

Social Security (Amendment) (Scotland) Bill

Island Communities Impact Assessment

November 2023

Island Communities Impact Assessment – Social Security (Amendment) (Scotland) Bill

Introduction

This document records the decision not to undertake an Island Communities Impact Assessment (“ICIA”) in respect of the Social Security (Amendment) (Scotland) Bill (“the Bill”). It also summarises the information and evidence that has been considered, along with the rationale for this decision.

Further information about the background and the policy intention of the Bill is set out in the Policy Memorandum. Estimated costs are set out in the Bill’s Financial Memorandum. This document should be considered together with those documents.

Policy aims

The Social Security (Scotland) Act 2018¹ (“the 2018 Act”) set out the overarching legislative framework for the administration of social security in Scotland, took powers for Scottish Ministers to deliver social security assistance and made provisions for operational functions such as managing overpayments, re-determinations and appeals.

The Scottish Parliament subsequently passed the Social Security Administration and Tribunal Membership (Scotland) Act 2020², which created statutory offences in primary legislation in relation to forms of assistance provided for under section 79 of the 2018 Act and also addressed a small number of other matters relating to social security administration.

This Bill introduces provisions aimed at effecting the continuous improvement of the social security system across a range of topics, in line with the Scottish social security principles laid out in Part 1 of the 2018 Act.³ These core principles, endorsed unanimously by the Scottish Parliament, deliberately correspond to some of the fundamental aspects of the right to social security, as set out in key human rights instruments such as the International Covenant on Economic, Social and Cultural Rights,⁴ the Universal Declaration of Human Rights,⁵ and the European Social Charter.⁶

In particular, the principles which connect most closely to the provisions included within the Bill state that –

“opportunities are to be sought to continuously improve the Scottish social security system in ways which –

¹ [Social Security \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2018/11/section/1)

² [Social Security Administration and Tribunal Membership \(Scotland\) Act 2020 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2020/11/section/1)

³ [s1, Social Security \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2018/11/section/1)

⁴ Article 9, [International Covenant on Economic, Social and Cultural Rights](https://www.unhcr.org/refugees/article-9-international-covenant-economic-social-cultural-rights)

⁵ Article 22, [Universal Declaration of Human Rights](https://www.unhcr.org/refugees/universal-declaration-human-rights)

⁶ Article 12, [European Treaty Series no. 163 – European Social Charter \(Revised\)](https://www.unhcr.org/refugees/european-social-charter)

- (i) put the needs of those who require assistance first, and
- (ii) advance equality and non-discrimination”

and

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

The majority of provisions included within the Bill are designed to create efficiencies and enhance the administration of the Scottish social security system, with a focus on measures to improve client experience and to deliver value for money. In addition a provision is included allowing Ministers to create, by way of regulations, financial assistance for people with experience of being in care.

Further information about the background and the policy intention of the Bill is set out in the Policy Memorandum which accompanies the Bill. An overview of the provisions included in the Bill and their specific policy aims are set out below.

Taking a regulation-making power for childhood assistance

New enabling powers are provided within the Bill, allowing the Scottish Ministers to make regulations for childhood assistance, which will help towards meeting some of the costs associated with having a child in the family. Scottish Ministers intend to use the new powers for childhood assistance in due course as a new legislative footing for Scottish Child Payment (SCP) to allow better alignment of Social Security Scotland benefits.

SCP is currently delivered under s79 of the 2018 Act⁷ as a ‘top-up’ where an individual is receiving a qualifying UK Government benefit.⁸ Placing the payment on a new legislative footing will offer the opportunity for greater alignment across the five family payments (including the Best Start Grants and Best Start Foods) and will afford flexibility in the way the payment is delivered in the future.

Financial support for people with care experience

A provision will be included in the Bill allowing Scottish Ministers to create, by way of regulations, financial support for people with care experience. The current intention is that these powers will be used initially for a payment called the Care Leaver Payment (CLP).

The CLP will fulfil the commitment made in the Promise Implementation Plan published in March 2022 to ‘provide some additional financial security for young people with care experience and will help reduce some of the financial barriers that young people face whilst moving on from care and into adulthood and more independent living’.

⁷ [s79, Social Security \(Scotland\) Act 2018](#)

⁸ [Who should apply - mygov.scot](#)

Amendments to Coronavirus (COVID-19) measures introduced in 2020

In 2020, due to the coronavirus (COVID-19) pandemic, sections 52A and 52B were amended into the 2018 Act by the Coronavirus (Scotland) Act 2020.

Section 52A means requests for re-determinations must be considered valid beyond the maximum period of one year prescribed by the 2018 Act, where the reason for delay was related to COVID-19. Section 52A also allows for appeals to be brought beyond the maximum prescribed period of one year, where the Tribunal gives permission on the basis of being satisfied that the reason for the delay was related to COVID-19. Section 52B allows a late application to be treated as being made within the prescribed period for a given benefit under Chapter 2 of the 2018 Act, where the reason for delay was related to COVID-19.

The provisions in the Bill will give Social Security Scotland discretion to accept late requests for re-determination beyond the one-year prescribed period on the basis of 'exceptional circumstances', rather than only COVID-19. The provisions in the Bill will repeal section 52A of the 2018 Act and allow appeals to be brought, with the permission of the Tribunal, beyond the one-year prescribed period on the basis of 'exceptional circumstances', rather than only COVID-19. Provisions in the Bill will remove section 52B from the 2018 Act and revert application periods to existing pre-COVID deadlines.

Withdrawing a request for re-determination

Under the 2018 Act, where a determination of entitlement to assistance is made, an individual has a right to a re-determination. If a client asks for a re-determination, the Scottish Ministers are under a statutory duty to make a new determination. A client cannot subsequently withdraw their request for re-determination, even if their circumstances have changed since making their request, or if they have otherwise changed their mind.

The Bill includes provision enabling clients to withdraw a re-determination request if they no longer wish to challenge the decision. This policy builds on the person-centred, rights-based approach already adopted for challenge rights in line with the Scottish social security principles and the Social Security Charter ('the Charter').⁹

Completing re-determinations beyond the period allowed

Where a re-determination is not completed by the Scottish Ministers in the timescales set out in the relevant regulations, the re-determination becomes out-of-time and the client is notified that they have a right to appeal to the First-tier Tribunal (Social Security Chamber) without waiting for the re-determination to be made. The Scottish Ministers are, at that point, no longer under a duty to make the re-determination. However, in practice, they continue to consider the re-determination request.

⁹ [Social Security Scotland - Our Charter](#)

Provisions are included in the Bill so that the Scottish Ministers remain under the duty to make the re-determination beyond the period allowed, unless the client opts to exercise their right to appeal. This will offer legal clarity in terms of what happens in practice when a re-determination runs late.

Making a new determination of entitlement whilst there is an ongoing appeal

Under the 2018 Act, Scottish Ministers cannot make a new determination after a valid appeal has been brought, even if an error has been identified, or new evidence received, which shows that a client has been underpaid, or not received an award that they were entitled to. The appeal must continue unless it is withdrawn by the client.

In instances where the Scottish Ministers recognise that an individual should have received a higher, or more advantageous, award, the provisions in the Bill allow a new determination to be made after an appeal has been lodged and the appeal to stop as a result. The new determination can only be made if the client agreed, and will come with challenge rights.

Appeals to First-tier Tribunal against process decisions

The 2018 Act provides at section 61 that individuals can appeal to the First-tier Tribunal for Scotland against certain decisions made by the Scottish Ministers on the process of applying for benefits, or the process of challenging determinations.

The provisions in the Bill set out the powers of the Tribunal to uphold or set aside decisions in process appeals, and the effect of a Tribunal decision in a process appeal. The Bill also sets out further circumstances in which a process appeal may be raised, to include the new types of process introduced by the Bill.

Overpayment liability and challenge rights

Under the 2018 Act, a client has a statutory liability to repay any overpayment made in error, except where they did not cause or contribute to that error, and if it was the sort of error a person could not reasonably be expected to have noticed.

The provisions in the Bill set out that liability extends to clients who have a representative acting on their behalf, except where the representative uses the assistance for a purpose which is a breach of their duties or responsibilities, in which case the representative will be personally liable.

Currently, where Social Security Scotland determines that an overpayment has occurred, it makes a new determination on a client's entitlement to benefit. Although this new determination will bring re-determination and appeal rights if the client wants to challenge the decision, there is not any formal right to challenge the decision that an individual is liable to repay the overpayment.

The provisions in the Bill also introduce a right to a review (followed by a right to appeal to the First-tier Tribunal for Scotland (Social Security Chamber)) against a finding of liability for an overpayment. The further review and appeal provisions in part 6 of the Tribunals (Scotland) Act 2014 will also be available.

Recognising Appointments made by a Minister of the Crown

Where a person lacks capacity to manage their own financial affairs, the Department for Work and Pensions (DWP) and Scottish Ministers both have provisions that allow them to appoint a person or organisation, known as an appointee, to act on that person's behalf.

Due to differences in the law and the processes that govern appointments in Scotland and the rest of the United Kingdom, a DWP appointee – which is an appointment made by a Minister of the Crown – cannot automatically be treated as equivalent to an appointee under the 2018 Act.

The Bill will introduce powers for Scottish Ministers to make provision in regulations prescribing circumstances in which a DWP appointee may be treated as though they had been appointed by Scottish Ministers to act on a client's behalf, pending an assessment by Social Security Scotland.

Liability of appointees

Currently, there is no provision within the 2018 Act with the effect that an appointee will be liable to account to the individual for any mismanagement of the individual's property (either in relation to children or adults). There are provisions respectively, in terms of the Children (Scotland) Act 1995 and the Adults with Incapacity (Scotland) Act 2000, which make other types of representatives liable to the individual for mismanagement of their property.

The Bill provides that an appointee will be liable to account to the individual for whom they were appointed, for their use of the individual's funds outwith their authority or power, or after having received intimation of the termination or suspension of their authority or power to intervene. They are to be liable to repay the funds to the account of the individual. No liability will be incurred where the appointee acted reasonably and in good faith in their use of the individual's funds.

Information for audit of the social security system

Social Security Scotland need to produce effective measurements and estimates of the extent of client error, official error, and fraud as assurance that the social security system is efficient and delivering value for money in line with the Scottish social security principles.¹⁰

Currently Scottish Ministers can only request that people provide information for the specific purpose of determining an individual's entitlement to social security

¹⁰ [s1\(h\), Social Security \(Scotland\) Act 2018](#)

assistance. Provisions in the Bill will give Scottish Ministers powers to require individuals to provide information when reasonably requested to do so, in order to review their entitlement for the purposes of audit. Safeguards will be built in to ensure that where a person has good reason they might be exempted from the process.

Recovering Scottish social security assistance from awards of compensation

A person affected by accident, injury, or disease due to the fault of a third party may be entitled to compensation. Depending on the nature of their accident, injury, or disease they may also be entitled to social security assistance. The Scottish Government believes that a third party's legal obligation to fully compensate those they have harmed should not be subsidised by Scotland's social security system.

The provisions in the Bill allow the Scottish Government to recover relevant forms of Scottish assistance from awards of compensation, avoiding the risk of a person being 'doubly compensated' for the same incident. The policy on compensation recovery is consistent with the responsibilities in the Scottish Public Finance Manual¹¹, and aligns with the Scottish social security principle that the Scottish social security system is to be efficient and deliver value for money.¹²

Changes to the remit and status of the Scottish Commission on Social Security

The Scottish Commission on Social Security (SCoSS) reviews certain social security policies, by way of consideration of draft regulations, and provides the Government and the Scottish Parliament with scrutiny reports on each piece of legislation it reviews.

The provisions in the Bill expand the types of regulations that SCoSS is able to review, and replace the requirement for SCoSS to prepare accounts for external audit, with a requirement to submit an annual report on their work to Scottish Ministers. The Scottish Ministers will then share this report with the Scottish Parliament.

The Bill also removes the status of SCoSS as a body corporate. SCoSS will continue to be recognised as an advisory non-departmental public body which better reflects how it operates in practice.

¹¹ [Scottish Public Finance Manual - gov.scot \(www.gov.scot\)](http://www.gov.scot)

¹² [s1\(h\), Social Security \(Scotland\) Act 2018](#)

Who will the Bill affect?

The Bill will primarily affect:

- People using the services provided by Social Security Scotland, including their appointees and representatives
- Social Security Scotland
- The Scottish Courts and Tribunals Service
- The First-Tier Tribunal for Scotland (Social Security Chamber)
- The Judiciary
- The Scottish Commission on Social Security
- People with care experience
- Insurance companies and the legal firms who interact with them

Information relating to island communities

The Scottish Government published a report on Scotland's inhabited islands in 2015¹³, based on information gathered in the 2011 census. At that time, a total of 93 islands in Scotland were inhabited, with a total population of 103,700 (2% of the total population of Scotland). 2022 census data has recently been published but no regional breakdown of the information gathered is yet available.

The projected percentage change in population by age grouping, based on 2022 census data, shows that Scotland's population will age in every area to 2043. The highest % reduction in children and the working age population is in islands and remote rural areas (-23% and -15%). The projected percentage change in population is most extreme in island and remote rural areas, where an approximate drop of 19,000 people represents a 12% change between 2018 and 2043.

The 2022 Census¹⁴ also shows which local authority areas have increasing and decreasing populations. Na h-Eileanan Siar saw the biggest decrease (down 5.5%). In Shetland Islands the decrease (1.2%) was driven by migration. The population in the Orkney Islands has however grown, by 3%.

The forms of assistance provided by Social Security Scotland are provided to people on low incomes, people with disabilities, or people with unpaid caring responsibilities.

In 2011, island residents reported their general health as marginally better than the Scotland population as a whole: 83 per cent of island residents reported their health as being 'Very good' or 'Good' compared with 82 per cent for Scotland as a whole. Amongst the island groups, this proportion ranged from 59 per cent in Flotta to 98 per cent in Easdale.

Much of this variation is likely to be associated with the age profile of island populations – nationally the proportion of the population reporting their general health as 'Very good' or 'Good' was 97 per cent for those aged under 25 compared

¹³ [Inhabited islands analytical report | Scotland's Census \(scotlandscensus.gov.uk\)](https://www.scotlandscensus.gov.uk/inhabited-islands-analytical-report)

¹⁴ [Scotland's Census 2022 - Rounded population estimates | Scotland's Census \(scotlandscensus.gov.uk\)](https://www.scotlandscensus.gov.uk/scotland-census-2022-rounded-population-estimates)

with 48 per cent and 35 per cent respectively for those aged 75 to 84 and aged 85 and over.

The proportion of island residents with a long-term (lasting 12 months or more) health problem or disability that limited their day-to-day activities was just under 20 per cent, including 9 per cent who reported their daily activities were limited a lot. The corresponding proportions for Scotland as a whole were very similar.

The proportion of people with a limiting long-term illness or disability varied considerably by island group. It ranged from 38 per cent in Flotta down to 5 per cent in Easdale. The proportion of people whose daily activities were limited a lot by a long-term health problem or disability was highest in Eday (21 per cent) and lowest in Easdale, where no one reported their daily activities to be limited a lot. As with general health, the prevalence of limiting long-term health problem or disability increases with age.

In 2011, a slightly higher proportion of island residents (9.5 per cent) provided at least one hour unpaid care a week than nationally (9.3 per cent). These were very slight decreases on the proportions recorded in 2001 (of 9.7 per cent in the islands and 9.5 per cent in Scotland). Amongst island groups the proportion of people providing unpaid care in 2011 ranged from 3 per cent in Vatersay up to 24 per cent in Housay.

Social Security Scotland publishes information on its client base for the various forms of assistance it delivers, including analysis by local authority area¹⁵. The figures are not however broken down into mainland and island groupings, as some local authorities cover some islands and some parts of the mainland.

Social Security Scotland has established a network of trained advisers throughout Scotland who support people to apply for benefits. The Local Delivery Service has been offering support to residents on inhabited Scottish islands since July 2021. It can arrange appointments in a client's home, by telephone, or by video. In addition to this, there are 13 community venues across the Western Isles, Orkney and Shetland where face-to-face appointments can be offered.

There is no difference to the service provided on islands compared to the service on the mainland. Since launching July 2021, Social Security Scotland's Local Delivery has supported 449 clients in the Western Isles, 469 clients in Shetland, 522 clients in Orkney, and 734 clients in Argyll & Bute, which includes some islands.

Consultation and engagement

Most of the provisions in the Bill were consulted on as part of a public consultation titled Scotland's Social Security system: Enhanced Administration and Compensation Recovery¹⁶, which ran for a total of 12 weeks from 4 August to 27 October 2022. The Scottish Government ran a series of events whilst the

¹⁵ [Social Security Scotland - Social Security Scotland statistics: publications](#)

¹⁶ [Scotland's social security system: enhanced administration and compensation recovery - consultation - gov.scot \(www.gov.scot\)](#)

consultation was open aimed at driving engagement and increasing the number of responses received, including an online engagement event aimed specifically at island communities which took place on 25 October 2022 and which was promoted through the Scottish Islands Federation's membership network.

The consultation received a total of 34 responses, most of which were submitted on behalf of organisations. An independent analysis of the responses carried out on behalf of the Scottish Government¹⁷ found that there was widespread support for most of the proposals included in the consultation. Concerns raised about the proposals in the consultation were considered during policy development and influenced the provisions included in the Bill.

There has not yet been a formal consultation on the policy or provisions regarding care experience assistance. The Scottish Government will shortly launch a full public consultation seeking views on the proposed assistance, which will include reference to the powers taken in the Bill in regard to care experience assistance. In addition, further consultation on the detailed rules for the assistance itself will be undertaken before the regulation-making power being taken in the Bill is exercised.

Findings in relation to impacts on island communities

The analysis of responses to the consultation showed that 2 of the 34 respondents answered the question about impacts on island communities. Six people participated in the online engagement event aimed specifically at island communities.

One respondent raised the particular barriers faced by members of island communities, including poor transport links, housing shortages and expensive food and fuel, but did not comment specifically on the impacts of any Bill proposal in particular.

The other respondent noted that communications options needed to be suitably broad to meet islanders' needs, but also made no specific comments on particular Bill proposals.

Assessment

It is assessed that the Bill will not have a significantly different effect on island communities. The Bill is intended to improve the Scottish system of social security as a whole, in ways which improve client experience and deliver increased value for money, in the same way across all of Scotland.

Further impact assessments will consider the effects on Island Communities and will be undertaken in due course where necessary, for example when the regulation-making powers being taken in the Bill are being exercised to make secondary legislation, or when new operational processes are being designed and implemented with Social Security Scotland.

¹⁷ [Social security system - enhanced administration and compensation recovery: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/consultations/2022/10/25/analysis/analysis.html)

The positive impacts of the legislation identified in other impact assessments which accompany the Bill will also apply to people in island communities, and no barriers specific to the islands exists in respect of the implementation of the Bill provisions.

There is no intention for the Bill to have a different effect on the island communities and it has been assessed that the provisions in the Bill do not need to be developed in a way to improve or mitigate the outcomes expected from the Bill.

Sign-off

In preparing the ICIA, we have formed an opinion that our policy, strategy or service is not likely to have an effect on an island community which is significantly different from its effect on other communities (including other island communities).

The reason for this is detailed in the assessment section above.

ICIA approved by: Ian Davidson, Deputy Director, Social Security Policy Division

Date approved: October 2023



© Crown copyright 2023

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-83521-570-8 (web only)

Published by The Scottish Government, November 2023

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS1379154 (11/23)

W W W . g o v . s c o t