

Submission on the Social Security Amendment Bill

Citizens Advice Scotland (CAS) welcomes this opportunity to provide our overview of the impact of the Scottish Social Security landscape to inform scrutiny of this Bill. As the amendments largely reflect our views expressed in the consultation process, including our recommendations, we have limited our response to those aspects of the Bill that are of the most direct concern to the Citizens Advice network in Scotland. We have expressed views where we believe there is scope for further amendments, or significant wrap around work needed to achieve the policy intent.

CAS makes the following submissions restricted to aspects of:

- Part 1 providing the power to introduce Regulations to create Scottish Child Payment (SCP) as a standalone payment, not simply a top up provided to those in receipt of certain reserved benefits.
- Part 2 proposing to repeal certain emergency Coronavirus provision.
- Part 3 proposing new timescales for re-determination or appeal requests, the right to withdraw a re-determination request, clarification of duties where a re-determination has not been completed within the period allowed, powers to make a new determination which stops an appeal following an error whilst an appeal is ongoing, and new powers for the Tribunal in a process appeal.
- Part 4 proposing a right to review, followed by a right to appeal to the First-tier Tribunal for Scotland, against a finding of liability for an overpayment.

Our key recommendations:

- Carefully drafted guidance on what constitutes “good reason”, and “exceptional circumstances” will require to include guidance on Covid-19.
- The provisions relating to re-determinations within one year and out-with one year should be mirrored in respect of initial applications for Adult Disability Payment (ADP).
- Return periods for review forms should mirror those for initial applications.
- Consideration should be given to eliminating the re-determination stage for claimants. Doing so would ensure that the process of challenging decisions best supports the dignity of individuals while improving efficiency.
- Clear guidance to claimants and stakeholders about the status of appeals raised when a re-determination has not been completed within the statutory timescales. Such guidance should clarify that these appeals concern the original decision not yet re-determined and that the Tribunal is empowered to substitute its own decision about entitlement. Such guidance would clarify the status of further evidence submitted with the out of time re-determination request.
- Exploring the options for using an income threshold below which lawfully recoverable overpayments will not be collected.

1. Part 1 of the Bill: Childhood Assistance

CAS agrees that s79 of the Social Security (Scotland) Act 2018, which allows the top-up of a qualifying reserved benefit, performs a specific function which may limit its utility in meeting the needs of Scottish claimants.

CAS agrees that being able to react to potential changes to reserved benefits will be important in ensuring that the Scottish Social Security effectively meets the needs of Scotland's population. Flexibility in the design and delivery of Scottish Child Payment could enable a closer alignment with other forms of Social Security Scotland (SSS) assistance, such as Best Start Grant, potentially streamlining access to benefits, permitting a more seamless system of support and easing evidence provision processes. Such flexibility could enable Social Security Scotland to target support to those most in need. Criteria could be developed based upon need, so that those who are ineligible for qualifying benefits are supported. The cases below illustrate some scenarios that could be addressed by moving Scottish Child Payment to a standalone payment:

Citizens Alert: A West of Scotland CAB reports of a client who is a young mother (under twenty-five) living with her 2-month-old child. She started working part-time for the NHS in March 2021. She was not entitled to Statutory Maternity Pay, and was advised to claim Maternity Allowance, which as a benefit was deducted in its entirety from her Universal Credit entitlement. Had the MA been treated as earnings, with a work allowance, client would have been entitled to £585 more UC per month.

Citizens Alert: A Central Scotland CAB reports of a client who sought advice on eligibility for benefit. Client was no longer receiving UC as, having applied for Maternity Allowance (MA), which was awarded and backdated, her income is higher than UC standard allowance and child element. Client's SCP will cease since she is no longer in receipt of qualifying benefit. MA paid at £156 a week and client does not have housing costs as she lives with her mother.

CAS therefore welcomes the provisions of Part 1, including the potential to extend the support for a certain period of time in certain circumstances following an individual ceasing to be responsible for a child, such as bereavement.

While CAS awaits any ensuing draft regulations, it must be noted here that care will be required to ensure that unnecessary and distressing re-assessments do not occur, that qualification does not become excessively more complex, that no barriers to take up result from the transition, and that adequate resourcing is provided to deliver the change.

Recommendation: explore the feasibility of extending Scottish Child Payment to those with No Recourse to Public Funds (NRTPF)

At present, those with no recourse to public funds responsible for a child under three who is a British Citizen and with incomes under £726/month can access the Best Start Foods scheme.¹

CAS recommends feasibility work on utilising an equivalent mechanism in any new Regulations in respect of Scottish Child Payment to extend a vital lifeline to those subject to NRTF.

Citizens Alert: A Central Scotland CAB reports of a client who needed help with the cost of formula and nappies for the baby. Client was advised to speak to her Health Visitor directly in first instance and signposted to local food and baby bank. The Bureau sourced supermarket vouchers for clients, which were posted directly to client and a text message notification confirming this was also issued. The advisor observed a significant increase in families with NRTPF and low-income families generally who are unable to afford essential items required to care for a baby and noted the limited help that the Bureau was able to provide in such cases.

2. Part 2 of the Bill: 'Applications for Assistance'

CAS observes that Covid-19 has had a disproportionate impact on disabled people. People with health profiles that required them to shield during the pandemic, and those with mental health and/or learning difficulties, in many instances remain more isolated and potentially less able to access advice than was the case prior to the pandemic. To ensure individuals in these circumstances are treated with dignity, fairness and respect, guidance on what constitutes "good reason" and "exceptional circumstances" will require to be carefully drafted to include the impact of Covid-19.

3. Part 3 of the Bill: 'Determinations and Re-determinations of Entitlement to Assistance'

The amendments in respect of re-determination and appeal requests in Part 3² explicitly recognise that there are a range of exceptional circumstances that might delay the progress of a re-determination or appeal request, including, for example, abuse, severe mental illness and an unstable housing situation. This reflects our recommendations in response to the consultation exercise and is fundamental to delivering on a social security system that treats individuals with dignity, fairness and respect. It also supports access to and delivery of advice services by ensuring adequate provision for circumstances in which providing timely requests is challenging.

¹ [Best Start Foods if you have no access to public funds - mygov.scot](https://mygov.scot)

² Part 3 s52A

Recommendation: Expand the use of good reason and exceptional circumstances beyond re-determination and appeal requests

While the provisions in respect of late re-determinations and appeals are welcome, the proposed amendments do not provide the same flexibility and scope for case-by-case analysis in respect of initial applications. Initial applications for Adult Disability Payment (ADP) and Child Disability Payment (CDP) are complex and involve providing detailed accounts of highly sensitive personal circumstances, ideally supported by formal and informal evidence. The form itself can be daunting, requiring psychological preparation to tackle. Obtaining advice is often essential, but can take time to secure, particularly if complex communication needs are involved.

At present the provision within the relevant Regulations in relation to ADP, for example, is limited to "Where the Scottish Ministers are satisfied that there is a good reason why an application was made after the 8-week period described in paragraph (4), they may treat the application as having been made within that period".³

Periods for returning review forms, used to report changes affecting a claim, are even narrower than for initial applications. Just twenty-eight days are provided to return an ADP review form; two reminders will be issued, but after 56 days an award may be suspended. This timeframe can lead to inefficiencies and distress.

Citizens Alert: A West of Scotland CAB reports of a client, an ADP recipient, in distress due to feeling under pressure to respond to a review request within twenty-eight days. The adviser observes that many clients may have to wait substantial periods for an appointment at the CAB to get help completing the form. The adviser compares the twenty-eight-day timeframe with the eight weeks provided to return a Part Two application form.

Being unable to meet these tight timescales can result in significant financial loss if claims have to be made fresh or changes cannot be treated as having been reported from an earlier date. It also contributes to inefficiencies on SSS processing times. As part of optimising the ability of Scottish social security to deliver fairness, dignity and respect and contribute to poverty reduction, a parallel provision expanding the application of good reason and exceptional circumstances to initial applications and review requests is necessary and would support take-up.

Recommendation: Provide guidance on late Re-determinations and Appeals

To achieve the policy intent these provisions must be accompanied by clear guidance and awareness raising, tailored separately to Social Security Scotland staff, claimants, and

³ [The Disability Assistance for Working Age People \(Scotland\) Regulations 2022 \(legislation.gov.uk\)](https://www.legislation.gov.uk) Section 35 (6)

stakeholders. Access to informed advice services will be crucial to the success of the provisions.

Citizens Alert: An East of Scotland CAB reports of a client seeking support to progress an appeal. To assess the ADP redetermination, the CAB asked client to obtain copies of her completed Part 2 ADP form & the Notice of Determination from Social Security Scotland. The client contacted SSS, who indicated that they could not provide either and that the client’s only option was to lodge a fresh claim, on the basis that the ADP decision in question was out of time for raising an appeal. The decision was less than six months old. The adviser explained that “a pattern is emerging that when clients ask for documents needed to pursue an out of time redetermination within 12-months, they are falsely told that the 6-week limit is an absolute limit, so documents cannot be produced.” The client, who struggles with anxiety and depression, had accepted SSS’s assertions. The client felt unable to face progressing a late appeal.

Recommendation: Provide guidance on appeal lapsing

The introduction of appeal lapsing, accompanied by safeguarding provisions requiring claimant consent and enabling the new determination to be challenged, is welcomed by CAS. Obtaining genuinely informed consent to a new determination preserves the dignity of claimants and helps build and maintain a relationship of trust between Social Security Scotland and claimants.

Where completed after obtaining the informed consent of the claimant, appeal lapsing can reduce distress and improve efficiency by avoiding the need for an appeal hearing. The requirement for these provisions to be accompanied by robust guidance, alluded to in the Explanatory Notes to the Bill⁴, cannot be overstated. The CAS network frequently receives reports of potentially harmful communications about appeal lapsing in the context of Personal Independence Payment (PIP) causing anxiety and distrust.

Citizens Alert: A North of Scotland CAB reports of a client who was contacted by the DWP while an appeal process was ongoing and accepted the award offered. The CAB adviser explained that the client was not afforded an opportunity to consider the offer and to seek advice although medical evidence had been provided detailing learning difficulties associated with challenges in processing information, especially by telephone. The CAB advisor, the named representative on the appeal documents, was not made aware of the offer, and was not therefore able to explore the client’s options with him. The CAB advisor explained that, due to anxiety, the client is not prepared to engage in any further process.

⁴ [Explanatory Notes Accessible \(parliament.scot\)](https://www.parliament.scot/Explanatory-Notes-Accessible) paragraph 91

Citizens Alert: A North of Scotland CAB reports of a client who explained that an unexpected call was received from the DWP offering a settlement prior to an appeal hearing. The client reported being told that a decision had to be made within the same day. The client was unable to reach her CAB adviser and accepted the offer. The client informed the DWP of a preference to wait for advice but was told that the offer was a one-time offer and a decision needed to be made. Client reports feeling pressured and was not told of the right of appeal against the revised decision.

Recommendation: Remove the need for clients to request a redetermination before appealing

- By October 2023, ADP advice represented 24% of all benefits advice provided by the CAS network.
- Re-determinations are the fastest growing area of ADP advice. In the three months to October 2023, re-determinations represented the third largest area of advice for the network in respect of Adult Disability Payment (ADP), behind only advice about the claims process and eligibility.
- Re-determination advice increased as a proportion of overall ADP advice by 25% in the second Quarter of 2023 relative the first Quarter.

CAS submits that the requirement for clients to request a re-determination creates inefficiency and is not the optimal way to support access to justice in a manner compatible with the dignity of the individual. The provisions as currently proposed mean that there are potentially four stages of challenge for claimants: following an initial decision, following a re-determination, and the same two steps again if a new determination is made under the appeal lapsing process.

CAS submits that the provisions of Part 3 of the Bill are an opportunity to remove the requirement for claimants to request a re-determination to access the appeal system. Eliminating the re-determination step for claimants could facilitate access to justice. Claimants would only have to go through one process to challenge a decision, reducing delays and improving efficiency. Social Security Scotland would continue to be empowered to carry out a re-determination via appeal lapsing to avoid unnecessary hearings. If clearly communicated to claimants, this combination may encourage them to exercise their right to challenge a decision.

The lengthy challenge process can cause distress, but also financial or practical hardship if claimants are relying on a successful outcome to access additional support.

Citizens Alert: A West of Scotland CAB reports of a client who required assistance with a re-determination. The client had been awarded 10 points related to the 'moving around' Mobility Component Activity, which should provide automatic eligibility to apply for a Blue Badge. However, a Mobility

award was not recorded on the client's decision letter. The client had completed the application for ADP online without support. While the client's decision letter correctly explained that a standard rate Mobility award is associated with a score of between 8-11 points, and recorded a score of 10 points, it did not grant an award of the Mobility Component at all. The CAB observes that a potential further 56 days could elapse before a re-determination is completed. Meantime the client will struggle to access additional benefits such as a Blue Badge.

Simplifying the process could help break down the multiple complex barriers faced by claimants to exercising their appeal rights:

Citizens Alert: A Central Scotland CAB reports of a client with several health conditions including a learning disability and long-standing mental ill health who is heavily reliant on her parents' support. Stress increases her mental ill-health (and associated self-harming behaviour and self-neglect). The client's parents undertake many activities on her behalf. A claim for PIP was refused on application and upon MR request. Despite the client's mother's knowledge of how well the client meets the criteria for an award of PIP, the client's mother thinks that the process of undertaking any further challenge to the PIP decision (even with maximum support from CAB) will cause stress to the client and a deterioration in her health. For this reason, the client will not pursue an appeal.

While short-term assistance has gone some way toward supporting challenges in some cases, the overall reduced burden on the claimant of being able to go straight to appeal is self-evident.

Citizens Alert: A West of Scotland CAB reports of a client whose ADP award has been terminated following a re-determination request. The points awarded were reduced from 11 (Standard Rate Daily Living) to 4 (no award). The client sustains part-time work while managing long Covid and mental health struggles. The client explained their reliance on the weekly income of £68.10 and advised that she will struggle to face the stress of a prolonged process to appeal the decision.

Recommendation: Provide discretion to not re-determine a decision entire

The positive potential of clarifying the ability for SSS to consider aspects of a decision on a case-by-case basis, rather than a duty in all cases to consider the decision being challenged entire, is illustrated by the case below:

Citizens Alert: A North of Scotland CAB reports of a client, who following a successful re-determination request received a revised award of Child Disability Payment (CDP). However, the re-determination notice did not state that the award of CDP is revised from the date of the original claim, nor did it provide

any detail as to the level of arrears and how they would be paid. The revised award set a much shorter scheduled review date than the original decision, meaning that the family now face a review in less than 12 months' time. The original scheduled award review date was not challenged by the client, but because the re-determination request resulted in the entire original decision being revised, the only option for the family to challenge the review period in the revised decision is to raise a formal appeal to a Tribunal. The Tribunal would then consider the revised decision in its entirety, which entails risk. Due to delays the family of a severely disabled child were left waiting for an additional payment of the equivalent of £74.85 per week from February until December 2023. All of this has distracted the family from their primary focus of meeting their child's needs and caused distress and exhaustion. They were therefore not willing to embark on a further challenge but expressed anxiety and frustration about having to face a review process so soon.

In cases such as this, it would support a person-centred approach to ensure that decision makers are re-determining those aspects of a decision that are in dispute, with changes being made to other aspects of an original decision only where clearly justified.

Recommendation: Clarify the process around re-determinations after the period allowed to SSS

CAS is receiving an increasing number of reports describing confusion around the status of re-determination requests where an appeal is possible on grounds that a re-determination request has not been responded to within the statutory timeframe, and the powers of the Tribunal in these cases.

CAS welcomes the clarity provided by the amendments to Regulation 45, which ensure that a re-determination request can continue to be considered until an appeal is raised but notes that it will need to be carefully and explicitly communicated. This because although the legal duty to consider the re-determination request will end when an appeal is initiated, the duty introduced by 49A will apply i.e., the appeal lapsing route. It must be clearly explained that any new determination issued under section 49A will relate to the original decision that is now the subject of the appeal. Equally important is to ensure understanding and awareness that any subsequent challenge would be to the new, re-determined decision.

This is linked to a more general recommendation from CAS that there is greater emphasis in guidance on the terms of Regulation 45 1) a) ii), which ensures that appeals under this section will concern the original decision that prompted the re-determination request, and therefore that the Tribunal is empowered to substitute its own decision about entitlement. This necessary structure also makes it imperative that guidance clarifies the status of further evidence or information supplied with a re-determination request.

Citizens Alert: A West of Scotland CAB reports of a client who attended having received a letter from Social Security Scotland, advising him that he has the right to appeal since a re-determination decision has not been made within fifty-six days. The client was unclear as to whether he would be appealing the fact that the decision hadn't been made in time or appealing the original decision not to award ADP. The client had been referred to physiotherapy in relation to his ongoing chronic back pain and for professional mental health support, he was therefore struggling to focus on his claim. The CAB contacted Social Security Scotland, who advised that the client should submit the appeal based on the decision not to award ADP. The adviser and client were left unclear as to whether the redetermination request will be ended once the appeal is raised. The client struggles with anxiety, low mood, lack of motivation, and chronic back pain; he felt that this confusion around the process made his condition more difficult to manage and anxiety levels more severe. The client is dependent on others for support.

Finally, CAS emphasises the crucial importance of endeavouring to effectively complete re-determinations within the timescales and to communicate clearly.

Citizens Alert: A West of Scotland CAB reports of a prolonged redetermination processes and inadequate communication having caused unnecessary stress to a client. The client had not received paperwork in a timely fashion or updates, leaving the client uncertain of the outcome of a re-determination request. The adviser observes that instances where backdated payments due following a successful re-determination request are credited to a client's bank account without accompanying documentation are not uncommon, causing further confusion and associated distress.

4. Part 4: "right to review, followed by a right to appeal to the First-tier Tribunal for Scotland, against a finding of liability for an overpayment"

CAS welcomes the introduction of the words "The Scottish Ministers **may** decide that an individual is liable" and the introduction of the right to request a re-determination and subsequent First Tier Tribunal appeal on liability decisions. This reflects our recommendation in response to the original consultation exercise. This empowers decision makers to fully respond to the circumstances of an overpayment case, and delivers in respect of dignity, fairness and respect by affording clients the right to formally challenge a decision that they are liable for an overpayment, rather than limiting the right to challenge to decisions about the amount of any overpayment.

Furthermore, CAS would welcome confirmation that recovery will not commence pending the outcome of a challenge to a liability decision.

Recommendation: Develop an income threshold for debt recovery

CAS believes that the series of welcome amendments pertaining to challenging overpayment liability decisions are an opportunity to consider the terms of section 65,⁵ which are currently very broad, to better reflect ongoing discussion about the appropriate affordability tool to assess repayment arrangements.

CAS recommends conceptual work be carried to explore the feasibility, as an option to best meet the needs of those who require assistance and of efficiency in respect of enforcement costs, of recovering overpayments where it is lawful to do so using an income threshold. This would involve setting a threshold under which no payment for recovery of an SSS debt is deducted and amounts over it are deducted at a fixed percentage. Payment will either be sufficient to clear the debt over time or written off at the end of the payment period.

This type of arrangement is already in use for student loan recovery and is being suggested by UK banks as a solution to business's repaying government backed support loans provided during the Covid-19 pandemic.

If deduction via an ongoing Social Security Scotland benefit award or HMRC is not possible then payment via a new earnings deduction table for recovery of Scottish Social Security Benefits would cover most cases, using the affordability principals outlined below.

Affordability would be determined by setting reasonable and fair parameters regarding the threshold, deduction rate and period. There are a number of options for setting this threshold. The main benefit would be a simple, affordable and easy to maintain system.

CAS explored this in our response to Social Security Scotland's consultation on the use of the Standard Financial Statement as a Debt Management Tool. Such amendments would result in fairer and more sustainable outcomes for cases such the one below:

Citizens Alert: An East of Scotland CAB reports of a client who accrued an ADP overpayment while in prison for five months. The amount of the overpayment was £670 and the repayment rate suggested by SSS was £195/month over three months. The client had severe practical difficulty in reporting the change of circumstances while in prison. The client evidenced multiple health conditions and a history of addiction. In addition to the overpayment, he was subject to deductions from his Universal Credit award to repay an advance loan, rent arrears and Council Tax arrears.

Such a proposal would also provide clarity to the position in respect of direct deductions from benefit to recover overpayments. While Social Security Scotland has stated that a

⁵ [Social Security \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2018/11/section/65) "In making a decision to which this section applies, the Scottish Ministers must have regard to the financial circumstances of the individual who owes the money (so far as those circumstances are known to the Ministers)".

flexible approach will be taken to reflect the debtor's financial circumstances and other debts owed to SSS with reference to a standard rate for deductions of £10 or 10% of total SSS benefit entitlement four weekly, whichever is higher, this is only enshrined in legislation in a very limited way.⁶

⁶ See for example section 44 of the Adult Disability Assistance for Working Age People (Scotland) Regulations 2022 "Where an individual has a liability to the Scottish Ministers under section 63 of the 2018 Act (liability for assistance given in error), the individual's payment of Adult Disability Payment may be given (in whole or in part) by way of deduction, at a reasonable level, from that liability", "reasonable level" means a level that is reasonable having regard to the financial circumstances of the individual." [The Disability Assistance for Working Age People \(Scotland\) Regulations 2022 \(legislation.gov.uk\)](https://www.legislation.gov.uk)