

Scotland's social security system: Enhanced Administration and Compensation Recovery

Consultation

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Scottish Government
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Ministerial foreword

Since the Social Security (Scotland) Act 2018 came into force, the Scottish Government has been building a new social security system where assistance is a human right and where people are treated with dignity, fairness and respect. During the current cost of living crisis we will continue to take action where we can to help low income households, carers and disabled people, using our limited devolved powers and constrained resources.



We have already delivered 12 benefits, including more generous replacements for UK benefits and seven completely brand new forms of support, from our Carers Allowance Supplement to the 'game-changing' Scottish Child Payment.

Following the successful launch of Child Disability Payment, the implementation of Adult Disability Payment is well underway. Meanwhile, we are in the process of transferring Scottish cases of Disability Living Allowance for Children to Child Disability Payment, and we have initiated the case transfer process to Adult Disability Payment.

This has involved a huge amount of work, which has all been achieved by Scottish Government and Social Security Scotland staff, and some DWP staff, despite the difficulties created by coronavirus (COVID-19) over the past two years. I am grateful for the commitment shown by the many people involved in successfully delivering this new public service, which is crucial to the Scottish Government's wider plans to tackle poverty and make Scotland a fairer place for all. I am particularly grateful to all those who have contributed to our Experience Panels and to our various stakeholders and independent advisors.

I have been pleased to see from our client surveys that Social Security Scotland is making a positive difference, which is being felt by those using our services. Ninety-three per cent of people responding to our client surveys rated their experience of Social Security Scotland 'good' or 'very good'.

But we know that there is much more work to be done. The principles which underpin the Scottish system of social security are set out in the Social Security (Scotland) Act 2018, and it is with those principles in mind that I am pleased to launch this consultation.

The principles, endorsed unanimously by the Scottish Parliament, include that opportunities are to be sought to continuously improve the Scottish social security system in ways which put the needs of those who require assistance first, and that the system is to be efficient and deliver value for money.

In addition, Social Security Scotland's Charter, 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 our resources fairly and efficiently.

It is important that we continuously seek to live up to those commitments by making changes which better reflect our aspirations as our experience grows. By contributing to this consultation, I would therefore encourage you to contribute to the discussion on improving our social security system, in which everyone in Scotland has a stake, and thank you in advance for taking the time to do so.

A handwritten signature in black ink, appearing to read 'Ben Macpherson', with a long horizontal flourish extending to the right.

BEN MACPHERSON MSP
Minister for Social Security and Local Government

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Introduction

This consultation seeks views on a number of proposed changes which have been identified as desirable since the passage of prior primary legislation, principally the [Social Security \(Scotland\) Act 2018](#) (the '2018 Act').

The Scottish system of social security is founded on dignity, fairness and respect, and takes a rights-based approach to delivering devolved welfare powers.

The Scottish Social Security Principles provide the foundation of this Scottish system. These seven core principles deliberately correspond to some of the fundamental aspects of the right to social security, as set out in key human rights instruments such as the [International Covenant on Economic, Social and Cultural Rights](#), the [Universal Declaration of Human Rights](#) and the [European Social Charter](#).

The principles are set out on the face of the 2018 Act, with strong stakeholder and public support, and with the intention of embedding the more positive, supportive ethos of the Scottish system from the outset.

The proposals being consulted on in this document are aimed at effecting the continuous improvement of the Scottish social security system across a range of topics, in line with the following social security principles:

opportunities are to be sought to continuously improve the Scottish social security system in ways which put the needs of those who require assistance first, and advance equality and non-discrimination

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

The consultation is set out in themed sections which connect relevant proposals with these principles. Proposals for changes and questions seeking views on those proposals are grouped into the following sections:

- **Improving client experience**
 - Scottish Child Payment
 - Re-determinations
 - Determinations after an appeal is lodged
 - Appointees
 - Challenge rights for overpayment liability
- **Delivering value for money**
 - Compensation recovery
 - Alternatives to prosecution for low-value fraud
 - Overpayment liability where someone acts on a client's behalf
- **Independent advice and scrutiny of Social Security**
- **Coronavirus (COVID-19) measures**

The consultation has been designed to allow for submission of each of the sections independently, in recognition of the fact that respondents may wish to respond on one or some of the themes without wishing to express views on the others.

Improving client experience

A defining feature of our human rights approach to social security is that every aspect of the new system has been designed together with the people who know the system best – those who access and rely on services.

We have put client experience at the heart of the design and improvement of all our social security systems and services. As part of the work to develop and implement devolved social security powers, the Scottish Government undertook extensive research with the Social Security Experience Panels – over 2,000 people with lived experience of the social security system and with additional ‘Seldom Heard Voices’ groups, securing participation from the widest possible range of perspectives.

Our co-design approach to delivering this new public service is unprecedented in its scale and innovation. That is why it has attracted widespread support and interest from stakeholders (including the UN), academics, and other public authorities keen to learn more about the work taking place in Scottish social security.

There are numerous examples of how people with lived experience have directly influenced the development of policy, operational procedures and the style and format of communications. In the case of the social security Charter, people with lived experience were empowered to share decision making with Government, making key decisions about the commitments that should be made by Government.

The importance of client experience in developing Scotland’s social security system is reflected in what people tell us about interacting with Social Security Scotland. In client surveys carried out between 2018 and 2021 a majority of respondents rated the service highly. Around nine in ten respondents said they were treated with dignity, fairness and respect, with a similar proportion agreeing that their time was not wasted by Social Security Scotland.

Each of the proposals in this section are aimed at building on those early achievements, and seeks to make the experience of the people who rely on the service provided by Social Security Scotland better still.

Scottish Child Payment

Background

The Scottish Child Payment is a transformative action to reduce child poverty as part of a wider strategy to support those who need it most and meet our challenging child poverty targets. Scottish Child Payment currently supports around 103,000 children under the age of 6 across each of Scotland’s 32 local authority areas. The payment was doubled to £20 per week per child in April 2022 and will increase to £25 per week by the end of 2022.

There are no limits to the number of children per family who can receive the payment, and analysis suggests that over 400,000 children could benefit once the payment is fully rolled out to children under 16.

The Child Poverty Action Group called the payment “a hugely welcome development on the path to meeting Scotland’s child poverty targets...a real lifeline for the families across Scotland who are facing a perfect storm of financial insecurity as the UK cut to universal credit bites, energy prices soar and the wider costs of living rise.”

The payment is delivered under s79 of the Social Security (Scotland) Act 2018, which allows the top-up of a qualifying reserved benefit.

Issues to consider

A timetable of under 18 months from announcement to delivery of Scottish Child Payment has been unprecedented in the UK; testimony to the priority that the Scottish Government has put on tackling child poverty. Introducing Scottish Child Payment under the ‘top-up’ power in s79, which involved making secondary legislation, was the fastest way to deliver the payment. However, the legal route used to achieve that speed means that there are ways in which we know the payment lacks flexibility.

In order to receive Scottish Child Payment a person must be in receipt of a qualifying UK benefit, such as Universal Credit. As the relevant qualifying benefits are reserved to the UK Government, the Scottish Government cannot control the eligibility criteria for them. This approach has various advantages. In particular, it has allowed us to create a streamlined application process that we know people like.

However, we think it would be desirable to have additional flexibility over the rules governing Scottish Child Payment to be able to make changes in future. This could be in response to client and stakeholder feedback, or to react to potential changes to UK benefits that the UK Government may make, helping to future-proof Scottish Child Payment. We believe additional flexibility over the rules governing Scottish Child Payment would ensure we could align the payment more closely with other forms of Social Security Scotland assistance, such as Best Start Grant.

Q1. Do you agree or disagree that it would be useful to be able to make changes to Scottish Child Payment that were not limited by the current approach that relies on ‘top-up’ powers?

Agree / Disagree / Don’t know

Q2. Please give reasons for your answer.

Q3. Please give your views on the advantages that could arise from creating this additional flexibility.

Q4. Please give your views on the disadvantages that could arise from creating this additional flexibility.

Re-determinations

Background

Re-determinations are an important tool for ensuring that human rights remain at the centre of the Scottish social security system. Our key priority is to treat people with dignity, fairness and respect, and that means getting the decision right first time and quickly correcting any errors if they do occur.

Our processes for challenging decisions have been co-designed with people who have lived experience of the Department for Work and Pensions (DWP) system.

Re-determination in the Scottish system is different from the DWP process in the following ways:

- during the re-determination process, another officer in Social Security Scotland will consider the case afresh taking account of new evidence provided, and will make a new decision
- our intention is to ensure any request for a re-determination can be made simply and in a manner that is convenient for the client
- we publish clear procedures and timescales for making the re-determination
- if they are not met, the person can appeal directly to the First-tier Tribunal
- short-term assistance may be payable where a continuing payment is reduced or stopped and the individual asks for a re-determination or appeal of the decision to reduce or stop the continuing payment
- the value payable is the difference between the level of assistance paid under the earlier determination and the level paid under the later determination.

Issues to consider

Once a client has asked for a re-determination Social Security Scotland is under a statutory duty to make a new determination. A client has no way of withdrawing that request. Social Security Scotland has no option but to make a fresh determination, regardless of whether or not that client has changed their mind since asking.

The Scottish Government considers that the rights-based approach of Scottish Social Security is best served by letting clients decide whether or not a re-determination should in fact go ahead.

Clients may have had the benefit of additional advice or simply a chance to reflect on their options following the submission of a re-determination request, and we do not see any value in forcing them to go through a re-determination process against their wishes where they have changed their mind since submitting the request.

In line with the Scottish approach to social security, where clients are at the heart of everything Social Security Scotland does, we propose that the decision about whether or not a re-determination goes ahead should be one for the client to make.

It is important to note that where someone is in receipt of short-term assistance (STA) in respect of an ongoing determination, withdrawing the re-determination request will also have the effect of stopping the payment of any STA.

Q5. Do you agree or disagree that a client should be able to withdraw a re-determination request before Social Security Scotland has made a re-determination decision?

Agree / Disagree / Don't know

Q6. Please give reasons for your answer.

Determinations after an appeal is lodged

Background

The Scottish Government is clear that people should have a right to challenge if they believe that Social Security Scotland has not made the right determination and that the challenge process is as simple and straightforward as possible.

Our processes have been co-designed with people who have lived experience of the DWP system. Our key priority is to treat people with dignity and respect and that means getting the decision right first time and quickly correcting any errors if they do occur. We will do all we can to support a person if they want to make an appeal.

Where Social Security Scotland has completed a re-determination and the client still disagrees with its decision they can appeal. Clients can also appeal if Social Security Scotland fails to make a re-determination in the time allowed by regulations. Appeals are made to the Social Security Chamber of the First-tier Tribunal for Scotland, which was created in November 2018. The Tribunal is administered by the Scottish Courts and Tribunals Service, which is independent of the Scottish Government.

In keeping with the Scottish Government's person-centred approach, the process for appeals ensures minimal burden on the client. If a client wants to appeal to the First-tier Tribunal they complete an appeal request form and return it to Social Security Scotland, which then forwards it to the Tribunal for consideration.

Issues to consider

Scottish Ministers cannot currently make a new determination if a client has appealed to the First-tier Tribunal, even if it is established after an appeal has been lodged that the client's award of assistance is wrong.

Where Social Security Scotland identifies that it has made an official error, or new evidence shows that the re-determination (or determination if the re-determination is not made in time) is incorrect, the appeal continues against the determination or re-determination. Social Security Scotland tells the Tribunal why it now considers its prior determination was wrong, but the appeal must proceed.

Introducing a mechanism for Social Security Scotland to make a new determination at this stage would mean that errors could be rectified early. We are considering whether the appeal should end as a consequence, which could prevent unnecessary appeals going ahead, and would mean that clients would not have to wait for the Tribunal to make a decision. This could reduce stress for clients by removing the need to go through a Tribunal hearing.

If Social Security Scotland was able to make a new determination after a client had requested an appeal, we also want to consider whether a new determination should only be made if the client consents.

Q7. Do you agree or disagree that a new determination should only be made if it gives the client everything they could get from the Tribunal?

Agree / Disagree / Don't know

Q8. Please give reasons for your answer.

Q9. Do you agree or disagree that a client should be asked for their consent before a new determination is made?

Agree / Disagree / Don't know

Q10. Please give reasons for your answer.

Q11. Please provide your views on what challenge rights the client should have on the new determination.

Appointees

Background

Where a person lacks capacity to manage their own financial affairs, the DWP and Social Security Scotland can each appoint a person or organisation, known as an appointee, to act on that persons behalf. This means that when someone who lacks capacity applies for a form of assistance paid by Social Security Scotland, someone may already have been appointed under UK legislation to receive and manage their reserved UK benefits (e.g. Universal Credit, Employment Support Allowance).

The 2018 Act, and associated statutory guidelines, set out the law and processes that govern when Social Security Scotland can appoint another person to act for someone who lacks capacity to manage their assistance.

These differ markedly from those of the DWP. As a consequence, when a DWP appointee applies for any form of Social Security Scotland assistance on a person's behalf, we cannot currently automatically treat them as equivalent to a Social Security Scotland appointee, and allow them to act for assistance we administer.

Social Security Scotland must in all cases make its own assessment of whether an appointment is appropriate, using processes set out in statutory guidelines, which usually take the form of an interview with the client and potential appointee. For most of Social Security Scotland's assistance this will not cause any significant delay in processing of applications or determinations.

We have however identified some scenarios where it might be better for the individual making the application if Scottish Ministers had the flexibility to allow an existing DWP appointee to act for the client for a short period, pending an assessment by Social Security Scotland's Local Delivery team.

This approach has already been applied through regulations for case transfers from Child Disability Living Allowance and Personal Independence Payment, in order to minimise risk of a break in payments when moving between the two systems.

But it is not only when someone moves from one system to another that this approach could be beneficial. The devolution of social security powers means there could be people with entitlement in both the Scottish and UK systems. Scenarios where the extension of this approach to situations outside of case transfer could improve the client experience include:

- where a terminally ill person makes a first application for a Social Security Scotland benefit under the Special Rules, which must be expedited
- where an entitled person moves from another part of the UK and applies for any of our equivalent ongoing forms of assistance, for example Personal Independence Payment (PIP) to Adult Disability Payment, to prevent or minimise any break in payments
- where an application is made for a lower value or one-off or income related Scottish assistance, such as Scottish Child Payment or Funeral Support Payment, and waiting for the appointment process to be completed could significantly delay the determination of entitlement or payment

Issues to consider

Previous changes to our appointee legislation were made by the [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020](#). Those changes were intended to provide a clear statutory basis for transparent processes, and, in accordance with our rights-based approach, in line with the principles of [the Adults with Incapacity \(Scotland\) Act 2000](#) and the [United Nations Convention on the Rights of Person with Disabilities](#).

The proposals in this consultation would mean appointees who had not yet been subject to these new procedures would sometimes be able to apply for and receive assistance on behalf of a person for a short period of time.

There is a small risk that in some cases when the appointment is later reviewed by Social Security Scotland, it may be terminated. This could happen if the person was found to have been able to manage their assistance themselves or because, in a smaller proportion of cases, the appointee was unsuitable.

This risk however needs to be balanced with the potential benefits of having an application processed or payment made more quickly and easily, as in the situations outlined above. A balance requires to be struck between the protections afforded to the client by Social Security Scotland's appointee process, and the benefits of being paid their social security entitlement promptly.

Q12. Do you agree or disagree that Social Security Scotland should be able to make payments to a DWP appointee until it completes its appointee process?

Agree / Disagree / Don't Know

Q13. Please give reasons for your answer.

Challenge rights for overpayment liability

Background

While our aim is to design robust processes and procedures to avoid overpayments of Scottish social security assistance, we know that they will happen, and where they do, we will learn lessons quickly and will continuously improve.

The Scottish Government has always been clear that overpayments that have occurred as a result of error should not be recovered where the individual did not cause or contribute to that error, or if it was the sort of error a person could not reasonably be expected to have noticed. Where an overpayment has occurred, it may be recovered by making deductions from future payments. Every effort will be made to contact the individual to agree a payment plan.

The person will have the opportunity to discuss any potential hardship repayment may cause, complete an affordability calculation and discuss their personal circumstances to enable the appropriate payment plan to be agreed. Where the person unreasonably refuses to agree a repayment plan, then enforced deductions may be considered - a maximum deduction rate of £10 or 10% (whichever is higher) every 4 weeks would be applied.

The determination which authorises the making of those deductions will be open to challenge. Like all decisions that form part of a determination of entitlement, it will have re-determination and appeal rights.

Where a person has no continuing entitlement to assistance, Social Security Scotland can still seek recovery. If Social Security Scotland has made reasonable efforts to seek recovery of debts owed, but the client has not repaid, then they may pursue recovery through the ordinary civil court processes. The Government is subject to the same legal rules that apply to private citizens seeking to recover a debt, such as the requirement to make reasonable requests for repayment prior to raising any court action, and the requirement to prove its case with evidence.

Issues to consider

Currently, where Social Security Scotland comes to the view that an overpayment has occurred, it will make a new determination on a client's entitlement to the benefit in question. Although this new determination will bring re-determination (and appeal) rights if the client disagrees and wants to challenge the decision, those rights of challenge do not currently include the right to challenge the narrower, separate decision on whether or not the client is liable to repay the overpayment.

For example, the person held liable for the overpayment might accept that an overpayment has in fact occurred, but may believe the overpayment was neither their fault nor an error that a person could have reasonably been expected to notice. Clients would be able to defend any court proceedings which may be raised by Social Security Scotland to recover any outstanding sums, but currently they cannot directly appeal the decision on their liability to the Tribunal. Clients may request an informal review, but this does not carry formal appeal rights.

The Scottish Government considers that its person-centred approach to social security is best served by creating a right of challenge against a finding of liability for an overpayment which avoids the delay and expense of potentially lengthy and stressful court proceedings for clients.

We would wish to consider where and by whom that challenge should be heard – for example, whether Social Security Scotland should first look at its decision again when a challenge is raised, or whether that challenge should go straight to a judge in the Social Security Chamber of the First-Tier Tribunal for Scotland.

Q14. Do you agree or disagree that the Scottish Government should introduce rights of challenge against Social Security Scotland's decision that someone is liable to repay an overpayment?

Agree / Disagree / Don't know

Q15. Please give reasons for your answer.

Q16. Please provide your views on the most appropriate way to hear challenges against Social Security's decisions that someone is liable to repay an overpayment, bearing in mind that the aim is to avoid clients having to go to court.

Delivering Value for Money

One of the social security principles is '*the Scottish social security system is to be efficient and deliver value for money*'. During the passage of the 2018 Act, the Scottish Government noted concerns that this principle could be seen to undermine the other six. The needs of those who require assistance remains and will always be the Scottish Government's first and most important consideration but Ministers also have a duty to deliver value for money in keeping with the [Public Finance Manual](#).

Achieving efficiency and value for money also reflects the need to ensure that every penny of public money achieves maximum value for those who should benefit most from the system – the people who rely on social security.

As the other principles and the Scottish Government's wider approach make clear, this principle is firmly not, and never will be, about using public finances as an ideological excuse to breach or undermine people's rights.

This principle is echoed in the commitment contained in Social Security Scotland's Charter, which was co-designed with people with lived experience of the welfare system, requiring Social Security Scotland's resources to be allocated both fairly and efficiently.

Each of the proposals under this theme are therefore aimed at ensuring that the maximum value is achieved when delivering this crucial public service in Scotland.

Compensation Recovery

Background

A person who has been affected by an accident, injury or disease may be entitled to social security benefits as a result. If it was the fault of a third party then the person may also be entitled to compensation from that third party.

Compensation of this sort is usually paid by insurers on behalf of the party at fault after a settlement is agreed between the parties or is enforced through the courts.

Under UK legislation, before any compensation payment is made, a compensator (usually an insurance company) is legally obliged under the [Social Security \(Recovery of Benefits\) Act 1997](#) to request a Certificate from the Department for Work and Pensions (DWP).

That Certificate states the amount of any recoverable benefit that must be repaid to the DWP by the compensator. The recoverable benefits are listed in the 1997 Act. In the context of devolved social security, compensation recovery is most relevant to disability assistance and to Industrial Injuries Disablement Benefit, which will be replaced by a Scottish equivalent as part of the devolution of social security.

The policy intent behind the existing UK scheme is that nobody should be compensated twice for the same injury or disease – social security benefits should meet the person’s needs while a settlement is being reached but they will be recovered if and once a settlement is agreed.

Example

A person is injured in a bus accident which is found to have been caused by the bus company. As a result of the injuries the person sustained they become eligible for Personal Independence Payment (PIP). The insurer of the bus company must pay back to the Department for Work and Pensions the amount of PIP paid to that person (up to the value of the total compensation to be paid) from the day after the accident until either the date that person’s claim is settled, or 5 years from the day after the accident – whichever date is earliest.

Issues to consider

A power to recover Scottish assistance from awards of compensation is consistent with the responsibilities in the Scottish Public Finance Manual, and with the social security principles. The Scottish Government’s view is that a third party’s legal obligation to fully compensate another person who they have harmed should not be subsidised by the social security system. Scottish Ministers’ intention is to recover Scottish assistance from compensation to the same extent as DWP recovers.

The Scottish Government will consider further consultation on this topic in future, taking detailed technical and administrative processes into account with key stakeholders, prior to the drafting of any legislation which may be required.

Q17. Do you agree or disagree in principle that the Scottish Government should undertake recovery of Scottish social security assistance from compensation paid as a result of injury or disease for which a third party is liable?

Agree / Disagree / Don’t know

Q18. Please give reasons for your answer.

Alternatives to prosecution for low-value fraud

Background

The Scottish Government considers social security an investment in the people of Scotland, as stated plainly in the social security principles. In order to ensure that the right people are paid the right amount at the right time, we must ensure that appropriate action is taken to prevent fraud from entering the system.

In those cases where it does enter the system, it is vitally important that the necessary tools are in place to detect it and respond efficiently and proportionately. Chapter 6 of the 2018 Act sets out fraud offences: obtaining assistance by deceit, failing to notify a change of circumstances and causing a failure to notify a change of circumstances.

We have been clear that we will not seek to criminalise those who make genuine errors, and where someone fails to report a change of circumstances an offence will only be committed if a person does not have a reasonable excuse.

All investigations are undertaken with a presumption of innocence and individuals will always have an opportunity to state their case and offer their view of events.

Social Security Scotland is responsible for investigations into allegations or suspicions of fraud. The [Social Security Assistance \(Investigation of Offences \(Scotland\) Regulations 2020](#) set out the investigative powers of Social Security Scotland and authorisations required to use them, as well as the potential penalties for failing to provide information when asked. These regulations were subject to a public consultation and are underpinned by a published Code of Practice.

Issues to consider

Currently, in cases where Social Security Scotland considers that there is enough evidence to suggest that a fraud offence under the 2018 Act has taken place, a referral can be made to the Crown Office and Procurator Fiscal Service (COPFS).

In Scotland the decision on whether to institute criminal proceedings for fraud rests solely with COPFS. When deciding on the appropriate action e.g. prosecution or a non-court disposal such as a Procurator Fiscal Fixed Penalty (often referred to as a Fiscal fine), a number of factors are taken into account, including the value of the fraud in question and other aggravating factors.

Instead of referring a case for prosecution, the DWP has the option of issuing administrative penalties of up to 50 per cent of the value of the fraudulently obtained overpayment, up to a maximum of £5,000.

Scottish Ministers currently have no power to issue administrative penalties independent of those exercisable by COPFS.

As a result, it is possible cases where small sums of money have been attained illegally could be referred for prosecution, when some other, lesser form of action may have been more appropriate and have less impact on individuals.

Q19. Do you agree or disagree that Social Security Scotland should have available an alternative to prosecution where small sums of money have been obtained illegally?

Agree / Disagree / Don't know

Q20. Please give reasons for your answer.

Q21. If you agree, please describe what alternatives to prosecution you consider might be appropriate where small sums of money have been obtained illegally?

Overpayment liability where someone acts on behalf of a client

Background

In some circumstances a client will need someone else to act for them in connection with their award of assistance. The relationship between someone who cannot act for themselves and the person acting for them is based on trust. Whether they are judicially or administratively appointed, they will usually take decisions that will benefit the person they are acting for, and not themselves.

However, just like anyone else, they may make honest mistakes or bad judgements when carrying out their duties and some will encounter conflicts of interest.

For example, a failure to report a change of circumstances (such as hospitalisation) quickly might result in an overpayment. In the vast majority of cases, by the time it is discovered the overpaid funds will have made their way to the client, either directly, or in the form of goods and services from which they have benefited.

Where the person acting for them has acted reasonably, in good faith, and in accordance with the limit of their powers, the Scottish Government considers it unfair to hold them personally liable if they did not benefit from the payment themselves.

The 2018 Act currently specifies that a person who is entitled to assistance has a statutory liability to repay any overpayment made in error, except where they did not cause or contribute to that error, or if it was the sort of error a person could not reasonably be expected to have noticed. There are various options open to individuals to make this repayment, including through deductions from future entitlement to ongoing benefit, and it can be enforced through litigation in civil courts.

Where someone else applies for, manages and receives payments on a person's behalf, it will usually be them who has either been at fault, or who would have been in a position to notice the error.

The way in which the 2018 Act currently works means that only the person entitled to assistance has a statutory liability to repay any overpayment. Others who act on a client's behalf agree to be responsible for repaying overpayments when they agree to receive payments on the client's behalf.

The only way to enforce recovery of the overpayment in these situations, where the person acting on the client's behalf has also unreasonably refused to agree a repayment plan, would be by court action against that third party.

Issues to consider

The Scottish Government is considering how to ensure that overpayments can be recovered from the recipient of the payment in whatever circumstances it may arise. We do not think it is fair to seek recovery from vulnerable clients where due to the bad faith of another person they saw no benefit from those payments. However, nor do we consider that people should be deterred from volunteering to act on behalf of a friend or family member by a risk to their personal finances, so some flexibility is required.

We therefore propose to allow for liability to be placed on both the individual with entitlement and/or the person who was acting for them when the overpayment happened. The policy intent of this proposal is that in all cases, whether the client has someone acting for them or not, Social Security Scotland should usually seek repayment from the person who actually benefited from the overpayment.

Where the client has benefited, then they should repay, with the arrangements normally being agreed with the person acting for them, including through deductions from ongoing payments.

However, where the third party has acted deceitfully, for example misrepresenting a client's circumstances to obtain an overpayment which they then kept for themselves, we consider that third party should be liable. We anticipate this would only occur in minority of complex cases where financial abuse was uncovered either from the outset or in the course of enforcement proceedings.

The Scottish Government's view is that the same protections which currently exist for clients should also apply to these sorts of third parties. This would mean that the third party would not be liable where they did not cause or contribute to that error, or if it was the sort of error that a person could not reasonably be expected to have noticed. Additionally, where a payment is to be recovered, every effort would be made to agree a mutually acceptable repayment plan with the third party in question.

Q22. Do you agree or disagree that third parties, such as appointees, should be included within the scope of statutory liability for overpayments in the way described above?

Agree / Disagree / Don't know

Q23. Please give reasons for your answer.

Independent Advice and Scrutiny of Social Security

Background

The Scottish Government's collaborative approach to social security goes beyond the involvement of people with lived experience of the system, drawing on specialist knowledge and advice from academics and other experts in social security to make sure that the new public service meets its full potential.

In addition to the thousands of people who have taken part in experience panels, and the numerous steering and reference groups which have contributed to policy development, both the Scottish Commission on Social Security (SCoSS) and the Disability and Carers Benefit Expert Advisory Group (DACBEAG) have each played vital roles in the development of the new Scottish system of social security.

SCoSS is an independent, advisory non-departmental public body established by the Social Security (Scotland) Act 2018 ('the 2018 Act'). It provides expert advice to Scottish Ministers and the Scottish Parliament on devolved social security matters. The 2018 Act allows for up to five paid commissioners to sit on the SCoSS board.

Board members, including the Chair, are paid non-executive appointments made by the Scottish Ministers in line with the [Code of Practice for Ministerial Public Appointments in Scotland](#). The Chair is accountable to the Scottish Ministers and the Scottish Parliament. The current SCoSS members were appointed for periods of three or four years. SCoSS is supported by a small secretariat employed by the Scottish Government.

SCoSS reviews certain types of social security regulations, and provides the Government and the Scottish Parliament with scrutiny reports on each piece of legislation it reviews. SCoSS is also obliged by the 2018 Act to report to the Scottish Parliament 'from time to time' on the extent to which the Scottish Government is meeting the commitments set out in Our Charter, with recommendations for improvement where it feels those are necessary.

[A framework document](#) currently sets out the broad framework within which SCoSS operates and defines key roles and responsibilities underpinning the relationship with the Scottish Government. The Framework document sets out that it should be reviewed every 2-3 years. The Scottish Government and SCoSS have agreed that a review should proceed this summer, which will cover the remit and organisation of SCoSS.

DACBEAG was established in April 2017 and provides independent advice and recommendations to Scottish Ministers, both by request and proactively, on policy and practice options being developed on disability and carers benefits. This group's advisory role is different to SCoSS' statutory scrutiny function. DACBEAG's input is used in policy development, and is [published online](#) where appropriate.

Unlike SCoSS, DACBEAG has no statutory basis. Members are appointed by Ministers in agreement with the Chair based on their individual expertise in social security and related topics and do not undergo a formal public appointments process. The Scottish Government provides DACBEAG with support staff to carry out its role.

DACBEAG has now reached the end of its initial agreed term, which ran to the end of the 2021/22 Parliamentary year. Over its term it has provided hundreds of recommendations to Ministers on a broad range of diverse topics.

Issues to consider

Independent advice and scrutiny has been and will continue to be crucial in developing Scottish social security policy. However, there is a limited pool of independent experts and organisations with the necessary capacity, knowledge and time to offer external scrutiny and policy advice. In addition, providing sufficiently well-resourced and capable secretariat teams to support independent input has at times been challenging. The Scottish Government want to ensure that we make the best of the range of expertise and to ensure it is organised and supported as efficiently as possible for future requirements beyond the safe and secure devolution of the current devolved assistance.

Looking ahead, the Scottish Government has committed to a review of Adult Disability Payment commencing in summer 2023 a year after the benefit is launched nationally in August 2022. This independent review will be a significant undertaking and decisions are still to be taken about how it will be conducted. It will be important that the approach is informed by the outcomes of this consultation on the organisation more generally of independent advice and scrutiny.

In addition we will shortly be developing policy options for Employment Injury Assistance to replace Industrial Injuries Disablement Benefit (IIDB). The Industrial Injuries Advisory Council (IIAC) currently scrutinises IIDB regulations and provides independent advice to the UK Government on the addition of new diseases to the list of prescribed diseases and occupations they should be prescribed for. As part of Employment Injury Assistance policy development consideration needs to be given to how such advisory functions will be undertaken in Scotland in the future.

Against the background of these challenges, the SCoSS review and the end of DACBEAG's initial term, it is timely to consider how independent advice and scrutiny is best organised in the future. It may be possible to combine all of these functions in an independent body to make the best use of independent expertise and secretariat resources. There may be arguments for organising these functions differently.

The Scottish Government is therefore seeking views on how independent social security advice and scrutiny could and should operate in future, including to identify any changes that would require legislation, to ensure that the organisation of these functions remains fit for purpose into the future.

Q24. To what extent do you think the current arrangements for the provision of independent scrutiny and advice work effectively?

Fully / Partially / Not at all / Don't know

Q25. Please give reasons for your answer.

Q26. If the current arrangements were changed, would it be right to:

- (a) maintain separation between independent scrutiny and advice
- (b) combine these functions to maximise the effective use of independent expertise and secretariat resources
- (c) take a completely different approach.

Q27. Please give reasons for your answer.

Q28. There are different options for organising independent advice and scrutiny e.g. formal arrangements in the form of a statutory body like a non-departmental public body and paid board members, or informal arrangements at Ministerial invitation with members participating on a voluntary basis.

Please describe your views on how independent advice and scrutiny should be organised in the future.

Q29. Do you agree or disagree that the public body or bodies providing the Scottish Government with independent scrutiny and advice of Scottish Social Security should also provide advice in the future on Employment Injury Assistance?

Agree / Disagree / Don't know

Q30. Please give reasons for your answer.

Coronavirus (COVID-19) Measures

Background

In 2020, at the height of the global coronavirus (COVID-19) pandemic, some temporary changes were made to the way that essential public services, such as social security, operated. In addition, the Scottish Government considered that further support and flexibility for those using public services was necessary to reflect restrictions at that time, in both guidance and legislation, on the way people can live and work.

Sections 52A and 52B of the 2018 Act were amended into the 2018 Act by the [Coronavirus \(Scotland\) Act 2020](#). The 2020 Act made a range of provisions designed to ensure that business and public services could continue to operate effectively during a period where controls on movements had been imposed, and when pressures on public services were acute due to increased absence rates.

Section 52A means that a request for a re-determination must be considered valid beyond the maximum prescribed period of one year where the reason for the lateness was due to COVID-19. Otherwise, the 2018 Act only allows late requests for a re-determination within one year of the day when the client is informed about the determination, where there is a good reason.

Section 52A also has the effect that an appeal may be brought beyond the maximum prescribed period of one year where the Tribunal gives permission, on the basis that they are satisfied that the good reason for the application not having been made sooner is related to COVID-19.

In all other instances, the 2018 Act provides that an appeal request cannot be brought if it is made more than one year after the day when the client is informed about the determination or re-determination that is being appealed.

Section 52B then makes provision in relation to applications for assistance. Where eligibility for assistance depends on an application being made by a particular time, section 52B has the effect that a late application can be treated as made within that time, where the reason for the delay is related to COVID-19. For example, the legislation for Adult Disability Payment prescribes an initial 8 weeks for an application to be completed. The effect of section 52B is that an application for Adult Disability Payment made outwith the 8 week period could be treated as made within the initial 8 weeks, where the delay was due to a reason related to COVID-19.

Some legislation already allows an application may be treated as made 'on time' (for example, in relation to Adult Disability Payment, within 8 weeks of starting the application) if there is good reason for the delay. Section 52B has the effect of making clear that COVID-19 can be a good reason for an application being made late. This does not prevent other reasons being 'good reasons', but these are not specified. There is no definitive list of good reasons.

Other forms of assistance, such as the Best Start Grants, have no flexibility for late applications other than the COVID-related reason in Section 52B of the 2018 Act.

Issues to consider

We cannot remove all of the uncertainty about the future caused by this virus, but there have been extraordinary advances in science and technology over the past two years that are enabling a more sustainable response to the virus; and therefore a return to greater normality that we all want to see.

Thanks to the progress in vaccination and treatments, we intend to rely much less on legal restrictions going forwards and much more on people and organisations taking basic, sensible steps to reduce the risk of harm from COVID-19.

As a result, there is a question of whether these particular exceptions remain necessary to address the effects of COVID-19, or whether timescales should return to their original lengths. There is also the question of whether or not the ability to apply late where there is a good reason should apply for reasons other than COVID-19.

Q31. Do you agree or disagree that requests for a re-determination should no longer be able to be treated as valid where they are made more than a year late and the reason for that delay is COVID-19?

Agree / Disagree / Don't know

Q32. Please give reasons for your answer.

Q33. Do you agree or disagree that applications for an appeal should no longer be able to be treated as valid where they are made more than a year late and the reason for that delay is related to COVID-19?

Agree / Disagree / Don't know

Q34. Please give reasons for your answer.

Q35. Do you agree or disagree that applications for assistance to Social Security Scotland should no longer be able to be treated as made on time where they are made late and the reason for that delay is related to COVID-19?

Agree / Disagree / Don't know

Q36. Please give reasons for your answer.

Q37. Do you agree or disagree that the ability to apply late, where deadlines for making applications for assistance apply, should be extended to reasons other than COVID-19?

Agree / Disagree / Don't know

Q38. Please give reasons for your answer.

Impact assessments

An Impact Assessment is an evidence-based process used by the Scottish Government during the development of proposals to consider the possible effects and outcomes on people, businesses and communities. We undertake a range of Impact Assessments to allow us to consider the impacts our proposals will have on different groups of people, different communities and different businesses.

The Scottish Government created the [National Performance Framework](#) to explain our aims for Scotland, the values that guide our approach and the national outcomes we are committed to achieving. Undertaking impact assessments helps us to understand if our proposals align with our national outcomes. We can address any unintended consequences at an early stage and develop our proposals appropriately to mitigate any potential negative impacts.

In our work to develop policy for continuously improving Scotland's social security system we have considered how the decisions we make could affect different people and groups differently – using research and evidence we already have, and continuing to listen to clients and organisations who support them to find out more.

It is important that the social security system continues to develop, adapt and improve to continue to support those who require assistance. We also want to do what we can to improve equality through any changes and avoid any negative impacts on any people, groups, communities or businesses.

We would therefore like to use this consultation to take your views on any possible impacts the proposals may have in a number of areas that we may not have considered to date. A summary of what we have learned so far is provided below.

Equality Impact Assessment

The Scottish Government uses Equality Impact Assessments to help consider how a proposal could affect different groups differently when it is being developed, as well as thinking about how any proposed changes could be used to improve equality. In developing the proposals we have set out in this document we looked at equality information to identify where changes could affect some groups more than others, either positively or negatively, and where there are opportunities to make changes which would improve equality.

We paid particular attention to groups of people with protected characteristics as identified in the [Equality Act 2010](#). The protected characteristics covered are age, disability, gender reassignment, pregnancy or maternity, race, sex, sexual orientation and religion and belief.

The impacts that we have identified so far for each protected characteristic are:

Age

Social Security Scotland client diversity and equalities analysis to May 2021 shows that 93% of clients were between the ages of 16 and 44¹.

This high proportion of younger people does not reflect the population of Scotland as a whole, but is probably due to the type of support provided by Social Security Scotland to that date.

The majority of applications were for Best Start Grant and Best Start Foods or Scottish Child Payment, and applicants for these benefits are likely to be younger people with dependent children under 6 years old. As more types of assistance, such as Adult Disability Payment, are rolled out by Social Security Scotland this distribution of age is likely to change.

The proposal to allow people to retain their DWP appointee for a limited time in the Scottish system would have a positive impact on the age characteristic. The increased prevalence of dementia in older people means that they are more likely to require an appointee than other people. Allowing these older people to retain their DWP appointee for a limited time would speed up the processing of their application. There are however risks that where someone is not an adult with incapacity, but has a DWP appointee in place, then the DWP appointee could have some control over the client's benefits for a short period and receive their money.

Disability

The proportion of Social Security Scotland applicants in the period to May 2021 who self-identified as having a physical or mental health condition or illness lasting or expected to last 12 months or more was 17%².

Comparable nationwide data does not exist for Scotland as a whole but 31% of adults reported that they lived with a limiting long-term condition in August/September 2020³. This discrepancy could be in part due to the types of benefits administered by Social Security Scotland at this point in time.

Adult Disability Payment will be rolled out nationally across Scotland in Autumn 2022 and as such it is likely that there will be an increase in the proportion of people who have a disability making an application to Social Security Scotland for assistance. We are aware that recovering assistance paid from compensation awards is likely to have a disproportionate impact on people who have a disability or serious injury.

People who have been injured in an accident can currently apply for disability assistance, whether devolved or reserved, or Industrial Injuries Disablement Benefit (IIDB). If a compensation settlement is reached for this accident then the proposal in this consultation is that the amount of any recoverable benefit will be repaid to Social Security Scotland by the compensator (usually an insurance company).

We do not foresee a negative impact of this proposal on people who have a disability as there is an existing system which already operates in the UK as a whole.

We know that people who are disabled and have children are more likely to be in poverty⁴ and therefore more likely to be affected by any changes to Scottish Child Payment. If we have more flexibility over the qualification criteria for Scottish Child Payment we could be more responsive to client and stakeholder feedback.

The proposal to retain DWP appointees for a limited time is likely to have a positive impact on people with a disability who already have a DWP appointee in place by speeding up the initial application process. The benefit of that positive impact is being considered against the risk of an unsuitable appointee receiving payment and controlling someone's award for a short period.

We recognise that the proposal to allow a new determination to be made after an appeal has been lodged could have a positive impact on people with a disability. DWP data shows that for initial decisions following a PIP assessment during April 2013 to September 2021 15% of appeals lodged saw DWP change the decision in the customer's favour before the appeal was heard at tribunal⁵. This proposal could allow errors to be rectified more quickly and, if the appeal stopped, this could avoid unnecessary appeals proceeding to the Tribunal. This could reduce stress and anxiety for clients by removing the need to attend a Tribunal hearing.

We do not expect the proposals about overpayment liability to have any particular impact on people with a disability. A client's disability will not be a factor in whether they are found liable for an overpayment. When making a decision on overpayment liability, Social Security Scotland will consider whether the client could be reasonably expected to have noticed the error. The changes proposed in this consultation paper would legally allow liability to be placed on appointees or parents/guardians of children who make and administer applications on their behalf.

Sex

The latest mid-year estimates for Scotland published by National Records of Scotland show that 52% of the population aged 16 and over were female, and 48% were male⁶.

However, the proportion of Social Security Scotland applicants to May 2021 who self-identified as 'Man' (12%) were significantly lower than those who self-identified as 'Woman' (86%). A small proportion of applicants (less than 1%) self-identified 'In Another Way' and 3% of applicants selected 'prefer not to say'⁷.

The majority of equalities data for this period were from applicants for Scottish Child Payment or Best Start Grant or Best Start Foods, the high proportion of women applying for these benefits (89% and 90% respectively) had a disproportionate impact on the gender breakdown for clients as a whole.

In society, caring roles most typically fall to women⁸. In addition to the figures above for Scottish Child Payment and Best Start assistance, 69% of people who receive Carers Allowance Supplement are women⁹.

Currently of the twelve benefits that Social Security Scotland deliver, seven relate to dependent children and two relate to caring responsibilities. When Social Security Scotland begins to administer more forms of assistance nationally, such as Adult Disability Payment, the gender split of clients is likely to change.

However, it seems likely that there will continue to be a difference between the gender breakdown of Social Security Scotland clients and the gender breakdown of the Scottish population.

The suite of proposals in this consultation paper aimed at improved client experience are intended to have a positive impact across Social Security Scotland clients. These proposals are likely to have a disproportionately positive impact on women due to the gender breakdown of Social Security Scotland clients.

Gender Reassignment

There is no robust data relating to the proportion of people in Scotland to whom the gender reassignment protected characteristic applies. Less than one percent of the clients who responded to the Social Security Scotland Equalities Monitoring and Feedback form to May 2021 self-identified as transgender and 4% chose 'prefer not to say'¹⁰.

Across all of the proposals presented in this consultation paper we are not aware of any impacts to people to whom the gender reassignment protected characteristic applies.

Sexual Orientation

The latest results from Scottish Surveys Core Questions show that around 3% of adults in Scotland self-identified as 'Lesbian, Gay, Bisexual or Other' in 2019¹¹. We have so far not identified any impacts on people to whom the sexual orientation protected characteristic applies.

Race

The proportion of Social Security Scotland clients self-identifying as belonging to a minority ethnic group is higher, at 8%¹², than in the wider Scottish population at just under 5%¹³. This suggests that any cross-cutting changes made to the Social Security Scotland system such as those described under the theme 'Improving Client Experience' in the consultation paper, will have a disproportionate impact on people to whom the race protected characteristic applies.

We also recognise that there are a higher proportion of children from a minority ethnic group in poverty, at 40% compared to 24% of all children¹⁴. As a result certain minority ethnic groups are more likely to be eligible for Scottish Child Payment and therefore more likely to be impacted by any changes made in future.

Religion or Belief

We are aware that when adults in relative poverty are broken down by religion, statistics show that poverty impacts some religious groups more than others: 49% of Muslims, 19% of Roman Catholics, 19% of other Christian groups, compared to 18% of all adults¹⁵.

These statistics are reflected in that the proportion of Social Security Scotland clients self-identifying as Muslim (5%)¹⁶ is higher than that of Scotland as a whole (2%)¹⁷. Given that some religious groups are more likely to be living in poverty, they are therefore more likely to apply to Social Security Scotland for one, some or all of the Five Family payments. As such these religious groups are more likely to be affected by any changes made to the Social Security Scotland system.

The suite of proposals described in this consultation paper aimed at improving client experience are intended to have a positive impact across all Social Security Scotland clients. There is likely to be a positive impact on the religious groups outlined above as a result of the proposals to improve client experience.

Pregnancy or Maternity

We know that people with the protected characteristic of pregnancy or maternity will be more likely to apply for Scottish Child Payment than other people as by definition it is assistance for people with children. Any changes made to the delivery of Scottish Child Payment will have a disproportionate impact on people with this protected characteristic.

We recognise that the proposal to retain DWP appointees for a short period could potentially speed up the application process for pregnant people applying for Best Start Grant, Best Start Foods or Scottish Child Payment. This would be a positive impact for this group of people. However this would mean that assistance could be paid where Social Security Scotland had not yet found the client to be incapable. The benefit of that positive impact is being considered against the risk of an unsuitable appointee receiving payment and controlling someone's award for a short period.

We do not expect the proposal about alternative options to prosecution in cases where there is evidence of low value fraudulent activity to have an impact on people with this protected characteristic. An individual's protected characteristics will not be a factor in whether an investigation proceeds rather it will depend on whether there is reasonable evidence that there is substance to an allegation. The values of dignity and respect are embedded within Social Security Scotland culture and all staff are required to undertake equality training to ensure all clients are treated with fairness and without discrimination.

We have so far not identified any specific impacts on groups who share protected characteristics brought by the remaining proposals about the independent advice and scrutiny of social security and COVID-19 measures.

Q39. Do you have any information you wish to share on the impact of the proposals on groups who share protected characteristics?

Please provide details, making reference to the specific proposal or proposals to which your comments relate.

Island Communities Impact Assessment

This impact assessment is about testing any new policy, strategy or service which is likely to have an effect on island communities which is significantly different from the effect on other communities.

We are aware that island stakeholders have emphasised the importance of policy makers understanding the island experience. Each island has its own specific considerations and constraints, and there are several factors which impact on island residents' daily lives compared to people who live on the Scottish mainland. For the majority of the proposals described in this consultation paper we have not identified any island-specific impacts or barriers.

There could be a positive impact for people who live in remote island communities as a result of the proposal to retain DWP appointees for a short period. The Social Security Scotland appointee process requires a visit from a Local Delivery officer. There is a network of Local Delivery officers covering the islands but as more assistance is rolled out and more clients make applications to Social Security Scotland, it could take longer for clients living in island locations to receive a visit due to their location. By retaining a DWP appointee to act, we may prevent undue delay which would positively impact people living in island communities.

Q40. Do you have any information you wish to share on the impact of the proposals on Island communities?

Please provide details, making reference to the specific proposal or proposals to which your comments relate.

Fairer Scotland Duty

This is about considering how the decisions we make about future policy for Social Security Scotland can help to reduce the challenges that people can face as a result of 'socio-economic disadvantage' – which can be things such as having a low income, not having access to basic goods or services, or having a background which gives them fewer advantages.

The proposals in this consultation paper are aimed at effecting the continuous improvement of the Social Security system in Scotland. Social Security Scotland do not gather equalities information about clients' socio-economic background. However we recognise that the types of assistance offered by Social Security Scotland to people with dependent children, people with caring responsibilities and people with disabilities means that clients are more likely to be impacted by socio-economic disadvantage than the general Scottish population.

Currently people over the age of 18 must be in receipt of a qualifying UK benefit in order to receive any of the Five Family Payments (Scottish Child Payment, Best Start Foods, Best Start Grant: Pregnancy and Baby Payment, Best Start Grant: Early Learning Payment, Best Start Grant: School Age Payment).

This indicates that clients who receive the Five Family Payments have a low income which is considered a socio-economic disadvantage. Similarly people must be receiving Carer's Allowance in order to be eligible for Carer's Allowance Supplement, indicating a low income.

Disability related benefits delivered by Social Security Scotland such as Child Disability Payment and Adult Disability Payment are not income based but we are aware that studies show households where a household member is disabled are more likely to be living in poverty than households where no-one is disabled. Relative poverty rates are higher at 23% in households where a household member is disabled than in households where no-one is disabled (17%).

The importance of disability related benefits for households where a household member is disabled is clear as when these benefits are not considered the poverty gap increases to 29% of households with a disabled household member compared to 16% of households where no-one is disabled¹⁸.

The proposal to retain DWP appointees for a time limited period prevents clients with DWP appointees being left without resources while Social Security Scotland processes to appoint an appointee are followed. Given the importance of disability assistance to the income of these households, it is therefore vital to maintain continuity of payments where possible.

If we do not retain DWP appointees for a short period then any possible gaps in clients' assistance will need to be managed, while Social Security Scotland processes are followed and appointees appointed. This would cause these clients and their households hardship which could be avoided by using DWP appointee for a time limited period. The benefit of the positive impact is being considered against the risk of an unsuitable appointee receiving payment and controlling someone's award for a short period.

The purpose of the Scottish Child Payment is to reduce child poverty. The proposal to have more flexibility over the qualification criteria of Scottish Child Payment may give us greater opportunity to reduce inequality caused by socio-economic disadvantage.

We know that the early years are key to improving long term outcomes. While future options and policy aims remain to be consulted upon or decided, if there was additional flexibility over the rules governing Scottish Child Payment then the Scottish Government would have greater control over design, delivery and eligibility criteria.

Q41. Do you have any information you wish to share on the impact of the proposals on reducing inequality caused by socio-economic disadvantage?

Please provide details, making reference to the specific proposal or proposals to which your comments relate.

Child Rights and Wellbeing Impact Assessment

The Scottish Government is committed to ensuring that children's rights, as determined by the [United Nations Convention on Rights of the Child](#), are recognised, respected and promoted.

A Child Rights and Wellbeing Impact Assessment helps ensure that our policies and measures protect and promote the wellbeing of children and young people. A child is defined as anyone under the age of 18 as per the United Nations Convention on the Rights of the Child.

We recognise that the proposals within this consultation paper will have impacts on children and young people, and those we have considered are set out below.

We expect the various proposals in this consultation paper will have a direct or indirect impact on the following articles of the United Nations Convention on the Rights of the Child: Article 3 (best interests of the child), Article 23 (rights of disabled children) and Article 26 (Social Security).

The proposal to address overpayment liability will have a positive impact on children's rights. For example, currently a child entitled to Child Disability Payment has a statutory liability to repay an overpayment under s63 of the Social Security (Scotland) Act 2018. The proposal will allow statutory liability to be placed on the parent/ guardian instead. Another potential impact on children's rights as a result of this proposal will be the impact of parents/ guardians having to repay debt, but there are robust measures in place to prevent hardship. Where debts are to be recovered, all household finances and circumstances are taken into account.

Any potential changes to fraud powers may impact upon young people between the ages of 16 and 18 because they may be the subject of an investigation, a witness or be acting in some other capacity such as an appointee or a support for another person under investigation. They could be investigated or prosecuted either in relation to their own application for benefit, or in relation to an application for another person on whose behalf they have been acting. This would only be expected to happen in exceptional circumstances.

There will be different impacts on different groups of young people due to age. There will be no direct impact on children under the age of 16 as only those over the age of 16 will be the subject of an investigation. As is currently the case in the UK reserved system, until the age of 16 a person will be represented by an adult who is responsible for all benefit related activities.

The proposal to have more flexibility in how Social Security Scotland delivers Scottish Child Payment does not in itself have a direct or indirect impact on children's rights. Having more flexibility over the delivery of Scottish Child Payment would give us the opportunity to explore ways to further increase the positive direct and indirect impacts on those under the age of 18.

Future options and proposals for Scottish Child Payment will have to be considered and consulted upon and the impact on children's rights will be closely monitored during this process. Further impact assessments will be completed as any future policies are developed.

The proposal to allow a new determination to be made after an appeal has been lodged where new evidence is provided or an official error identified, could potentially have a positive impact on children's rights. The proposal would mean that errors could be rectified more quickly, and if the appeal stopped, people would not have to wait for the Tribunal to make a decision. The early resolution of a dispute is in the child's best interests as it could offer greater financial certainty and remove stress.

We have not so far identified any direct or indirect impact on children's rights from the proposed policies on appointees; compensation recovery; re-determination rights; the independent advice and scrutiny of social security or COVID-19 measures.

The proposal to recover compensation intends to replicate the existing compensation recovery system, which already operates at UK level, for the recovery of assistance delivered by Social Security Scotland.

[Getting It Right For Every Child](#) (GIRFEC) is Scotland's national approach to improving the wellbeing of children and young people. It is based on children's rights and its principles reflect the United Nations Convention on the Rights of the Child (UNCRC).

GIRFEC promotes eight indicators that matter when talking about the wellbeing of children or young people. The relevant wellbeing indicators for the proposals are:

Healthy: The proposals described in this consultation paper aimed at improving client experience of the social security system in Scotland will have an indirect impact on the health and wellbeing of children and young people whose households are receiving assistance from Social Security Scotland.

Where processes are streamlined, rights-based and person-centred then this could impact on the wellbeing of all in the household by reducing stress and uncertainty about finances. Additional flexibility over the rules governing Scottish Child Payment would help ensure we could align it more closely with other forms of assistance, such as Best Start Grant and Best Start Foods. These forms of assistance are aimed at attaining high standards of physical and mental wellbeing through supporting children to have a healthy start during the crucial early years period.

Included: The proposal to have more flexibility over the qualification criteria for Scottish Child Payment may give the Scottish Government greater opportunity to help children and young people overcome inequalities caused by socio-economic disadvantage. By helping children to overcome barriers, this proposal could help children and young people to feel included and accepted in their community.

Q42. Do you have any information you wish to share on the impact of the proposals on children's rights and wellbeing?

Please provide details, making reference to the specific proposal or proposals to which your comments relate.

Business and Regulatory Impact Assessment

A Business and Regulatory Impact Assessment analyses the potential costs, benefits and risks of policy changes that may impact on the public, private or third sector. The aim is to use evidence to identify the proposal which best meets the objectives while keeping costs and burdens to a minimum.

We have considered the potential business and third sector impacts of creating a mechanism to recover any Social Security assistance paid to a person who then receives compensation for the same injury or disease.

We recognise that there is likely to be an impact on the private and third sector as a result of this proposal, particularly the insurance industry and law sector. This impact could include additional administration burdens and the greater risk of error.

As the options for a compensation recovery delivery mechanism are considered and developed we will pay close attention to the potential burdens, costs and benefits to these businesses. We aim to work with stakeholders across the insurance and legal sectors to better understand any potential impacts on their businesses. We will ensure that, in advance of future changes, we provide sufficient information in order to reduce any potential impacts.

We do not foresee the proposals having any impact on the legal aid fund.

Q43. Do you have any information you wish to share on the impact of the proposals on businesses or organisations in the public, private or third sector?

Please provide details, making reference to the specific proposal or proposals to which your comments relate.

Responding to this Consultation

We are inviting responses to this consultation by 27 October 2022.

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/scotlands-social-security-system>.

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 27 October 2022.

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

Social Security Policy Team
Scottish Government
4 Atlantic Quay
Glasgow
G2 8LU

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 socialsecurityci@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.

¹ [Social Security Scotland - Social Security Scotland client diversity and equalities analysis to May 2021](#)

² [Social Security Scotland - Social Security Scotland client diversity and equalities analysis to May 2021](#)

³ [Chapter 1: General Health, Long-Term Conditions and Caring - Scottish Health Survey – telephone survey – August/September 2020: main report - gov.scot \(www.gov.scot\)](#)

⁴ [Poverty & Income Inequality in Scotland: 2016-19 \(www.gov.scot\)](#)

⁵ [Personal Independence Payment statistics to April 2021 - GOV.UK \(www.gov.uk\)](#)

⁶ <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/mid-year-population-estimates/mid-2020>

⁷ [Social Security Scotland - Social Security Scotland client diversity and equalities analysis to May 2021](#)

⁸ [Scotland's Carers - gov.scot \(www.gov.scot\)](#)

⁹ [Social Security Scotland - Summary statistics for Carer's Allowance Supplement to October eligibility date 2021](#)

¹⁰ [Social Security Scotland - Social Security Scotland client diversity and equalities analysis to May 2021](#)

¹¹ [Scottish Surveys Core Questions 2019 - Supplementary Tables](#) (Last updated: January 2021)

¹² [Social Security Scotland - Social Security Scotland client diversity and equalities analysis to May 2021](#)

¹³ [Scottish Surveys Core Questions 2019 - Supplementary Tables](#) (Last updated: January 2021)

¹⁴ [Additional child poverty analysis 2020 - gov.scot \(www.gov.scot\)](#)

¹⁵ [Poverty & Income Inequality in Scotland: 2016-19 \(www.gov.scot\)](#)

¹⁶ [Social Security Scotland - Social Security Scotland client diversity and equalities analysis to May 2021](#)

¹⁷ [Scottish Surveys Core Questions 2019 - Supplementary Tables](#) (Last updated: January 2021)

¹⁸ [Poverty & Income Inequality in Scotland: 2016-19 \(www.gov.scot\)](#)



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