

Social Security Administration and Tribunal Membership (Scotland) Bill

Stage 2 Consideration

10 September 2020

Briefing from Citizens Advice Scotland

Scotland's Citizens Advice Network empowers people in every corner of Scotland through our local bureaux (CAB) and national services by providing free, confidential, and independent advice. We use people's real-life experiences to influence policy and drive positive change. We are on the side of people in Scotland who need help, and we change lives for the better

Summary

Citizens Advice Scotland (CAS) supports the following amendments (in Marshalled List order): **6; 7; 22; 8 to 21.**

Introduction

Citizens Advice Scotland (CAS) welcomes the Bill, which provides an opportunity to make minor amendments to address issues which have been identified since the passage of the Social Security (Scotland) Act 2018, including making provision for the introduction of the Scottish Child Payment. CAS welcomes the amendments brought at Stage 2, which cover a number of further areas which CAS and others identified in evidence at Stage 1¹.

Appointees

Although CAS was broadly content with the proposed provisions on appointees which addressed an area where a gap in the law currently exists – allowing adults to manage a child's benefits payments on their behalf, for instance where informal kinship care arrangements exist - we recommended that regulations and guidance should include safeguards to ensure this provision is used appropriately and sensitively.

We welcome the Scottish Government's amendments which have been shaped by extensive consultation with stakeholders, including CAS, and make provision for:

- Statutory guidance to be published, covering how prospective appointees will be assessed as suitable, how appointments can be made and terminated, a review process and a process for handling complaints.
- Statutory safeguarding principles that must be used in developing decision maker guidance.

- A right for individuals who wish to challenge a decision about their appointment to appeal to a Tribunal.
- A further safeguarding process for adults with capacity who wish to use an appointee.

CAS supports amendments 6 and 7 (in the name of the Cabinet Secretary).

Determination of entitlement to assistance

CAS supports provisions for appointees to be made for the purposes of enabling a claim for assistance under special rules if they are terminally ill, but revealing the extent of their illness would be detrimental to the individual's health. However, we recognise concerns raised by SAMHⁱⁱ and others at Stage 1 that there could be potential for this to be inappropriately used in cases where an individual is not terminally ill. CAS supports the additional safeguard of requiring information on the use of this power to be recorded and reported, as proposed in amendment 22.

CAS supports amendment 22 (in the name of Jeremy Balfour).

Assistance given in error

At Stage 3 of the Social Security Bill's passage through the Scottish Parliament, amendments were considered relating to allowing people to challenge liability to repay a social security overpayment through an appeal to the Tribunal, rather than through the Sheriff Court. Section 68 of the Act created a power for Scottish Ministers to make regulations to transfer certain powers in this regard from the Sheriff Court to the Tribunal.

CAS believes it would be appropriate to extend the re-determinations and appeals system in respect to challenges to liability to repay overpayments. In the absence of regulations being made, this would require to be challenged in the Sheriff Court. Currently in the courts, the creditor must only aver that the debt exists, and does not have to provide original paperwork unless challenged to do so. Also in the simple procedure process (for debts less than £5000), which is most likely to cover overpayments, if the debtor does not respond to the creditor's claim then the creditor can simply apply for a decision without a hearing. The question of liability is therefore not addressed. CAB In-Court advisers report that the vast majority of court actions go through undefended or not responded to with one of the main reasons being a strong sense of powerlessness that most people feel when faced with an adversarial system which is alien to them.

However, despite consensus around the principle of challenge in a Tribunal in Parliament and subsequently from discussions with stakeholders, regulations have not been brought forward at the time of writing. The amendments in the name of the Cabinet Secretary require these to be brought forward no later than 1 April 2021 following consultation with stakeholders.

CAS supports amendments 8, 17, 19 and 21 (in the name of the Cabinet Secretary).

Identifying possible eligibility

One of the main areas where the work of citizens advice bureaux complements the work of the social security system is through benefit checks and income maximisation. We know from our work that a substantial number of people are entitled to social security support but are currently not receiving it. Bureaux play a hugely important role in maximising the income of clients, ensuring that they are claiming all the benefits that they are entitled to. In many instances, clients may be seeking advice about another issue (e.g. debt), with the bureaux able to improve their financial circumstances through ensuring that they are claiming the right benefits.

Citizens Advice Scotland welcomed the duty placed on the Scottish Ministers to inform people about possible eligibility for other benefits they may be entitled to by the Social Security (Scotland) Act 2018, and welcomes amendments which would extend this duty to any top-up benefits created, such as people who apply for Scottish Child Payment.

CAS supports amendments 9, 10 and 20 (in the name of the Cabinet Secretary).

Suspension

In our response to the draft regulations for Disability Assistance for Children and Young People, as well as our evidence to the Committee at Stage 1, CAS highlighted that, contrary to the Scottish Government's policy intentions, the regulations appeared to remove entitlement for children or young people who spend more than 28 days in a care home, residential educational establishment or legal custody. The Scottish Commission on Social Security also highlighted the same point, and identified that this could be addressed by amending the Act to enable entitlement to remain while payment is suspended.

CAS believes it is important that the payment should be suspended rather than stopped, and should be resumed promptly and smoothly, as opposed to the individual having to re-apply and be assessed for the benefit again. We recommended the Bill is used as an opportunity to amend the 2018 Act to make provision for a suspension and resumption of a benefit, rather than removing entitlement, and welcome amendments to make provision for this.

In correspondence with the Cabinet Secretary, CAS and other organisations recommended that suspension of payments be restricted to when the following circumstances apply:

- an individual is in a care home, hospital, residential educational establishment or legal custody in prescribed circumstances;
- an individual is entitled to more than one kind of assistance of a prescribed nature (whether reserved or devolved); or
- an individual has failed to provide information requested in prescribed circumstances.

The amendments lodged adequately make provision for suspension of payment (or the setting of a nil award) in these circumstances.

In addition, the amendments propose that payment could be suspended to protect a person from suspected financial abuse. Our understanding is that this emerged from the Scottish Government's development of the amendments related to appointees, and is intended to cover scenarios where an investigation is opened due to suspicion that an appointee is stealing or withholding payments from the individual. CAS would be content with the power to suspend payment in these circumstances, but would recommend that guidance provides for a suspension under these circumstances to be as short as possible, by making provision for a new appointee without delay.

CAS supports amendments 15 and 16 (in the name of the Cabinet Secretary).

For more information or CAB cases, contact:

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ⁱ Citizens Advice Scotland evidence on the Bill -

https://www.parliament.scot/S5_Social_Security/General%20Documents/SSCS520ATM07_Citizens_Advice_Scotland.pdf

ⁱⁱ Scottish Association for Mental Health evidence on the Bill -

https://www.parliament.scot/S5_Social_Security/General%20Documents/SSCS520ATM05_Scottish_Association_for_Mental_Health.pdf