

Social Security Administration and Tribunals (Scotland) Bill 2020

Child Rights and Wellbeing Impact Assessment

May 2020

Social Security Administration and Tribunal Membership (Scotland) Bill:

Children's Rights and Wellbeing Impact Assessment (CRWIA)

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Executive Summary

The aim of this Child Rights and Wellbeing Impact Assessment (CRWIA) is to identify, research, analyse and record the anticipated impact of the Social Security Administration and Tribunal Membership (Scotland) Bill on children's human rights and wellbeing in Scotland. The overarching policy objectives of the Bill are :

- To allow for the appointment of a person to act on behalf of a child where there is no person with legal authority who is willing to so act;
 - To allow for the appointment of a person to act on behalf of an adult who does not lack capacity but due to difficult circumstances wishes for an appointee to act on their behalf.
 - To ensure Scottish Ministers do not disclose information about an individual's health where that would be likely to cause serious harm to the recipient's physical or mental health;
 - To create statutory fraud offences in relation to the types of top up assistance created under section 79 of the 2018 Act;
 - To enable the Scottish Ministers, by regulations, to transfer to the First-tier Tribunal for Scotland (the FTT for Scotland) some or all of the competence and jurisdiction of the sheriff courts in relation to the recovery of top up assistance created under section 79 of the 2018 Act;
 - To create powers to undertake fraud investigations in relation to top up assistance created under section 79 of the 2018 Act;
 - To modify the power to make regulations under schedule 5 of the 2018 Act, to widen the category of qualified persons whose clinical judgement, based on the appropriate guidance, will be accepted as confirmation that an individual is terminally ill for the purpose of establishing entitlement to Disability Assistance;
- and*

	<ul style="list-style-type: none"> • To enable other types of judges to be temporarily authorised to sit in the FTT and the Upper Tribunal.
<p>Background and evidence base</p>	<p>The policy background to the Bill and further information about the specific provisions are fully described in the Policy Memorandum published on the Scottish Parliament’s website. Paragraphs 91 to 101 of the Policy Memorandum contains an assessment of the Bill’s effect on human rights.</p> <p>The Scottish Government is creating a social security system to deliver devolved benefits that is rights-based and grounded in the principles of dignity, fairness and respect.</p> <p>In 2018 there were around 1.03 million children under the age of 18 in Scotland¹. As of August 2019, around 41,600 children under age 18 were in receipt of Disability Living Allowance for Children (DLAC Child). Of these, around 40,200 were under age 16². Our forecasts estimate that we could receive approximately 7,600 new applications for Child Disability Payment (CDP) in 2020/21.</p> <p>As of May 2018, approximately 4% of children under the age of 18 in Scotland were in receipt of DLA³. In 2019, 1,250 children (1%) within early learning and childcare registrations were either assessed or declared as disabled⁴ and 14% of those registered had additional support needs⁵.</p> <p>The Scottish Health Survey 2018⁶ found that around 12% of young people in Scotland (under the age of 16) had a limiting long-term physical or mental health condition⁷.</p> <p>As of August 2019, around 20 of the children and young people receiving DLA Child in Scotland were classified as terminally ill. The number of terminally ill children in Scotland receiving DLA Child has remained stable over the past few years (between 20-30 children) however this may increase with the new definition of terminal illness.</p>

¹ National Records of Scotland (2019) [Mid-2018 population estimates Scotland](#)

² Stat Xplore, accessed 16th March 2020, [Stat Xplore](#)

³ Stat Xplore, accessed 16th March 2020, [Stat Xplore](#) and NRS (2019) [Mid-2018 population estimates Scotland](#): Child DLA May-18 caseload estimate, Scotland, under 18s: 38542. 30 June 2018 under 18 population estimate: 1,028,798

⁴ Scottish Government (2019) [Summary Statistics for schools in Scotland no. 10: 2019 edition – Additional early learning and childcare tables 2019](#), Table 5

⁵ Autism spectrum, English as an additional language, family issues, including additional support for bereavement, and young carers, speech and communication issues, learning difficulties and dyslexia, looked after, physical or motor impairment, or physical or mental health problems, social, emotional and behavioural difficulties, visual or hearing impairment or are deafblind.

⁶ Scottish Government (2018) [Long-Term Conditions Statistics, The Scottish Health Survey 2018: supplementary tables](#)

⁷ Scottish Government (2018) [Long-Term Conditions Statistics, The Scottish Health Survey 2018: supplementary tables](#)

Scope of the CRWIA	The CRWIA considers potential impact of the Social Security Administration and Tribunal Membership (Scotland) Bill on the realisation of children’s rights under the United Nations Convention on the Rights of the Child ⁸ , and assesses how the Bill measures against the wellbeing indicators listed in section 96(2) of the Children and Young People (Scotland) Act 2014 ⁹ .
Children and young people’s views and experiences	<p>Section 3 of the Bill puts in place as a default position that the statutory offences which currently exist in the 2018 Act and which apply to social security assistance given under Part 2 of the Act now apply to social security assistance that is given under regulations made under section 79 of the 2018 Act (power to provide top up of reserved benefits)(“top-up assistance”). These statutory offences were subject to full public consultation as the 2018 Act was being developed.</p> <p>A consequential effect of the Bill modifying the statutory offences in sections 71 - 73 is that the investigative powers exercisable under the Social Security Assistance (Investigation of Offences) (Scotland) Regulations 2020, which apply to the investigation of offences under section 71 – 73 of the 2018 Act, will also be exercisable in relation to the investigation of these new offences, allowing individuals authorised by these regulations to investigate suspected instances of top-up assistance fraud.</p> <p>The full public consultation that informed the development of these regulations and the statutory Code of Practice on investigations took into account the views of a wide range of stakeholders. Of the 12 organisations that responded to the consultation, 4 were received from stakeholder groups relating to children / young people, equalities and human rights, disability and long term conditions, and carers.</p>
Key Findings	<p>What aspects of the policy/measure will affect children and young people up to the age of 18?</p> <p>The Articles of the UNCRC and the wellbeing indicators under the Children and Young People (Scotland) Act 2014 apply to all children and young people up to the age of 18 including non-citizen and undocumented children and young people.</p> <p>As the provisions within the Social Security Administration and Tribunal Membership (Scotland) Bill regulations cover a range of areas, not all provisions relate to each United Nations Convention on the Rights of the Child (UNCRC) article, but cumulatively the Scottish Government has assessed that the Bill will impact on the following UNCRC articles:</p>

⁸ [United Nations Convention on the Rights of the Child](#)

⁹ [Section 96\(2\) of the Children and Young People \(Scotland\) Act 2014](#)

Article 2 – Non-discrimination
Article 3 – Best interests of the child
Article 4 – Implementation of the Convention
Article 5 – Parental guidance and a child’s evolving capacities
Article 12 – Respect for the views of the child
Article 16 – Right to privacy
Article 23 – Children with a disability
Article 26 – Social Security
Article 27 – Adequate standard of living
Article 40 – Juvenile Justice

The key findings section explains what parts of the Bill impact on each particular right, and explains whether the effect on the realisation of this right is positive, neutral or negative. The key finding section also details how each provision is considered to measure up against the wellbeing indicators listed in section 96(2) of the Children and Young People (Scotland) Act 2014.

Appointment of person to act on behalf of a child (under the age of 16)

The 2018 Act provides that Scottish Ministers may appoint a person to act on behalf of an individual in connection with the determination of the individual’s entitlement to assistance under section 24 of the Act, and to receive such assistance on the individual’s behalf. However, Scottish Ministers may only appoint someone in a narrow set of circumstances – none of which allow for an individual to be appointed on behalf of a child. Most parents and some other persons will already have the parental right to act as a child’s legal representative and so do not need to be formally appointed. However other persons who may be responsible for the child’s care, but who do not have parental rights and responsibilities or other legal authority, will not be able to act on the child’s behalf in relation to the determination of their entitlement to social security assistance without a mechanism for being formally appointed to do so.

The provision on appointment of a person to act on behalf of a child ensures that children living in complex family situations are not prevented in a practical sense from receiving CDP, or any other social security assistance that they are entitled to, just because they are being cared for by someone without the parental right to act as the child’s legal representative, such as an informal kinship carer.

When developing this provision, the Scottish Ministers recognised that any power conferred on the Scottish Ministers to make and terminate an appointee will determine who can manage the child’s entitlement to social security assistance. This is why the Scottish Ministers can only exercise the power to make or terminate an

appointment if they have first had regard, in so far as practicable, to the views of children and any persons with parental rights and responsibilities.

This provision is considered to have a positive impact on the realisation of Article 3 of the UNCRC (Best interests of the child). The Scottish Ministers can only appoint a person to act on behalf of the child, where there is no person who has authority to act on behalf of the child, resides with, and has care of, the child and is willing and, practicably, able to act on the child's behalf. This legal test has been framed in order to find the necessary balance between being able to appoint an appointee where that is in the child's best interests, and also respecting the rights of the child's parent and anyone else with parental rights and responsibilities. The duty on the Scottish Minister to take account, in so far as practicable, of the views of the child and persons with parental rights and responsibilities acts as a safeguard against an appointment disproportionately interfering with the rights of the child and persons with parental rights and responsibilities and / or the risk of the appointment not being in the child's best interests. The child's best interests is therefore a primary consideration for the Scottish Ministers when deciding whether to appoint an appointee.

Given the importance this provision attaches to the views of the child and persons with parental rights and responsibilities, this provision is considered to have a positive impact on the realisation of article 5 (parental guidance and a child's evolving capacities) and article 12 (respect for the views of the child). Appointing a person to act on behalf of a child involves the Scottish Ministers sharing sensitive personal information about the child with the appointee. The safeguards incorporated into this section: the fact that appointments can only be made in a narrowly defined set of circumstances after having regards to the views of persons with parental rights and responsibilities and the child ensures that this interference in the child's private life is only permitted where it is necessary for the child to receive the assistance they are entitled to. This is consistent with the child's right to privacy under Article 16, and is considered to be a positive impact on that right.

Although an appointee can act in connection with the determination of any kind of assistance under the 2018 Act, the impetus for developing this appointee mechanism was and is the Scottish Ministers' plans to administer CDP, in relation to which children with a disability will be directly entitled to assistance. In so far as the appointee mechanism ensures that children living in complex family situations are not hindered from accessing their entitlement to CDP, the provision can be said to positively impact on a number of UNCRC rights. Namely Article 23 (the right of disabled children to receive assistance and to live a full and

decent life), Article 26 (the right of children to social security) and Article 27 (the right of the child to an adequate standard of living) and Article 2 (freedom from discrimination in relation to the enjoyment of the rights under the UNCRC).

With regard to section 96(2) of the Children and Young People (Scotland) Act 2014, this provision is considered to measure positively against the following wellbeing indicators:

- **nurtured** (having a nurturing place to live, in a family setting with additional help if needed or, where this is not possible, in a suitable care setting),
- **respected** (having the opportunity, along with carers, to be heard and involved in decisions which affect them), and
- **included** (having help to overcome social, educational, physical and economic inequalities and being accepted as part of the community in which they live and learn.)

The provision is considered to measure neutrally against the other wellbeing indicators:

- **safe** (protected from abuse, neglect and harm by others at home, at school and in the community),
- **healthy** (having the highest attainable standards of physical and mental health, access to suitable healthcare, and support in learning to make healthy and safe choices),
- **achieving** (being supported and guided in their learning and in the development of their skills, confidence and self-esteem at home, at school and in the community),
- **active** (having opportunities to take part in activities such as play, recreation and sport which contribute to healthy growth and development, both at home and in the community), and
- **responsible** (having opportunities and encouragement to play active and responsible roles in their schools and communities and, where necessary, having appropriate guidance and supervision and being involved in decisions that affect them).

Appointment of a person to act on behalf of an adult with legal capacity and determination of entitlement to assistance: non-disclosure of information

The provision in section 1 of the Bill relating to appointees for adults with capacity are considered to have an overwhelmingly positive impact on adults, including young people aged 16 and 17, who have capacity but who, because of difficult circumstances, may not be able to act for themselves or would find managing their claim for assistance to be a distressing experience.

Section 2 of the Bill (determination of entitlement to assistance: non-disclosure of information) is intended to address the needs of

adults, including people aged 16 and 17, in relation to whom a doctor or nurse has advised that the disclosure of information relating to their entitlement to assistance would be likely to cause serious harm to the individual's physical or mental health. In such circumstances, the Scottish Ministers' duties to inform individuals at various stages of their social security claim will not apply. The Scottish Ministers may then appoint an appointee to act on the individual's behalf and to receive this information in place of the individual - provided the individual with capacity consents to the appointment. An example of when a doctor or nurse would be expected to notify the Scottish Ministers that an individual is at risk of harm in this way is where an individual is entitled to assistance on account of terminal illness, and the fact that the individual is terminally ill has not been disclosed by medical professionals to the individual due to the likelihood of that information causing serious harm to the individual's physical or mental health.

Having an appointee mechanism for adults, including young people, with legal capacity is intended to improve access to social security for those young people that are entitled to it, but who, because of difficult circumstances, would either not manage to effectively exercise their rights under the 2018 Act or where doing so would not be conducive to that individual's wellbeing. The Scottish Ministers' power to appoint an appointee on behalf of an adult with legal capacity is contingent on the adult agreeing to it. The only other relevant considerations by the Scottish Ministers would be whether the exercise of the power to appoint is lawful and in the interests of the adult. The primacy this provision gives to the best interests' of the adult, including young people aged 16 and 17, is considered to make a positive impact on the realisation of Article 3 (best interests of the child). Section 2 is also considered to positively impact on the realisation of article 3 because it allows the best interests of a young person to be considered before a decision is made on whether to provide the young person with potentially harmful information relating to their social security entitlement. The fact that an appointment is contingent on an adult with legal capacity consenting to an appointment means that the provision is considered to positively impact on the realisation of Article 12 (respect for the views of the child) and Article 16 (respect for privacy) in so far as the provision applies to 16 and 17 year olds.

Although an appointee can act in connection with the determination of any kind of assistance under the 2018 Act, the impetus for developing this appointee mechanism was, and is, the Scottish Ministers' plans to administer Disability Assistance to people of all ages, including young people aged 16 and 17. In so far as the appointee mechanism ensures that disabled young people are not prevented in a practical sense from accessing the assistance that they are entitled to because of difficult

circumstances, the provision can be said to positively impact on a number of UNCRC rights. Namely Article 23 (the right of disabled children to receive assistance and to live a full and decent life), Article 26 (the right of children to social security) Article 27 (the right of the child to an adequate standard of living) and Article 2 (freedom from discrimination in relation to the enjoyment of the rights under the UNCRC).

With regard to section 96(2) of the Children and Young People (Scotland) Act 2014, these provisions are considered to score positively against the following wellbeing indicators:

- **safe** (protected from abuse, neglect and harm by others at home, at school and in the community),
- **healthy** (having the highest attainable standards of physical and mental health, access to suitable healthcare, and support in learning to make healthy and safe choices),
- **respected** (having the opportunity, along with carers, to be heard and involved in decisions which affect them), and
- **included** (having help to overcome social, educational, physical and economic inequalities and being accepted as part of the community in which they live and learn.)

The provision is considered to measure neutrally against the other wellbeing indicators:

- **achieving** (being supported and guided in their learning and in the development of their skills, confidence and self-esteem at home, at school and in the community),
- **nurtured**, (having a nurturing place to live, in a family setting with additional help if needed or, where this is not possible, in a suitable care setting),
- **active**, (having opportunities to take part in activities such as play, recreation and sport which contribute to healthy growth and development, both at home and in the community) and
- **responsible** (having opportunities and encouragement to play active and responsible roles in their schools and communities and, where necessary, having appropriate guidance and supervision and being involved in decisions that affect them).

Provisions in relation to the creation of statutory offences

Section 3 of the Bill puts in place as a default position that the statutory offences which currently exist in the 2018 Act and which apply to social security assistance given under Part 2 of the Act now apply to social security assistance that is given under regulations made under section 79 of the 2018 Act (power to

provide top up of reserved benefits)(“top-up assistance”). These are:

- trying to obtain assistance by deceit (through providing false or misleading information);
- failing to notify a relevant change of circumstances without a reasonable excuse; and
- causing another person to fail to notify a change of circumstances.

The provisions within the Bill in relation to statutory offences may indirectly impact families and consequently a child, if a parent, carer or guardian is found guilty of a statutory offence and any penalties are imposed. They may directly impact upon young people between the ages of 16-18. In so far as this provision directly impacts young people aged 16 and 17, this provision is considered to have an effect on the realisation of Article 40 of the UNCRC (juvenile justice).

The effect of this provision is simply to widen the type of social security assistance that the offences that currently exist in the 2018 Act apply to, without changing the legal safeguards that apply to the investigation and prosecution of these offense nor changing the criminal consequences that apply if convicted of these offences. This provision is therefore considered to have a neutral impact on the realisation of this article: that is to say that the measure brings no discernible lessening of or progress in children’s rights or their wellbeing.

With regard to section 96(2) of the Children and Young People (Scotland) Act 2014, the provision is considered to measure neutrally against all 8 indicators of wellbeing.

- **achieving** (being supported and guided in their learning and in the development of their skills, confidence and self-esteem at home, at school and in the community),
- **nurtured**, (having a nurturing place to live, in a family setting with additional help if needed or, where this is not possible, in a suitable care setting),
- **active**, (having opportunities to take part in activities such as play, recreation and sport which contribute to healthy growth and development, both at home and in the community),
- **responsible** (having opportunities and encouragement to play active and responsible roles in their schools and communities and, where necessary, having appropriate guidance and supervision and being involved in decisions that affect them),
- **safe** (protected from abuse, neglect and harm by others at home, at school and in the community),

- **healthy** (having the highest attainable standards of physical and mental health, access to suitable healthcare, and support in learning to make healthy and safe choices),
- **respected** (having the opportunity, along with carers, to be heard and involved in decisions which affect them), and
- **included** (having help to overcome social, educational, physical and economic inequalities and being accepted as part of the community in which they live and learn).

Investigations

A consequential effect of the Bill modifying the statutory offences in sections 71 - 73 is that the investigative powers exercisable under the Social Security Assistance (Investigation of Offences) (Scotland) Regulations 2020, which apply to the investigation of offences under section 71 – 73 of the 2018 Act, will also be exercisable in relation to the investigation of these new offences, allowing individuals authorised by these regulations to investigate suspected instances of top-up assistance fraud.

Section 3 of the Bill also gives the Scottish Ministers the option of creating different offences in regulations which may replace the new offences which stand as the default position. Under the Act as it stands, the power to make provision to investigate offences only applies to offences established by the Act itself rather than offences set out in regulations. Therefore section 5 of the Bill modifies this power so that if the Scottish Ministers do decide to create offences in regulations, the Scottish Ministers can also make provision for the investigation of these offences.

As identified in the CRWIA¹⁰ carried out for the development of the Social Security Assistance (Investigation of Offences) Regulations 2020, while an application for assistance for a child under 16 may be the subject of an investigation, until the age of 16 a child will be represented by an adult who is responsible for all application-related activities. In exceptional circumstances where a child under 16 needs to be interviewed, this should not take place without a parent or other responsible adult present. Authorised officers will be very clear about the rights of the accompanying person in terms of what they can and cannot do during an interview, which will also be set out in information which will be provided in advance of the interview.

A young person between the ages of 16-18 is responsible for their own entitlement to assistance unless they fall within the definition of an Adult with Incapacity or an adult with capacity who wishes to have an appointee. This means that, in cases of fraud investigation, the young person may be investigated or interviewed under caution. Where there are reasons to suspect that they may

¹⁰ https://www.legislation.gov.uk/sdsi/2020/9780111043462/pdfs/sdsiod_9780111043462_en.pdf

have committed an offence, they will always be given an opportunity to offer their account of the events and a reasonable explanation at an interview. Support that may be provided to an individual during an interview and complaints can be made if an individual feels that authorised officers have fallen below the standards expected.

The Bill's effect is to extend the type of assistance that can be investigated, but the Bill does not alter the investigative powers available to, or legal restraints placed on, investigative officers investigating under the Social Security Assistance (Investigation of Offences) (Scotland) Regulations 2020. Therefore, the provision is not considered to have any new impact on the realisation of rights under the UNCRC. This is consistent with the CRWIA carried out for the Social Security Assistance (Investigation of Offences) (Scotland) Regulations 2020¹¹

In so far as the provision allows for young people to be investigated on suspicion of committing an offence, the provision is considered to impact on the realisation of Article 40 of the UNCRC (juvenile justice). For the reasons mentioned, this impact is considered to be neutral, i.e. no discernible lessening of or progress in children's rights.

The provision is considered to have a neutral impact on all other wellbeing indicators listed in section 96(2) of the Children and Young People (Scotland) Act 2014.

Provisions in relation to top up Assistance: Assistance given in error/ First-tier Tribunal's jurisdiction

Section 68 of the 2018 Act allows the Scottish Ministers, by regulations, to transfer to the FTT 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. The current provisions in relation to the recovery of the value of assistance within the 2018 Act do not apply to any form of top up assistance provided under regulations made under section 79. The provisions in this Bill in relation to transferring jurisdiction to the FTT 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 will ensure that assistance provided under section 79 can be recovered where appropriate, and allow an individual in receipt of top-up assistance to appeal a decision by the Scottish Ministers to the FTT for Scotland.

While section 63 of the 2018 Act contains provisions relating to the liability for assistance given in error, a CRWIA was carried out

¹¹ https://www.legislation.gov.uk/sdsi/2020/9780111043462/pdfs/sdsiod_9780111043462_en.pdf

during the passage of the Social Security Scotland Bill¹². Ceasing payments or setting repayment levels is responsibility of the operational teams and section 65 of the Act ensures that the financial circumstances of debtors must be taken into consideration when seeking to recover assistance given in error.

The Scottish Government has been clear that no individual will be placed into hardship as a result of repayment. The provisions within the Bill will extend this to relate to assistance provided under section 79 of the 2018 Act. The Scottish Government is unaware of any direct or indirect impacts on children/young people as a result of these provisions and does not consider any of rights under the UNCRC to be affected.

This provision is considered to measure neutrally against all of the wellbeing indicators listed in section 96(2) of the Children and Young People (Scotland) Act 2014:

- **achieving** (being supported and guided in their learning and in the development of their skills, confidence and self-esteem at home, at school and in the community),
- **nurtured**, (having a nurturing place to live, in a family setting with additional help if needed or, where this is not possible, in a suitable care setting),
- **active**, (having opportunities to take part in activities such as play, recreation and sport which contribute to healthy growth and development, both at home and in the community),
- **responsible** (having opportunities and encouragement to play active and responsible roles in their schools and communities and, where necessary, having appropriate guidance and supervision and being involved in decisions that affect them),
- **safe** (protected from abuse, neglect and harm by others at home, at school and in the community),
- **healthy** (having the highest attainable standards of physical and mental health, access to suitable healthcare, and support in learning to make healthy and safe choices),
- **respected** (having the opportunity, along with carers, to be heard and involved in decisions which affect them), and
- **included** (having help to overcome social, educational, physical and economic inequalities and being accepted as part of the community in which they live and learn).

Widening the category of healthcare professionals who can make a clinical judgement of terminal illness

The Bill confers powers on the Scottish Ministers to make provision in regulations about the appropriate health professionals

¹² <https://www.gov.scot/publications/social-security-scotland-bill-child-rights-and-wellbeing-impact-assessment/>

whose diagnosis of terminal illness will be taken to evidence an individual's entitlement to Disability Assistance. Regulations must provide that the person making the diagnosis is either a registered medical practitioner, a registered nurse or part of another healthcare profession as may be prescribed in regulations. Under the 2018 Act as it stands, the regulations must permit the diagnosis to be given by a registered medical practitioner only. This provision will result in more healthcare professionals being able to assist individuals, including children, by establishing their entitlement to Disability Assistance on account of terminal illness.

This provision will have a positive impact on children and young people who are terminally ill by making it easier and quicker for children to receive assistance on account of terminal illness. In so far as the provision will improve access to social security assistance on account of terminal illness, the provision is considered to have a positive impact on children and young people's rights to social security under Article 26 of the UNCRC.

With regard to section 96(2) of the Children and Young People (Scotland) Act 2014, this provision is considered to score positively against the following wellbeing indicator:

- **included** (having help to overcome social, educational, physical and economic inequalities and being accepted as part of the community in which they live and learn).

The provision is considered to measure neutrally against all other wellbeing indicators:

- **achieving** (being supported and guided in their learning and in the development of their skills, confidence and self-esteem at home, at school and in the community),
- **nurtured**, (having a nurturing place to live, in a family setting with additional help if needed or, where this is not possible, in a suitable care setting),
- **active**, (having opportunities to take part in activities such as play, recreation and sport which contribute to healthy growth and development, both at home and in the community),
- **responsible** (having opportunities and encouragement to play active and responsible roles in their schools and communities and, where necessary, having appropriate guidance and supervision and being involved in decisions that affect them),
- **safe** (protected from abuse, neglect and harm by others at home, at school and in the community),
- **healthy** (having the highest attainable standards of physical and mental health, access to suitable healthcare, and support in learning to make healthy and safe choices)
- **respected** (having the opportunity, along with carers, to be heard and involved in decisions which affect them), and

	<ul style="list-style-type: none"> • included (having help to overcome social, educational, physical and economic inequalities and being accepted as part of the community in which they live and learn). <p>Provisions relating widening the list of judicial offices eligible for temporary authorisation to sit in the FTT</p> <p>With regard to the provisions in relation to widening the list of judicial offices eligible for temporary authorisation to sit in the FTT, whilst the Bill is not likely to have a direct impact on children and young people or the realisation of their rights under the UNCRC, having a functioning tribunals systems supports the most vulnerable in society- including children and young people.</p> <p>The provision is considered to measure neutrally against all other wellbeing indicators:</p> <ul style="list-style-type: none"> • achieving (being supported and guided in their learning and in the development of their skills, confidence and self-esteem at home, at school and in the community), • nurtured, (having a nurturing place to live, in a family setting with additional help if needed or, where this is not possible, in a suitable care setting), • active, (having opportunities to take part in activities such as play, recreation and sport which contribute to healthy growth and development, both at home and in the community), • responsible (having opportunities and encouragement to play active and responsible roles in their schools and communities and, where necessary, having appropriate guidance and supervision and being involved in decisions that affect them), • safe (protected from abuse, neglect and harm by others at home, at school and in the community), • healthy (having the highest attainable standards of physical and mental health, access to suitable healthcare, and support in learning to make healthy and safe choices) • respected (having the opportunity, along with carers, to be heard and involved in decisions which affect them), and • included (having help to overcome social, educational, physical and economic inequalities and being accepted as part of the community in which they live and learn).
<p>Conclusions and Recommendations</p>	<p>The provision allowing for the appointment of a person to act on behalf of a child (under the age of 16) is considered to have a positive impact on the realisation of the following rights protected by the UNCRC:</p> <p>Article 2 – Non-discrimination Article 3 – Best interests of the child Article 5 – Parental guidance and a child’s evolving capacities Article 12 – Respect for the views of the child Article 16 – Right to privacy</p>

Article 23 – Children with a disability
Article 26 – Social Security
Article 27 – Adequate standard of living

This provision is not considered to affect the realisation of any other rights under the UNCRC.

The provision is considered to measure positively against the following wellbeing indicators listed in section 96(2) of the Children and Young People (Scotland) Act 2014: nurtured, respected and included. The provision is considered to measure neutrally against the other wellbeing indicators: safe, healthy, achieving, active and responsible.

The provisions for appointment of a person to act on behalf of an adult with legal capacity and non-disclosure of information relating to determination of entitlement are considered to have a positive impact on the realisation of the following rights protected by the UNCRC:

Article 2 – Non-discrimination
Article 12 – Respect for the views of the child
Article 16 – Right to privacy
Article 23 – Children with a disability
Article 26 – Social Security
Article 27 – Adequate standard of living

These provisions are not considered to affect the realisation of any other rights under the UNCRC.

The provisions are considered to measure positively against the following wellbeing indicators listed in section 96(2) of the Children and Young People (Scotland) Act 2014: safe, respected and included. The provisions are considered to measure neutrally against the other wellbeing indicators:

- Healthy,
- Achieving,
- Nurtured,
- Active,
- Respected,
- Responsible, and
- Included.

The provision for creating new statutory offences and the provision on the investigation of these offences is considered to affect the realisation of article 40 (juvenile justice) in a neutral way. The effect is considered to be neutral because the Bill's effect is only to extend the types of social security assistance that the current statutory offences apply to: the legal safeguards that apply to

	<p>investigation of the possible commission of these offences and which apply to the prosecution of these offences remain the same, as do the criminal consequences of being convicted of these offences.</p> <p>The provisions creating a power to, by regulations, allow the sheriff courts to take over the FTT's jurisdiction for the recovery of top-up assistance and for authorising members of the judiciary to sit in the FTT are not considered to effect the realisation of any rights protected by the UNCRC and are considered to measure neutrally against the wellbeing indicators listed in section 96(2) of the Children and Young People (Scotland) Act 2014.</p> <p>Finally, the provision for widening the type of healthcare professions which can diagnose an individual as terminally ill for social security purposes is considered to positively affect the realisation of Article 26 of the UNCRC (the right to social security). This provision is not considered to affect the realisation of any other rights under the UNCRC. The provision is considered to measure positively against the wellbeing indicator of being included, and is considered to have a neutral effect on the other wellbeing indicators listed in section 96(2) of the Children and Young People (Scotland) Act 2014.</p> <p>No changes are required to achieve the best outcome for children and young people.</p>			
<p>Monitoring and review</p>	<p>The Act places a duty on Scottish Ministers to report annually to the Scottish Parliament on the performance of the Scottish social security system during the previous financial year.</p> <p>Scotland's Commissioner for Children and Young People also has a role to play. The Commissioner has a duty to review law, policy and practice to examine their effectiveness in respecting the rights of children and young people. The Commissioner can investigate on behalf of groups of children and young people. As of April 2016, the Commissioner has also been able to investigate on behalf of an individual and this may include the Social Security Scotland's use of the Investigation of Offences regulations.</p>			
<p>Regulation/ Clause</p>	<p>Aims of measure</p>	<p>Likely to impact on . . .</p>	<p>Compliance with UNCRC requirements</p>	<p>Contribution to wellbeing indicators</p>
<p>Section 1: Appointment of person to act on behalf of individual.</p>	<p>The aims of the measure are detailed in the 'key findings section' above and summarised in the 'conclusions and</p>	<p>The provision for appointment of person to act on behalf of a child under the age of 16 will likely have a positive impact</p>	<p>The section's compliance with the UNCRC is detailed in the 'key findings section' above and summarised</p>	<p>The section's contribution to children's wellbeing measured against the wellbeing indicators is</p>

	recommendations' section of the assessment.	on children entitled to Child Disability Payment and any other forms of social security assistance who are cared for by someone who does not, otherwise than by being made an appointee, have legal authority to act on the child's behalf. The provision will also likely have a positive impact on these children's carers who are likely to be grandparents, step-parents, and fathers who are not married to the child's mother or registered on the child's birth certificate. The provision allowing for appointments for persons to act on behalf of adults with capacity including young people aged 16 or 17 will likely benefit mentally vulnerable people who are entitled to Disability Assistance or any other form assistance under the Act.	in the 'conclusions and recommendations' section of the assessment.	detailed in the 'key findings section' above and summarised in the 'conclusions and recommendations' section of the assessment.
Section 2: Determination of entitlement to assistance: non-disclosure of information.	The aims of the measure are detailed in the 'key findings section' above and summarised in the 'conclusions and	Likely to impact positively on mentally vulnerable people and their carers. In particular, people who are	The section's compliance with the UNCRC is detailed in the 'key findings section' above and summarised	The section's contribution to children's wellbeing measured against the wellbeing indicators is

	recommendations' section of the assessment.	terminally ill but who are not aware of this circumstance because a healthcare professional has withheld this information to safeguard the individual's welfare.	in the 'conclusions and recommendations' section of the assessment.	detailed in the 'key findings section' above and summarised in the 'conclusions and recommendations' section of the assessment.
Section 3: Offences	The aims of the measure are detailed in the 'key findings section' above and summarised in the 'conclusions and recommendations' section of the assessment.	Likely to impact on individuals entitled to top-up assistance. The Scottish Government is aiming to administer the first ever payments of top-up assistance by the end of 2020. This assistance, known as the Scottish Child Payment, is intended to benefit low-income families with children under 6.	The section's compliance with the UNCRC is detailed in the 'key findings section' above and summarised in the 'conclusions and recommendations' section of the assessment.	The section's contribution to children's wellbeing measured against the wellbeing indicators is detailed in the 'key findings section' above and summarised in the 'conclusions and recommendations' section of the assessment.
Section 4: Assistance given in error: First-tier Tribunal's jurisdiction.	The aims of the measure are detailed in the 'key findings section' above and summarised in the 'conclusions and recommendations' section of the assessment.	May impact in a minor way individuals who are liable to repay assistance to the Scottish Ministers and who the Scottish Ministers decide to recover money from (having regard to the individual's circumstances).	The section's compliance with the UNCRC is detailed in the 'key findings section' above and summarised in the 'conclusions and recommendations' section of the assessment.	The section's contribution to children's wellbeing measured against the wellbeing indicators is detailed in the 'key findings section' above and summarised in the 'conclusions and recommendations' section of the assessment.

Section 5 and 6: Investigations	The aims of the measure are detailed in the 'key findings section' above and summarised in the 'conclusions and recommendations' section of the assessment.	Direct impact on individuals investigated for the possible commission of statutory offences under the 2018 Act relating to receipt of top-up assistance by fraudulent means. Indirect impact on these individual's families.	The section's compliance with the UNCRC is detailed in the 'key findings section' above and summarised in the 'conclusions and recommendations' section of the assessment.	The section's contribution to children's wellbeing measured against the wellbeing indicators is detailed in the 'key findings section' above and summarised in the 'conclusions and recommendations' section of the assessment.
Section 7: Persons who can give diagnosis.	The aims of the measure are detailed in the 'key findings section' above and summarised in the 'conclusions and recommendations' section of the assessment.	Likely to impact positively on individuals entitled to Disability Assistance on account of terminal illness. Will impact on the healthcare professions of medicine and nursing.	The section's compliance with the UNCRC is detailed in the 'key findings section' above and summarised in the 'conclusions and recommendations' section of the assessment.	The section's contribution to children's wellbeing measured against the wellbeing indicators is detailed in the 'key findings section' above and summarised in the 'conclusions and recommendations' section of the assessment.
Section 8: Authorisation of judiciary to sit in Scottish Tribunals	The aims of the measure are detailed in the 'key findings section' above and summarised in the 'conclusions and recommendations' section of the assessment.	Likely to have an impact on members of the judiciary only.	The section's compliance with the UNCRC is detailed in the 'key findings section' above and summarised in the 'conclusions and recommendations' section of the assessment.	The section's contribution to children's wellbeing measured against the wellbeing indicators is detailed in the 'key findings section' above and summarised in the 'conclusions and recommendations' section of the assessment.

CRWIA Declaration	
Tick relevant section, and complete the form.	
CRWIA required	CRWIA not required
✓	
Authorisation	
Policy lead Paul Curtis Social Security Directorate, Policy Division, Legislation and Operational Policy Unit	Date 6 May 2020
Deputy Director or equivalent Ann McVie Deputy Director Social Security Policy Division	Date 6 May 2020



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