



**The Health and
Social Care
Alliance
Scotland
(the ALLIANCE)**



**Social Security (Amendment)
(Scotland) Bill Call for Views**

10 January 2024

Introduction

The Health and Social Care Alliance Scotland (the ALLIANCE) welcomes the opportunity to respond to the Social Justice and Social Security Committee's call for views on the Social Security (Amendment) (Scotland) Bill. We submitted a response to the Scottish Government's pre-legislative consultation on the Bill¹, and consider that many of the proposals align closely with our recommendations.

After certain powers relating to social security were devolved to Scotland, the Social Security Scotland (Act) 2018 provided a strong yet flexible framework for the delivery of devolved payments. This flexibility has been used by the Scottish Government to make some much-needed changes to how the social security system works, in particular explicitly embedding the principle that social security is a human right.

There remain however improvements that can be made to the system. Although many of these would relate to secondary legislation or to operational policies, we recognise the need for some changes in primary legislation. In this response, the ALLIANCE:

- Welcomes the proposal to establish “childhood assistance” as its own category of payment, allowing greater flexibility in delivering the Scottish Child Payment than current “top up” arrangements.
- Welcomes the introduction of more choice and accountability within the system, including the ability to withdraw a re-determination request and to challenge liability for overpayment.
- Cautions that proposals relating to fraud and error only be applied where strictly necessary, and that individuals are reminded of their right to independent advocacy and/or advice in such circumstances.
- Calls for the establishment of a successor to the Disability and Carers Benefits Expert Advisory Group (DACBEAG) to provide independent advice on social security on a permanent basis.



- Urges a wider review of disability and carer payments after the end of the safe and secure transition, and to rapidly progress work towards a Minimum Income Guarantee.

Question 1: Do you have any views on Part 1 of the Bill?

In particular, do the provisions in Part 1 raise any concerns for you in relation to the social security principles?

The ALLIANCE welcomes the proposal to establish “childhood assistance” as a standalone category of social security, granting Scottish Ministers the ability to make regulations relating to such payments. This would allow the Scottish Government to adopt a more flexible approach to delivering the Scottish Child Payment than is possible under the current “top up” arrangements.

In our response to the pre-legislative consultation, we agreed that this would be a useful change to make. We accepted that the original implementation via “top up” was a reasonable approach to take in order to roll out the payment as rapidly as possible. However, we recognised that the direct link between Scottish Child Payment and qualifying reserved payments could prove to be a significant limitation in the longer term. We were concerned that should the UK Government choose to narrow eligibility for qualifying payments, that would result in loss of eligibility for Scottish Child Payment against the wishes and intent of the Scottish Government or Parliament. Similarly, we noted the existence of a “cliff edge” withdrawal of social security payments that can leave parents and families worse off.

Establishing the Scottish Child Payment as a form of assistance in its own right under the Social Security Act will allow the Scottish Government to address these concerns. Not only will they be able to protect eligibility for the payment, but they will also have the option of widening eligibility. In addition measures to minimise or eliminate the impact of the “cliff edge” withdrawal of payments, for example through a taper system, will only be possible if the Scottish Child Payment is a form of assistance in its own right rather than a top up.



Although proposals to introduce “care experience assistance” were not included in the pre-legislative consultation, the ALLIANCE is supportive of the principle of such a payment. We agree with the Scottish Government’s rationale of seeking to support people leaving care as they transition to adulthood, and we will engage with the detail of the payment through the consultation on the Care Leaver Payment.

Question 2: Do you have any views on Part 2 of the Bill?

In particular, do the provisions in Part 2 raise any concerns for you in relation to the social security principles?

The ALLIANCE agrees that it is reasonable to repeal the provisions, added to the 2018 Act by the Coronavirus Act 2020, related to late applications where the reason was COVID-19. In our response to the pre-legislative consultation, we had stated we didn’t know whether this would be the right approach, and asked for more information on circumstances where these provisions had been used.

The Policy Memorandum notes that fewer than 0.1% of applications for relevant payments had seen these provisions used, and that figure was constantly decreasing. We are therefore content that there appears to be such limited use of the provisions that it is reasonable to repeal them entirely, and to rely instead on existing flexibilities relating to good reason for late submission or completion of applications.

Question 3: Do you have any views on Part 3 of the Bill?

In particular, do the provisions in Part 3 raise any concerns for you in relation to the social security principles?

Similar to Part 2, the ALLIANCE agrees that it would be reasonable to repeal COVID-19 specific provisions that are no longer deemed particularly relevant. We welcome that they will be replaced by provisions that allow people to demonstrate that “exceptional circumstances” prevented them from requesting a re-determination within the usual period of a year.



We also welcome the introduction of the right to withdraw a re-determination request. In our response to the pre-legislative consultation, we had agreed with this approach as a matter of individual choice, noting that the process could be stressful for individuals going through it and that they may change their mind after receiving further advice. It is important that this right is appropriately communicated to people, alongside what exercising the right entails. It should be made clear that they have the right to access independent advocacy and/or advice before making such a decision.

We agree with the proposal to require Scottish Ministers to complete re-determinations even if they are out of time, without removing the right of applicants to lodge an appeal at that point. This was not consulted on but appears to be a reasonable approach that ensures the re-determination process concludes whilst maintaining individual choice.

We also agree with the provisions that would allow Scottish Ministers to make a new determination after an appeal has been lodged, in cases where there had been an error in their original determination. We had agreed with this approach in our earlier consultation response, arguing that especially given the stress of the Tribunal and appeals processes, where it was possible to rectify an error without going through them, that would be preferable. We also emphasised the importance of only making a new determination with the consent of the individual, who should be fully informed of the implications and retain the right to challenge the decision, and welcome that the proposals align with our recommendations.

Question 4: Do you have any views on Part 4 of the Bill?

In particular, do the provisions in Part 4 raise any concerns for you in relation to the social security principles?

The ALLIANCE broadly agrees with the proposals that would change the approach to liability for error. We agreed in our response to the pre-legislative consultation that third parties should be included within the



scope of statutory liability, and argued it was unfair for liability for fraud to fall on the individual receiving the payment if it was their representative who had committed that fraud.

We recognise the difficult balance to be struck when overpayment has arisen out of mistakes made in good faith and where the resulting funds were used to the benefit of the person they were intended for. Whilst seeking recovery for overpayments may be in line with the principle of value for money, it is important that the Scottish Government adhere strictly to the approach of not criminalising or penalising genuine errors. In line with the principle of respect for the dignity of individuals, nobody should experience financial hardship as a result of recovering overpayments that occurred by genuine accident.

The proposal to introduce a right to challenge liability for an overpayment is welcome. We had agreed with this in our response to the earlier consultation, arguing that people should not have to wait for highly stressful court proceedings before being able to challenge liability. We had also stated they should have a right to a review and appeal of decisions relating to liability for overpayment and note that the policy memorandum indicates such rights will be included within the process.

Question 5: Do you have any views on Part 5 of the Bill?

In particular, do the provisions in Part 5 raise any concerns for you in relation to the social security principles?

The ALLIANCE agree with proposals to allow Department for Work and Pensions (DWP) appointees to be temporarily recognised for Social Security Scotland purposes, with the proviso that they be considered for suitability under the 2018 Act which may result in a different appointee on a permanent basis. In our response to the pre-legislative consultation we had agreed with this approach on the basis of ensuring payments were made as quickly as possible, whilst highlighting concerns such as the difficulty for individuals in changing unsuitable DWP appointees at present.



Although proposals on holding appointees liable for mismanagement or acting in breach of their responsibilities were not consulted on, we consider the relevant proposals in the bill to be consistent with the rest of the bill and the 2018 Act.

Question 6: Do you have any views on Part 6 of the Bill?

In particular, do the provisions in Part 6 raise any concerns for you in relation to the social security principles?

The ALLIANCE agree in principle with the proposals to ensure compliance with requests for information in relation to fraud and error. Although these proposals were not consulted on, we understand the stated importance of ensuring the suitability of the system for financial audit and agree that it is reasonable to seek to minimise fraud and error.

These provisions should be strictly limited however and applied only in cases of genuine concern. Where there is reason to suspect fraud or error, communication with the individuals in question must be approached sensitively and with respect for their dignity and wellbeing. As with all other aspects of social security, it should be made clear to individuals that they can seek independent advocacy and/or advice to support them in such circumstances.

Question 7: Do you have any views on Part 7 of the Bill?

In particular, do the provisions in Part 7 raise any concerns for you in relation to the social security principles?

The ALLIANCE agree in principle with the proposal to allow for a compensation recovery scheme from liable third parties as a result of accidents, injuries or diseases. As the Scottish Government note, these powers exist under the UK-level social security system but were not included in the 2018 Act. Applying the same principles to Scottish social security would ensure consistency of approach, whilst also aligning with the principle of ensuring value for money by recovering the resulting costs from the third party rather than falling entirely on the public purse.



It is important however that this approach does not result in inadvertently “diverting”, as it were, an individual’s entire compensation payment towards social security. It would seem to be unfair and go against the point and principle of compensation if someone who is disabled as a result of the actions or negligence of another person or organisation were to only receive the same social security payment as they might have expected to get otherwise in compensation.

Question 8: Do you have any views on Part 8 of the Bill?

In particular, do the provisions in Part 8 raise any concerns for you in relation to the social security principles?

The ALLIANCE cautiously welcome the proposals that would extend the range of regulations that the Scottish Commission on Social Security (SCoSS) scrutinise whilst replacing auditing and accounting duties with a duty to produce an annual report. In principle, we agree that SCoSS should be able to scrutinise the widest possible range of social security regulations, and that the reduction in administrative burden associated with removing auditing and accounting duties will relieve pressure on the commission.

However, in our response to the pre-legislative consultation, we had called for an increase in capacity for SCoSS, which currently consists of four part-time commissioners and a very small secretariat. We noted that this lack of capacity meant that whilst scrutiny thus far had been exemplary, the commission had been more limited in ability to engage with stakeholders and people with lived experience than it might have liked. Whilst resource for SCoSS may be an operational rather than legislative matter, it is important for the future of the social security system that the commission is adequately resourced to provide the best scrutiny possible.

Our response also called for scrutiny, provided by SCoSS, and advice, formerly provided by the Disability and Carers Benefits Expert Advisory Group (DACBEAG), functions to continue to be provided separately. As the



bill makes no provision relating to advice, it can be assumed that no change is intended to the current separation of those functions. However, DACBEAG was stood down at the start of 2023, with advice on social security matters falling to the independent review into Adult Disability Payment and the Expert Group on Minimum Income Guarantee.

Whilst these groups may suffice to provide advice on the relevant topics, we would encourage the Scottish Government to consider the scope for a successor to DACBEAG to provide independent advice on social security more generally. This is particularly relevant in light of the anticipated end to the safe and secure transition period for disability and carers benefits. Limiting the review of such payments purely to the Adult Disability Payment would be a missed opportunity, and any wider review of Scottish social security would benefit from a broad range of expert advice, independent of the Scottish Government. This would align with the principle of seeking opportunities to continually improve the system.

Question 9: Do you have any other comments?

Overall, the ALLIANCE welcome the strong commitment that the Scottish Government has shown to implementing a fairer and more dignified social security system which is rooted in human rights. We believe however that there are still significant further improvements that can be made to the system beyond the confines of this bill. Whilst some of these would be better addressed through secondary legislation or operational changes, we feel this legislation is an opportune time to further highlight these issues.

Case transfer of existing claims from the DWP to Social Security Scotland is intended to be completed by the end of this parliamentary term. That will conclude what the Scottish Government has referred to as the “safe and secure transition” between the two systems. In advance of reaching that point, we recommend that the Scottish Government take actions in line with the recommendations of the ‘Beyond a Safe and Secure Transition’ report from the Scottish Campaign on Rights to Social Security (SCoRSS)².



In particular, we call on the Scottish Government to go beyond the planned independent review of Adult Disability Payment and undertake an independent review of disability and carer payments more widely. Disability payments in particular should follow the six principles laid out in the SCoRSS report, namely that payments should:

- Have a clear purpose,
- Be human rights based,
- Support equal participation in society and independent living,
- Be adequate,
- Provide whole-of-life support,
- And interact well with future social security developments.

Ensuring the adequacy of payments is particularly important considering the outsized impacts of first the COVID-19 pandemic and then the cost of living crisis on disabled people, people living with long term conditions, and unpaid carers. A pressing issue of adequacy relates to the upcoming Pension Age Disability Payment. The ALLIANCE recently contributed to and supported calls led by Age Scotland for the payment to include a mobility component³, and would like to see action on this as a priority.

Similarly, a Minimum Income Guarantee (MIG) has the potential to be a gamechanger in social security provision. Whilst recognising the challenges inherent to delivering a MIG under current devolved powers, we would urge the Scottish Government to both seek to deliver on the principle of a MIG to the maximum extent possible, and to investigate options for working in partnership with the UK Government to either devolve further powers or to amend policies in existing reserved areas to give fuller effect to the policy.

About the ALLIANCE

The Health and Social Care Alliance Scotland (the ALLIANCE) is the national third sector intermediary for health and social care, bringing together a diverse range of people and organisations who share our vision, which is a Scotland where everyone has a strong voice and enjoys their right to live well with dignity and respect.



We are a strategic partner of the Scottish Government and have close working relationships with many NHS Boards, academic institutions and key organisations spanning health, social care, housing and digital technology.

Our purpose is to improve the wellbeing of people and communities across Scotland. We bring together the expertise of people with lived experience, the third sector, and organisations across health and social care to inform policy, practice and service delivery. Together our voice is stronger and we use it to make meaningful change at the local and national level.

The ALLIANCE has a strong and diverse membership of over 3,500 organisations and individuals. Our broad range of programmes and activities deliver support, research and policy development, digital innovation and knowledge sharing. We manage funding and spotlight innovative projects; working with our members and partners to ensure lived experience and third sector expertise is listened to and acted upon by informing national policy and campaigns, and putting people at the centre of designing support and services.

We aim to:

- Ensure disabled people, people with long term conditions and unpaid carers voices, expertise and rights drive policy and sit at the heart of design, delivery and improvement of support and services.
- Support transformational change that works with individual and community assets, helping people to live well, supporting human rights, self management, co-production and independent living.
- Champion and support the third sector as a vital strategic and delivery partner, and foster cross-sector understanding and partnership.



Contact

Allan Faulds, Senior Policy Officer

E: allan.faulds@alliance-scotland.org.uk

Rob Gowans, Policy and Public Affairs Manager

E: rob.gowans@alliance-scotland.org.uk

T: 0141 404 0231

W: <http://www.alliance-scotland.org.uk/>

¹ The ALLIANCE, 'ALLIANCE response to the social security enhanced administration consultation' (October 2022), available at: <https://www.alliance-scotland.org.uk/blog/news/alliance-response-to-the-social-security-enhanced-administration-consultation/>

² Scottish Campaign on Rights to Social Security (SCoRSS), 'Beyond a Safe and Secure Transition' (August 2020), available at: https://www.cas.org.uk/system/files/publications/scorss_report_beyond_a_safe_and_secure_transition.pdf

³ Age Scotland, 'A Fairer Pension Age Disability Payment' (November 2023), available at: <https://www.ageuk.org.uk/scotland/our-impact/policy-research-influencing/reports-research/pension-age-disability-payment---mobility-component/>

