

Social Security Administration and Tribunals (Scotland) Bill 2020

Equality Impact Assessment

May 2020



Scottish Government
Riaghaltas na h-Alba
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Title of Policy	The Social Security Administration and Tribunal Membership (Scotland) Bill
Summary of aims and desired outcomes of Policy	<ul style="list-style-type: none"> • 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 and able 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 introduce powers for the Scottish Ministers to make provision in regulations about the investigation of offences in relation to top up assistance created under section 79 of the 2018 Act; • To create statutory fraud offences in relation to the types of top up assistance created under section 79 of the Social Security (Scotland) Act 2018 ('the 2018 Act'); • To enable the Scottish Ministers, by regulations, to transfer to the First-tier Tribunal (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 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 in relation to a diagnosis of terminal illness for the purpose of entitlement to Disability Assistance; and • To enable other types of judges to be temporarily authorised to sit in the FTT and the Upper Tribunal.
Directorate: Division: team	<p><i>Social Security Directorate/ Justice Directorate</i></p> <p><i>Policy Division/ Civil Law and Legal System</i></p> <p><i>Legislation and Operational Policy Unit/ Courts and Tribunals</i></p>

Background

The Social Security (Scotland) Act 2018 received Royal Assent on 01 June 2018. The Equality Impact Assessment for the Social Security (Scotland) Bill was published on 20 June 2017 and is available [here](#). The 2018 Act transposed eleven benefits onto a Scottish legislative platform, allowing the Scottish Ministers to shape a new and distinctly Scottish benefits system, with dignity and respect being core to its approach. These are: Disability Living Allowance, Personal Independence Payment, Attendance Allowance, Severe Disablement Allowance and Industrial Injuries Scheme; Carer's Allowance; Sure Start Maternity Grants; Funeral Payments; Cold Weather Payments and Winter Fuel Payments; and Discretionary Housing Payments. The 2018 Act provides for a supplementary payment to persons receiving Carer's Allowance, pending the transposition of that benefit onto a Scottish legislative platform. The 2018 Act also contains powers to create new benefits. The most relevant of which for the purpose of the Social Security Administration and Tribunal Membership (Scotland) Bill 2020 is the power to provide in regulations for top up of reserved benefits.

Also relevant for the purposes of the Bill, is the fact that the 2018 Act set out an overarching legislative framework for the administration of social security in Scotland, making provision for operational functions such as managing overpayments, fraud, error and appeals.

The requirement for this Bill has arisen from the identification by the Scottish Government of a need to create statutory offences in primary legislation in relation to forms of assistance provided for under section 79 of the Social Security (Scotland) Act 2018 (top up of a reserved benefit). The Bill also addresses a small number of other matters relating to social security administration and Tribunal membership, which need to be made in order to ensure the continued effective implementation of the 2018 Act.

The remaining paragraphs set out the evidence base underpinning the equality impact assessment that was carried out for the Bill.

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 (DLA Child). Of these, around 40,200 were under age 16².

The Scottish Health Survey 2018³ found that around 12% of young people in Scotland (under the age of 16) had a limiting long-term physical or mental health condition.

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

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

³ Scottish Government (2018) [Long-Term Conditions Statistics, The Scottish Health Survey 2018: supplementary tables](#)

In the current UK Government Social Security legislation, a person is deemed terminally ill by the UK Department of Work and Pensions (DWP) if they have 'a progressive disease and their death as a consequence of that disease can be reasonably expected within six months'⁴. This is described as 'special rules' provision.

Information published by DWP shows that in Scotland:

- for people over State Pension age, 3,300 people were entitled to Attendance Allowance (AA) and 370 to Disability Living Allowance under these provisions⁵, representing 2% of the pension age caseload⁶ at August 2019 (the last available data point);
- for people of working age, 3,200 people were entitled to Personal Independence Payment (PIP) under these provisions, representing 1% of the PIP caseload⁷ as at October 2019 (the last available data point); and
- for children and young people under age 16, 20 people were entitled to Disability Living Allowance for Children (DLA Child) under these provisions as at August 2019.

At 31 July 2018, there were an estimated 14,738 looked after children (under 18 years old) in Scotland⁸, accounting for around 2% of all children in Scotland⁹. The most common setting was 'kinship care', with 28% of the total looked after children being looked after by relatives or friends¹⁰.

At the time of the 2011 census, 96% of Scotland's population identified as "White" while 4% identified as belonging to another ethnic group¹¹. In 2011, 7% of Scotland's population communicated in languages other than English at home¹² while data from 2019 shows that this is true for 9% of children registered for Early Learning & Childcare in Scotland¹³.

We do not have statistics showing the number of children and young people within Scotland who apply for disability benefits and who belong to minority ethnic groups. However, UK wide information from the 2015/16-2017/2018 suggests that minority ethnic families in all age groups are slightly less likely to claim DLA than white

⁴ Social Security Contributions and Benefits Act 1992, s. 66(2)

⁵ Stat Xplore, accessed 16th March 2020, [Stat Xplore](#)

⁶ Stat Xplore, accessed 16th March 2020, [Stat Xplore](#), and calculation

⁷ Stat Xplore, accessed 16th March 2020, [Stat Xplore](#), and calculation

⁸ This includes children in several types of care setting, including at home (where a child is subject to a Compulsory Supervision Order and continues to live in their normal place of residence), foster care, residential unit or school, a secure unit, with prospective adopters, or in kinship care (where they are placed with friends or relatives).

⁹ Scottish Government (2019) [Children's social work statistics 2017-2018](#)

¹⁰ Scottish Government (2019) [Children's social work statistics 2017-2018](#)

¹¹ NRS (2013) [2011 Census: Key Results on Population, Ethnicity, Identity, Language, Religion, Health, Housing and Accommodation in Scotland - Release 2A](#)

¹² NRS (2013) [2011 Census: Key Results on Population, Ethnicity, Identity, Language, Religion, Health, Housing and Accommodation in Scotland - Release 2A](#)

¹³ Scottish Government (2019) [Summary Statistics for schools in Scotland no. 10: 2019 edition – Additional early learning and childcare tables 2019](#), Table 5

families, with a slight exception for Bangladeshi families who are more likely to receive the DLA care component¹⁴.

In the 2011 census, both for the general population and the 0-24 age group, white people are more likely to say their day to day activities are limited “a lot” or “a little” by their long-term health conditions, compared to their share in the population. This is not true for any of the other ethnic categories apart from “Caribbean or Black” respondents aged 0-24 who are slightly more likely to say their day-to-day activity is limited “a little”¹⁵.

However analysis of 2011 census health data shows that there was a wide variation in health problems or disability amongst men and women from different ethnic groups. Women from three groups - Bangladeshi, Pakistani and Gypsy/Traveller - recorded higher rates of 'health problem or disability' than women from the 'White: Scottish' ethnic group, while men from only two ethnic groups - Pakistani and Gypsy/Traveller - recorded higher rates of 'health problem or disability' than men from the 'White: Scottish' ethnic group¹⁶.

At the time of the 2011 Census, just over 4,000 people in Scotland (0.1% of the population) identified their ethnic group as 'White: Gypsy/Traveller'¹⁷. Generally, Gypsy/Traveller households were more likely to contain dependent children (36% compared to 26% of the population as a whole) and they were three times more likely to contain 'three or more' dependent children.¹⁸ The number of Gypsy/Traveller children who receive disability benefits under the current system is unknown.

According to latest data published by Scottish Surveys Core Question in 2019, 50% of respondents identified as having “no religion” while 47% identified as Christian (“Church of Scotland”, “Roman Catholic” or “other Christian”), 2% as Muslim, and 2% as an “other religion”¹⁹. Once age was taken into account, in comparison to those with no religious affiliation a lower proportion of “other” religious groups reported good/very good general health and a higher proportion reported having a limiting long-term condition. “Other Christians” reported a higher level of good/very good general health than the “no religion” reference group²⁰.

Work was carried out to assess impacts of the Social Security Administration and Tribunal Membership (Scotland) Bill in terms of eliminating unlawful discrimination, harassment and victimisation; advancing equality of opportunity; and promoting good relations among and between different groups. The evidence base

¹⁴ UK Government (2019) <https://www.ethnicity-facts-figures.service.gov.uk/work-pay-and-benefits/benefits/state-support/latest#by-ethnicity-and-type-of-support> Section 4

¹⁵ Scotland's Census 2011 - National Records of Scotland, Table LC3205SC - Long-term health problem or disability by ethnic group by age: All people

¹⁶ Scottish Government (2015) [Which ethnic groups have the poorest health?](#)

¹⁷ Scottish Government (2015) [Gypsy/Travellers in Scotland - A Comprehensive Analysis of the 2011 Census](#)

¹⁸ Scottish Government (2015) [Gypsy/Travellers in Scotland - A Comprehensive Analysis of the 2011 Census](#)

¹⁹ Scottish Government (2019) [Scottish Surveys Core Questions 2017](#)

²⁰ Scottish Government (2019) [Scottish Surveys Core Questions 2017](#)

for the following protected characteristics was reviewed and assessed: age, disability, gender reassignment, pregnancy or maternity, race, sex, sexual orientation and religion and belief.

The policy background to the Bill and further information about the specific provisions is fully described in the Policy Memorandum published on the Scottish Parliament's website.

The Scope of the Equality Impact Assessment

As the measures within the Bill cover a range of topics related to social security, many people in Scotland might be impacted. The full EQIA process has been followed, given the potential equality impacts related to the policy areas to which the Bill relates.

The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 places a duty on the Scottish Ministers to review policies and practices against the need to

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The Equality Act 2010 covers the protected characteristics of: age, disability, gender reassignment, pregnancy or maternity, race, sex, sexual orientation and religion and belief. The impacts of the Bill have been assessed against the extent which it fulfils these needs.

Consultation

This EQIA has been informed by extensive engagement with a range of external stakeholders, as well as the wider public, on a range of matters in relation to social security over a significant period of time.

In July 2016 the Scottish Government launched a public consultation to support the development of a framework that would become the Social Security (Scotland) Bill. 521 formal written responses were submitted, of which 241 were from organisations and 280 from individual respondents²¹.

In 2017 the Scottish Government set up Social Security Experience Panels, with over 2,400 people with lived experience across Scotland registering as panel members²².

²¹ Scottish Government (2017) [Analysis of Written Responses to the Consultation on Social Security in Scotland](#)

²² Scottish Government (2017) [Social Security Experience Panels - About Your Benefits and You: quantitative research findings](#)

The 'Disability Assistance in Scotland' Consultation launched in March 2019. This sought the views of the people of Scotland on the three proposed disability assistance benefits. The consultation received 263 replies, of which 74 were from stakeholder organisations and 189 were from individuals²³.

The Scottish Government has also undertaken ongoing consultation with stakeholders through our independent Disability and Carers Benefits Expert Advisory Group (DACBEAG) as well as the Ill Health and Disability Benefits Stakeholder Reference Group.

In addition to the above, the views of people with lived experience have been captured through a range of user research and stakeholder engagement activities held throughout Scotland. These events have provided an opportunity to engage specifically with equality groups that would be impacted by the results of this Bill.

Following the initial consultation on the content of the Social Security (Scotland) Bill, a focused consultation²⁴ was undertaken between 6 August until 29 October 2018 which informed the final content of the *Social Security Assistance (Investigation of Offences) (Scotland) Regulations 2020* and the Code of Practice for Investigations. Over 200 individuals and organisations were directly invited to respond. As part of that consultation, the question below was asked:

Are you aware of any equality issues we have not identified in terms of introduction of the Investigation of Offences regulations and fraud investigations more generally?

A total of 18 written responses to the full public consultation were received, from individuals and from organisations. The independent analysis of the responses was undertaken by KSO Research²⁵. Respondents represented a range of individuals and organisations with knowledge and experience of, or an interest in, social security matters.

A consultation was carried out by the Scottish Government's Chief Medical Officer on the statutory guidance that, as the Act currently stands, registered medical practitioners (doctors) must follow when diagnosing an individual as terminally ill for social security purposes. Both clinicians who will use the guidance and organisations who will support terminally ill clients took part in the managed (non-public) consultation.

Key Findings

Appointment of person to act on behalf of a child

This provision is considered to have a positive impact on children and young people.

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

²³ Scottish Government (2019) [Disability assistance in Scotland: analysis of consultation responses](#)

²⁴ <https://consult.gov.scot/social-security/fraud-investigations/>

²⁵ <https://www.gov.scot/publications/independent-analysts-report-consultation-investigation-offences-regulations-code-practice-investigations/>

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.

There are likely to be a number of complex family situations for some children who may be eligible for social security assistance but who are being cared for by someone who does not have parental rights and responsibilities (PRR) to act on their behalf.

In these situations, an adult such as a grandparent, step-parent, older sibling or unmarried parent may be providing care and accommodation for a child on a daily basis. Inclusion of the provisions within this Bill relating to appointees for children will ensure that Scottish Ministers have an appropriate legal mechanism to accept and to administer applications from an appropriate adult even if the adult does not have the PRR to act on the child's behalf. These provisions will ensure that social security for children is equally accessible no matter the child's family situation. It is considered to advance equality of opportunity among children who are entitled to social security assistance on account of disability or terminal illness. The provision is considered to advance equality of opportunity by addressing the needs of a minority of children who will be entitled to assistance and who are being cared for by an adult who does not have PRR to act on their behalf. If this provision was not in place, then it would make it more difficult for some children to access the assistance that they are entitled to because of their family situation: this provision seeks to remove this disadvantage.

When developing this provision, the Scottish Ministers recognised that any power conferred on the Scottish Ministers to make and terminate an appoint 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, insofar as practicable, to the views of children and any persons with parental rights and responsibilities.

This duty promotes the child's right under 12(1) of the UNCRC to be listened to in all matters relating them:

“Article 12 - 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.”

This aspect of the provision is considered to advance equality of opportunity among children to express their views on their social security entitlement, having regard to the disadvantage that children are placed in this respect compared with adults.

We are aware that language used in written communications or interactions with Agency staff may constitute a potential barrier for LGBT appointees. Similarly, the requirement to provide their gender while only having the option to choose between male and female may pose a barrier for individuals identifying as non-binary when applying to act as appointee.

We will ensure that the language used in relation to appointees for children will be inclusive for LGBT individuals.

We believe this provision may measure positively against the need to eliminate indirect discrimination based on race. We know that definitions of 'family' and the composition of a 'typical' household may have cultural variances. It is possible that there are common kinship arrangements within Black Asian Minority Ethnic (BAME) households whereby those without PRRs care for a child. It is therefore anticipated that this provision, together with existing provision in the 2018 Act for advocacy support, (which will also be available to carers), will have a positive impact and will positively influence the take-up of Child Disability Payment and all other forms of assistance that children may be directly entitled to.

We are aware of the barriers faced by ethnic minorities in applying for disability benefits, especially those with English as a second language. To address this, work has been undertaken with ethnic minorities alongside the main Experience Panels. This work has given us a depth of information about the barriers faced by these groups, and ideas for how Social Security Scotland can address these barriers.

The ethnic minority population of Scotland includes refugees from a very wide number of countries. Scotland has resettled 3,441 people under the Vulnerable Persons Resettlement Scheme (VPRS) and Vulnerable Children Resettlement Scheme (VCRS) since the first quarter of 2014, mostly people from Syria²⁶. We anticipate that the parental status for some of these children will be complex as someone who does not have parental rights and responsibilities (PRR) may need to act on their behalf.

We have not identified any particular impact that this provision will have on those within the protected characteristic of religion or belief.

Provisions relating to appointees for adults with capacity and non-disclosure of harmful information

The provisions relating to appointees for adults with capacity are considered to meet the needs of individuals 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. It is anticipated that in many cases these difficult circumstances will be connected to a person's disability. Accordingly, this provision is considered to measure favourably against the need for public authorities to eliminate discrimination, including by taking steps to meet the needs of persons who share a protected characteristic that are different from the needs of persons who do not

²⁶ Home Office (2019) [Resettlement by Local Authority tables](#) Asylum and resettlement datasets. Immigration statistics data tables year ending December 2019.

share it and by removing or minimising disadvantage suffered by persons who share a protected characteristic that is connected to that characteristic.

Section 2 of the Bill (determination of entitlement to assistance: non-disclosure of information) is intended to address the needs of adults 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 their physical or mental health. In such circumstances, the Scottish Ministers' duties to inform individuals at various stages of their 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 adult whom would be likely to be harmed - provided the adult 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 the information causing serious harm to the individual's physical or mental health. This provision is intended to meet the needs of some mentally vulnerable individuals who will be entitled to assistance. Where an individual's mental vulnerability is connected to their disability or old-age, this provision is considered to measure positively against the need to remove disadvantage suffered by persons who share a protected characteristic that are connected to that characteristic, and the need to take steps to meet the needs of persons who share a protected characteristic that are different from the needs of persons who do not share it.

We have not identified any particular impact that this provision will have on those within the protected characteristics of gender reassignment and sexual orientation.

We anticipate that this provision will be of particular benefit to individuals belonging to the protected characteristic of race. It is known that there is a low uptake of palliative and end of life care services for BAME groups. This was found to be a common theme in the 45 studies included in the 'Palliative and end of life care for BAME groups in the UK'.²⁷ Potential explanatory factors for the low uptake included lack of referrals, lack of knowledge about services or about what palliative care involves and religious traditions and family values in conflict with the idea of palliative/hospice care. It is likely that some of the reasons for low uptake of palliative care could also lead to low uptake of disability assistance when terminally ill.

There is some evidence that ethnic groups can vary in the extent to which individuals would wish to know about their terminal diagnosis. This issue is discussed in relation to Chinese families²⁸ and also in a cross cultural study involving some East Asian countries²⁹. A patient's cultural beliefs may be considered by a medical practitioner when assessing whether information relating to their prognosis could be harmful to the individual. The provision which allows the withholding of harmful information will allow individuals to access disability assistance under terminal illness special rules

²⁷ <https://www.mariecurie.org.uk/globalassets/media/documents/policy/policy-publications/june-2013/palliative-and-end-of-life-care-for-black-asian-and-minority-ethnic-groups-in-the-uk.pdf>

²⁸ <https://www.ecald.com/assets/Resources/Breaking-Bad-News-Chinese.pdf>

²⁹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4616852/>

where they are unaware of their prognosis. In this way the provision will help eliminate discrimination by ensuring individuals with different cultural beliefs will not be disadvantaged from accessing disability assistance under special rules.

We have not identified any particular impact that this provision might have on those within the protected characteristic of religion or belief.

Top up Assistance: 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). 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 EQIA identified no direct negative impacts in relation to protected characteristics arising from the creation of statutory offences. However, a small number of indirect impacts have been identified which should be addressed. These relate largely to the operational processes around ensuring individuals are aware of their responsibilities under the 2018 Act.

Where service users have additional requirements linked to language, culture or understanding of services as a result of any protected characteristic, these need to be met effectively and all communications accessible. In relation to offences, and in line with section 4 of the 2018 Act (recognition of importance of inclusive communication), all communications between Social Security Scotland and individuals must be accessible to ensure that individuals understand their responsibilities under the 2018 Act and do not unwittingly commit an offence.

Alongside the need for accessible communications required under section 4 of the 2018 Act, access to digital communications varies across differing age groups, with those aged 16 to 44 years using social networking sites significantly more than those aged 45 and over. Therefore Social Security Scotland will have to take this into account when designing communications that inform individuals of their responsibilities in relation to forms of top up assistance. Related to this, data from the Office for National Statistics³⁰ shows that people aged 16 to 44 years use social networking sites significantly more than those aged 45 and over.

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<https://www.ons.gov.uk/file?uri=%2fpeoplepopulationandcommunity%2fhouseholdcharacteristics%2fhomeinternetandsocialmediausage%2fdatasets%2finternetaccesshouseholdsandindividualsreferenceables%2f2019/internetaccessdatatables2019.xlsx>

Top up Assistance: Assistance given in error/ First-tier Tribunal's jurisdiction

Section 68 of the 2018 Act allows Scottish Ministers, by regulations, to transfer to the First-tier Tribunal for Scotland some or all of the competence and jurisdiction that a sheriff has in relation to the recovery of money owed under section 63. Similar to the provisions in relation to the creation of statutory offences, the provisions within this Bill in relation to the transfer of competence to the FTT will provide consistency between the provision that is already in place for those forms of assistance provided for under Part 2 of the 2018 Act and those provided for section 79.

The EQIA identified no negative impacts in relation to protected characteristics arising from this provision.

Top up Assistance: Investigations

The legislative approach to establishing the new top-up assistance fraud offences is to modify sections 71 – 73 of the 2018 Act. A consequential effect of this modification 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.

The Bill's effect is to extend the type of assistance that can be investigated, but 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, no new impacts have been identified by this provision that were not already identified by the EQIA carried out in December 2019 in relation to the Social Security Assistance (Investigation of Offences) (Scotland) Regulations 2020³¹ which relates to the investigation of fraud in relation to assistance provided under Part 2 of the 2018 Act.

Stakeholders previously cited issues such as learning disability, hearing impairment, mental health issues cognitive impairments and memory problems as examples of disability that may significantly disadvantage disabled clients during any investigation. The main aspects of an investigation where this will have significant impact are likely to be written correspondence, interviews and witness statements. These must be taken into account when developing operational procedures to

³¹ http://www.legislation.gov.uk/ssi/2020/11/pdfs/ssieqia_20200011_en.pdf

prevent any indirectly negative impact on the Scottish Ministers' responsibility to eliminate discrimination, advance equality of opportunity and foster good relations.

The EQIA did not identify any specific impacts in relation to gender reassignment. Where the Scottish Ministers and authorised investigative officers know about it, no person should be misgendered and their wishes about how they should be addressed are reflected in: correspondence; face to face interactions; and papers that may be passed to other authorities including the Crown Office and Procurator Fiscal Service (COPFS). Questioning as part of any interview under caution must not be based around gendered assumptions.

While the Scottish Government's Pregnancy and Parenthood in Young People Strategy highlights that young mothers are considerably more reliant on state benefits and tax credits than older mothers – a position that remains the case as the child ages, no concerns or impacts were identified or raised throughout the previous consultation process in relation to the Social Security Assistance (Investigation of Offences) (Scotland) Regulations 2020 as an individual's Maternity/ Paternity status is not directly relevant to investigations.

There are no direct impacts with regard to race. However, clients whose first language is not English may experience barriers to participation in an investigation particularly in relation to written and verbal communications surrounding the interview under caution and witness statements. It is anticipated that, consistent with the 2018 Act, where there is a requirement to communicate in another language, this information will already have been captured through the original application process. Individuals participating in an investigation who require an interpreter, will have one provided where appropriate.

In the consultation which informed the Social Security Assistance (Investigation of Offences) (Scotland) Regulations 2020, a number of stakeholders raised concerns that females were disproportionately subject to investigation. The Scottish Government does not have statistics to support that women are disproportionately subject to fraud investigation. The DWP estimate³² that of the £166 million of Personal Independence payment known to be lost to fraud at GB level in 2018/19, £71 million (43%) is associated with female claimants and £95 million (57%) with male claimants.

As part of the development of the Social Security Assistance (Investigation of Offences) (Scotland) Regulations 2020, a number of stakeholders previously raised concern about the interactions between domestic abuse and fraud investigations. It is known that where gender information was recorded, around four out of every five incidents of domestic abuse in 2017-18 had a female victim and a male accused³³. Stakeholders also highlighted broader concerns that some women may be forced to claim benefits fraudulently and that others may have repeated malicious false accusations made about them by an abusive partner either as a form of control or in retribution³⁴.

³² Statistics extracted from <https://stat-xplore.dwp.gov.uk/> in November 2019

³³ <https://www.gov.scot/publications/domestic-abuse-recorded-police-scotland-2017-18/>

³⁴ <https://www.gov.scot/publications/domestic-abuse-recorded-police-scotland-2017-18/>

Information about unfounded allegations will only be held by authorised officers as long as it is needed, but will be retained long enough to detect patterns which may suggest vexatious intent and as far as possible, prevent repeated reinvestigation of baseless allegations. While this impact was raised in relation to women, men are also subject to domestic abuse and it is important to acknowledge that this can also occur across a range of familial and other relationship types.

There is no available data regarding the sexual orientation of people who are investigated for benefit fraud and no concerns or impacts were identified. However, it is likely that some of the same impacts highlighted around gender reassignment might also apply in terms of use of correct terminology and avoidance of stereotyping or false assumptions about relationships and family structures.

There were no religious or faith related concerns identified, however, investigative officers are expected to take an individual's religious belief into account with the objective of ensuring full and fair representation at any interview, and are expected to accommodate individuals' reasonable requests on account of religious belief or faith.

Diagnosing terminal illness for disability assistance purposes: Persons who can give diagnosis

The Bill confers powers on the Scottish Ministers to make provision in regulations about the appropriate health professionals 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 by establishing their entitlement to Disability Assistance on account of terminal illness. This provision is intended to better meet the needs of terminal ill individuals by making it easier, and quicker for individuals to establish their entitlement to Disability Assistance.

We have not identified any particular impact that this provision will have on those within the protected characteristic of race.

We have not identified any particular impact that this provision will have on those within the protected characteristics of gender reassignment and sexual orientation.

We have not identified any particular impact that this provision will have on those within the protected characteristic of religion or belief.

We have not identified any particular impact this provision will have on those with the protected characteristics of disability or age.

These provisions therefore measure neutrally against the Scottish Ministers' duty to have regard to the need to eliminate discrimination: advance equality of opportunity and foster good relations.

Authorisation of judiciary to sit in Scottish Tribunals

Part 2 of the Social Security Administration and Tribunal Membership (Scotland) Bill relates to enabling other types of judges to be temporarily authorised to sit in the First-tier Tribunal (FTT) and the Upper Tribunal. With regard to these provisions, the Scottish Government expects a neutral impact on the current members.

The EQIA identified no negative impacts in relation to protected characteristics arising from this provision. The amendments will also support a functioning tribunals system designed to meet the needs of the most vulnerable in society.

Conclusions and Recommendations

The Scottish Government considers that the provision on appointment of an appropriate adult to act on behalf of a child will have a positive impact on children and young people by advancing equality of opportunity for some of the most vulnerable children who will be entitled to social security assistance on account of disability.

The provisions regarding appointees for adults with capacity and non-disclosure of harmful information will make social security more accessible for people who may be vulnerable (either because of age, or a health condition or disability), and for whom it may not be appropriate to disclose certain harmful evidence. In terms of the public sector equality duty, this is considered to advance equality of opportunity among people who share a relevant protected characteristic and persons who do not share it.

This EQIA has not identified any direct impacts on person with protected characteristics from the provisions which create new statutory offences or the from the proposed transfer of jurisdiction to the FTT for Scotland. However a number of indirect impacts have been identified, mainly in relation to ensuring that any communications between individuals and the Scottish Ministers meet the requirements of section 4 of the 2018 Act (recognition of importance of inclusive communication). This will be of particular importance in those cases where service users have additional requirements linked to language, culture or understanding of services as a result of any protected characteristic.

The changes that the Bill makes in relation to the investigation of statutory offences under the 2018 Act is to extend the type of assistance that can be investigated, but without altering 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, no new impacts have been identified by this provision that were not already identified by the EQIA carried out in December 2019 in relation to the Social Security Assistance (Investigation of Offences) (Scotland) Regulations 2020³⁵ which relates to the investigation of fraud in relation to assistance provided under Part 2 of the 2018 Act.

³⁵ http://www.legislation.gov.uk/ssi/2020/11/pdfs/ssieqia_20200011_en.pdf

Widening the category of healthcare professionals who may diagnose an illness as terminal for the purpose of entitlement to Disability Assistance is considered to have a neutral impact on the Scottish Ministers' responsibility to eliminate discrimination, advance equality of opportunity and foster good relations. The provision is intended to make it easier and quicker to establish an individual's entitlement to assistance on account of terminal illness. In so far as an individual's terminal illness may be linked to their old-age or a disability, this measure could be said to have a positive impact on the need to minimise disadvantage suffered by persons with these protected characteristics.

With regard to the provision targeted to ensure that the Social Security Chamber has access to a wider pool of judiciary to manage the anticipated case volumes from 2021 onwards, no impacts related to protected characteristics have been identified. The provisions will allow for a more efficient Social Security Chamber which supports the most vulnerable in society.



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