

# **Social Security (Amendment) (Scotland) Bill**

## **Child Rights and Wellbeing Impact Assessment (CRWIA)**

**November 2023**

## **Disclaimer**

This draft document is an initial assessment of the impact of the Social Security (Amendment) (Scotland) Bill. The Scottish Government will continue to review and update this document where required during the parliamentary process. Any future iterations will reflect an increased understanding of these impacts as the amount of data and research available continues to grow.

This impact assessment should be read in conjunction with the Equality Impact Assessment (EQIA) for the Bill, which has been published separately.

# CRWIA Stage 1 – Screening

## Brief Summary

The Social Security (Scotland) Act 2018<sup>1</sup> (“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, error and appeals.

The Scottish Parliament subsequently passed the Social Security Administration and Tribunal Membership (Scotland) Act 2020<sup>2</sup>, which included provision for appointees, provisions for suspension of entitlement, and extended the provisions for offences in the 2018 Act to forms of top-up assistance under section 79 of the 2018 Act.

A CRWIA was published for the 2020<sup>3</sup> Act.

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.<sup>4</sup> 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,<sup>5</sup> the Universal Declaration of Human Rights,<sup>6</sup> and the European Social Charter.<sup>7</sup>

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 –

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

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

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

<sup>3</sup> [Social Security Administration and Tribunals \(Scotland\) Bill 2020: CRWIA - gov.scot \(www.gov.scot\)](https://www.gov.scot/legislation/bills/2020/crwia)

<sup>4</sup> [s1, Social Security \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2018/11/section/1)

<sup>5</sup> Article 9, [International Covenant on Economic, Social and Cultural Rights](https://www.unhcr.org/refugees/article-9-international-covenant-economic-social-cultural-rights)

<sup>6</sup> Article 22, [Universal Declaration of Human Rights](https://www.unhcr.org/refugees/universal-declaration-human-rights)

<sup>7</sup> Article 12, [European Treaty Series no. 163 – European Social Charter \(Revised\)](https://www.unhcr.org/refugees/european-social-charter)

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.

The Scottish Government believes that social security is a human right<sup>8</sup>, as set out in the 2018 Act, and a shared investment to help tackle poverty and build a fairer, more equal society. The National Performance Framework<sup>9</sup> was created to explain the Scottish Government’s aims for Scotland, the values that guide our approach and the national outcomes it is committed to achieving.

The majority of the proposals in the Bill are cross-cutting in nature and promote a person-centred, human rights-based approach to social security. The policy intention is to create efficiencies, remove barriers and empower people interacting with Social Security Scotland.

The Bill will contribute positively to advance the national outcomes of:

- **Communities:** We live in communities that are inclusive, empowered, resilient and safe.
- **Human Rights:** We respect, protect and fulfil human rights and live free from discrimination.
- **Poverty:** We tackle poverty by sharing opportunities, wealth and power more equally.

The Scottish Government published a strategy document titled “Equality, opportunity, community: New leadership – A fresh start” on 18 April 2023 which set out the First Minister’s vision for Scotland and the outcomes the government aims to achieve by 2026.<sup>10</sup>

The Bill will contribute positively to two of the three indicators set out: Equality and Community. Firstly, Equality, through tackling poverty. Social Security Scotland makes payments which contribute to reducing inequality and which help protect people from the harms which flow from living in poverty.

The second objective, Community, will be advanced through this Bill by prioritising public services in a way which is person-centred, with a focus on tackling inequalities

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<sup>8</sup> [s1\(b\), Social Security \(Scotland\) Act 2018](#)

<sup>9</sup> [National Performance Framework | National Performance Framework](#)

<sup>10</sup> [Equality, opportunity, community: New leadership - A fresh start - gov.scot \(www.gov.scot\)](#)

and ensuring that people are empowered to access and challenge their social security entitlement.

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.

The scope of this CRWIA is focused on the possible impacts on children and young people that may occur from implementing the provisions in the Bill. If passed, the Scottish Government intends to make regulations and to provide statutory guidance following consultation with stakeholders, to support the implementation of the Bill. This and further ongoing research and stakeholder engagement will contribute to further CRWIAs for each set of substantive regulations.

### **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 Act<sup>11</sup> as a ‘top-up’ where an individual is receiving a qualifying UK Government benefit.<sup>12</sup> 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’.

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<sup>11</sup> [s79, Social Security \(Scotland\) Act 2018](#)

<sup>12</sup> [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').<sup>13</sup>

### **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

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<sup>13</sup> [Social Security Scotland - Our Charter](#)

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.

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 Social Security (Scotland) Act 2018.

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.<sup>14</sup>

Currently Scottish Ministers can only request that people provide information for the specific purpose of determining an individual's entitlement to social security 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 Manual<sup>15</sup>, and aligns with the Scottish social security principle that the Scottish social security system is to be efficient and deliver value for money.<sup>16</sup>

## **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

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<sup>14</sup> [s1\(h\), Social Security \(Scotland\) Act 2018](#)

<sup>15</sup> [Scottish Public Finance Manual - gov.scot \(www.gov.scot\)](#)

<sup>16</sup> [s1\(h\), Social Security \(Scotland\) Act 2018](#)

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.

### **Further information**

The process of developing the policies contained in the Bill has been ongoing since 2022, with the impacts on children's rights and wellbeing considered as part of this process.

### **Which aspects of the relevant proposal currently affects or will affect children and young people up to the age of 18?**

The articles of the UNCRC and the child wellbeing indicators under the Children and Young People (Scotland) Act 2014 apply to all children and young people up to the age of 18, including non-citizen and undocumented children and young People.

The Bill contains a number of proposals which intend to effect the continuous improvement of the Scottish social security system and ensure that the system is efficient and delivering value for money. Some provisions of the Bill seek to amend or repeal sections of the 2018 Act, and others seek to create new provisions in that Act.

The Bill will therefore affect children and young people who come into contact with the social security system whether directly or indirectly.

Under the 2018 Act there are two forms of assistance for which a person under 16 might be eligible: Child Disability Payment (CDP) and Child Winter Heating Allowance (CWA). Child Rights and Wellbeing Impact Assessments have been published for CDP<sup>17</sup> and CWA<sup>18</sup>.

Where a child under the age of 16 is eligible for these forms of assistance, an application is made and managed by a responsible adult over the age of 16 on their behalf, most often someone with parental rights and responsibilities.

Where a young person is between the ages of 16 and 18 they can apply for and manage independently all forms of Scottish assistance for which they are eligible, with access to a range additional support measures. These include the right to be accompanied by a supporter, the right to advocacy, the availability of interpreters and accessible communications, third party representatives, accessible locations,

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<sup>17</sup> [The Disability Assistance for Children and Young People \(Scotland\) Regulations 2021](#)

<sup>18</sup> [The Winter Heating Assistance for Children and Young People \(Scotland\) Regulations 2020](#)

and interviews at home ensure people are treated with dignity and respect and fully able to participate in any review.

Specific aspects of the measures in the Bill which may affect children and young people in particular are described below.

### **Taking a regulation-making power for childhood assistance**

Scottish Ministers intend to use the new powers for childhood assistance in due course as a new legislative footing for SCP.

SCP is currently delivered under s79 of the 2018 Act as a ‘top-up’ where an individual is receiving a qualifying UK Government benefit. Placing the payment on a new legislative footing will afford flexibility in the way the payment is delivered in the future and will offer the opportunity for greater alignment of social security assistance. The Bill will not make any specific changes to the payment, but will instead provide a new regulation-making power which will enable future changes.

Any changes made in future would affect children who are intended to benefit from the payment. It should be noted that the Bill itself will not bring any changes, but only enable development of regulations in future. The development of any regulations made under the provisions in the Bill will be accompanied by all necessary impact assessments, including a further CRWIA.

### **Financial support for people with care experience**

The Bill takes a regulation-making power for the Scottish Ministers to establish one or more schemes to provide care experience assistance to those who have experience of the care system. The regulation-making power will enable the Scottish Ministers to establish a scheme to deliver the Care Leaver Payment.

The assistance will provide a one-off payment for young people leaving care, with the intention of helping to reduce some of the financial barriers that young people face in transition to adulthood and more independent living. This payment aims to provide care leavers with additional financial support and will form part of a broader package of support.

Details on the eligibility criteria, processes and delivery model of the payment are still to be determined. This will be developed through engagement and consultation with care experienced people and those with experience of delivering similar support. Further impact assessments will also be undertaken on any scheme established by way of regulations. Details of any assistance will be set out in regulations, which will be accompanied by all necessary impact assessments, including a further CRWIA.

### **Re-determinations and Appeals provisions**

For the purposes of this CRWIA the provisions in the Bill aimed at offering people more flexibility when challenging decisions made by Social Security Scotland will be considered together. This includes the provisions which intend to:

- give Social Security Scotland discretion to accept late requests for re-determinations, and the Tribunal discretion to give permission for appeals to be brought, beyond the one-year prescribed period on the basis of 'exceptional circumstances'
- allow people to withdraw a request for re-determination
- clarify 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
- allow a new determination to be made by Scottish Ministers after an appeal has been lodged and the appeal to stop as a result
- 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.

All aspects of these proposals can directly or indirectly affect children and young people up to the age of the 18 in receipt of devolved social security benefits that come with rights of re-determination and appeal, or whose families are in receipt of the same. This is because these policy proposals involve challenging decisions on all benefits delivered by Social Security Scotland that come with re-determination and appeal rights. Therefore, these proposals could potentially affect families who challenge a benefit decision on both low-income benefits as well as disability benefits, including parents, guardians, kinship carers and thereby directly or indirectly impacting children or young people up to the age of 18.

### **Overpayment liability and challenge rights**

The proposals included in the Bill to clarify that liability extends to clients who have a representative acting on their behalf and to 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 may directly or indirectly impact upon a child or young person.

### **Recognising Department for Work and Pensions appointees**

Section 85A of the 2018 Act provides that Scottish Ministers may appoint a person to act on behalf of a child (under the age of 16) where there is no person with legal authority who is willing to act. Scottish Ministers have a duty to take account, insofar as practicable, of the views of the child and persons with parental rights and responsibilities, as a safeguard against an appointment disproportionately interfering with the rights of the child and persons with parental rights and responsibilities and / or the risk of the appointment not being in the child's best's interests.

This proposal will impact on children under 16 who have an appointee acting on their behalf in relation to their DWP entitlements and who are undergoing a migration to an equivalent Social Security Scotland benefit or making a new application in the Scottish social security system.

Recognising the DWP appointee in the Scottish system for a short period of time ensures that children living in complex family situations are not temporarily prevented from receiving Child Disability Payment, or any other social security assistance that they are entitled to, just because they are being cared for by someone without the parental right, such as an informal kinship carer.

Section 85A of the 2018 Act also provides that Scottish Ministers may appoint a person to act on behalf of an individual (over the age of 16) where they are deemed incapable within the definition of the Adults with Incapacity (Scotland) Act 2000. Scottish Ministers have a duty to take account, insofar as practicable, of the views of the client, and anyone with an interest in their welfare or financial affairs when making the appointment decision, as a safeguard against an appointment disproportionately interfering with the rights of the individual.

This proposal will impact young people aged 16 or 17, who have an appointee acting on their behalf in relation to their DWP entitlements, and are undergoing a migration to an equivalent Social Security Scotland benefit or making a new application in the devolved system.

Recognising the DWP appointee in the Scottish system for a short period of time ensures that no vulnerable young person will experience a sudden stop to their crucial social security entitlements, or a delay in payments being made. The Scottish Government recognises that this proposal will delay the implementation of Social Security Scotland's safeguarding measures, such as taking into view the account of the client before making an appointment. However, it is important to emphasise that this is a temporary measure, as their views will still be taken into account as soon as reasonably practicable.

The provisions in the Bill take a regulation-making power to prescribe the 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. Further consideration of the impacts will be considered as secondary legislation is developed.

### **Information for audit of the social security system**

The provisions included in the Bill which give Scottish Ministers powers to require individuals to provide information in order to review their entitlement for the purposes of audit will not in themselves have an impact upon rights of children and young people. The way in which these provisions are implemented in future and the audit

processes and the methodology by which those exercises are carried out will affect children and young people.

The Bill also sets out that Scottish Ministers may prescribe in regulations categories of individuals who are not to be requested to provide information.

Any impacts on children and young people will be considered during the development of regulations and the methodology of audit exercises. Further impact assessments considering the impact on children and young people will be undertaken for secondary legislation and prior to operational implementation.

### **Recovering Scottish social security assistance from awards of compensation**

Recovery provisions are a longstanding feature of the UK social security system with the primary legal framework contained in the 1997 Social Security (Recovery of Benefits) Act. The UK recovery scheme is administered by the Compensation Recovery Unit (CRU), a part of the Department for Work and Pensions. Prior to the devolution of certain social security powers to the Scottish Parliament, all relevant amounts of benefits received by people living in Scotland were recovered by the CRU.

The introduction of Adult Disability Payment (ADP) and CDP have resulted in a discrepancy in that equivalent amounts received in relation to accidents, injuries or disease are not recoverable from the compensator.

The policy to recover social security assistance from awards of compensation means that compensators will have an obligation to repay equivalent amounts of social security assistance received by injured parties. To do this, compensators may reduce the amount of compensation due to be paid to those injured parties.

The reduction takes into consideration the amounts that were received to support the individual during the process of reaching settlement. This action effectively stops the injured party from being doubly compensated as a result of the accident, injury or disease. It is proposed that CDP and SCP forms of assistance will be recovered from compensation payments.

Children and young people under the age of 18 in receipt of CDP as a result of an accident, injury or disease caused by a liable third party will be indirectly affected. Children and young people will also be indirectly impacted if their parents, guardians or representatives are in receipt of SCP as a result of an illness or injury caused by a negligent party.

### **Which groups of children and young people are currently or will be affected by the relevant proposal?**

The Bill contains a number of proposals which intend to effect the continuous improvement of the Scottish social security system and ensure that the system is efficient and delivering value for money. Some provisions of the Bill seek to amend or repeal sections of the 2018 Act, and others seek to create new provisions in that Act.

The Bill will therefore affect children and young people who come into contact with the social security system. Many of the proposals are cross-cutting in nature and provisions included in the Bill will have an impact across the social security system on disability assistance and low-income benefits. The proposals could have a direct impact on children and young people up to the age of 18 who receive or apply for social security assistance. They may also have an indirect impact on children and young people up to the age of 18 whose parents, guardians or kinship carers receive or apply for social security assistance.

### **Is a Stage 2 Children's Rights and Wellbeing Impact Assessment required?**

A CRWIA is required for the Bill, but it has been determined that further assessment is not necessary in relation to the following policies:

- taking a regulation-making power for childhood assistance
- financial support for people with care experience
- information for audit of the social security system
- changes to the remit and status of SCoSS

The Bill contains regulation-making powers for Scottish Ministers to create childhood assistance, and to create one or more schemes to provide financial assistance for people with care experience. The current intention is that the regulation-making power relating to childhood assistance will enable a future change to the legislative footing of SCP while the care experience assistance powers will initially be used to create a scheme to support people leaving care.

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.

The Bill will not have an immediate impact on children and young people as a result of these regulation-making powers, however it is likely that there will be impacts in

future when Scottish Ministers lay regulations. The impact of any such changes will be quantified as part of the regulation-making progress and any particular impact on children and young people considered at that stage.

For the proposal on information for audit of the social security system any impacts on children and young people will arise from the methodology of audit exercises and from secondary legislation. Further impact assessments will be undertaken to consider the impact on children and young people as regulations are developed and prior to operational implementation.

The provisions in the Bill which make changes to the remit and status of SCoSS are not anticipated to affect children and young people. The Bill will allow the Scottish Government to implement recommendations set out by an independent review.

The removal of Body Corporate status follows extensive discussion with the SCoSS Board, SCoSS Advisor and the Public Bodies Support Unit and ensures that governance is proportionate and allows SCoSS to focus on its advisory role. These administrative reforms are not expected to have any direct impact on individuals.



## CRWIA Stage 2 – Assessment of Impact and Compatibility

**What evidence have you used to inform your assessment? What does it tell you about the impact on children’s rights?**

### Evidence from stakeholders / policy colleagues

The proposals included in the Bill have been developed in close collaboration with a range of internal Scottish Government stakeholders, including:

- Social Security Policy Division
- Scottish Government Legal Directorate
- Care Experience and Whole Family Wellbeing Division
- Mental Health and Incapacity Law Division
- Communities Analysis Division

A public consultation ‘Scotland’s social security system – enhanced administration and compensation recovery’<sup>19</sup>, which informed the Bill ran from 4 August to 27 October 2022 and sought views on any potential impacts that the proposals may have on children’s rights and wellbeing. The consultation document was made also made available in an easy-read format<sup>20</sup>, and responses were accepted by whatever method respondents preferred. 34 responses were received and those have been published where the appropriate permissions were provided.<sup>21</sup>

A range of associated public engagement events took place during the same period and an online workshop was co-facilitated with Disability Equality Scotland to gather the views of their members. An independent analysis of consultation responses was undertaken by external consultants EKOS<sup>22</sup> and published by the Scottish Government on 31 March 2023.<sup>23</sup>

The feedback from the public engagement events was supplemented by further research undertaken by the Social Security Experience Panels and Client Panels teams with their members. This research took the form of focus groups, interviews and a survey to explore members’ views on topics included within the consultation.<sup>24</sup>

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<sup>19</sup> [Scotland's social security system: enhanced administration and compensation recovery - consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot/consultation/2022/08/04/Scotland's-social-security-system-enhanced-administration-and-compensation-recovery)

<sup>20</sup> [Social security consultation: easy read - gov.scot \(www.gov.scot\)](https://www.gov.scot/consultation/2022/08/04/Social-security-consultation-easy-read)

<sup>21</sup> [Published responses for Scotland's social security system: Enhanced Administration and Compensation Recovery - consultation - Scottish Government consultations - Citizen Space](https://www.gov.scot/consultation/2022/08/04/Published-responses-for-Scotland's-social-security-system-Enhanced-Administration-and-Compensation-Recovery-consultation-Scottish-Government-consultations-Citizen-Space)

<sup>22</sup> [Home - EKOS \(ekos-consultants.co.uk\)](https://www.ekos-consultants.co.uk/)

<sup>23</sup> [Social security system - enhanced administration and compensation recovery: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/consultation/2023/03/31/Social-security-system-enhanced-administration-and-compensation-recovery-consultation-analysis)

<sup>24</sup> [Social Security Experience Panels - re-determinations and appeals, fraud and special measures for COVID-19: main report - gov.scot \(www.gov.scot\)](https://www.gov.scot/consultation/2023/03/31/Social-Security-Experience-Panels-re-determinations-and-appeals-fraud-and-special-measures-for-COVID-19-main-report)

Four organisations in the public and third sector provided further information on the impact of the proposals on children’s rights and wellbeing. Feedback from the respondents highlighted the positive impact of the proposals on increasing access to, and take-up of, social security assistance as a way to help tackle child poverty.

Citizen’s Advice Scotland stated in their consultation response that the proposals had the potential to advance the commitments made in the Bright Start, Bright Futures: Tackling Child Poverty Delivery Plan, including in “addressing challenges that areas of long ingrained poverty become trapped in” and “making it easier to access the support available”.

A recognised limitation of the public consultation was that very few responses were received from stakeholders in the legal and insurance sectors with an interest in the policy about compensation recovery. The Scottish Government sought to engage with potentially impacted stakeholders, who may have experience of the UK compensation recovery scheme, to gain insight and further scope out the design of the new scheme.

A targeted engagement event with stakeholders from the insurance and personal injury industry was held in March 2023. The purpose of this virtual event was to communicate the proposal and provide reassurance that the Scottish Government’s preferred approach to the recovery of social security assistance is one which offers consistency across both UK and Scottish Governments.

A public consultation was not conducted on the provisions about information for audit of the social security system. The Scottish Government is clear that this provision is high priority, fundamental to the functioning of the Scottish social security system and aligns with the practice of other government departments. Stakeholder engagement will inform the processes used to capture information for audit to ensure that they are clear, user-friendly and accessible. Further engagement will be undertaken and further impact assessments developed as regulations are developed and prior to operational implementation.

Views were not sought on the proposal about re-determinations beyond the period allowed as the need for this provision emerged after the public consultation during policy development. To seek input from stakeholders on this proposal, Scottish Government requested written feedback and offered an engagement session with public and third sector organisations.

A series of meetings were also hosted by Scottish Government officials to consider the impacts and benefits of the re-determinations provisions (withdrawing a re-determination request and allowing re-determinations requests beyond a calendar year in exceptional circumstances). These were held with various stakeholders including Scottish Women’s Convention; Blesma; Scottish Association for Mental Health; The Action Group; and Inclusion Scotland amongst others. These meetings were held in small groups and were designed to seek views on the proposed

amendments and identify any barriers that people who seek to challenge a decision may have on families, children and young people.

## Evidence from children and young people

While there has not been direct engagement in relation to the Bill specifically with children and young people, engagement has taken place with organisations who work with and represent children, young people and their families. Several of the evidence sources which have been considered include the views and experiences of children and young people.

Organisations that work with children, young people and families that participated in the consultation process and with whom engagement has taken place that has informed policy development include: Child Poverty Action Group; The Promise Scotland; One Parent Families Scotland; Save the Children; The Action Group and Scottish Women's Aid.

The proposals in the Bill have been developed in a collaborative way, taking into account the views of a wide range of stakeholders. The Scottish government recognise the value of consulting children and young people directly, as well as through representative organisations and will continue to explore further engagement opportunities during the passage of the Bill and prior to implementation. The proposals in the Bill aimed at improving client experience are rooted in the values of providing children, young people and their families with dignity, fairness and respect.

### Children under 3

In the Children's Parliament report *What Kind of Scotland?*,<sup>25</sup> poverty is identified as the most important barrier to a good life. It affects children day to day, in terms of practical things like having enough food to eat and a house that is warm, but also because children can notice the stress money concerns cause the adults at home.

As part of the formation of the CRWIA for the first Tackling Child Poverty Delivery Plan,<sup>26</sup> the Poverty and Inequality Commission identified themes, which were developed through consultation with children and young people facilitated by the Children's Parliament, Young Scot and the Princes Trust, into recommendations including:

- Social Security: put more money towards benefits;
- Improve quality of life by providing greater support to those affected by poverty; and

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<sup>8</sup> Children's Parliament (2017) [What Kind of Scotland](#)

<sup>26</sup> Scottish Government (2018) [Every child, every chance: tackling child poverty delivery plan 2018-2022, Annex 4 - Child Rights and Wellbeing Impact Assessment](#)

- Increase incomes and reduce costs to support with: the cost of the school day; the cost of travel; and activity expenses.

Several of the provisions included in the Bill will contribute to the second recommendation of improving quality of life by providing greater support to those affected by poverty.

Of the 13 forms of assistance currently delivered by Social Security Scotland, eight are intended for people who are on a low income. People who use the services of Social Security Scotland are therefore more likely than the wider population to be living on a low income and affected by poverty.

The appeals and re-determinations provisions aim to contribute to the second recommendation by increasing flexibility and choice for people challenging a decision on their benefit entitlement. These proposals build on a rights-based approach for those engaging with social security and enact continuous improvement. Whilst children under 3 will not be the ones challenging a benefit decision, they will be indirectly impacted by these changes if their parents, guardians or representatives are accessing social security, and these proposals aim to offer increased clarity and understanding to clients and stakeholders in the existing challenge process.

The proposal to introduce formal challenge rights for overpayment liability similarly contributes to the second recommendation by offering people who are entitled to social security assistance and have been found liable for an overpayment the right to challenge this decision. The objective of this proposal is to embed consistency throughout the whole process of challenging liability, and ensure that people have a formal route to dispute liability for an overpayment where they feel it is appropriate to do so. This is consistent with Social Security Scotland's ethos of treating individuals with fairness, dignity and respect at all times.

Children under 3 will not be the ones to challenge the overpayment liability decision but they could be indirectly impacted by this provision if their parents, guardians or representatives are accessing social security and found liable for an overpayment. This policy intends to offer greater clarity for clients and aims to align the overpayment liability decision challenge process with the existing process in place for challenging entitlement determinations by introducing the right to appeal. It should be noted that the overpayment liability decision is not a determination because determinations are about entitlement.

The proposal to make an appointee liable to account to the individual for any mismanagement of the individual's property will ensure that any child who is not being cared for by somebody with parental rights and has an appointee in place, is offered the same protections as the Children (Scotland) Act 1995 offers to children with other types of representatives.

## Young carers

Young Carer Grant (YCG) is a payment that can be applied for annually by young carers aged 16, 17, and 18 who care for someone who is normally paid a qualifying disability benefit.

In December 2022, the estimated number of young carers aged 4-17 in Scotland was around 28,000.<sup>27</sup> In the 2022-23 financial year, 4,470 applications were received for YCG, with 85 re-determinations requested during this time. The Scottish Government does not hold sufficient data on which age bracket is more likely to request a re-determination, but YCG applications are higher for 16 and 17-year-olds than 18-year-olds.<sup>28</sup>

The re-determinations and appeals provisions will directly impact young people who wish to challenge a decision on their benefit entitlement by affording further flexibility and choice, which will have a positive effect on a group of people who may have challenging priorities. We know that young carers can invest a substantial amount of time and energy into looking after a family member, and may not have enough time for themselves, which can ultimately have an impact on physical and mental well-being and cause added stress.<sup>29</sup> This finding has been confirmed in Social Security Experience Panels research.<sup>30</sup>

These proposals will allow young carers to have further autonomy by empowering young people to challenge a decision made about their entitlement to benefits with greater flexibility and choice in a way which works best for their personal circumstances. They could therefore lead to improved outcomes for young carers in terms of well-being and access to social security assistance.

## Young parents

A report from the Women's Budget Group has found that overall, women are more likely to rely on social security than men.<sup>31</sup> Additionally, the Scottish Government's Young People Strategy highlights that young mothers are more likely to be reliant on state benefits and tax credits than older mothers.<sup>32</sup>

The Scottish Government is aware that young people can lack awareness of the benefits available to them and a negative experience can put them off engaging further with social security services.<sup>33</sup> The way in which services are accessed and

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<sup>27</sup> [Background - Scotland's Carers Update Release: December 2022 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/background-scotland-carers-update-release-december-2022/pages/12.aspx)

<sup>28</sup> [Young Carer Grant: high level statistics to 30 April 2023 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/young-carer-grant-high-level-statistics-to-30-april-2023/pages/1.aspx)

<sup>29</sup> [Young-carers-wellbeing.pdf \(childrenssociety.org.uk\)](https://www.childrenssociety.org.uk/what-we-do/our-research/young-carers-wellbeing)

<sup>30</sup> [Social Security Experience Panels: Young Carer Grant - initial findings - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/social-security-experience-panels-young-carer-grant-initial-findings/pages/1.aspx)

<sup>31</sup> [Social-security-gender-and-Covid-19.pdf \(wbg.org.uk\)](https://www.wbg.org.uk/wp-content/uploads/2022/07/Social-security-gender-and-Covid-19.pdf)

<sup>32</sup> [Pregnancy and Parenthood in Young People Strategy - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/pregnancy-and-parenthood-in-young-people-strategy/pages/1.aspx)

<sup>33</sup> [Social Security Experience Panels: Seldom Heard research programme: carers and care experienced people - visual summary - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/social-security-experience-panels-seldom-heard-research-programme-carers-and-care-experienced-people-visual-summary/pages/1.aspx)

delivered when help is needed can have a huge impact on the dignity of families experiencing poverty, where facing complex difficulties can make accessing support harder, and could increase a sense of distrust in public services.<sup>34</sup> The re-determinations and appeals provisions included within the Bill will increase access to the challenge rights process and could help very young pregnant people, ensure that young parents have further autonomy when disputing entitlement to a devolved benefit, and help facilitate increased confidence in the challenge process overall.

For people accessing Scottish social security benefits, the challenge rights process has been designed with users in mind, with a range of application channels for children and young people who may wish to request a re-determination or make an appeal. This could be over the phone, by paper application, as well as online for disability benefits. These inclusive options are important to allow the young person to apply in whatever way best meets their specific needs. The Scottish Government recognises that some people need additional support to apply due to digital exclusion, disability, or difficulty in communicating.

### **Young people who have a disability**

As of 31 July 2023, 4,150 (4%) of registered ADP applications were made by people between the ages of 16-18.<sup>35</sup> ADP is the replacement for Personal Independence Payment (PIP) and Disability Living Allowance for adults in Scotland. Following a phased pilot, ADP launched nationally on 29 August 2022. Following this national launch, people are now directed to apply for ADP instead of Personal Independence Payment if they live in Scotland. People living in Scotland who get PIP will have their benefit transferred to Social Security Scotland. As of July, 277,764 people were claiming Personal Independence Payment in Scotland, of whom 3,269 (1%) were aged between 16 and 19.<sup>36</sup>

There will be re-determination requests and applications for appeals arising about entitlement to CDP. Parents or guardians of disabled children can apply for this benefit when a disabled child is under 16, and this payment aims to provide financial assistance for daily care and mobility needs. Once it has been determined that a child is eligible for CDP, the benefit can be paid up until their 18<sup>th</sup> birthday. From July 2021 to June 2023, 42% of applications for CDP had been made for children aged 5-10, whilst 31% were made for children aged 11-15, and 26% were made for children aged 0-4. As of June 2023, 67,000 children and young people were in receipt of CDP.<sup>37</sup>

Once a child reaches the age of 16, they are considered a young person with legal capacity. Young people aged 16 and over are generally expected to manage their

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<sup>34</sup> [Includem Poverty-and-Stigma-inquiry-11.03.22.pdf](#)

<sup>35</sup> [Social Security Scotland - Adult Disability Payment: high level statistics to 31 July 2023](#)

<sup>36</sup> [Social Security Scotland - Personal Independence Payment statistics to July 2023](#)

<sup>37</sup> [Social Security Scotland - Child Disability Payment: high level statistics to 30 June 2023](#)

own entitlement to Child Disability Payment including receiving payments and challenging decisions about their entitlement. If the young person cannot manage their own entitlement after they become 16, Social Security Scotland must consider whether an appointee is required to receive disability assistance on behalf of the young person.

While children under 16 who are receiving CDP may not directly interact with the challenge process, as their benefit will be administered by a parent or guardian, they will be positively impacted by the re-determinations and appeals provisions in the Bill that aim to embed further flexibility, access and choice for clients who are disputing a CDP award.

The purpose of the policy to recover social security assistance from compensation awards is to address the issue that currently injured parties receive both compensation payments as well as Scottish social security assistance to mitigate for the same loss from an accident, injury or disease.

In addressing this issue, children and young people who have received CDP as a result of the negligence of a liable third party will no longer be 'doubly compensated'. This action will revert the approach to compensation recovery to the status quo prior to the devolution of certain social security powers, providing consistency across the UK.

Data provided by the DWP was used to forecast the number of cases where amounts of CDP would be recovered from compensation payments. Initial estimates suggest there may be between 10 and 30 cases per year of CDP recovered. Once the compensator and injured person have reached settlement and the amounts owed are repaid to Scottish Ministers, the proposed provisions will have no further impact on the Scottish social security assistance received from that date onwards.

### **Children in low income families**

SCP is a weekly payment for parents or carers on low incomes who have a child under 16. As of 30 June 2023, 316,190 children aged 0-15 years were actively benefitting from SCP<sup>38</sup>. Although children under 16 do not receive SCP directly, and therefore do not interact with the challenge process, they may be positively impacted by the proposals to introduce further flexibility and choice in the challenge process.

The provisions on recovering social security assistance from compensation recovery will have an indirect impact on children and young people whose parents, guardians or representatives are in receipt of SCP as a result of an illness or injury caused by a negligent party. This proposal ensures that people are not paid twice or 'doubly

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<sup>38</sup> [Scottish Child Payment: high level statistics to 30 June 2023](#)

compensated' for the same injury, accident or disease and that there is a consistent approach across the UK.

Although there is not a direct equivalent of SCP in the UK system, the child element of Universal Credit could be considered as a comparison and is recoverable under the Social Security (Recovery of Benefits) Act 1997. Data was obtained from DWP to help forecast the number of cases where SCP would be recovered from compensation awards. Initial estimates suggest that there may be 70 to 205 cases per year of SCP recovered from compensation awards. As previously mentioned after settlement has been reached and the amounts owed for the relevant period repaid to Scottish Ministers, the proposed provisions will have no further impact on the Scottish social security assistance received from that date onwards.

## **Analysis of the evidence**

### **How have the findings influenced the development of the relevant proposal?**

The findings have informed understanding of children and young people's experiences of using the social security system in Scotland. They have underlined the importance of collaborative working both within and outside of the Scottish Government to ensure the best outcomes for child and young people who come into contact with the social security system.

The Scottish Government has assessed the re-determinations and appeals provisions against each of the indicators of wellbeing as set out by the Children and Young People (Scotland) Act 2014 and concluded that they are likely to have a positive impact for young people.

For the proposal to introduce challenge rights for decisions on overpayment liability the findings informed the policy development and the decision to formalise in legislation the existing informal processes for challenging liability. This has the positive effect for all individuals (including children and young people) of ensuring that any liability challenge will come with a right to a review followed by a right to appeal to the First-tier Tribunal for Scotland (Social Security Chamber).

One of the key issues raised during the consultation and development of the proposal to recover social security assistance from compensation awards was that claiming compensation can be a long and challenging process for the injured party, and that the addition of a compensation recovery procedure would add further complexity, negatively impacting the injured party – who could be a child or young person. To address this, the proposal puts the obligation of repaying any amounts owed to Scottish Ministers on the compensator not the injured party. Although the injured party will be provided with a copy of the information requested by the



compensator in relation to the amounts of recoverable benefits received, there will be no requirement to do anything.

Another concern raised about this policy was that the injured party should not have the entirety of their compensation payment recovered by Scottish Ministers. To prevent this, the proposal ringfences compensation amounts awarded for general damages such as pain and suffering making them unrecoverable. This, in effect, will ensure that children and young people who have incurred an injury or illness due to a liable third party will receive any compensation awarded specifically for damages such as pain and suffering or mental anguish. Following on from the responses from the public consultation, the proposal was designed to target compensation awarded for loss of earnings, cost of care and loss of mobility as the purpose of the benefits received by the injured parties is to mitigate these same losses.

## **Assessing the impact against the UNCRC requirements**

[Further information about the UNCRC requirements, including easy-to-understand of the articles, can be found on the Children and Young People's Commissioner for Scotland website](#)

### **Articles where a positive impact has been identified**

- Article 2 – non-discrimination
- Article 3 – best interests of the child
- Article 5 – parental guidance and a child's evolving capacities
- Article 6 – life, survival and development
- Article 12 – respect for the views of the child
- Article 18 – parental responsibilities and state assistance
- Article 20 – children unable to live with their family
- Article 23 – children with a disability
- Article 26 – social security
- Article 27 – adequate standard of living
- Article 42 – knowledge of rights

### **Articles where a negative impact has been identified**

- None

### **Articles where a neutral impact has been identified**

- Article 1 – definition of the child
- Article 4 – implementation of the Convention
- Article 7 – birth registration, name, nationality, care
- Article 8 – protection and preservation of identity
- Article 9 – separation from parents

- Article 10 – family reunification
- Article 11 – abduction and non-return of children
- Article 13 – freedom of expression
- Article 14 – freedom of thought, belief and religion
- Article 15 – freedom of association
- Article 16 – right to privacy
- Article 17 – access to information from the media
- Article 19 – protection from violence, abuse and neglect
- Article 21 – adoption
- Article 22 – refugee children
- Article 24 – health and health services
- Article 25 – review of treatment in care
- Article 28 – right to an education
- Article 29 – goals of education
- Article 30 – children from minority or indigenous groups
- Article 31 – leisure, play and culture
- Article 32 – child labour
- Article 33 – drug abuse
- Article 34 – sexual exploitation
- Article 35 – abduction, sale and trafficking
- Article 36 – other forms of exploitation
- Article 37 – inhumane treatment and detention
- Article 38 – war and armed conflicts
- Article 39 – recovery from trauma and reintegration
- Article 40 – juvenile justice
- Article 41 – respect for higher national standards

#### First optional protocol

- Articles 4 – 7

#### Second optional protocol

- Articles 1 – 11

## Impact on children and young people

Under the UNCRC, 'children' can refer to: individual children, groups of children, or children in general. Some groups of children will relate to the groups with protected characteristics under the Equality Act 2010: disability, race, religion or belief, sex, sexual orientation. 'Groups' can also refer to children by age band of setting, or those who are eligible for special protection or assistance.

The proposals in the Bill may have an impact on parents, carers, pregnant people, young parents under 18, under 18s and disabled children. The proposals promote a person-centred approach aimed at advancing equality of engagement with social security for children and young people and protect all the Articles of the UNCRC indicated.

## **Negative impact or incompatibility issues**

No negative impacts or potential incompatibility issues have been identified.

## **Options for modification or mitigation of negative impact or incompatibility**

During policy development of the provisions on compensation recovery the concerns previously discussed were identified and addressed to avoid any potential negative impacts to the injured party.

The principles of compensation recovery are a long standing part of the UK social security system with the current legislation and process in place for over 25 years. The DWP recovers amounts of Disability Living Allowance (DLA) the UK equivalent to CDP, from compensation as well as the child element of Universal Credit. There is no evidence to suggest that this recovery has a negative impact on children's rights as this is an accepted administrative process that places responsibility on the party that is making the compensation payment, not on the injured party.

As the proposal emulates the UK approach to compensation recovery, evidence suggests that there will be no negative impacts on children and young people.

## **Positive impact: giving better or further effect to children's rights in Scotland**

Where appropriate the relevant articles have been grouped together.

### **Article 2 – non-discrimination**

The Scottish Government is committed to treating all social security applicants equally. The principle of non-discrimination is enshrined in the 2018 Act with Section 1 stating that 'social security is itself a human right and essential to the realisation of other rights'<sup>39</sup>. The approach taken by Social Security Scotland is rights-based and client-centred, putting the person at the heart.

The re-determinations and appeals provisions go a step further in adherence to non-discrimination. For example, allowing for a person to have the option to request a re-

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<sup>39</sup> [Social Security \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://legislation.gov.uk)

determination or appeal in exceptional circumstances will actively promote a more flexible, rights based and non-discriminatory process, where people who may be going through volatile or difficult circumstances have the opportunity to challenge a determination beyond the hard deadline of a year, provided they can present evidence that they were unable to challenge previously within this period. This could benefit young people who are experiencing domestic abuse and coercive control, young people or their relatives who are unwell or have had mitigating factors concerned with illness, people who are homeless or have unstable housing, as well as a number of other circumstances that may have prevented a person from requesting a re-determination within the set time. These provisions will allow Social Security Scotland to have discretion to accept late requests for a re-determination beyond one year in exceptional circumstances, which could be extremely beneficial for people experiencing difficult situations by allowing greater flexibility.

The proposal to recognise DWP appointees will be beneficial in advancing equality and non-discrimination, by ensuring crucial social security entitlements are paid without delay to children and young people.

The proposal to make an appointee liable to account to the individual for any mismanagement of the individual's property will ensure that any child who is not being cared for by somebody with parental rights and has an appointee in place, is offered the same protections as the Children (Scotland) Act 1995 offers to children with other types of representatives. This ensures that any children who are living in complex family situations are not disadvantaged or face unintended discrimination.

### **Article 3 – Best interests of the child**

### **Article 5 – Parental guidance and a child's evolving capacities**

### **Article 12 – Respect for the views of the child**

### **Article 18 – Parental responsibilities and state assistance**

Social security benefits in Scotland have been developed around the principles of dignity, fairness and respect, transparent decision-making, a person-centred approach and they are rooted in the belief that social security is a human right.

Every child has a right to express their views and have them given due weight in accordance with their age and maturity. Children should be provided with the opportunity to be heard, either directly or through a representative or appropriate body. Throughout the development of provisions included in the Bill, input has been sought from people with lived experience of social security systems (including from those with lived experience of interacting with DWP). This includes families through the Social Security Experience Panels, as well as engagement with stakeholders who support people accessing benefits.

The re-determinations and appeals proposals continue to embed this person-centred approach by ensuring the best interests of children and young people are taken into

account. The changes being made will help to ensure that decisions can be challenged in the way that is best suited to the needs of the person engaging with Social Security Scotland.

For example, where a young person is challenging a benefit decision but Social Security Scotland has failed to make a re-determination in the time allowed in regulations, the young person has the right to appeal to the First-tier Tribunal without waiting for the re-determination to be made. The Scottish Government recognises that a young person can find engaging with government agencies stressful and difficult. If Social Security Scotland had a statutory duty to make the re-determination beyond the period allowed if it has gone 'out-of-time' as proposed in the Bill, the young person could choose to wait for the re-determination to be made, rather than making an appeal at Tribunal level which a young vulnerable person can find daunting.<sup>40</sup> This could help to mitigate feelings of stress, worry and anxiety by not having to proceed with an appeal process.

CDP can be claimed before the age of 16-years-old and can be payable until a person is 18-years-old, or 19-years-old if a young person is waiting for an ADP determination. Young people over the age of 16, who are able to manage their own affairs can receive CDP directly to their bank account, rather than the entitlement being paid to a person who is responsible for them and able to act on their behalf. This means that many young people moving from CDP to ADP will be managing this aspect of their finances, and will have responsibility for their benefit entitlement and any challenges they may wish to make. The re-determinations and appeals provisions will allow more autonomy for young people who manage their own affairs and entitlement and allow for further flexibility and clarity when engaging with social security and challenging decisions.

The Scottish Government's objective in proposing to recognise DWP appointees is to strike the right balance between the rights protected by Social Security Scotland's appointee process, and the rights of the client in regards to receiving their social security assistance without delay. Whilst this provision will ensure an appointee can temporarily remain in place to ensure payments can continue, as soon as is reasonably practicable, the views of the child and the people with parental rights and responsibilities will be taken into account. This will ensure that the appointee continues to be in the best interests of child or young person.

#### **Article 6 – Life, survival and development**

#### **Article 20 – Children unable to live with their family**

#### **Article 23 – Children with a disability**

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<sup>40</sup> [Re-determination and appeal processes - Social Security Experience Panels - re-determinations and appeals, fraud and special measures for COVID-19: main report - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2020/09/20200915_Social_Security_Experience_Panels_-_re-determinations_and_appeals_fraud_and_special_measures_for_COVID-19_main_report.pdf)

Children with disabilities have the right to live a full and decent life with dignity, self-reliance, and participation in the community. The Scottish Government recognise that children with disabilities or long-term ill health conditions are more likely to experience poverty and can experience barriers to benefit take-up.

Social Security Scotland are committed to removing barriers to accessing services, both for those with disabilities and for those supporting children with disabilities, through inclusive communications and simple application processes.

The re-determination and appeals provisions go a step further in aligning the challenge process with this ethos, and are designed to positively impact all people accessing social security benefits by promoting a person-centred approach. They aim to positively impact disabled children by allowing for greater flexibility and further ownership when challenging a decision made by Social Security Scotland.

Some disabled young people lack the capacity required to interact or complete the tasks required by Social Security Scotland, and therefore require an appointee to act on their behalf. There are also children under the age of 16, who are entitled to social security assistance, but because of complex family situations require an appointee to act on their behalf. Both of these groups have a fundamental human right to social security, as enshrined in the 2018 Act . The provision to recognise DWP appointees ensures that such children and young people can continue to have someone to act on their behalf in accordance with their needs, enabling them to continue receiving crucial social security entitlements without potential interruption or delay.

## **Article 26 – Social Security**

### **Article 27 – Adequate standard of living**

Every child has a right to benefit from social security, taking into account the resources and circumstances of those who have responsibility for the child. The Scottish Government is committed to the principle that social security is a human right.

The provisions in the Bill do not prevent children or young people from receiving any social security payment due to them. The proposal to recognise DWP appointees will ensure that children and young people continue to receive social security payments without potential delay or interruption.

The re-determinations and appeals provisions align with the Charter and the social security principles by improving user experience for all people accessing Social Security Scotland through embedding further flexibility and choice when bringing a challenge. These policies more generally will allow for a more cohesive challenge rights process, promoting additional accessibility to social security and greater

understanding of challenging decisions made about entitlement, which will positively impact children's lives both directly and indirectly.

### **Article 42 – knowledge of rights**

Some of the policy proposals are designed to clarify in legislation re-determinations and appeal processes. The intention is to offer clarity to stakeholders and clients, which may lead to increased knowledge about people's rights, in order to support them to challenge decisions.

By enhancing choice and introducing greater flexibility for people who wish to bring a challenge about their benefit entitlement, the rights-based approach is embedded in the Scottish social security system and people could gain a greater understanding of the process of challenging decisions made by Social Security Scotland.

## **Impact on wellbeing: does or will the relevant proposal contribute to the wellbeing of children and young people in Scotland?**

[Further information about the wellbeing indicators can be found on the Scottish Government website](#)

The indicators where there will be an improvement in wellbeing are:

- **nurtured** - growing, developing and being cared for in an environment which provides the physical and emotional security, compassion and warmth necessary for healthy growth and to develop resilience and a positive identity
- **respected** - being involved in and having their voices heard in decisions that affect their life, with support where appropriate
- **responsible** - having opportunities and encouragement to play active and responsible roles at home, in school and in the community, and where necessary, having appropriate guidance and supervision
- **included** - having help to overcome inequalities and being accepted as part of their family, school and community

The indicators where there will no impact on wellbeing are:

- **achieving** - being supported and guided in learning and in the development of skills, confidence and self-esteem, at home, in school and in the community
- **active** - having opportunities to take part in activities such as play, recreation and sport, which contribute to healthy growth and development, at home, in school and in the community
- **safe** - growing up in an environment where a child or young person feels secure, nurtured, listened to and enabled to develop to their full potential (this includes freedom from abuse or neglect)
- **healthy** - having the highest attainable standards of physical and mental health, access to suitable healthcare, and support in learning to make healthy and safe choices

**Nurtured:** The provisions in the Bill relating to liability of appointees will ensure that children and young people who have appointees can be confident that they are offered the same protections as others who have parents or other types of representatives acting on their behalf. The provisions to allow DWP appointees to be recognised will provide children and young people with financial security and avoid potential delays.

**Respected:** The principle of respect for the dignity of individuals is at the heart of the Scottish social security system. The provisions in the Bill will further embed these principles, recognising that all people, including young people have the opportunity and right to be heard and be involved in decisions that affect them. The Bill aims to bolster these commitments to ensure that there is no doubt regarding current policy and processes and to ensure that children and young people are treated with dignity, fairness and respect throughout their interactions with the Scottish social security system.

**Responsible:** The re-determinations and appeals provisions aim to give further autonomy to children and young people. Having the opportunity to be heard and involved in decisions which affect children and young people will mean greater ownership and responsibility for their own affairs, which could lessen anxiety for those that are vulnerable or have challenging circumstances when seeking to challenge a benefit entitlement.

**Included:** The provisions in the Bill will mean that young can challenge decisions that impact them, which may help children and young people to overcome social and economic inequalities or feeling of exclusion in society. This will facilitate children and young people feeling more considered in Social Security Scotland outcomes and establish a positive relationship, inspiring confidence in the challenge rights process.



## Post Assessment Review and sign-off

### Communicating impact to children and young people

Both the CRWIA and EQIA will be published on the Scottish Government website.

Organisations who work with, support and represent children and young people will be directly emailed to inform them about the Bill and impact assessments being published.

It is also the intention to publish factsheets about the content of the Bill to help people understand what the Bill will do and how the policies will affect them. The final content of the factsheets is yet to be decided but the intention is that they will be accessible, inclusive and laid out in an easy-to-understand format.

### Planning for the review of impact on child rights (Stage 3)

Monitoring and evaluation plans for the Bill are currently being developed and consideration of impact on the rights of children and young people, including Stage 3 of the CRWIA, are being factored into this.

### Compatibility sign-off statement

This proposal has been assessed against the UNCRC requirements and has been found to be compatible.

**Deputy Director Signature:** Ian Davidson

**Date of sign-off:** October 2023



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The Scottish Government  
St Andrew's House  
Edinburgh  
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ISBN: 978-1-83521-565-4 (web only)

Published by The Scottish Government, November 2023

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA  
PPDAS1379134 (11/23)

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