibility that new forms might be required, or existing forms amended. In the event that new forms for business are required the Scottish Government is committed to working with the insurance sector to develop and test run the forms with those who will be using them to ensure that they are fit for purpose and user-friendly.

It is not anticipated that new forms for business will be required for the other proposals included in the Bill.

Changes will be needed to the existing Social Security Scotland forms that clients use to request re-determinations and make appeals. Changes would include adding information to the forms about late re-determination and appeals timescales. The Scottish Government anticipate that only minor amendments would be required to existing letters and forms, which have already undergone rigorous user research.

Digital Impact Test

The proposals included in the Bill do not change digital technologies (including platforms) and markets.

Legal Aid Impact Test

The Scottish Government does not anticipate significant impacts on the legal aid budget as a result of the Bill.

The right to appeal to the First-tier Tribunal (Social Security Chamber) is provided for in the Social Security (Scotland) Act 2018. Currently, Civil Legal Aid or Assistance By Way of Representation (ABWOR) is not available for social security matters before the First-Tier Tribunal. Advice and Assistance is available to provide advice to a person in relation to social security matters, however legal aid funding for representation before the First-Tier Tribunal in relation to social security matters is not available. As such, any increase in appeal volumes attributable to the provisions in the Bill is unlikely to affect the legal aid budget.

Impact on legal aid budgets must be assessed in a BRIA for each new assistance provided for under the 2018 Act. This Bill is providing for powers for both childhood assistance and care experience assistance within the 2018 Act, which in due course will lead to new types of assistance. However provision for those forms of assistance will be substantively made within secondary legislation, for which a separate BRIA will be undertaken.

Civil Legal Aid will continue to be available to clients to appeal an entitlement decision to the Upper Tribunal, Court of Session or Supreme Court.

The Scottish Government expects the impact on the Legal Aid budget to be minimal as a result of the introduction of the proposals in the Bill.

Enforcement, Sanctions and Monitoring

The Scottish Government do not anticipate any new burdens for businesses, local government or the third sector generated by the proposals in regard to enforcement,

sanctions or monitoring. The Bill contains powers to create offences in secondary legislation but any impacts of those will be considered as part of a future BRIA when the regulation-making powers are exercised.

The 2018 Act places a duty on Scottish Ministers to report annually to the Scottish Parliament on the performance of the Scottish Social Security system during the previous financial year.

This annual report describes what the Scottish Ministers have done in that year to meet the expectations on them set out in the Charter. The Social Security Charter sets out what people are entitled to expect from the Scottish social security system, including how they should be treated and how their application will be processed. Complaints regarding Social Security Scotland can be directed to the Scottish Public Services Ombudsman.

Audit Scotland monitor and report on the delivery of the social security system, including Social Security Scotland.

Implementation and Delivery Plan

The Scottish Government intends to take forward this legislation in the current Parliamentary session. Secondary legislation to amend existing regulations, or make new regulations will then follow, giving due consideration to consultation and engagement.

Post-implementation Review

The legislation will be reviewed within 10 years to ensure that it continues to be fit for purpose.

Summary and Recommendation

Option 3 – to bring forward primary legislation – is recommended.

This option will incur the most costs but the Bill will bring about the most benefits. Primary legislation will enable the Scottish Government to fulfil its obligations to continuously improve the Scottish social security system and to ensure that the system is efficient and delivering value for money. This approach also supports the Scottish Government's commitment to "Keep The Promise" by 2030 and would ensure a consistent, national approach is taken to providing financial assistance to people with care experience.

Many of the proposals cannot be progressed without legislation, while a non-legislative approach for others would have a less meaningful impact.

Engagement remains ongoing with businesses, SCTS, third sector support and advocacy services in terms of the potential cost impacts of the Bill.

Summary costs and benefits

Option 1 – Do nothing

Total benefit per annum:

- No need for existing resources, guidance and/ or systems to be updated

Total cost per annum:

- Fails to deliver continuous improvements to the Scottish social security system
- Scottish Ministers do not have powers to make provision for care experience assistance. There is the potential for continued additional societal cost and impact on costs at other points of the system, including social security provision, mental health support and services and housing provision
- Social Security Scotland unable to undertake audit exercises that would meet the requirements under the specific Accountable Officer responsibilities outlined in Part 2 section 15 of the Public Finance and Accountability (Scotland) Act 2000
- Scottish Government unable to recover social security assistance from compensation awards leading to discrepancies with the rest of the UK and failure to live up to commitment in the Social Security Principles to ensure that the Scottish social security system is efficient and delivers value for money

Option 2 – Non-regulatory changes

Total benefit per annum:

- No substantial benefits identified
- Limited scope to make changes to existing challenge processes in the social security system
- Fewer updates to guidance and less training required for Social Security Scotland staff and welfare advice organisations

Total cost per annum:

- Fails to deliver continuous improvement to the Scottish social security system
- Potential for continued additional societal cost and impact on costs at other points of the system, including social security provision, mental health support and services and housing provision as support for care experienced people is not delivered consistently across the country
- Social Security Scotland unable to undertake audit exercises that would meet the requirements under the specific Accountable Officer responsibilities outlined in Part 2 section 15 of the Public Finance and Accountability (Scotland) Act 2000
- Scottish Government unable to recover social security assistance from compensation awards leading to discrepancies with the rest of the UK and failure to live up to commitment in the Social Security Principles to ensure that the Scottish social security system is efficient and delivers value for money

Option 3 – Legislative change

Total benefit per annum:

- Contributes towards the delivery of National Outcomes, particularly those relating to Communities, Human Rights and Poverty
- Makes the social security system more effective in contributing to the Scottish Government's mission to tackle poverty and protect people from harm

- The care experience assistance provisions support the Scottish Government's commitment to Keep The Promise by 2030 and the action within the Promise Implementation Plan ensuring that care leavers are provided with person-centred support to enable positive transitions from care to more independent living
- Provides additional flexibility for clients who wish to challenge decisions without limitations of option 2
- May reduce the administrative burden on the Scottish Courts and Tribunals Service and lead to potential savings if appeal cases could be resolved before reaching the Tribunal
- Eliminates the risk of unfair treatment by extending the time to request a re-determination or appeal in exceptional circumstances
- Allows Social Security Scotland to make a new determination after an appeal has been lodged at Tribunal level with the client's agreement which could reduce the impact on some people who may find a Tribunal process stressful
- Improvements to challenge rights processes align with Social Security Scotland's rights based approach and allow clients to have increased control
- Mitigates the risk of harmful delays in payments of awards, particularly in cases of terminal illness or where timely assessment and payment is essential
- Clarifies that overpayment liability extends to clients who have a representative acting on their behalf
- Provides protection for vulnerable individuals to recover funds from their appointee in the rare cases where their appointee does not use the money to the benefit of that individual
- Ensures that overpayments can be recovered by Social Security Scotland from representatives in the rare cases where the representative does not use the money to the benefit of the individual they act for
- Introduces compensation recovery as a feature of the Scottish social security system bringing Scotland back into line with the rest of the UK and ensuring the system provides value for money
- Allows the recommendations of the Glen Shuraig review to be implemented

Total cost per annum:

- Welfare Rights organisations and advice and advocacy services may need to increase their knowledge of any new processes in order to support clients
- Costs to SCTS in terms of training and a small potential increase in caseload from the provisions relating to compensation recovery, challenge rights for overpayment liability and information for audit
- Potential costs to insurers, insurance lawyers and personal injury lawyers in terms of computer systems and staff training when the proposal to recover social security assistance from compensation awards is implemented. Costs will be dependent on the eventual delivery method selected
- Implementation costs and running costs for Social Security Scotland as detailed in the financial memorandum

Declaration and Publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Minister's name: Shirley-Anne Somerville

Minister's title: Cabinet Secretary for Social Justice

Scottish Government Contact point: Social Security Policy Division



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