

Devolved Social Security Benefits: Consultation on the Transfer of Jurisdiction of Debt Recovery from the Sheriff Court to the First-tier Tribunal

September 2021

Responding to this Consultation

We are inviting responses to this consultation by 23 December 2021.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/social-security/devolved-social-security-benefits>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 23 December 2021.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form to:

Social Security Legislation and Operational Policy
Scottish Government
4 Atlantic Quay
70 York Street
Glasgow, G2 8JX

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy:
<https://www.gov.scot/privacy/>

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at ssplegislationandoperationalpolicy@gov.scot.

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Foreword



I was fortunate to be a member of the Scottish Parliament's Social Security Committee during the passage of the Social Security (Scotland) Bill.

Following the debate at the time about where debt recovery best lay, the Bill was amended to allow Scottish Ministers to make regulations that would transfer some or all of the competence and jurisdiction that a sheriff has over debt recovery in the devolved social security system to the Social Security Chamber of the First-tier Tribunal.

Now, as Social Security Minister, I am proud to be responsible for taking that part of the now Social Security (Scotland) Act 2018 forward, and this consultation lays out the options for consideration.

This Scottish Government is committed to ensuring that devolved social security benefits are delivered in Scotland with dignity, fairness and respect at the heart of the process. That is why we will always consider an individual's financial circumstances before considering debt recovery.

Experience of the UK benefit system suggests the value of overpayments is just over 2% of expenditure each year and so debt recovery of devolved benefits will only impact on a small number of individuals in proportion to the number of payments made. However, if not recovered, where appropriate, this is money lost to the investment in social security or other public services in Scotland.

This consultation is about seeking your views on the options that are available to ensure that debt recovery hearings are conducted in the most appropriate way. I hope you are able to contribute your views on these proposals and I invite you to let us know what you think.

A handwritten signature in black ink, appearing to read "Ben Macpherson".

Ben Macpherson
Minister for Social Security and Local Government

Contents

1. Introduction	6
2. Recovery of overpayments in the Scottish Social Security System.....	8
3. Processes in the sheriff court	11
4. Processes in the First-tier Tribunal.....	13
5. Transfer of jurisdiction of debt recovery from the sheriff court to the First-tier Tribunal	15
6. Other Factors to Consider in Debt Recovery.....	20
7. Impact Assessments	20
 Annex A Partial Business and Regulatory Impact Assessment.....	23
Annex B Respondent Information Form and Consultation Questionnaire	32

Devolved Social Security Benefits: Consultation on the Transfer of Jurisdiction of Debt Recovery from the Sheriff Court to the First-tier Tribunal

1. Introduction

1.1 This consultation is about the recovery of Scottish devolved social security benefits paid in error, and whether the jurisdiction of some, or all, of the competence over the debt recovery should be transferred from the sheriff court to the [Social Security Chamber of the First-tier Tribunal \(FtT\)](#).

1.2 [Chapter 5](#) of Part 2 of the Social Security (Scotland) Act 2018 ('the 2018 Act'), 'Recovery of Value of Assistance' sets out the powers of Social Security Scotland to recover overpaid benefits as a result of an error.

1.3 This overpayment may arise due to an error by Social Security Scotland (official error), client error, third party error, or through benefits which may have been received fraudulently. The overpayment is the difference between the benefit given, and the benefit (if any) that should have been given had the error not been made.

1.4 [Section 64](#) of the 2018 Act outlines the circumstances in which a client may be liable to repay an overpayment. An individual will not be liable to repay an overpayment where they are not at fault, for example where the error is made by Social Security Scotland, unless it was an overpayment that an individual would have been reasonably expected to notice. In all other circumstances Social Security Scotland may seek to recover overpayments but in doing so (under Section 65 of the 2018 Act) they will take into account the individual's financial and other circumstances they consider relevant.

1.5 Overpayments in the UK benefit system¹ are currently around 2.4% of the benefit expenditure. 1.4% of this is fraud, 0.6% claimant error and 0.4% official error. The Scottish Fiscal Commission Economic and Fiscal Forecasts report of August 2021² has forecast that Social Security Scotland will be administering benefit expenditure in excess of £5.2 billion in 2026-27 so a corresponding error of 2.4% overpayments potentially amounts to around £125 million in that year. If not recovered, this would be money lost to the investment in social security or other public services in Scotland.

1.6 It is important that overpayments are avoided wherever possible in the first place and Social Security Scotland's key objectives are to minimise errors through thorough staff training and IT deployment; early detection and correction of any errors that do occur and to develop effective processes to recover overpayments. Over time Social Security Scotland will have their own overpayment data which will be able to inform these activities.

¹ Fraud and error in the benefit system: 2019 to 2020 estimates (revised 29 May 2020) ([link](#))

² Scotland's Economic and Fiscal Forecasts – August 2021 ([link](#))

1.7 Under [Section 65](#) of the 2018 Act, in deciding on whether to pursue recovery, Social Security Scotland will take into account the individual's financial situation through an 'affordability assessment' based on the [Common Financial Tool](#). Other circumstances will also be taken into account. This approach seeks to ensure that money will not be recovered in a manner that knowingly results in hardship for the individual.

1.8 The Department for Work and Pensions (DWP) have a wide range of powers of recovery available to them including deductions from benefits, recovery from earnings, confiscation/compensation orders and in some circumstances referral to a debt collector. The DWP may also impose civil or administrative penalties.

1.9 However, the Scottish Ministers have taken a different approach and the only power that Social Security Scotland has to recover overpayments is by deduction from future devolved benefits. Instead, emphasis is placed on ensuring the right payments are made at the right time to the right people, correcting errors quickly and taking into account the individual's financial circumstances.

1.10 Social Security Scotland will always aim to agree a schedule of repayments with the individual through a variety of payment methods. This could be repayment in full if appropriate, an affordable payment plan, deduction from future devolved recurring benefits, voluntary offsetting off future payments, or recovery from a deceased person's estate if applicable. Any plan can be managed over time and may see temporary suspension of recovery depending on the circumstances of the client.

1.11 Where the individual has no recurring entitlement to a devolved social security benefit, and a mutually acceptable agreement is not reached, or where the individual fails to repay after repeated approaches, then the eventual recourse for Social Security Scotland is recovery through the civil court process. It will be for Social Security Scotland to prove that there is a debt and the client will have the right to challenge that in court by way of defending an action for recovery.

1.12 During the passage of the Social Security (Scotland) Bill 2018 through the Scottish Parliament, concerns were raised by stakeholders that the 'overpayment liability' in some instances would only be determined when challenged through the sheriff court and this was viewed as more daunting for vulnerable individuals than attending a First-tier Tribunal. Therefore at Stage 3 an amendment was made to the Bill to allow some or all of the powers in relation to social security debt recovery to be transferred from the sheriff court to the First-tier Tribunal. The 2018 Act had the following provision:

Section 68. First-tier Tribunal's jurisdiction

The Scottish Ministers may by regulations transfer to the First-tier Tribunal for Scotland some or all of the competence and jurisdiction that a sheriff has in relation to the recovery of money owed under section 63.

1.13 Section 68 was subsequently repealed through the ‘Social Security Administration and Tribunal Membership (Scotland) Act 2020’ and replaced with [section 87A](#). This section extends the provision of the transfer of jurisdiction to top-up benefits and puts the Scottish Ministers policy commitment to consult on the issue on a statutory basis.

1.14 This consultation is to determine which, if any, powers over debt recovery should be transferred from the sheriff court to the First-tier Tribunal.

2. Recovery of overpayments in the Scottish Social Security System

2.1 There are two different types of payment made to individuals in the Scottish Social Security System. There are **one-off benefits** such as Best Start Grant Pregnancy and Baby Payment, Best Start Grant Early Learning Payment and Best Start Grant School Age Payment, Funeral Support Payment, Young Carer Grant, Job Start Payment, Winter Heating Assistance and Cold Spell Heating Assistance. These benefits are mainly in the form of one-off or lump sum payments and grants.

2.2 Then there will be **recurring benefits** such as Child Disability Payment, Adult Disability Payment, Pension Age Disability Payment, Scottish Carer’s Allowance, Severe Disablement Allowance and Industrial Injuries Benefits. These benefits will involve regular payments to individuals who will have an ongoing relationship with Social Security Scotland. Eligibility is generally more complex and may involve evidence gathering and more sophisticated decision-making. Individual’s circumstances may change over time which may require adjustments to their payments.

2.3 If an overpayment has been identified in either type of benefit, the first action Social Security Scotland will take is to decide whether the individual is liable to repay. An individual will be liable if an overpayment arose due to their error or where an individual could reasonably be expected to have noticed an error made by Social Security Scotland.

2.4 If it is determined that the overpayment is recoverable, and where financial and other considerations have deemed recovery to be appropriate, Social Security Scotland will always aim to agree a schedule of repayments with the individual through a variety of affordable payment methods. Where agreement cannot be reached and the individual has no recurring entitlement to benefits, then the only means for Social Security Scotland to recover the debt is through raising an action for payment in the sheriff court. At this stage the individual can defend an action for the recovery of the overpayment.

2.5 Where the individual has a recurring benefit, Social Security Scotland can recover the overpayment through deductions of future payments. The individual will be informed of this decision by Social Security Scotland and they will be able to request a re-determination if they are not content. If they are still dissatisfied with the decision they can then appeal the decision to the First-tier Tribunal. The First-tier Tribunal will consider the case and determine whether Social Security Scotland’s decision is reasonable considering all of the facts of the case.

2.6 Similarly, if an overpayment has arisen in a one-off benefit type but the individual is also a recipient of a recurring benefit then deductions can be taken from the recurring benefit to recover the debt for the one-off benefit.

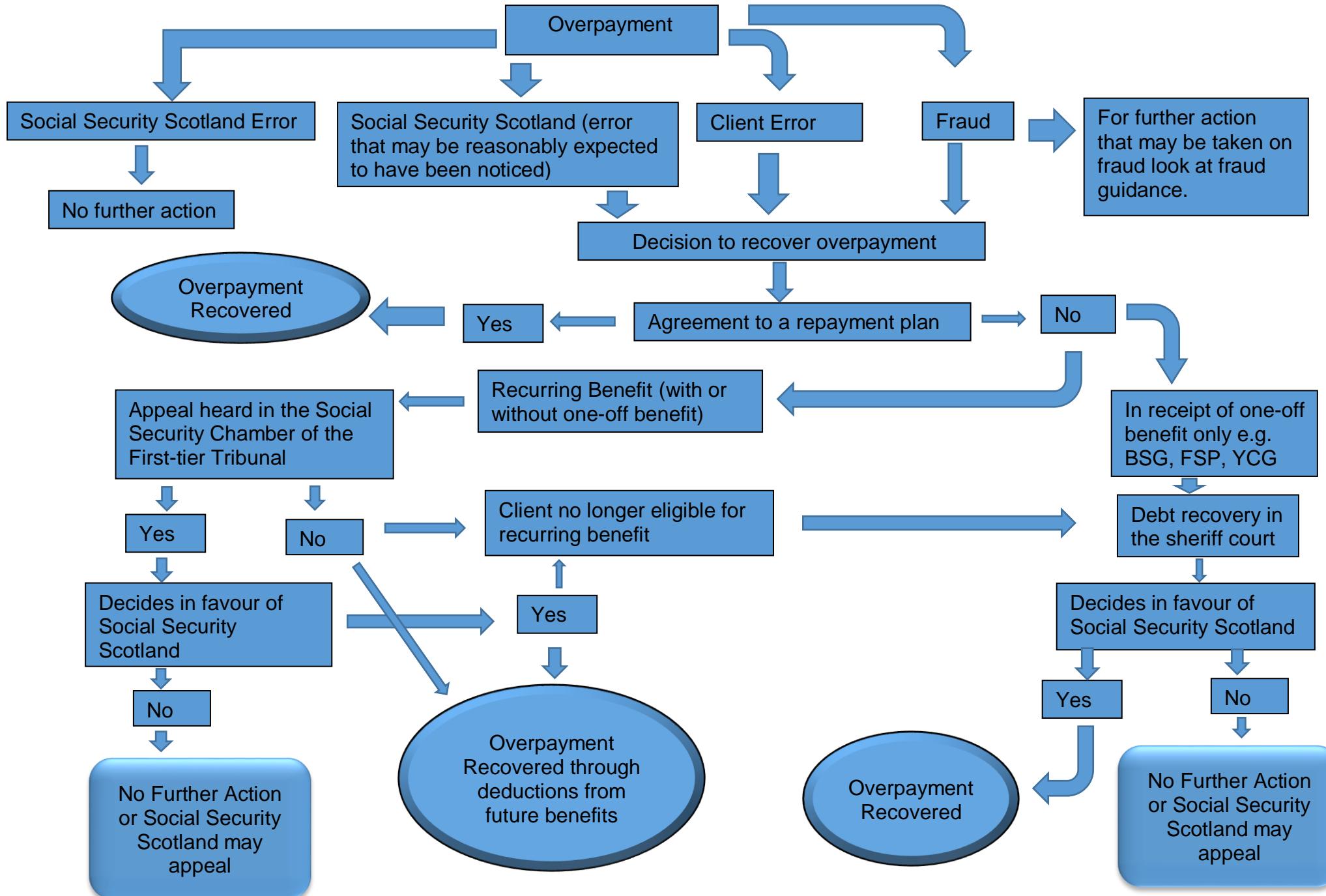
2.7 In circumstances where an individual that received an overpayment was a recipient of a recurring benefit that has been stopped, deductions from future payments will not be possible. Such individuals will be able to appeal the determination that they are no longer entitled to the benefit, but if it is determined that there is an overpayment and a payment agreement cannot be reached liability cannot be challenged in the appeal and the debt can only be recovered (and liability challenged) through the sheriff court process.

2.8 Therefore, through the 2018 Act there are two routes to challenge whether you have to pay the overpayment back. Where civil recovery is sought through the sheriff court the individual will be able to contest recovery of the overpayment through the ordinary court process. Where a determination is made about a recurring entitlement or to implement a deduction from a recurring benefit an individual will be able to appeal that decision to a First-tier Tribunal.

Concerns with this system:

- For individuals who do not have a devolved recurring benefit there is no means to defend the action for recovery of the overpayment other than through the sheriff court. Many individuals may choose to make the repayment rather than go through a sheriff court procedure. This may not be consistent with a rights-based approach.

2.9 The process for recovery of overpayments is set out below:



3. Processes in the sheriff court

3.1 As detailed in sections 2.4 and 2.7 above, where an individual has no recurring entitlement to a devolved benefit, where an affordability assessment has been made and where a mutually acceptable agreement for repayment is not reached, or where the individual fails to repay, then the only recourse for Social Security Scotland is recovery through the civil courts.

3.2 Social Security Scotland will initiate the case with the sheriff court. If the debt is less than £5,000 then it will follow [simple procedure](#) but if it is in excess of £5,000 then it will follow [ordinary cause](#) procedure. As many of the one-off benefits are less than £5,000, these cases would be brought through simple procedure.

Simple Procedure

3.3 Under the simple procedure, a Claim Form is formally served on the individual and if they respond it must be within a certain time-scale. The individual may:

- admit the claim and settle it before the last date for a response;
- admit the claim and ask the court for time to pay; or
- dispute the claim or part of the claim (such as the amount of debt).

3.4 If the individual disputes the claim, the sheriff will consider the case and decide whether to:

- refer parties to alternative dispute resolution;
- arrange a case management discussion;
- arrange a hearing;
- make a decision without a hearing;
- dismiss the claim or make a decision because the claim is unlikely to be successful.

It is at this stage that the liability for the debt is considered.

3.5 The sheriff may make any decision which resolves the dispute, including a decision which:

- orders the individual to pay Social Security Scotland a sum of money;
- dismisses the claim (or part of the claim) made by Social Security Scotland;
- absolves the individual of the claim (or part of the claim) made by Social Security Scotland.

3.6 If the court has decided the individual is liable for the debt then the sheriff court issues a **decision** (a formal order from the **court** saying the individual must pay money to a creditor) and the individual must repay Social Security Scotland.

3.7 Once a claim has been decided, the sheriff must make an order about expenses. This may be that no expenses are awarded to either party or that an award of expenses is made in favour of one party which is normally the party who

succeeds in the claim. These expenses must then be paid by the unsuccessful party.

3.8 There is normally a limit on the amount of expenses which can apply for claims below £3000. For example, if the value is between £1500 and £3000 - the maximum amount of expenses which can normally be awarded by the court to the successful party is 10% of the value of the claim.

Ordinary Cause Procedure

3.9 Ordinary cause procedure is used in the sheriff court where the value of the claim is over £5,000. A debt in excess of £5,000 may occur e.g. where an individual was in receipt of a recurring benefit, but due to client error it was found that they were not entitled to the benefit and an overpayment debt had built up over a period of time. As the benefit was stopped the debt could not be recovered from future payments.

3.10 There is not an application form to be completed when applying using the ordinary cause procedure; instead it is raised using an initial writ. It is usually advisable for parties to seek legal advice when raising an action by ordinary cause procedure.

3.11 As of 1 September 2021, there had been no cases heard in the sheriff court relating to debt recovery of devolved social security benefits. Prior to the devolution of these benefits, appeals would have been heard through the UK Social Security and Child Support First-tier Tribunal. If an individual lost their appeal in that tribunal, the DWP would use the powers they have available to recover the debt. Therefore, debt recovery cases in relation to devolved social security benefits are a new responsibility for the sheriff court.

Registry Trust

3.12 Details of Scottish decisions are supplied by the sheriff courts to [the Registry Trust](#). The Registry Trust maintain a public register containing all simple procedure money decisions granted in the sheriff courts during the preceding six years. The Scottish Register also contains details of ordinary cause decrees dated 1 January 2010 onwards.

3.13 The Registry Trust notifies credit reference agencies of all decisions, recalls and dismissals on a regular basis and the credit reference agencies update an individual's credit file accordingly. Therefore a decision made by the sheriff courts may impact on an individual's credit history.

Sheriff Officers

3.14 Sheriff Officers have legal powers to enforce court orders and can be instructed by Social Security Scotland to assist in recovering a debt. A sheriff officer will serve the individual with a charge for payment which is a formal document informing the individual that unless they pay the debt or apply for time to pay, then

Social Security Scotland is entitled to enforce payment. The individual will usually have 14 days to make the payment.

3.15 If the debt is not paid, then enforcement of the debt called diligence can take a number of forms including:

- earnings arrestment – regular deductions from wages at source;
- bank arrestment – the freezing of funds in a bank account;
- attachment – a sheriff officer can ‘attach’ certain items kept outside an individual’s home, for example in a garage or shed and in some cases ‘exceptional attachments’ inside the home.

Disadvantage with debt recovery at sheriff court

- The sheriff court may be perceived as a daunting environment;
- Individuals may choose to make the repayment rather than go through a sheriff court procedure;
- A decision made by the sheriff court in relation to a debt may impact on an individual’s credit history;
- The Registry Trust maintain a public register of certain sheriff court decrees;
- The sheriff court expertise is not Social Security benefit eligibility;
- The sheriff court can award expenses to either party.

4. Processes in the First-tier Tribunal

4.1 The new [Social Security Chamber of the First-tier Tribunal for Scotland](#) was created on 22 November 2018. The Social Security Chamber hears appeals from determinations made by Social Security Scotland on devolved social security benefits. These appeals will include determinations regarding deductions from future benefits to recover overpayments.

4.2 If an individual has received a notification from Social Security Scotland that an overpayment has occurred and that a determination has been made that deductions are to be made from future benefits, the individual can request a redetermination in respect of the deduction. Social Security Scotland will then make a new determination and within the re-determination notice the letter will advise that an appeal can be made to the Chamber if the individual is still unhappy with the decision. The letter will also contain the appeal form that should be completed and returned to Social Security Scotland.

4.3 If the individual decides to appeal, Social Security Scotland will send all the information they have collected, including the application form, reports and evidence given to the Tribunal so that they can consider the appeal. The individual can also submit further evidence to the Tribunal.

4.4 The First-tier Tribunal will consider the case and may reach a decision based on the papers provided if all parties agree to this or there may be an oral hearing. If an oral hearing is held, the default position will be that cases before the Tribunal will be decided by a legally qualified member sitting alone.

4.5 Exceptions will be made only where there is a need for a particular specialism, as in cases involving disability assistance and employment-injury assistance. In these cases legal members will usually be accompanied by an ordinary member with medical experience. In disability assistance cases, there will also usually be an ordinary member with disability experience. If there is a hearing, the hearing will be at a location convenient to the person who is appealing the decision.

4.6 The hearing will be informal and the individual will have the opportunity to explain the reasons for their appeal and will be asked questions by the Convener. The individual can bring someone to support them and can also have a representative at the hearing. A representative from Social Security Scotland may also attend the oral hearing. Further information on the Social Security Chamber can be found at:

<https://www.socialsecuritychamber.scot/Home/About-us>

4.7 The tribunal will make a decision. If the appellant is not happy with the outcome, they would still be able to apply for permission to appeal to the Upper Tribunal but this can only be on the grounds of error of law. Individual tribunal decisions are not published by the Chamber but, from time to time, updates will be published on matters of interest and points of law arising in decisions.

Benefits of debt recovery at the First-tier Tribunal Social Security Chamber

- Going to the First-tier Tribunal is likely to be a less daunting environment for individuals than going to the sheriff court;
- No award of expenses would be made against an individual in the First-tier Tribunal;
- A decision of the First-tier Tribunal would not impact on an individual's credit history;
- Questions about what a person is eligible for are the First-tier Tribunal's area of expertise;
- Having debt recovery decisions made by only one judicial body would avoid divergent case law;
- Appeals against recovery of an overpayment pursued through deductions from a recurring benefit will lie with the First-tier Tribunal. If the First-tier Tribunal is going to deal with these cases, it makes sense that it should deal with them all;
- In the reserved benefit system, any challenge to the recovery of an overpayment is made to the First-tier Tribunal (UK), so tribunals are familiar with this work.

5. Transfer of jurisdiction of debt recovery from the sheriff court to the First-tier Tribunal

5.1 The views of stakeholders, regarding the transfer of jurisdiction from the sheriff court to the First-tier Tribunal for debt recovery of devolved social security benefits were sought at various workshops that were held between 2018 and 2020. There were very strong views in favour of the transfer and the general consensus was that stakeholders would welcome the transfer from the sheriff court to a tribunal setting.

5.2 The previous chapter sets out the benefits that could arise with the hearing of social security debt recovery in the First-tier Tribunal rather than the sheriff court. To transfer the competence and jurisdiction that a sheriff has in relation to the recovery of debt to the First-tier Tribunal, the following would need to be considered:

- What powers over debt recovery should be transferred;
- The number of cases that could potentially be transferred;
- What processes would be necessary;
- What further expertise if any would be required by the First-tier Tribunal;
- Access to legal aid.

Which powers over debt recovery should be transferred?

5.3 There are potentially three options for the transfer of some or all of the competence and jurisdiction that a sheriff has in relation to debt recovery of social security benefits and these are set out more fully in the accompanying Business Regulatory Impact Assessment (BRIA).

5.4 The three options are:

1. Do not transfer jurisdiction from sheriff court to First-tier Tribunal.
2. All social security debt recovery cases currently within the jurisdiction of the sheriff court to transfer from the sheriff court to First-tier Tribunal.
3. All social security debt recovery cases currently within the jurisdiction of the sheriff court which would fall within the simple procedure to transfer from the sheriff court to the First-tier Tribunal.

5.5 The Scottish Government preferred option would be the second option - that all of the jurisdiction of the sheriff court regarding debt recovery in the social security system is transferred to the First-tier Tribunal. This would ensure that all social security debt recovery decisions were made by only one judicial body and would avoid divergent case law. It would also address concerns raised during Stage 3 of the Social Security Bill that the sheriff court is not the correct environment for determining debt in the social security system.

Question 1. Do you agree that all social security debt recovery that falls within the jurisdiction of the sheriff court should be transferred from the sheriff court to the First-tier Tribunal?

Yes/No

Comment:

The number of cases that could potentially be transferred

5.6 As discussed in paragraph 3.11, prior to devolution of benefits, appeals over overpayments would have been heard through the UK Social Security and Child Support First-tier Tribunal and if an individual lost their appeal in that tribunal the DWP would use the powers they had available to recover the debt. Therefore, debt recovery cases of devolved social security benefits are a new responsibility for the sheriff court.

5.7 There is considerable uncertainty in the volume of cases that might have been the responsibility of the sheriff court, and whether this change will lead to an increase in the number of cases that the First-tier Tribunal will hear. Therefore, at this stage it is not possible to provide any estimates of the scale of the impact, other than it is unlikely to be a large number of cases.

What process would be necessary

5.8 The Social Security First-tier Tribunal would replace the sheriff court as the decision maker over those cases currently within the jurisdiction of the sheriff court with regards to the recovery of debt in the social security system. The liability for the debt and the recovery of the debt would, if the action was defended by the individual, be considered by the panel and no longer the sheriff court.

5.9 Where an individual does not agree to a repayment plan and Social Security Scotland has made a decision to recover an overpayment from an individual that does not have a devolved recurring benefit they would refer the case to the Tribunal. The individual would be able to defend the case for recovery in the Tribunal. If the Tribunal finds that there is a debt then a legislative change may be required to allow the Tribunal to make a decision which is as enforceable as a sheriff court decision.

5.10 If the Tribunal makes a decision that there is an overpayment and it is to be repaid then a legislative change would be required so that they can make an ‘order for payment’. This will only be in cases where deductions from a recurring benefit is not possible.

5.11 It would be expected that an individual would be able to apply for a ‘time to pay direction’ from the Tribunal so that the repayment can be made in affordable amounts over an agreed time period. A direction is normally granted at the point of a court decision. Where no time to pay direction is made, once diligence has commenced and the charge for payment has been served, the individual may still be able to apply for a time to pay order. If the individual does not make the repayment then the ‘time to pay direction or order’ lapses and sheriff officers will be able to enforce the ‘order for payment’.

Question 2. Do you agree that the Tribunal will require the powers in these circumstances to determine whether the overpayment is to be recovered, to make an order for payment, and to issue time to pay directions and time to pay orders?

Yes/No

Comments

5.12 To allow clients to appeal a one-off benefit overpayment it is proposed that Social Security Scotland, using powers under section 37 of the 2018 Act, will send a determination without application detailing the overpayment to the individual which will allow them to appeal the existence of an overpayment with the First-tier Tribunal if they wish. This is not necessary for those individuals whose recurring benefit has been stopped as they will already be sent a determination that states that they are not entitled to the benefit which they can appeal.

What further expertise if any would be required by the First-tier Tribunal

5.13 It would be expected that the legal member of the tribunal would be able to determine whether there is a debt for the one off benefit types. The legal member will already be considering the overpayment liability for the recurring benefit types. A specialist with knowledge of the benefit may also sit on the tribunal to consider whether the deduction from future benefits is reasonable. For those recurring benefits that have been stopped, the same skills will be used so this should be

familiar to the panel. If the tribunal finds in the Social Security Scotland favour then an order to pay would be issued.

5.14 The tribunal would be a relatively informal, investigative approach to dealing with a case. Rules of procedure would be required to ensure the process was fair to all parties involved. It may be possible to reach a decision on the basis of written submissions by the parties, without a need for a hearing if all parties agreed. The tribunal would have power to compel attendance by parties and witnesses.

Access to Legal Aid

5.15 Where a debt recovery action proceeds under either the Simple or Ordinary Cause Procedure Rules at the sheriff court, an individual may be eligible for legal assistance by way of:

- advice and assistance, and/or
- civil legal aid

5.16 Advice and assistance is oral or written advice on a matter of Scots law that may be provided by a solicitor to a client, and would be available to any person eligible in connection with proceedings in both the sheriff court and the First-tier Tribunal. It does not extend to the provision of representation services during proceedings, whereas civil legal aid, if granted, would allow representation for those eligible in the sheriff court and in an appeal to the Upper-tier Tribunal. Different eligibility criteria apply for advice and assistance and civil legal aid, with the former being solicitor granted and the latter subject to approval of the Scottish Legal Aid Board.

5.17 First-tier tribunals have an inquisitorial rather than adversarial approach, and generally the provision of legal aid representation is not available in the Social Security Chamber. However, there are proceedings for which either Assistance By Way of Representation (ABWOR), which is a type of advice and assistance that permits representation to be provided, or civil legal aid is available before other chambers in the First-tier tribunal.

5.18 As an individual may be eligible for civil legal aid in cases currently before the sheriff court, consideration needs to be given to access to a form of legal aid that allows for representation if jurisdiction over debt recovery is transferred to the First-tier tribunal.

5.19 The general rule is that for claims below the value of £3,000 civil legal aid is not available, whereas above £3,000, civil legal aid may be available if an individual is eligible and is not one of the listed “excepted proceedings” under the Legal Aid (Scotland) Act 1986.

5.20 Therefore, if debt recovery of social security benefits is transferred from the sheriff court to the First-tier Tribunal under the ‘no detriment’ rule it would be expected that the same rights of access to publicly funded legal representation as currently provided for in the sheriff court would be available in the First-tier Tribunal.

As most of the one-off benefits are below the value of £3,000 then it is unlikely that legal aid representation would be required in these instances.

5.21 However, for debt recovery involving a recurring benefit where it has been determined that the individual is no longer entitled to it, there is the potential for the debt to be greater than £3,000. Therefore, in these limited instances the provision of the right to publicly funded legal representation would need to be considered as part of the transfer of jurisdiction.

Provision of representation

5.22 There are two methods in which publicly funded legal representation can be provided. A solicitor may grant a type of ABWOR in order to represent their client in proceedings in some circumstances.

5.23 Generally ABWOR is subject to the usual advice and assistance financial eligibility test but may also be subject to a test of “reasonableness” (as with civil legal aid) and on the basis of whether the person cannot participate effectively in proceedings without such legal representation.

5.24 Alternatively, civil legal aid may help pay for representation by a solicitor in the civil courts and tribunals system. It is generally means-tested, and to qualify for civil legal aid the Scottish Legal Aid Board must agree that an individual has both probable cause and that it is reasonable to grant civil legal aid in the circumstances of the case.

5.25 As there are examples of both types of representation currently being used in tribunals, the Scottish Government would work with the Scottish Legal Aid Board to determine the best approach to provide this support within the Social Security Chamber of the First-tier Tribunal in these limited circumstances.

Question 3. Do you agree that a form of publicly funded legal representation should be provided in these limited circumstances in the Social Security First-tier Tribunal?

Yes/No

Comment:

6. Other Factors to Consider in Debt Recovery

Bankruptcy

6.1 If an individual has received an overpayment, has applied for bankruptcy, is in a period of insolvency and has no entitlement to a recurring benefit then at the end of the insolvency period the debt is written off unless it is a fraudulently obtained overpayment. Therefore during a period of insolvency, the debt could not be referred to the sheriff court for recovery. After discharge, the debt associated with fraud can be pursued under normal recovery action and could include debt recovery through the sheriff court.

6.2 If an individual has applied for bankruptcy and is in a period of insolvency, then [section 84](#) of the 2018 Act ensures that an individual's entitlement to benefits does not transfer to another person i.e. the individual would still continue to receive the benefits to which they were entitled. Under section 65 of the 2018 Act there is to be consideration of the debtor's circumstances and the policy is that no deductions in relation to the recovery of an overpayment will take place if the individual is in a period of insolvency.

6.3 Similar to those with no entitlement to a recurring benefit, the outstanding balance is written off at the end of insolvency unless it is a fraudulently obtained overpayment, when normal recovery action can commence. This means the individual would remain liable for paying debts obtained by fraud after being discharged from bankruptcy - normally a period of 1 year.

Recovery from estates

6.4 Where a debtor dies with outstanding Social Security debt, Social Security Scotland has the ability to recover overpayments from a client's estate and where there is no estate would look to write-off the outstanding balance. This debt includes any benefit that was given to the individual in respect of a period after the individual's death.

6.5 The value of funeral expense assistance given in connection with an individual's funeral is to be treated as a funeral expense that the individual's estate is liable to pay the Scottish Ministers.

7. Impact Assessments

Business and Regulation

7.1 The Scottish Government is committed to consulting with all parties potentially affected by proposals for new legislation, or where legislation is being changed significantly.

7.2 A partial Business and Regulatory Impact Assessment BRIA (Annex A) has been prepared for the 'Transfer of jurisdiction of debt recovery from the sheriff court to the First-tier Tribunal'.

7.3 We would welcome comments on whether there are any costs and benefits that are not captured in the analysis; please provide supporting evidence.

7.4 Respondents are also asked to consider if there is any additional information that would enhance the BRIA; please provide supporting evidence.

Question 4. What are your views on the overall costs and benefits identified in the Impact Assessment?

Equality

7.5 The Scottish Government is committed to promoting equality and removing or minimising disadvantage which may be experienced by different groups of people. We have a legal duty to consider the impact of policies on people who may be differently affected in relation to the 'protected characteristics' under the Equality Act 2010. The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Question 5. Please tell us about any potential equality impacts, either positive or negative, that you consider the proposals in this consultation may have, with reference to the 'protected characteristics' listed above. Please be as specific as possible.

Child Rights and Wellbeing

7.6 The Child Rights and Wellbeing Impact Assessment (CRWIA) is used to identify, research, analyse and record the impact of a proposed law or policy on children's human rights and wellbeing. CRWIA helps us to consider whether the Scottish Government is advancing the rights of children in Scotland and protecting and promoting the wellbeing of children and young people

Question 6. Are there any aspects of a child's rights or wellbeing that you think might be affected either positively or negatively by the proposals covered in this consultation?

Island Communities Impact Assessment

7.7 An Island Communities Impact Assessment (ICIA) is carried out when a policy, strategy or service is likely to have an effect on an island community which is significantly different from its effect on other communities (including other island communities). An ICIA ensures equity for island communities so that the needs of island communities are considered.

Question 7. Are there any aspects of the proposal covered in this consultation that you think will either act positively or negatively on an island community?

Annex A

Partial Business and Regulatory Impact Assessment

1. Title of Proposal

This Partial Business Regulatory Impact Assessment relates to the transfer of some or all of the competence and jurisdiction of debt recovery from the sheriff court to the First-tier Tribunal.

2. Purpose and intended effect

2.1 Background

The proposal is about the recovery of devolved social security benefits, paid in error and whether the jurisdiction of some or all of the competence over the debt recovery should be transferred from the sheriff court to the [Social Security Chamber of the First-tier Tribunal](#) (FtT).

Chapter 5 of the 2018 Act sets out the powers of Social Security Scotland to recover overpaid assistance under the Act. The overpayment may have arisen due to an official error, client error, or through fraud. Social Security Scotland will not recover overpayments if it is a result of official error except where it was an overpayment that the client could have reasonably noticed. Social Security Scotland will also ensure that no individual is placed into hardship as a result of a repayment plan.

There will be different approaches to recovery of overpayments depending on the type of devolved benefits.

For those individuals who **only** receive a one-off benefit (such as Best Start Grant Pregnancy and Baby Payment, Best Start Early Learning Payment and Best Start Grant School Age Payment, Funeral Support Payment, Young Carer Grant, Job Start Payment, Winter Heating Assistance and Cold Spell Heating Assistance) and a mutually acceptable repayment plan cannot be agreed, the only recourse that Social Security Scotland has to recover debt is through civil litigation in the sheriff court.

For those receiving a recurring benefit such as Disability Assistance for Children and Young People, Disability Assistance for Older People, Disability Assistance for Working Age People, Scottish Carer's Allowance, Severe Disablement Allowance, Industrial Injuries Benefits and Scottish Child Payment, overpayments can be recovered through deductions from future payments.

If deductions are to be made from future benefits the client has the opportunity to request a re-determination of that decision and if they are dissatisfied with the subsequent decision they can appeal the decision to the First-tier Tribunal. The First-tier Tribunal will consider the case and determine whether Social Security Scotland's decision is reasonable considering all of the facts of the case.

For those individuals who receive a one-off benefit and a recurring benefit then a debt arising from the one-off benefit can be deducted from the individuals recurring

benefit to recover the debt. Individuals would have the opportunity to request a re-determination of that decision and if they are still not satisfied can choose to appeal to the First-tier Tribunal before deductions are taken.

However, for those who received recurring benefits where it is subsequently determined that they are no longer entitled to them and a debt remains, deductions from future payments will not be possible. If a payment agreement cannot be reached the debt can only be recovered through the sheriff court process.

During the passage of the Social Security (Scotland) Bill 2018 through the Scottish Parliament, concerns were raised by stakeholders that there were no means to 'challenge the liability for a debt' other than through a sheriff court procedure. This could result in many individuals choosing to make the repayment rather than attend a hearing at the sheriff court, which is not a rights based approach. Concerns were also raised that the sheriff court was not an appropriate environment for recovery of debt from vulnerable individuals in receipt of social security benefits. As a result an amendment was made to allow the Scottish Ministers to transfer some or all of the competence regarding debt recovery from the sheriff court to the First-tier Tribunal through regulations.

2.2 Objective

The policy objective is to transfer to the First-tier Tribunal some or all of the competence and jurisdiction that a sheriff has in relation to the recovery of money owed. This would address the concerns by stakeholders that the sheriff court is not the appropriate place for recovery of debt in the social security system.

2.3 Rationale for Government intervention

There were concerns raised by stakeholders during the passage of the Social Security (Scotland) Bill 2018 that the sheriff court was not the appropriate environment for determining debt in the social security system. Stakeholders subsequently raised this same issue at consultation events on fraud policy and Scottish Government Error and Overpayment Workshops.

The rationale for intervention is to allow stakeholders the ability to scrutinise and input into any proposal to transfer the competence and jurisdiction that a sheriff has over debt recovery in the social security system to the First-tier Tribunal. This would allow for the development of a system which is most appropriate for debt recovery of devolved social security benefits.

The proposals will contribute to the better achievement of the national outcomes:

- we tackle poverty by sharing opportunities, wealth and power more equally;
 - we respect, protect and fulfil human rights and live free from discrimination.
- by:
- ensuring that stakeholders have a rights based approach to challenging debt in the social security system.

3. Consultation

3.1 Within Government

The Legislation and Operational Policy Unit has engaged with the following divisions and agencies during the development phase of the policy.

- Officials responsible for transfer of jurisdiction of disputes within the housing sector from the sheriff court to the FtT (Housing and Property Chamber);
- DWP regarding debt within the social security system;
- Officials within Courts and Tribunals Policy;
- Officials within the Debt Management Team;
- Officials in Accountancy in Bankruptcy;
- Officials within Legal Aid Policy;
- The Scottish Courts and Tribunal Service (SCTS).
- HM Courts and Tribunal Service (HMCTS)

In considering the transfer of jurisdiction of debt recovery of social security benefits the SG considered the views of stakeholders attending the error and overpayment workshops, experience panels, the sheriff court and the Scottish Courts and Tribunal Service.

- Stakeholders attending the error and overpayment workshops between 2018 and 2020 made it very clear that they did not believe that it was appropriate for debt recovery appeals to be heard in the sheriff court and were supportive of the transfer of jurisdiction to the First-tier Tribunal.
- The SG consulted with ‘The Lord President of the Court of Session’, ‘The President of the Scottish Tribunals’ and the sheriffs principal to seek their views on the proposals as required under section 14 of the ‘Social Security Administration and Tribunal Membership (Scotland) Act 2020’ and they were broadly content with the proposal to transfer the jurisdiction to the First-tier Tribunal.

3.2 Public Consultation

A consultation on proposals to transfer the jurisdiction of debt recovery from the sheriff court to the First tier Tribunal will run for 12 weeks from September 2021. As well as directly contacting stakeholders with a known interest, the consultation will also be promoted on the SG website.

In addition, informal consultation via letter and in some cases through meetings have been held with:

- Scottish Association of Mental Health
- Citizen’s Advice Scotland
- Child Poverty Action Group
- Inclusion Scotland
- Enable Scotland
- Age Scotland
- National Deaf Children’s Society
- Low Income Tax Reform Group
- People First Scotland

- Royal National Institute for the Blind
- Scottish Commission for Learning Disability
- Scottish Council on Deafness
- Scottish Woman's Convention
- Scottish Commission on Social Security
- Disability and Carers Benefits Expert Advisory Group

3.3 Business Consultation

Scottish Government engaged with and sought the views of the groups set out in section 3.2

There were no commercial enterprises recognised as having an interest in debt recovery of social security benefits.

4. Options

4.1 The following options were considered:

1. Do not transfer jurisdiction from sheriff court to the First-tier Tribunal.
2. All social security debt recovery cases currently within the jurisdiction of the sheriff court to transfer from the sheriff court to the First-tier Tribunal.
3. All social security debt recovery cases currently within the jurisdiction of the sheriff court which would fall within the simple procedure to transfer from the sheriff court to the First-tier Tribunal.

Option 2 is the preferred option. The transfer of all debt recovery cases currently within the jurisdiction of the sheriff court should be transferred from the sheriff court to the First-tier tribunal. This would ensure that all debt recovery social security decisions are made by only one judicial body and would avoid divergent case law. It would also address concerns raised during Stage 3 of the Social Security Bill that the sheriff court is not the correct environment for determining debt in the social security system.

4.2 Sectors and groups affected

Sectors and groups affected include:

- a) devolved social security benefit clients - they will need to be made aware of the process for defending an action for debt recovery.
- b) Social Security Scotland – they will be responsible for assessing whether there is an overpayment and agreeing with clients how it should be recovered. They would need to inform the client of the process for debt recovery and the action taken if no agreement to recovery is reached.
- c) Sheriff Court – while there has been no challenge to the right of recovery of social security benefits as of 1 September 2021 in the sheriff court, discussions will be required to ensure that any transfer to the FtT is effective.
- d) First-tier Tribunal (Social Security Chamber) – if debt recovery is to be transferred, the FtT will need to develop guidance on the process for hearing appeals on the recovery of overpayments in the social security system where there is no mechanism for deduction from recurring benefits. They will also need to

recruit sufficient qualified panel members and may require additional administrative staff.

e) Scottish Legal Aid Board (SLAB) – for debt recovery cases above £3,000 in the sheriff court, clients may be eligible for legal aid in the form of representation.

There is no legal aid in the form of representation for appeals within the social security chamber of the FtT. Therefore if these cases are to be heard in the FtT under the ‘no detriment’ rule the legal aid in the form of representation would need to be available in these limited circumstances i.e. clients with debts over £3,000 with no recurring benefit. Discussions with SLAB will be required to identify the most appropriate delivery method for this right.

f) Advocacy – clients are entitled to advocacy within the FtT system. Those delivering advocacy would need to be aware of the rights of clients with regards to debt recovery.

4.3 Benefits

The Scottish Government is committed to address the concerns from stakeholders that the sheriff court is not the appropriate place for the liability of a debt to be determined in the social security system.

Option 1: Do not transfer jurisdiction from the sheriff court to the First-tier Tribunal. This option would not assist in addressing the concerns raised by clients that the sheriff court is not the appropriate place for debt recovery appeals to be heard in the social security system.

Option 2: All social security debt recovery cases currently within the jurisdiction of the sheriff court to transfer from the sheriff court to the First-tier Tribunal. This would be the preferred option as it would ensure that all debt recovery social security decisions are made by only one judicial body and would avoid divergent case law. It would also address concerns raised during Stage 3 of the Social Security Bill that the sheriff court is not the correct environment for determining debt in the social security system.

Option 3: All social security debt recovery cases currently within the jurisdiction of the sheriff court which would fall within the simple procedure to transfer from the sheriff court to the First-tier Tribunal. This would mean that debts of over £5,000 would remain within the sheriff court and heard through the ordinary procedure. However, this would mean that there still would be two judicial bodies determining debt in the devolved social security system which could lead to divergent case law. It would also lead to some individuals attending a hearing at the sheriff court while others attend a hearing at a First-tier Tribunal.

4.4 Costs and savings

Option 1: As this is the current option the costs involved include the Social Security Scotland administrative costs in debt recovery. This includes the letters to individuals, discussions on re-payment plans and then if debt recovery is pursued the administrative costs of informing the individual of the next steps and preparation for the claim. If the case is not settled prior to submission to the sheriff court there are then the costs associated with a court case, usually through the simple procedure. A registration fee has to be paid for all cases submitted to the

sheriff court. Court costs will vary with the least costs where the matter is settled before a hearing. The experience from the Courts is that cases are normally settled without the need for a hearing. There is also the potential of cost to the Legal Aid Fund, for related advice and assistance.

Option 2: This is the preferred option. The administrative costs incurred by Social Security Scotland would largely remain the same. However, as the action for recovery would be heard by the FtT there would be no court registration fee. Instead the individual could challenge the recovery of the debt through the FtT. As all cases would be likely to be heard in the FtT unlike the sheriff court system where many cases will be settled before a hearing, there would be more costs associated with the FtT. There would be further legal aid costs for representation for those with debts over £3,000 with no recurring benefit.

Option 3: This option would incur similar costs as option 1 for those cases heard in the sheriff court under ordinary procedure and similar costs to option 2 for those cases under simple procedure which would transfer to the FtT. As there would be two different approaches this could lead to extra administrative costs. There would also be the potential for a hearing in both the FtT and the sheriff court which could lead to divergent case law for the same case e.g. hearing an appeal in the FtT regarding the assistance being stopped and then recovering the debt through the sheriff court.

Scottish Firms Impact Test

5. Scottish Government officials have consulted with a range of third sector organisations affected by the transfer of jurisdiction, including on any concerns or benefits to their organisations. The transfer of jurisdiction would mainly impact on the sheriff court and the FtT and advocacy service. The responses to the consultation will influence the proposal and the completion at the post-consultation stage of the Final Stage BRIA.

5.1 Competition Assessment

Assessment has been based on Options 2 and 3 as Option 1 proposes no change and therefore imposes no actions that may incur additional costs.

The four competition filter questions provided for policy makers on competition assessment were applied and it is considered that the transfer of jurisdiction would not impact on competition within the market place.

i.e.

- The transfer of jurisdiction would not directly or indirectly limit the number or range of suppliers as these are dictated by the court processes.
- The transfer of jurisdiction would not limit the ability of suppliers to compete e.g. advocacy providers.
- The transfer of jurisdiction would not limit suppliers' incentives to compete vigorously.
- The transfer of jurisdiction would not limit the choices and information available to consumers.

5.2 Test run of business forms

No new forms associated with this proposal are expected.

6. Legal Aid Impact Test

The preferred Option 2 would result in the transfer of jurisdiction from the sheriff court to the FtT for debt recovery in the social security system. Individuals would have the same right to legal aid advice and assistance within the FtT as they did within the sheriff court. However, some individuals may have been entitled to legal aid in the form of representation within the sheriff court system and this same right would need to be available in the FtT in those limited circumstances e.g. debt over £3,000 with no recurring benefit that deductions can be taken from.

Enforcement, sanctions and monitoring

7.1 Background

Chapter 5 of the 2018 Act 'Recovery of Value of Assistance' sets out the powers of Social Security Scotland to deal with the recovery of overpaid benefits as a result of an error. Social Security Scotland will take into account the individual's financial and other circumstances through an 'affordability assessment' based on the [Common Financial Tool](#). This will ensure that money will only be recovered in a manner that does not result in hardship for the individual. Social Security Scotland has developed guidance for staff on the procedures to follow when recovering overpayments.

7.2 Enforcement and sanctions

Social Security Scotland will only pursue recovery of debt through the court system as a last resort and after consideration of the debtors circumstances. The preferred Option 2 ensures that individuals would have the opportunity to defend the action for recovery of a debt in the FtT. If the FtT reached a decision that the debt had to be repaid then a repayment plan would be sought. However, if individuals did not agree to a repayment plan then the FtT would have the same kind of binding orders available to a sheriff court. These orders may be enforced via a sheriff officer.

7.3 Monitoring

Social Security Scotland will review the implementation of debt recovery to ensure that overpayments are being recovered effectively and that individuals are treated in line with the Social Security Charter. Performance against the charter will be reviewed regularly and an Annual Report will be submitted to the Scottish Parliament each year on the performance of the Scottish social security system in that year.

8. Implementation and delivery plan

8.1 Implementation

The outcome of the consultation will determine the required implementation. If the preferred Option 2 is taken forward, then new Regulations which give additional responsibilities to the Social Security Chamber of the FtT would be required. The FtT would also be required to develop guidance on the process for determining a debt for individuals affected and the process for debt recovery where necessary.

The FtT would also require sufficient resources in members to hear the additional cases.

8.2 Implementation Period

It is hoped that the legislation that would enable the transfer of jurisdiction from the sheriff court to the FtT would be laid in the Scottish Parliament in 2022.

8.3 Post-Implementation Review

The Scottish Government will continue to engage with the tribunal service during the phased introduction of the devolved benefits and will provide feedback on the efficiency of the regulations. Audit Scotland will monitor and report on the delivery of the social security system, including Social Security Scotland.

Summary and recommendation

Option 2 is the recommended option, as it would ensure that all debt recovery social security decisions were made by only one judicial body and would avoid divergent case law. It would also address concerns raised during Stage Three of the Social Security bill that the sheriff court is not the correct environment for determining debt in the social security system.

• Summary costs and benefits table

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	Current System No benefits	Cost Neutral Current costs – administrative costs; court registration costs; court costs; legal aid costs.
2	This is the preferred option as it would ensure that all debt recovery social security decisions are made by only one judicial body and would avoid divergent case law. It would also address concerns raised during Stage 3 of the Social Security Bill that the sheriff court is not the correct environment for determining debt in the social security system.	Administrative costs largely remain the same. However, there would be savings with no administrative costs of pursuing debt prior to court action; no court registration costs, no court costs. However, extra administrative costs as more individuals are likely take the opportunity to appeal the decision in the FtT and there will be the additional advocacy costs. There will also be the legal aid costs in the form of representation in some limited circumstances.

3	<p>This would not be a practical option as two judicial bodies would still be involved in determining debt in the social security system which could result in divergent case law. It would also mean that some social security clients would have their case heard in a sheriff court while others in a FtT. This would not address the concerns that the sheriff court is not an appropriate environment for debt recovery in the social security system.</p>	<p>There would be costs similar to 1 and 2 for the different approaches. Administrative costs are likely to be higher managing two systems with different approaches.</p>

Declaration and publication

The Cabinet Secretary or Minister responsible for the policy (or the Chief Executive of non departmental public bodies and other agencies if appropriate) is required to sign off all BRIAs prior to publication.

- Sign-off for Partial BRIAs:

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact will be assessed during the public consultation with the support of businesses in Scotland.

Signed:



Date:

26 September 2021

Ben Macpherson , Member of Scottish Parliament
Minister for Social Security and Local Government

Scottish Government Contact point:

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Devolved Social Security Benefits: Consultation on the Transfer of Jurisdiction of Debt Recovery from the Sheriff Court to the First-tier Tribunal

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:
<https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual
- Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)
- Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

No

Consultation Questions

1. Do you agree that all social security debt recovery that falls within the jurisdiction of the sheriff court should be transferred from the sheriff court to the First-tier Tribunal?

- Yes
- No

Comment:

2. Do you agree that the Tribunal will require the powers in these circumstances to determine whether the overpayment is to be recovered, to make an order for payment, and to issue time to pay directions and time to pay orders?

- Yes
- No

Comment:

3. Do you agree that a form of publicly funded legal representation should be provided in these limited circumstances in the Social Security First-tier Tribunal?

- Yes
- No

Comment:

4. Business and Regulation

What are your views on the overall costs and benefits identified in the Impact Assessment?

Comment:

5. Equality

Please tell us about any potential equality impacts, either positive or negative, that you consider the proposals in this consultation may have, with reference to the 'protected characteristics' listed above. Please be as specific as possible.

Comment:

6. Child Rights and Wellbeing

Are there any aspects of a child's rights or wellbeing that you think might be affected either positively or negatively by the proposals covered in this consultation?

Comment:

7. Island Communities

Are there any aspects of the proposal covered in this consultation that you think will either act positively or negatively on an island community?

Comment:



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