

Consultation analysis – Scotland’s social security system: enhanced administration and compensation recovery

Final report for the Scottish Government

March 2023



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Final report for the Scottish Government
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Report prepared by: EKOS Ltd.

The opinions expressed in this report are those provided by respondents to the public consultation.

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Executive summary

Introduction

This summary provides an overview of responses received to the Scottish Government consultation ‘Scotland’s social security system: Enhanced Administration and Compensation Recovery’¹. The online consultation ran on the Scottish Government Citizen Space website for twelve weeks from 4 August 2022 to 27 October 2022. An independent organisation (EKOS Ltd) was commissioned to undertake analysis of the responses and this summary provides an overview of the findings of that analysis.

The consultation sought views on proposals to inform the continuous improvement of the Scottish system of social security. In line with the Social Security Principles² and Social Security Scotland's Charter³, the measures proposed are principally intended to improve client experience and deliver increased value for money.

A range of proposals were included in the consultation relating to:

- Scottish Child Payment
- re-determinations
- determinations after an appeal is lodged
- appointees
- challenge rights for overpayment liability
- compensation recovery
- alternatives to prosecution for low-value fraud
- overpayment liability where someone acts on behalf of someone else
- independent advice and scrutiny of social security
- Coronavirus (COVID-19) measures.

These proposals were grouped into four broad sections: improving client experience; delivering value for money; independent advice and scrutiny of social security; and COVID-19 measures.

¹ The Scottish Government, [Scotland’s social security system: Enhanced Administration and Compensation Recovery – consultation 2022](#).

² s1 [Social Security \(Scotland\) Act 2018](#).

³ Social Security Scotland, [Our Charter](#).

Questions were also included in the consultation, under the heading 'Impact assessments', to consider the possible effects and outcomes of the proposals on people, businesses, and communities.

Consultation process

A total of 34 responses were received to the online consultation (all validated and appropriate). Most consultation responses were from organisations (85%), with the remainder from individuals (15%). Third sector organisations were the most common organisation type to respond to the consultation, followed by the public sector and private sector.

The Scottish Government held six remote and in-person events between 27 September 2022 and 15 November 2022 with stakeholders and people with lived experience of the social security system and disability. The events, which supplemented the online consultation, attracted varied attendance levels. The Scottish Government has commissioned research to be undertaken with Social Security Experience Panel and Client Panel members focussed on certain consultation topics to supplement the feedback from engagement events and formal consultation responses. The findings will be analysed internally by the Scottish Government and the outputs will be considered before proposals are finalised.

Analysis and caveats

All consultation responses were given equal weighting and the analysis sought to identify the most common themes and issues in consultation responses. The views presented in this report should not be taken as representative of the range of stakeholders who were invited to respond to the public consultation.

Respondents were self-selecting and the number of consultation responses received and attendance at some of the virtual stakeholder and in-person public engagement events was relatively low. The Scottish Government is addressing this limitation through engagement with Social Security Experience Panel and Client Panel members.

It should also be noted that the consultation was structured to allow respondents to answer questions independently in recognition that respondents might want to respond to one or some of the proposals without wishing to express views on the others.

Main findings

Improving client experience

The first section of the consultation was titled 'Improving client experience', and a total of 16 questions were asked about five proposals. Each proposal sought to implement the Scottish Social Security Principle "opportunities are to be sought to continuously improve the Scottish social security system in ways which put the needs of those who require assistance first, and advance equality and non-discrimination"⁴.

Scottish Child Payment

There was strong support for the proposal that it would be useful for the Scottish Government to be able to make changes to Scottish Child Payment that were not limited by the current approach that relies on 'top-up' powers. Almost all respondents who answered this section agreed (93%) with the proposal while the remainder didn't know (7%).

The main advantages noted by respondents were that the proposal would:

- build on the early success of the Scottish Child Payment, in particular as an intervention to help reduce child poverty and in the context of the cost-of living crisis
- overcome limitations of Universal Credit, a UK Government qualifying reserved benefit for receipt of the Scottish Child Payment
- protect the Scottish Child Payment from the impact of any changes made by the UK Government to reserved UK benefits
- align the Scottish Child Payment with other forms of Social Security Scotland assistance
- enable the Scottish Government to be more agile and responsive to changing circumstances, for example future external events or factors.

The main disadvantages of the proposal identified by respondents were:

- that implementation of any changes that arose from creating greater flexibility might require additional resources (such as finance and staffing resource), and that this might be challenging in the current climate

⁴ [S1 Social Security \(Scotland\) Act 2018](#)

- that the application and assessment process for the Scottish Child Payment might become more complex.

A few respondents noted that additional flexibility could be used to restrict entitlement therefore the way in which additional flexibility was created would be important.

Withdrawing a re-determination request

Respondents were asked whether they agreed or disagreed that a person should be able to withdraw a re-determination request before Social Security Scotland has made a re-determination decision. Almost all consultation respondents who answered the question agreed (96%) while the remainder of respondents disagreed (4%).

Views expressed by respondents who agreed with this proposal included that:

- it was considered a fair and reasonable approach and in keeping with the Social Security Principles around adopting a rights-based and person-centred approach
- the proposal had several advantages such as additional flexibility for people and reduced administrative burden
- access to independent advice would help ensure people have considered their options before deciding whether or not their re-determination should go ahead
- people should not feel pressured in any way to withdraw a re-determination request.

Determinations after an appeal is lodged

The consultation asked whether a new determination should only be made where the new determination has the same effect as the Tribunal making the maximum award available to it. Consultation respondent feedback was mixed. 40% of all consultation respondents who answered this question agreed that a new determination should only be made if it gave the person everything they could get from the Tribunal. A similar proportion disagreed with the proposal (44%) and 16% didn't know.

Respondents who agreed with this proposal noted that:

- people should not have to attend any unnecessary Tribunal hearings, and this proposal could reduce stress for people
- it could reduce time and resources involved on appeals

- it could increase transparency and errors could be rectified early.

Respondents who disagreed with this proposal suggested that:

- it could pre-empt the outcome of Tribunal hearings and restrict options for Social Security Scotland to respond to an appeal
- some people might wish to consent to the new determination and accept a higher award that is less than the maximum they could get from a Tribunal
- the process involved in applying for a re-determination could be stressful for people, and that some people might rather avoid applying for a re-determination as a result.

Respondents were also asked whether they agreed or disagreed that a person should be asked for their consent before a new determination is made. A majority of all consultation respondents who answered this question agreed (72%). Similar proportions either disagreed with the proposal (16%) or didn't know (12%).

Respondents who agreed with this proposal reported that:

- people should be asked for consent at all stages of the challenge process, and that this could empower people
- it fits with a person-centred approach and aligns strongly with the Social Security Principles and Charter
- it would reduce stress for people, including those with protected characteristics
- it would provide an additional opportunity for people to be signposted to independent advice.

On the other hand, those who disagreed with this proposal held the view that asking a person for consent before a new determination was made might not be necessary at this stage, and that Social Security Scotland has the right to make a new determination. It was suggested asking for consent could lead to added pressure being placed on people.

Most consultation respondents expressed support for challenge rights on a new determination, and there were broadly three main views on how those rights should look:

- some people thought there should be a consistent approach across the social security system and therefore give people both re-determination and appeal rights on the new determination
- others said that the new decision should only come with appeal rights (meaning that the re-determination step should be skipped)
- while others suggested that instead of stopping the appeal, the appeal should just continue against the new determination.

Appointees

Respondents were asked whether they agreed or disagreed that Social Security Scotland should be able to make payments to a Department for Work and Pensions (DWP) appointee for a time-limited period until Social Security Scotland completes its appointee process. Almost all consultation respondents who answered this question agreed with the proposal (96%) and the remainder disagreed (4%).

Respondents who agreed with this proposal reported that:

- the proposal would avoid delays to payment
- the benefits of the proposal outweighed the risks.

Challenge rights for overpayment liability

Respondents were asked whether they agreed or disagreed that the Scottish Government should introduce rights of challenge against Social Security Scotland's decision that someone was liable to repay an overpayment. All consultation respondents who answered this question agreed (100%) with the proposal.

Much of the respondent feedback on this proposal was that rights of challenge were important for several reasons, including that:

- people should be able to challenge liability for an overpayment, as there could be a range of circumstances in which an overpayment could occur (for example administrative errors)
- each case should be assessed on its own merits as there might be mitigating factors
- the proposal could avoid court proceedings for people

- challenge rights were consistent with a person-centred, human rights-based approach
- the proposal could increase accountability, transparency, and openness of the Scottish social security system, and ensure greater alignment with the UK system.

Many respondents considered the most appropriate way to hear challenges was for Social Security Scotland to first look at its decision again when a challenge was raised with a possible re-determination and, if the person still disagreed, then for challenges to be heard at the First-tier Tribunal for Scotland (Social Security Chamber). Other approaches suggested by a few respondents included going straight to the First-tier Tribunal for Scotland (Social Security Chamber) in some cases, or an independent review.

Delivering value for money

The second section of the consultation was titled 'Delivering value for money', and a total of seven questions were asked about three proposals. Each proposal seeks to implement the Scottish Social Security Principle "the Scottish social security system is to be efficient and deliver value for money"⁵.

Compensation recovery

Respondents were asked whether they agreed or disagreed in principle that the Scottish Government should undertake recovery of Scottish social security assistance from compensation paid as a result of injury or disease for which a third party was liable.

Consultation respondent feedback on the proposal was mixed. 43% of respondents who answered the question agreed in principle, the same proportion didn't know (43%), and the remainder disagreed (14%).

Qualitative feedback from respondents who agreed with this proposal was that they considered it important that taxpayers' money was not used to compensate people twice for the same injury or disease.

⁵ [S1 Social Security \(Scotland\) Act 2018](#)

Among those respondents who disagreed with this proposal, the main point raised was that the proposal would place undue hardship or stress on people. A large proportion of respondents were unsure about this proposal as the subject matter was outside their area of expertise.

Alternatives to prosecution for low-value fraud

Respondents were asked whether they agreed or disagreed that Social Security Scotland should have available an alternative to prosecution where small sums of money have been obtained illegally. Almost two-thirds of respondents who answered this question agreed (65%). Similar proportions of respondents either disagreed (15%) with the proposal or didn't know (20%).

There was consensus among respondents who agreed with this proposal that prosecution for low level offences would be disproportionate. They felt that prosecution processes were expensive, time consuming and stressful or intimidating for the people involved. These consultation respondents suggested that an alternative approach could involve repayment of monies fraudulently obtained plus a penalty or community payback.

Respondents who disagreed with this proposal raised two main points, namely:

- if fraudulent activity is suspected to have had occurred, then it should always be referred for prosecution, assuming that there is sufficient evidence to suggest that a fraud offence has taken place
- that it would be important for people who were prosecuted to have access to a legal defence.

Third party overpayment liability

The Scottish Government proposal is that where an overpayment has occurred, whether the person has someone acting for them or not, Social Security Scotland should seek repayment from the person who actually benefited from the overpayment.

Respondents were asked whether they agreed or disagreed that third parties, such as appointees, should be included within the scope of statutory liability for overpayments. The majority of all consultation respondents who answered this question agreed (75%) with the proposal, while 10% disagreed and 15% didn't know.

Those respondents who agreed with this proposal felt that:

- the proposal would create additional flexibility by balancing the need to protect vulnerable people and avoiding deterring people from volunteering to act on someone else's behalf
- there might be mitigating circumstances whereby friends or family could be involved in helping someone and could inadvertently make an honest mistake
- third parties who act on someone else's behalf should not be held liable where they did not cause or contribute to that error, or if it was the sort of error that a person could not reasonably be expected to have noticed.

Some respondents believed that third parties, such as appointees, should only be liable in cases of their own financial gain. These respondents suggested that, regardless of whether or not a person had acted deceitfully, it would be unfair to hold that person financially liable where they had not received financial benefit.

Respondents who disagreed with this proposal felt that a third party, such as an appointee, might be deterred from volunteering to act on someone else's behalf if they were included within the scope of statutory liability for overpayments.

Independent advice and scrutiny of social security

The third section of the consultation was titled 'Independent advice and scrutiny of social security' and contained a total of seven questions.

Current arrangements

Respondents were asked to what extent they thought the current arrangements for the provision of independent scrutiny and advice worked effectively.

Consultation respondent feedback was mixed. 42% of respondents who answered this question thought current arrangements were either partially or fully effective, 25% thought current arrangements were not effective, and the remainder didn't know (33%).

The main feedback from respondents who thought current arrangements for the provision of independent scrutiny and advice work were partially or not effective included that membership of the Scottish Commission on Social Security (SCoSS) and Disability and Carers Benefit Expert Advisory Group (DACBEAG) could be widened to increase diversity and to ensure a wider representation of viewpoints and perspectives; and to ensure the groups have the right mix of skills, expertise, and capabilities.

Future options

Respondents were asked if the current arrangements for the provision of independent scrutiny and advice were changed, which of three pre-defined options did they consider most appropriate. Consultation respondent feedback was mixed. Half of respondents who answered this question (50%) thought it would be right to maintain separation between independent scrutiny and advice as a way to remove potential for conflict of interests.

Over one-quarter (27%) thought it would be right to combine these functions to maximise the use of independent expertise and secretariat resources, and as a way to ensure the more efficient and effective use of resources.

The remainder of respondents thought there is a need for a different approach (23%). These respondents felt that a new independent body is required to oversee the Scottish benefit called Employment Injury Assistance, which will in future replace Industrial Injuries Disablement Benefit. The main point raised was that the current membership of SCoSS and DACBEAG might lack the necessary skills and expertise to oversee Employment Injury Assistance.

The consultation document stated that there could be different options for organising independent advice and scrutiny in the future. This could be a formal arrangement, for example, a statutory body such as a non-departmental public body and paid board members, or an informal arrangement at Ministerial invitation with members participating on a voluntary basis.

The main point raised by consultation respondents was that if current arrangements were retained then consideration should be given to funding for back-office functions and remuneration for members.

Employment Injury Assistance

Respondents were asked whether they agreed or disagreed that the public body or bodies providing the Scottish Government with independent scrutiny and advice of Scottish Social Security should also provide advice in the future on Employment Injury Assistance. Consultation respondent feedback was mixed, albeit more disagreed (41%) with the proposal. Almost one-third of respondents who answered this question agreed with the proposal (32%) and the remainder didn't know (27%).

Respondents who agreed with the proposal felt that it would be important for SCoSS and DACBEAG members to have the necessary expertise to provide advice on Employment Injury Assistance. This feedback was often framed in the context of the complexity of this new benefit and to ensure the public body or bodies were effective in fulfilling their role and remit.

Respondents who disagreed with the proposal expressed support for the development of a new independent agency to oversee Employment Injury Assistance. These respondents felt that the necessary expertise might be lacking within the current membership of SCoSS and DACBEAG, and suggested a different approach was needed.

COVID-19 measures

The fourth and final section of the consultation was titled 'COVID-19 measures' and contained a total of eight questions.

Re-determinations and appeals

Respondents were asked whether they agreed or disagreed that requests for a re-determination should no longer be able to be treated as valid where they were made more than a year late and the reason for that delay was COVID-19. Consultation respondent feedback was mixed, albeit more disagreed with the proposal (53%). 40% of respondents who answered this question agreed with the proposal and the remainder didn't know (7%).

Similarly, consultation respondent feedback was mixed in relation to the question which asked respondents whether they agreed or disagreed that applications for an appeal should no longer be able to be treated as valid where they were made more than a year late and the reason for that delay was related to COVID-19.

Over half of all consultation respondents who answered this question disagreed (53%) with the proposal, just over two-fifths agreed (41%) and the remainder didn't know (6%).

The main feedback from respondents who agreed with these proposals was that the temporary measure has served its purpose. There was the suggestion, from some respondents who agreed with the proposal as well as from some of those who disagreed, that flexibility could be applied in exceptional circumstances. This would recognise the ongoing impact of the pandemic, including on particular groups of people and enable the Scottish Government to respond quickly to any future external factors and events.

Most respondents who disagreed with the proposals also said that the negative impacts of the pandemic were still being felt in society, and that the temporary measure might still be required.

Applications for assistance

Respondents were asked whether they agreed or disagreed that applications for assistance to Social Security Scotland should no longer be able to be treated as made on time where they were made late and the reason for that delay was related to COVID-19. Consultation respondent feedback was mixed, albeit more disagreed with the proposal (56%). 38% of consultation respondents who answered this question agreed with the proposal and the remainder didn't know (6%). Most consultation respondents emphasised the need for flexibility and discretion to allow cases to be considered on an individual basis.

Respondents were also asked whether they agreed or disagreed that the ability to apply late, where deadlines for making applications for assistance apply, should be extended to reasons other than COVID-19. There was widespread support among consultation respondents for the proposal. Almost all respondents who answered this question agreed (94%) with the proposal and the remainder didn't know (6%). Most consultation respondents restated their support for flexibility and discretion.

Impact assessments

Few consultation respondents answered the four questions that related to the impact of the proposals on different groups of people and on businesses and organisations. The main points raised are described in Chapter 7 of the main consultation analysis report.

1 Introduction

1.1 Introduction

In August 2022 the Scottish Government launched the consultation ‘Scotland’s social security system: enhanced administration and compensation recovery’⁶ to seek views on proposals to effect ongoing improvement of the Scottish social security system across a range of topics. The consultation ran for 12 weeks and EKOS Ltd, an independent research consultancy, was commissioned to analyse the responses received. This report presents the findings from that analysis.

1.2 Background

The Scotland Act 2016 transferred new social security powers to the Scottish Parliament, allowing Scottish Ministers to develop new policies on certain welfare benefits in Scotland. The Social Security (Scotland) Act 2018 (the 2018 Act), which received Royal Assent in June 2018, established a framework for the new system of Scottish Government benefits. Since the 2018 Act came into force, the Scottish Government has established a new agency, Social Security Scotland. It currently delivers 13 forms of assistance, including replacements for UK benefits and some completely new kinds of support which are only available in Scotland.

The Scottish system of social security is designed around the input of people with lived experience of the existing system, and seeks to take a person-centred, rights-based approach. The 2018 Act sets out seven core Social Security Principles which provide the foundation of the new Scottish system. These seven core principles 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 Rights⁷, the Universal Declaration of Human Rights⁸, and the European Social Charter⁹.

⁶ The Scottish Government, [Scotland’s social security system: Enhanced Administration and Compensation Recovery – consultation 2022](#).

⁷ United Nations The Office of the High Commissioner for Human Rights, [International Covenant on Economic, Social and Cultural Rights](#)

⁸ United Nations, [Universal Declaration of Human Rights](#)

⁹ Council of Europe, [European Treaty Series no. 163 – European Social Charter \(Revised\)](#)

The principles include that opportunities are to be sought to continuously improve the Scottish social security system in ways which put the needs of people who require assistance first, and that the system is to be efficient and deliver value for money.

Social Security Scotland's Charter¹⁰, which was co-designed with people with lived experience of social security, reflects the seven principles and sets out how they will be translated into more concrete actions and behaviours. In addition, the Charter commitments include undertaking to listen, learn and improve, to embed the Social Security Principles and Charter in the policymaking process, and to allocate resources fairly and efficiently.

The consultation sought views on proposals to inform the continuous improvement of the Scottish system of social security. In line with the Social Security Principles and Charter, the measures proposed are principally intended to improve client experience and deliver increased value for money.

¹⁰ Social Security Scotland, [Our Charter](#).

2 Consultation methodology

2.1 Introduction

The consultation ran for 12 weeks from 4 August 2022 to 27 October 2022 on the Scottish Government Citizen Space website. Several remote and in-person events aimed at a variety of audiences supplemented the online consultation.

2.2 Public consultation

The consultation received a total of 34 responses (all validated), **Table 2.1**. The majority of consultation responses were submitted through the Citizen Space website (71%), with the remainder submitted to the Scottish Government directly by email (29%).

Most consultation responses were from organisations (85%), with the remainder from individuals (15%).

Table 2.1: public consultation respondents

Type of respondent	Number	Percentage
Organisations	29	85%
Individuals	5	15%

N=34.

Organisation respondents were grouped under three broad categories, **Table 2.2**, comprising:

- the third sector which was the most common type of organisation respondent (59%) - this term includes voluntary and community organisations (both registered charities and other organisations such as associations, self-help groups and community groups, social enterprises, mutuals and co-operatives) such as Aberlour and Inclusion Scotland who submitted responses
- public sector organisations which made up more than one-quarter (27%) of organisation responses – these organisations are responsible for providing public services including education, emergency services, healthcare and housing, and typically have a direct relationship with the Scottish Government or Scottish Parliament, such as local authorities and NHS Boards
- the private sector which made up few organisation responses (14%) - this term refers to businesses that have no affiliation to the government and that are privately owned, for example, responses were received from solicitors and trade unions.

Table 2.2: organisation respondents by type

Type of organisation	Number	Percentage
Third sector	17	59%
Public sector	8	27%
Private sector	4	14%

N=29.

2.3 Engagement events

The Scottish Government organised four virtual consultation events which were held between 27 September 2022 and 15 November 2022. This comprised two stakeholder events, an island communities event, and an event to capture feedback from people with lived experience of disability co-facilitated with Disability Equality Scotland, **Table 2.3**.

The events were advertised in a variety of ways: the Scottish Government promoted stakeholder events through a newsletter and email to stakeholders; the Scottish Island Federation members' network promoted the island communities event; and Disability Equality Scotland promoted the event for people with lived experience of disability to its members.

Each virtual event lasted for 90 minutes with a total of 87 attendees across all events. At the events, Scottish Government policy officials explained the overarching themes of the consultation, the proposals, and the underlying policy rationale for these. The stakeholder engagement events and the island communities event were also used to signpost attendees to prepare and submit a consultation response through Citizen Space.

Table 2.3: engagement events

Event	Date of engagement event	Number of attendees
Stakeholder engagement event 1	27 September 2022	20
Stakeholder engagement event 2	11 October 2022	17
Island communities	25 October 2022	6
People with lived experience of disability	15 November 2022	44

Source: Scottish Government

Event notes from the co-facilitated event with Disability Equality Scotland were reviewed with feedback incorporated into relevant chapters of the report.

In an effort to broaden the audience beyond the central belt of Scotland, the Scottish Government also held two in-person public engagement events with a focus on accessible small towns and accessible rural areas. The events were held at Lochgelly Centre in Fife (4 October 2022) and Banchory Town Hall in Aberdeenshire (6 October 2022).

The public events were promoted using posters at the venues and through Social Security Scotland's Facebook account with attendees encouraged to submit a consultation response after the event. The events were poorly attended - only one person attended across both public events.

The Scottish Government has commissioned research to be undertaken with Social Security Experience Panel and Client Panel members focussed on certain consultation topics to supplement the feedback from engagement events and formal consultation responses. This research asks questions of members of the public with experience of social security. The Scottish Government will internally analyse the findings and the outputs will be considered before proposals are finalised.

2.4 Analysis

All responses were moderated by Scottish Government officials in the Directorate for Social Security to ensure that they were valid and appropriate. EKOS exported consultation responses from Citizen Space into Microsoft Excel for data cleaning, review, and analysis. Where submissions were submitted in another format, Scottish Government officials attached these documents to responses in Citizen Space for EKOS to manually input into Microsoft Excel.

No duplicate or campaign responses were identified.

The analysis has sought to identify the most common themes and issues. It does not report on every single point raised in the consultation responses.

The analysis has been structured in line with the themed sections of the consultation document which connected proposals to relevant Scottish Social Security Principles.

For open-ended questions, the approach is to help readers get a sense of the strength and frequency of themes and issues raised by respondents. This means that:

- most chapters in the report contain numbered themes (for example, Theme 1, Theme 2, Theme 3) - these have been set out in order of relative importance with Theme 1 being noted by the greatest number of consultation respondents
- points raised have been quantified in some way - for example, we use the terms 'all' (34 respondents), 'most' (25 to 33 respondents), 'many' (15 to 24 respondents), 'some' (six to 14 respondents), and 'few' (less than five respondents) to articulate the strength of opinion.

The standard process is that equal weighting should be given to all responses. This includes the spectrum of views, from large organisations with a national or UK remit or membership, to individual viewpoints.

This analysis report includes quotes from respondents who gave permission for their response to be made public. This does not indicate that these comments will be acted upon or given greater weight than others.

All responses, where the respondent gave permission for their comments to be published, will be made available on the Scottish Government Citizen Space [website](#).

2.5 Limitations

The public consultation and engagement events had several limitations which should be noted, including that:

- respondents to any public consultation or engagement event are self-selecting, and the views presented in this report should not be taken as representative of the range of stakeholders who were invited to respond to the public consultation
- the in-person public engagement events and the virtual island communities event were poorly attended which impacted on the ability of the Scottish Government to gather additional feedback from individuals to supplement the public consultation - the Scottish Government is addressing this limitation through engagement with Social Security Experience Panel and Client Panel members
- the consultation document was structured to allow respondents to answer questions independently in recognition that respondents might want to respond to one or some of the proposals without wishing to express views on the others - for example, private sector organisations answered few closed-ended questions.

3 Improving client experience

3.1 Introduction

Client experience is central to the Scottish Government’s approach to social security. As part of the work to develop and implement Scottish Government social security powers, extensive research was undertaken with the Social Security Experience Panels. These Panels comprise over 2,000 people with lived experience of the social security system and with additional ‘Seldom Heard Voices’ groups.

This chapter relates to Scottish Government proposals regarding improving client experience, and the Scottish Social Security Principle as set out in the 2018 Act: “opportunities are to be sought to continuously improve the Scottish social security system in ways which put the needs of those who require assistance first, and advance equality and non-discrimination”¹¹.

3.2 Scottish Child Payment

Scottish Child Payment helps to support low-income families in Scotland. It is payable to families in receipt of certain UK Government benefits, such as Universal Credit. There is no limit to the number of children per family who can receive the payment and over 385,000 children are forecast to be eligible in 2022/23.

Scottish Child Payment was introduced in February 2021 as a payment of £10 per week for children under the age of six across Scotland. In November 2022 the eligibility criteria changed to include children between the ages of six and 16 and the payment increased to £25 per week. The payment is delivered under Section 79 of the 2018 Act, which allows the top-up of a UK qualifying reserved benefit.

The Scottish Government thinks it would be desirable to have additional flexibility over the rules governing the Scottish Child Payment to be able to make changes in future. For example, in response to feedback from people with lived experience and stakeholders, or to react to potential changes made by the UK Government to UK reserved benefits.

¹¹ [Social Security \(Scotland\) Act 2018 S1\(g\)](#).

This could be utilised to future-proof the Scottish Child Payment and could allow for closer alignment between the payment and other forms of assistance delivered by Social Security Scotland, such as the Best Start Grants and Best Start Foods.

The consultation sought views on whether it would be useful to be able to make changes to the current arrangements for Scottish Child Payment.

3.2.1 Question 1: do you agree or disagree that it would be useful to be able to make changes to the Scottish Child Payment that were not limited by the current approach that relies on ‘top-up’ powers?

Note: the analysis of responses to Question 1, and all closed questions presented in **Appendix C**, excludes consultation respondents that did not provide a response (meaning blank responses).

Table C.1 and **Table C.2 (Appendix C)** provide the quantitative response to Question 1. Key points include that:

- almost all consultation respondents who answered Question 1 agreed (93%) with the proposal that it would be useful to be able to make changes to the Scottish Child Payment that were not limited by the current approach that relies on ‘top-up’ powers
- the remainder of consultation respondents didn’t know (7%).

3.2.2 Question 2: please give reasons for your answer.

Almost three-quarters of all consultation respondents (74%) answered Question 2. Qualitative responses to this question highlighted a range of advantages of the proposal, and the feedback is described at Question 3 (**Section 3.2.3**).

3.2.3 Question 3: please give your views on the advantages that could arise from creating this additional flexibility.

Almost three-quarters of all consultation respondents (74%) answered Question 3 on advantages that could arise from creating this additional flexibility. The main feedback is outlined below.

Theme 1: early success and impact of the Scottish Child Payment

Most consultation respondents (third and public sector organisations) highlighted the early success and impact of the Scottish Child Payment for families across Scotland as a reason why they supported the proposal that it would be useful to be able to make changes that were not limited by the current approach that relies on ‘top-up’ powers.

These respondents emphasised that the Scottish Child Payment has made a real difference to families and has been a lifeline for many families in Scotland experiencing financial hardship.

Some third sector organisations made the point that the cost-of-living crisis has had, and will continue to have, a disproportionate impact on lower income families and families living in poverty. Additional flexibility for the Scottish Government was therefore welcomed.

Theme 2: limitations of Universal Credit as a qualifying benefit

While most consultation respondents (third and public sector organisations) indicated that they understood the rationale for the current approach that relies on ‘top-up’ powers, they agreed with the Scottish Government on the need to future-proof and protect the Scottish Child Payment.

Most consultation respondents (third and public sector organisations) raised concerns relating to limitations of ‘top-up’ powers and Universal Credit which is a UK Government qualifying reserved benefit for receipt of the Scottish Child Payment. The main point raised was that changes made by the UK Government in the future to the eligibility criteria for UK qualifying reserved benefits, such as Universal Credit, could have a knock-on effect on the Scottish Child Payment thereby reducing its take-up and ultimately its impact for families in Scotland.

Some consultation respondents (third and public sector organisations) felt that current arrangements which tie the Scottish Child Payment to receipt of a UK qualifying reserved benefit had several limitations. These limitations include that:

- Universal Credit pays an additional amount for families’ first and second child meaning that families with more than two children are not eligible for extra money for any more children unless they meet certain criteria¹²
- families face a financial cliff-edge if a continuing payment of a UK qualifying reserved benefit was removed or stopped due to a change in their circumstances (for example, fluctuations in monthly earnings and income)
- the UK Government could change or narrow the eligibility criteria for UK qualifying reserved benefits in the future which the Scottish Government would not have any control over
- changes at a UK Government level could reduce the number of families in Scotland eligible for such UK qualifying reserved benefits and therefore for the Scottish Child Payment which is tied to these benefits

¹² [Universal Credit: support for a maximum of 2 children: information for claimants - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/universal-credit-support-for-a-maximum-of-2-children-information-for-claimants)

- particular groups of people might be disproportionately impacted by the eligibility criteria of UK Government qualifying reserved benefits - for example, there was reference within consultation responses to students, single-parent families, mothers eligible for maternity allowance (who are not entitled to Universal Credit), people eligible for housing benefit, migrants, and visually impaired people.

It was suggested that creating additional flexibility for the Scottish Government could help address these limitations.

The points raised are reflected in the following (selected) respondent quotes.

“Our early warning system has evidence of families losing entitlement of a qualifying benefit for a short period of time. This can be because of a temporary increase in earned income, a change of circumstances or due to the ways that universal credit works that can mean families lose entitlement for one assessment period, even though their income hasn’t changed. Because Scottish Child Payment in [sic] only payable to people who receive a qualifying benefit these households lose entitlement to both the qualifying benefit and Scottish Child Payment...The Scottish Government would have the ability to continue to support families, by making payments of Scottish Child Payment, during these periods when families are temporarily no longer entitled to the qualifying benefit.”

Child Poverty Action Group in Scotland

“Weekly entitlement to Scottish Child Payment is incompatible with monthly Universal Credit payments; therefore, it is difficult to work out any entitlement in a specific week. This is not an issue for someone who does not have earnings as their Universal Credit payments are likely to be the same every month. However, people with earnings that vary month to month may come in and out of Universal Credit entitlement – and therefore entitlement to Scottish Child Payment.”

The Action Group and VOCAL

“It would allow for an expansion of eligibility for those currently excluded due to non-qualification for UK benefits for example parents who don’t qualify for Universal Credit due to the two-child rule or those in receipt of Housing Benefit only due to the benefit cap.”

One Parent Families Scotland

Theme 3: greater flexibility for the Scottish Government

Many consultation respondents (individual respondents, public and third sector organisations) agreed that the proposal could allow additional flexibility for the Scottish Government over the rules governing the Scottish Child Payment to be able to make changes in future.

Some of these respondents felt that greater flexibility could help the Scottish Government mitigate the risks associated with changes made by the UK Government in the future to UK qualifying reserved benefits, such as Universal Credit. Narrowing of eligibility criteria for Universal Credit was highlighted as an example which could result in fewer families in Scotland continuing to receive this UK Government benefit – and therefore fewer families eligible for the Scottish Government benefit – Scottish Child Payment (for example, if they were not eligible for another UK qualifying reserved benefit).

Further, these respondents suggested that creating greater flexibility would enable the Scottish Government to fill gaps and address any existing unfairness in the current social security system.

Some of the points raised above are reflected in the following (selected) respondent quotes.

“By making the Scottish Child Payment more flexible the Scottish Government would be able to effectively respond to the current cost-of-living crisis, helping those in dire need. When we spoke with women about the rising cost-of-living, many made it clear that they felt families would be significantly impacted and as such a more flexible scheme would enable an immediate response to major changes in an individual’s life: for example, changes to employment.”

Scottish Women's Convention

“Flexibility in the design and delivery of Scottish Child Payment could enable a closer alignment with other forms of Social Security Scotland 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, for example, target support to those most in need.”

Citizens Advice Scotland

Theme 4: a more agile and responsive Scottish social security system

Some respondents (mostly third sector organisations) reported that an advantage of creating additional flexibility over the rules for the Scottish Child Payment would be a more agile and responsive Scottish social security system.

It was suggested that this flexibility could allow the Scottish social security system to:

- respond quickly to current and future external factors and events – such as the cost-of-living crisis, which respondents said was having a real impact on families experiencing or at risk of poverty, or a future pandemic
- increase efficiency and effectiveness - quicker decision-making; faster payments; and a system that was more responsive to changes in a family’s circumstances
- make improvements in response to feedback received from people with lived experience of the system and from key stakeholders
- simplify and streamline processes and thereby reduce bureaucracy.

Some of the points raised above are reflected in the following (selected) respondent quotes.

“An advantage may be the ability to fast-track benefit payments, so that whilst a case is being considered by Department for Work and Pensions (DWP), there is flexibility to make payments where there is a valid application particularly where increased hardship is being experienced. This may be helped by using National Insurance records/contributions to determine eligibility, or other income letters such as bank statements, payslips.”

Royal National Institute for the Blind Scotland (RNIB Scotland)

“The suggestion of aligning the Scottish Child Payment with the Best Start Grants will reduce bureaucracy within the system and make application and award of the Scottish Child Payment more streamlined which should ultimately improve the user experience and enable quicker payments to families.”

The Scottish Association of Social Work (SASW)

Theme 5: alignment with other forms of Social Security Scotland assistance

Some public sector organisations agreed that the proposal would help to align the Scottish Child Payment with other forms of Social Security Scotland assistance. Advantages of closer alignment were reported as reduced bureaucracy, streamlined application processes, making it easier for people to apply for benefits, and quicker payments to families.

Some of the points raised above are reflected in the following (selected) respondent quotes.

“The example given regarding the alignment to other forms of financial support [such as] the “Best Start Grants” demonstrates a sensible approach to streamlining the social security system to ensure quicker and easier access to financial support for those that require it.”

Social Work Scotland

“Making Scottish Child Payment a stand-alone benefit would make it easier to align entitlement to the other five family payments and therefore increase the possibility of fully automating payments without application. This could avoid people missing out on this essential financial support because of difficulty applying.”

Child Poverty Action Group in Scotland

3.2.4 Question 4: please give your views on the disadvantages that could arise from creating this additional flexibility.

Around two-thirds of all consultation respondents (68%) answered Question 4 and provided views on the disadvantages that could arise from creating this additional flexibility.

Note: much of the feedback provided by these consultation respondents was framed in the context of overall support for the further development and roll out of the Scottish Child Payment.

Theme 1: additional resources might be required

Some consultation respondents (individual respondents, public and third sector organisations) felt that if there was additional flexibility to make changes to the Scottish Child Payment in the future, then additional resources (such as finance and staffing resource) could be required to support implementation. These respondents highlighted that delivering Scottish Child Payment would likely be more expensive if:

- eligibility criteria for Scottish Child Payment was extended
- means testing or the introduction of a bespoke application and assessment process was required because Universal Credit was no longer a UK qualifying reserved benefit.

A few respondents (one third sector organisation and individual respondents) acknowledged the pressure on public finances and felt that access to more funding to create additional flexibility would be challenging in the current economic climate. Related points included concerns that:

- additional flexibility might reduce the level of support that could be made available through the Scottish Child Payment by spreading existing resources more thinly
- funding might need to be taken from other government budgets

- this situation could lessen the impact of the Scottish Child Payment for families and its wider contribution towards child poverty targets.

Some of the points raised are reflected in the following (selected) respondent quote.

“The additional flexibility arising from grounding Scottish Child Payment in primary legislation is likely to require additional administration, resulting from the need to determine eligibility for the payment by itself, and potentially from broadened eligibility criteria. We do not consider this to be a pressing disadvantage, and believe that the focus should be on outcomes, but acknowledge the likely requirement for additional staffing resource for Social Security Scotland.”

Health and Social Care Alliance Scotland (The ALLIANCE)

Theme 2: more complex application and assessment processes

Some respondents (mostly third sector and a few public sector organisations) suggested that a further benefit from having Universal Credit as a UK qualifying reserved benefit for receipt of the Scottish Child Payment was that the application and assessment process was straightforward.

These respondents felt that creating additional flexibility could add complexity to the process in a potentially problematic way for Social Security Scotland, particularly in the short-term. There was the suggestion that introducing means testing or a new application and assessment process could require technical changes including the alignment of IT systems. Some of these respondents also reported that greater complexity of the application process could make it more confusing for applicants to navigate and more difficult for families to access the Scottish Child Payment. Their responses highlighted that there could be a disproportionate impact on particular groups of people such as disabled people and people with mental health conditions.

Other concerns, raised to a lesser extent by a few public sector organisations, included that a more complex application process could lead to inconsistent implementation. They suggested that this could be addressed through additional training for Social Security Scotland staff and highlighted that informed decision-making relied on access to up-to-date and robust information.

Some of the points raised above are reflected in the following (selected) respondent quotes.

“Any change to Scottish Child Payment may create confusion around eligibility criteria which could negatively impact on take up of the benefit. In addition, the introduction of Scottish Child Payment on a fresh legislative basis could place additional administrative pressure and strain on Social Security Scotland. Adequate preparation and resourcing will be required prior to any changes being introduced.”

Citizens Advice Scotland

“Extending eligibility beyond qualifying UK benefits may require the introduction of means testing, which have potential to be complex and distressing for claimants to navigate. If eligibility routes are increased – something Scottish Association for Mental Health (SAMH) would welcome – application and assessment processes must be co-produced with people with lived experience, including people living with mental health problems to ensure the application process is as straightforward as possible.”

Scottish Association for Mental Health (SAMH)

Theme 3: additional flexibility could result in restricting eligibility criteria

While most consultation respondents (individual respondents, public and third sector organisations) assumed that the Scottish Government would use additional flexibility to widen eligibility criteria beyond UK Government qualifying reserved benefits, a few third sector organisations reported that the Scottish Government administration could use the additional flexibility over the rules governing the Scottish Child Payment to narrow eligibility criteria.

Some of the points raised above are reflected in the following (selected) respondent quotes.

“If the flexibility sought was provided to Scottish Ministers...then the powers could actually be used to limit, rather than widen, entitlement to Scottish Child Payment. Instead of "future proofing" this would provide the Scottish Government with powers that could avoid Parliamentary scrutiny and accountability. Therefore, the way in which "flexibility" is achieved is important.”

Inclusion Scotland

“It is also possible that a future Scottish Government could use increased flexibility to reduce the number of families entitled to Scottish Child Payment.”

Child Poverty Action Group in Scotland

3.3 Re-determinations

Where a person disagrees with a determination made by Social Security Scotland, they can apply for a re-determination. Re-determination processes were co-designed with people in Scotland who have lived experience of comparable DWP systems. During the re-determination process, another officer in Social Security Scotland will consider the case afresh taking account of new evidence provided and will make a new determination. The Scottish Government has deadlines for making the re-determination and if they are not met, a person can appeal directly to the First-tier Tribunal (Social Security Chamber).

Short-term assistance may be payable where a continuing payment is reduced or stopped, and the individual asks for a re-determination or appeal of the decision to reduce or stop the continuing payment.

There is currently no way to withdraw a request for re-determination once it has been made. The Scottish Government believes that its rights-based approach to social security is best served by letting people decide whether or not their re-determination should in fact go ahead. The consultation sought views on whether a person should be able to withdraw their re-determination request.

3.3.1 Question 5: do you agree or disagree that a person should be able to withdraw a re-determination request before Social Security Scotland has made a re-determination decision?

Table C.3 and **Table C.4 (Appendix C)** provide the quantitative response to Question 5. Key points include that:

- almost all consultation respondents who answered Question 5 agreed (96%) with the proposal that a person should be able to withdraw a re-determination request before Social Security Scotland has made a re-determination decision
- 4% of consultation respondents who answered Question 5 disagreed with the proposal.

3.3.2 Question 6: please give reasons for your answer.

Almost three-quarters of all consultation respondents (74%) answered Question 6, and the main themes are outlined below.

Respondents who agreed with the proposal

Theme 1: individuals should have the right to withdraw a re-determination request

Many consultation respondents (mainly third and public sector organisations) were supportive of the proposal regardless of the reason(s) for withdrawal. They considered it fair and reasonable that a person should be able to withdraw a re-determination request before Social Security Scotland has made a re-determination decision. Some of these respondents felt that the proposal was in keeping with the Social Security Principles around adopting a rights-based and person-centred approach.

The point raised above is reflected in the following (selected) respondent quote.

“Re-determinations are an important part of fairness built into the social security system...It cannot be right that a person-centred human rights-based system that is built on the principles of fairness, dignity and respect do not afford applicants the opportunity to change their mind through the application process at the re-determination stage. That control should always remain with the individual and they should have the right to withdraw their application at any stage in the process.”

The Scottish Association of Social Work (SASW)

Theme 2: the proposal has several advantages

Many consultation respondents (individual respondents, public and third sector organisations) suggested that the proposal that a person should be able to withdraw a request for re-determination could create additional flexibility for people. These respondents felt that the proposal would allow people to make decisions in response to changing personal circumstances and make more informed decisions about their re-determination request following independent advice.

Some consultation respondents (individual respondents, public and third sector organisations) highlighted that an additional advantage could be reduced administrative burden. These respondents felt that the proposal could save time and effort for people and Social Security Scotland staff alike.

The points raised above are reflected in the following (selected) respondent quotes.

“Giving people the ability to withdraw their request will allow Social Security Scotland to make a new determination quickly and would mean errors could be sorted at the earliest opportunity. This would reduce the stress and anxiety for claimants in particular those suffering from mental health issues.”

One Parent Families Scotland

“It seems logical, and efficient in terms of staff resources, to allow clients to withdraw redetermination requests when they have already achieved the objective for which the redetermination request was originally lodged.”

Inclusion Scotland

Theme 3: access to independent advice is vitally important

Some consultation respondents (individual respondents, public and third sector organisations) who agreed with the proposal considered it important that individuals were able to access independent advice easily. Independent advice was said to act as a safeguard and would help to ensure people have considered their options before deciding whether or not their re-determination should go ahead.

The point raised above is reflected in the following (selected) respondent quote.

“Someone might receive independent advice that there is little, or no chance of their request succeeding and based on that information, may wish to withdraw their request. They should be allowed to do so.”

Child Poverty Action Group in Scotland

Theme 4: caveats made by those who supported the proposal

Some third and public sector organisations who supported the proposal in principle caveated their response in some way. It was suggested:

- by a few third sector organisations that the re-determination process could be stressful, and that it would be important to ensure people do not feel pressured in any way to withdraw a re-determination request - monitoring and the option of a “cooling off” period were considered important in this regard

- that the advantages and disadvantages of withdrawing a request for re-determination should be clearly communicated to people, particularly where there would be an impact on short-term assistance - signposting people to independent advice was therefore considered important.

Some of the points raised above are reflected in the following (selected) respondent quotes.

“Care must be taken that pressure is not exerted by staff carrying out a re-determination or seeking further evidence to suggest that an individual may want to withdraw a request. The Scottish Government should monitor reasons why people withdraw requests to ensure that it does not become a barrier to justice.”

Child Poverty Action Group in Scotland

“We also recognise the risk for individuals who may be experiencing financial abuse who may feel under pressure from their abuser to remove a re-determination request. We would recommend that additional checks and safeguarding are brought in to ensure that, as far as possible, this does not happen”.

Christians Against Poverty Scotland

“Applicants who wish to do this should have all of the information needed to make an informed choice and be aware of the consequences of such action, including the loss of short-term assistance that may be in place. Information should be available in a range of formats pertaining to the needs of the individuals and they should have access to independent advocacy and representation should they wish.”

The Scottish Association of Social Work (SASW)

Respondent who disagreed with the proposal

One individual respondent disagreed with the proposal that a person should be able to withdraw a re-determination request before Social Security Scotland has made a re-determination decision. Their response was that care should be taken to ensure that re-determinations are withdrawn for the right reason(s) and not because people feel unable to face the process.

3.4 Determinations after an appeal is lodged

Where Social Security Scotland has completed a re-determination and a person still disagrees with its decision, they can appeal. People can also appeal if Social Security Scotland fails to make a re-determination in the time allowed by regulations. Appeals are made to the First-tier Tribunal for Scotland (Social Security Chamber). The Tribunal is administered by the Scottish Courts and Tribunals Service, which is independent of the Scottish Government.

If a person wants to appeal to the First-tier Tribunal (Social Security Chamber) they complete an appeal form and return it to Social Security Scotland, which then forwards it to the Tribunal for consideration. Scottish Ministers cannot currently make a new determination if a person has appealed, even if it is established after an appeal is lodged that a person's award of assistance is wrong. The Scottish Government believes that introducing a mechanism for Social Security Scotland to make a new determination at this stage, and stopping the appeal, could mean that errors could be rectified early.

The consultation asked whether a new determination should only be made where the new determination has the same effect as the Tribunal making the maximum award available to it; whether the new determination should only be made where a person consents to it; and what challenge rights should be available against the new determination.

3.4.1 Question 7: do you agree or disagree that a new determination should only be made if it gives the person everything they could get from the Tribunal?

Table C.5 and **Table C.6 (Appendix C)** provide the quantitative response to Question 7. There was relatively mixed consultation respondent feedback, including:

- 40% of consultation respondents who answered Question 7 agreed that a new determination should only be made if it gave a person everything they could get from the Tribunal
- 44% of consultation respondents disagreed with the proposal
- 16% of consultation respondents didn't know.

3.4.2 Question 8: please give reasons for your answer.

Almost three-quarters of all consultation respondents (74%) answered Question 8.

Respondents who agreed with the proposal

Theme 1: it would remove the need for people to attend unnecessary Tribunal hearings

A prevalent view among consultation respondents (individual respondents, public and third sector organisations), regardless of their response to Question 7, was that people should not have to attend any unnecessary Tribunal hearings, and this proposal could reduce stress for people.

Some of the points raised above are reflected in the following (selected) respondent quote.

“No change in current process should be to the detriment of the individual. The introduction of this additional route of rectification would reduce the stress experienced by individuals who found themselves enroute to appeal.”

The Scottish Association of Social Work (SASW)

Theme 2: it could reduce time and resources spent on appeals

A few consultation respondents (public and third sector organisations and one individual respondent) supported the proposal that a new determination should only be made if it gave a person everything they could get from the Tribunal as it could help reduce the time and resources involved in the challenge process.

These respondents went on to identify a range of benefits that the proposal might have for people and Social Security Scotland including:

- reduced bureaucracy and complexity of the appeals process
- increased transparency of the appeals process
- that errors could be rectified early
- that it would empower people by ensuring they had a right to challenge if they believed that Social Security Scotland had not made the right determination.

Some of the points raised above are reflected in the following (selected) respondent quote.

“In addition to reducing the emotional and health impacts on the individual who would otherwise have to attend a Tribunal hearing, this would also reduce the administrative burden on Social Security Scotland and the Tribunal by relieving them of the need to continue appeals processes that have already identified a satisfactory alternative resolution.”

Health and Social Care Alliance Scotland (The ALLIANCE)

Respondents who disagreed with the proposal

Theme 1: the proposal assumes that Social Security Scotland can pre-empt the decision of a Tribunal hearing

Some third sector organisations suggested that the proposal could result in new determinations pre-empting the outcome of Tribunal hearings. These respondents considered this eventuality inappropriate for Social Security Scotland and that it could restrict options for the agency to respond to an appeal. These respondents were also concerned that pre-empting a decision to work out everything a person could get from a Tribunal might not be practical given the complexity and nuance of individual cases.

The points raised above are reflected in the following (selected) respondent quotes.

“For Adult Disability Payment, an award is based on how the disability affects an individual, hence people with the same disability may get different awards, which will be correct for them. As an example, some single below knee amputees may be awarded standard or enhanced mobility and/or an award of daily living. In this instance it would be impossible for Social Security Scotland to know what everything is that the client could get from a Tribunal.”

Blesma

“It should not be for Social Security Scotland to pre-empt the decision of the tribunal. Child Poverty Action Group in Scotland believe that as soon as the Scottish Ministers accept that their decision is wrong, they should immediately make a more favourable determination of what they believe to be an individual’s correct entitlement. This is in keeping with the principles in s1 of the Act. If an individual wishes to challenge the new determination, they should have the immediate right to make a further appeal. This will enable a partial award of benefit to be in place until the appeal is heard.”

Child Poverty Action Group in Scotland (CPAG)

Theme 2: people might want to accept a higher award that is less than the maximum

Some consultation respondents (mostly third sector organisations) who disagreed with this proposal felt that it did not take into consideration people who might wish to consent to the new determination even if it would not give them everything that they could get from a Tribunal. Examples were provided of cases where it might be more desirable for a person to accept less than the maximum they could get from a Tribunal.

These respondents also stated that the challenge process could be stressful and daunting for people, and that some might rather avoid applying for a re-determination as a result.

A few consultation respondents disagreed with the wording of the proposal – “everything that they can get from a Tribunal” – as they felt it might be too restrictive and lacked clarity. Support was, however, expressed for informed consent and a person-centred approach.

Some of the points raised above are reflected in the following (selected) respondent quote.

“It is unclear what is meant by a determination giving the client ‘everything they could get from the Tribunal’. Does this mean the highest rate of benefit payable, or the rate of benefit sought by the client in their appeal? The latter is predicated on a client specifying this, which may not be the case, especially if they do not have a representative. We think that it is in clients’ interest for a new determination even if this does not award everything they are seeking from an appeal as it is a quicker resolution, whilst retaining the possibility of a further appeal”.

The Action Group and Voice of Carers Across Lothian (VOCAL)

Additional points raised

While outside the scope of the consultation question, a few third sector organisations suggested that the proposal offered the opportunity to reconsider whether claimants should be required to request a re-determination to access the appeals system. It was suggested that the proposal could limit efficiency of the process and be confusing for people.

A third sector organisation also proposed a different approach to appeals more widely. Their suggestion was to amend legislation to allow the Tribunal to only look at certain aspects of a person's case at appeal.

Respondents who answered don’t know to the proposal

A few third and public sector organisations were unsure about the proposal that a new determination should only be made if it gave a person everything they could get from the Tribunal. The main point raised was the importance of consent. Additional individual points raised included that there might be practical challenges in implementing and monitoring the proposal, and they felt that the proposal lacked clarity.

Some of the points raised above are reflected in the following (selected) respondent quotes.

“While we accept the rationale of the proposal, we do not believe that someone’s appeal should automatically end in the cases outlined in the consultation paper... Ultimately in a rights-based system this should be the decision of the claimant, who in some circumstances may wish to proceed with the appeal against the original determination (or re-determination).”

Scottish Association for Mental Health (SAMH)

“Would the system be like DWP whereby decision makers make telephone offers without explaining to claimants how they arrive at their decision and claimants appeal rights? Further clarity is required on this issue.”

North Ayrshire Council

3.4.3 Question 9: do you agree or disagree that a person should be asked for their consent before a new determination is made?

Table C.7 and **Table C.8 (Appendix C)** provide the quantitative response to Question 9. Key points to note include that:

- 72% of consultation respondents who answered Question 9 agreed that a person should be asked for their consent before a new determination was made
- 16% of consultation respondents disagreed with the proposal
- 12% of consultation respondents didn’t know.

3.4.4 Question 10: please give reasons for your answer.

Almost three-quarters of all consultation respondents (74%) answered Question 10.

Respondents who agreed with the proposal

Theme 1: people should be asked for their consent at all stages

Almost all consultation respondents who agreed with the proposal (individual respondents, public and third sector organisations) suggested that people should be asked for consent at all stages of the challenge process. These respondents felt that this would empower and support people.

Related points made by these respondents in support of the proposal were that it:

- fits with a person-centred approach
- aligns strongly with the Social Security Principles and Charter
- would reduce stress for people, including those with protected characteristics
- would provide an additional opportunity for people to be signposted to independent advice.

Some of the points raised above are reflected in the following (selected) respondent quotes.

“We believe that it is incredibly important that service-users feel empowered throughout the social security process. Currently, women who claim benefits regularly have feelings of dismay and anxiety, viewing themselves as ‘scroungers’. They must consistently justify their claims and do not have control over their own finances: contributing to an overall negative experience. Therefore, asking women for their consent would include them within the decision-making process.”

Scottish Women’s Convention

“In line with a human rights-based approach and in accordance with commitments in Scotland’s Social Security Charter – Our Charter – to ensure clients are full informed we believe asking for consent prior to making a new determination is the best approach. Clients should be informed of the reasons for making a new determination, such as discovery of an official error. In accordance with the charter, clients should be supported to access independent advice and advocacy to ensure they can make an informed decision about providing consent.”

Scottish Association for Mental Health (SAMH)

Respondents who disagreed with the proposal

Theme 1: asking for consent would not be necessary at this stage

All four organisation respondents (mostly third sector organisations) who disagreed with the proposal suggested that asking for a person’s consent would be unnecessary at this stage. These respondents felt that Social Security Scotland has the right to make a new determination, and that there was not a requirement for consent before making a new determination.

Some of the points raised above are reflected in the following (selected) respondent quote.

“If the individual has the option to withdraw their request for a redetermination or unsuccessful redetermination to proceed to appeal, there would be no need to request consent before making a new determination.”

Child Poverty Action Group in Scotland

Theme 2: added pressure being placed on people

A few third and public sector organisations who disagreed with the proposal that a person should be asked for their consent before a new determination was made felt that asking for consent could lead to added pressure being placed on people.

Respondents who answered don't know to the proposal

The main feedback from respondents who answered “don't know” to the proposal about consent were that people might feel pressured, and the proposal lacked clarity.

3.4.5 Question 11: please provide your views on what challenge rights the person should have on the new determination.

Around two-thirds of all consultation respondents (68%) answered Question 11.

Theme 1: mixed feedback on challenge rights

Mixed views were provided on challenge rights.

Most consultation respondents (third and public sector organisations) expressed support for challenge rights, and there were broadly three main views on how those rights should look. The three views were that:

- some respondents thought there should be a consistent approach across the social security system and therefore give people both re-determination and appeal rights on the new determination
- others said that the new decision should only come with appeal rights (meaning that the re-determination step should be skipped)
- while others suggested that instead of stopping the appeal, the appeal should just continue against the new determination.

Some of the points raised above are reflected in the following (selected) respondent quotes.

“The determination should be treated as if it is a new claim or determination. This means the client should have full rights to challenge the new determination, including the right for a re-determination and full appeal rights.”

Scottish Association for Mental Health (SAMH)

“Individuals should have the right to challenge the decision by making a further appeal to the tribunal without the need for a further redetermination.”

Child Poverty Action Group in Scotland

“Where an appeal has been lodged and Social Security Scotland are able to make a more favourable decision than the decision that was the subject of the appeal, the appellant should be able to choose if they want to continue with the appeal or not. It would be desirable for this can [sic] be done without the need to lodge a fresh appeal as this would introduce a further delay.”

Glasgow City Council

A few third sector organisations reported that challenge rights might, however, become less important if consent was required before a new determination was made.

Some of the points raised above are reflected in the following (selected) respondent quotes.

“If consent is included in the process outlined above then challenge rights become less of an issue. However, if there is no consent included then challenge rights are vitally important. We believe that making consent part of the process would mitigate the complications of needing to have a challenge process in place.”

Christians Against Poverty Scotland

“We’re unsure why challenge rights would be required if the client had already given their consent for a new determination and had also achieved all that could be got at tribunal. However, presuming on checking that the client or their representative found that the new determination did not provide everything that could be got at tribunal then of course the client should then be able to insist that their case be considered by a tribunal. Therefore, when the new determination is issued it should be clearly stated that the client has the option of proceeding to tribunal within a certain period of being notified of the new determination if they are not completely satisfied with it.”

Inclusion Scotland

3.5 Appointees

Where a person lacks capacity to manage their own financial affairs, the DWP and Social Security Scotland can each appoint a person or organisation, known as an appointee, to act on that person’s behalf. The 2018 Act, and associated statutory guidelines, set out the law and processes that govern when Social Security Scotland can appoint another person to act for someone who lacks capacity to manage their assistance. As the law and processes differ from DWP, currently when a DWP appointee makes a new application for Scottish Government benefits on a person’s behalf, they cannot automatically be treated as an appointee in Social Security Scotland’s system.

In some circumstances when a person is transferring from a UK disability benefit to a Scottish equivalent form of assistance, a DWP appointee may be temporarily recognised. This is subject to the requirements of the 2018 Act being applied as soon as reasonably practicable after the individual has transferred on to the Scottish benefit. The Scottish Government has identified some other scenarios where it believes it might be better for the client if Scottish Ministers had the flexibility to allow an existing DWP appointee to act for a person for a short period, pending an assessment by Social Security Scotland's Local Delivery team.

There is a small risk that in some cases when the appointment is later reviewed by Social Security Scotland, it may be terminated. This could happen if a person was found to have been able to manage their assistance themselves or because, in a smaller proportion of cases, the appointee was unsuitable. The Scottish Government considers this risk needs to be balanced with the potential benefits of having an application processed or payment made more quickly and easily. The consultation sought views on whether Social Security Scotland should be able to make payments to a DWP appointee for a time-limited period.

3.5.1 Question 12: do you agree or disagree that Social Security Scotland should be able to make payments to a DWP appointee until Social Security Scotland completes its appointee process?

Table C.9 and **Table C.10 (Appendix C)** provide the quantitative response to Question 12. There was widespread consultation respondent support for the proposal, and points to note include that:

- almost all consultation respondents who answered Question 12 agreed (96%) that Social Security Scotland should be able to make payments to a DWP appointee until Social Security Scotland completes its appointee process
- 4% of consultation respondents disagreed with the proposal.

3.5.2 Question 13: please give reasons for your answer.

Almost three-quarters of all consultation respondents (71%) answered Question 13, and the main points raised are outlined below.

Respondents who agreed with the proposal

Theme 1: allow prompt payments to be made

Most consultation respondents (individual respondents, public and third sector organisations) expressed strong support for the proposal as it would avoid delays to payment pending an assessment by Social Security Scotland's Local Delivery team.

These respondents considered it a sensible approach as it would allow prompt payments to be made by Social Security Scotland to those in need of assistance.

Some organisation respondents (mainly third sector organisations) noted that appointees would have been deemed appropriate following DWP checks therefore not having an arrangement in place to make payment to a DWP appointee and prevent delay would be unfair to people.

Some of the points raised above are reflected in the following (selected) respondent quotes.

“In keeping with principle of 'safe and secure transition' it essential that at migration the payment arrangements, including payment to appointees, are maintained until the new Social Security Appointment system can be completed. To do otherwise could put vulnerable people and their carers in a situation where they are unable to manage or even receive the payments.”

Glasgow City Council

“We would agree with this proposal based on a belief that the integrity of the DWP appointeeship process remains in line with human rights and person-centred approaches. We would strongly suggest that how systems operate, and transitions into changed systems of equal merit, should not prohibit people from accessing benefits that will provide vital support in addressing poverty.”

Social Work Scotland

Theme 2: benefits outweighed the risks

The general consensus among third and public sector organisations who agreed with the proposal was that benefits outweighed any risks. The main risk identified was the potential for financial abuse whereby a DWP appointee abused their position and power over the person they were acting for.

Some support was expressed by these respondents for the proposal as a DWP appointee would only be allowed to act for an individual for a short period of time. It was suggested that risks could be further mitigated if Social Security Scotland completed their own checks as soon as possible.

Some of the points raised above are reflected in the following (selected) respondent quotes.

“Given the short-term nature of the arrangement, on balance the risk of delays to payments if this measure is not introduced is greater than the risk that an appointee may be subsequently found not to be appropriate for the role.”

Citizens Advice Scotland

“We believe on balance that these proposals are proportionate and will avoid the risk of harmful delays in payments of awards, particularly in cases of terminal illness or, for example, for a Funeral Support Payment where timely assessment and payment is essential...the appointee should undergo the full Scottish processes for appointment as soon as is practically possible. In cases where the DWP appointee, after assessment, does not meet the Scottish criteria they should be replaced with a new appointee who meets the Scottish criteria as soon as possible.”

Scottish Association for Mental Health (SAMH)

Respondent who disagreed with the proposal

One individual respondent disagreed with the proposal and commented that the appointee process should, with all its checks, be completed prior to any payment to an appointee.

3.6 Challenge rights for overpayment liability

The Scottish Government policy on overpayments is that overpayments that have occurred as a result of error should not be recovered where the individual did not cause or contribute to that error, or if it was the sort of error a person could not reasonably be expected to have noticed. Where an overpayment has occurred, it may be recovered by making deductions from future payments and individuals will be contacted to agree a payment plan.

Currently, where Social Security Scotland comes to the view that an overpayment has occurred, it will make a new determination on a person's entitlement to the benefit in question. Although this new determination will bring re-determination (and appeal) rights if a person disagrees and wants to challenge the decision, those rights of challenge do not currently include the right to challenge the separate decision on whether or not a person is liable to repay the overpayment.

The Scottish Government believes that in a person-centred social security system people should be able to challenge the decision on whether or not they are liable to repay an overpayment. The consultation sought views on the proposal to introduce rights of challenge against Social Security Scotland's decision on overpayment liability.

3.6.1 Question 14: do you agree or disagree that the Scottish Government should introduce rights of challenge against Social Security Scotland's decision that someone was liable to repay an overpayment?

Table C.11 and **Table C.12 (Appendix C)** provide the quantitative response to Question 14. All respondents who answered this question agreed with the proposal that the Scottish Government should introduce rights of challenge against Social Security Scotland's decision that someone was liable to repay an overpayment.

3.6.2 Question 15: please give reasons for your answer.

Almost three-quarters of all consultation respondents (71%) answered Question 15, and the main feedback is outlined below.

Respondents who agreed with the proposal

Theme 1: people should be able to challenge liability for an overpayment

Many consultation respondents (individual respondents, public and third sector organisations) considered it important that people could challenge whether an overpayment had occurred and whether the overpayment was recoverable. These respondents felt there could be a range of circumstances in which an overpayment could occur, including administrative errors.

It was considered important that each case was assessed on its own merits as there might be mitigating factors.

Some of the points raised above are reflected in the following (selected) respondent quote.

“With overpayments - I don't really understand money so my disability means that what I could have reasonably expected to notice is radically different to a non-disabled person - how are you going to manage this without knowledge of how the disability affects an individual.”

Attendee - People with lived experience of disability event

Some consultation respondents (individual respondents, public and third sector organisations) agreed that the Social Security Scotland process for considering whether an overpayment was recoverable should take into account hardship and for an appropriate payment plan to be agreed. Respondents also highlighted other considerations, including the impact of the recovery of an overpayment on a person's physical and mental health and wellbeing.

Points raised are reflected in the following (selected) respondent quotes.

“While we recognise that Social Security Scotland are committed to ensuring repayment plans are affordable for clients, having this extra layer of protection will also help to reduce the impact and risk of clients being pushed into debt as a result of mistaken liability.”

Christians Against Poverty Scotland

“A system that has a blanket approach to overpayment being liable to be paid back lacks the opportunity for nuance where the responsibility for mistakes may not lie with the individual. Any system should be open to challenge as it will not be 100% accuracy with decisions 100% of the time.”

The Scottish Association of Social Work (SASW)

Theme 2: it would be important to avoid court proceedings

Most consultation respondents (individual respondents, public and third sector organisations) supported the proposal as creating a right of challenge against a finding of liability for an overpayment could avoid court proceedings for people. This was considered consistent with a person-centred, human rights-based approach. Feedback from respondents was that the proposal could increase accountability and transparency of the Scottish social security system and greater alignment with the UK system.

Some of the points raised above are reflected in the following (selected) respondent quotes.

“Social Security Scotland should introduce a right to challenge recoverability decisions. This exists with [UK Government] benefits and as such the Scottish provisions should give appellants the same rights not less. The current situation where claimants of Scottish benefits need to have the question of recoverability considered in the court while other factors relating to the overpayment (quantification) can be determined by a tribunal is too complicated and intimidating. The tribunal is the best place to consider all the aspects of an overpayment.”

Glasgow City Council

“Introducing rights of challenge against Social Security Scotland’s decision that someone is liable to repay an overpayment would provide a more holistic, equitable and person-centred approach.”

Stirling Council

3.6.3 Question 16: please provide your views on the most appropriate way to hear challenges against Social Security's decisions that someone is liable to repay an overpayment, bearing in mind that the aim is to avoid people having to go to court.

Around two-thirds of all consultation respondents (68%) provided an answer to Question 16.

Theme 1: preference for a consistent approach

A prevalent view among respondents (individual respondents, public and third sector organisations) was for a consistent approach within the Scottish social security system and for people to be able to challenge a Social Security Scotland decision at any stage of the process. It was suggested that the introduction of a right to challenge for overpayment liability would remove the need to go through the debt recovery process and wait for civil court proceedings. These respondents said that it could reduce the number of cases proceeding to court thereby reducing the stress and anxiety for people within the social security system.

Many of these respondents considered the most appropriate way to hear challenges was for Social Security Scotland to first look at its decision again when a challenge was raised with a possible re-determination and, if a person still disagreed, then for challenges to be heard at a First-tier Tribunal (Social Security Chamber).

Wider points raised included that:

- some respondents (mostly individual respondents) suggested that the re-determination step should be undertaken by an independent person or body
- a few third sector organisations suggested there might be scope to further streamline processes for cases where an individual is challenging both whether a benefit has been overpaid, and also whether that overpayment is recoverable.

Some of the points raised are further reflected in the following (selected) respondent quote.

“Enabling individuals to challenge overpayment liability through the same procedures as they would challenge a determination would be a logical approach. In particular, allowing them to request what would effectively amount to a re-determination of their liability would offer an opportunity for rectification without needing to involve either a Tribunal or civil court. Being granted the right to appeal liability for an overpayment, although still involving legal proceedings in the form of a Tribunal, would also likely allow for a less stressful means of resolving the issue.”

Health and Social Care Alliance Scotland (The ALLIANCE)

Theme 2: other suggested approaches

Other approaches to hearing challenges against Social Security Scotland's decision that someone might be liable to repay an overpayment were suggested by a few individual respondents and third sector organisations. Approaches suggested included going straight to First-tier Tribunal (Social Security Chamber) in some cases, or an independent review. A third sector organisation also suggested that further engagement with people with lived experience of the social security system might be required to inform and determine the most appropriate approach.

The points raised above are reflected in the following (selected) respondent quote.

“An independent body, ideally a non-profit organisation (such as Citizens Advice Bureaus?) whose role is to mediate cases between Social Security Scotland and their clients...Clients should have the right to access advice and support in mediating with Social Security Scotland regarding repayment options, in the cases where clients accept liability.”

NHS Greater Glasgow and Clyde

4 Delivering value for money

4.1 Introduction

Scottish Government proposals in this chapter relate to the following Social Security Principle - 'the Scottish social security system is to be efficient and deliver value for money'¹³. The Scottish Government aims to prioritise the needs of those who require assistance, but Ministers also have a duty to deliver value for money in keeping with the Public Finance Manual¹⁴. By increasing efficiency and value for money the Scottish Government hopes to ensure that public money achieves maximum value for those people who rely on social security.

4.2 Compensation recovery

A person who has been affected by an accident, injury or disease might be entitled to social security benefits. If it was the fault of a third party, then a person might also be entitled to compensation. Compensation of this sort is usually paid by insurers on behalf of the party at fault after a settlement is agreed between the parties or is enforced through the courts.

Under UK legislation, before any compensation payment is made, a compensator (usually an insurance company) is legally obliged under the Social Security (Recovery of Benefits) Act 1997 to request a Certificate from the DWP. That Certificate states the amount of any recoverable benefit that must be repaid to the DWP by the compensator. The recoverable benefits are listed in the 1997 Act.

In the context of Scottish social security, compensation recovery is most relevant to disability assistance. The policy intent behind the existing UK scheme is that nobody should be compensated twice for the same injury or disease. Social security benefits should meet the person's needs while a settlement is being reached but they will be recovered if and once a settlement is agreed.

The consultation sought views on whether the Scottish Government should undertake recovery of Scottish social security assistance from compensation paid as a result of injury or disease for which a third party is liable.

¹³ [Social Security \(Scotland\) Act 2018 S1\(h\)](#)

¹⁴ [Scottish Public Finance Manual](#)

4.2.1 Question 17: do you agree or disagree in principle that the Scottish Government should undertake recovery of Scottish social security assistance from compensation paid as a result of injury or disease for which a third party is liable?

Table C.13 and **Table C.14 (Appendix C)** provide the quantitative response to Question 17.

Consultation respondent feedback was relatively mixed and points to note include that:

- 43% of consultation respondents who answered Question 17 agreed in principle that the Scottish Government should undertake recovery of Scottish social security assistance from compensation paid as a result of injury or disease for which a third party was liable
- 14% of consultation respondents disagreed with the proposal
- 43% of consultation respondents didn't know.

4.2.2 Question 18: please give reasons for your answer.

Over half of all consultation respondents (53%) answered Question 18. **Note:** this includes all responses to Question 18, including from consultation respondents who did not answer Question 17. All responses to Question 18 were reviewed and a best fit approach adopted to ensure that points raised by those who did not answer Question 17 were reflected in the narrative below. This approach was replicated throughout the report where appropriate.

Respondents who agreed with the proposal

Theme 1: nobody should be compensated twice for same injury or disease

Some consultation respondents (mainly individual respondents and a third sector organisation) agreed with this proposal as they considered it important that taxpayers' money was not used to compensate people twice for the same injury or disease.

These respondents said that recovery of reasonable levels of Scottish social security assistance could help ensure that a third party's legal obligation to fully compensate another person who they had harmed was not subsidised by the social security system. There was agreement among these respondents with the proposal that social security benefits should meet the person's needs while a settlement is being reached but should be recovered if and once a settlement was agreed.

The points raised above are reflected in the following (selected) respondent quote.

“Where a third party [is] at fault it should be a component part of any claim for compensation to include an element for the benefits that have been paid that would otherwise not have been paid. The extent of the recovery should be limited to this element of the compensation payment.”

Glasgow City Council

Theme 2: NHS should be able to recover costs for treatment of occupational disease

A few consultation respondents (third and private sector organisations) agreed with the proposal in principle and additionally believed that the NHS should also be able to recover costs associated with the treatment of occupational disease in the same way they could for treating personal injuries.

Respondents who disagreed with the proposal

Theme 1: the proposal would place undue hardship on people

Some respondents (mainly third sector organisations and a public sector organisation) disagreed with the proposal as they felt that recovery of Scottish social security assistance from compensation paid as a result of injury or disease for which a third party was liable would place undue hardship or stress on people. These respondents felt that the main priority should be to ensure people were fairly compensated rather than recovery of assistance.

Some of the points raised above are reflected in the following (selected) respondent quote.

“Claiming money from a third-party source can be difficult and fraught with legal elements, actively worsening the claimant’s life. Therefore, we do not believe it is within the best interest for the Scottish social security system to actively undertake recovery work if a person has been compensated because of injury or disease for which a third-party is liable.”

Scottish Women’s Convention

Respondents who answered don’t know to the proposal

Theme 1: proposal was outside respondents’ relevant experience

A few respondents (third sector organisations and an individual respondent) stated that they did not have enough relevant experience or expertise to comment on this proposal.

Other respondents who answered don’t know commented that no-one should be compensated twice for the same injury or disease (third sector organisation) and that claimants should be fairly compensated for any distress caused (public sector organisation).

4.3 Alternatives to prosecution for low-value fraud

Social Security Scotland is responsible for investigations into allegations or suspicions of fraud. Currently, in cases where Social Security Scotland considers that there is enough evidence to suggest that a fraud offence under the 2018 Act has taken place, a referral can be made to the Crown Office and Procurator Fiscal Service (COPFS).

In Scotland, the decision on whether to institute criminal proceedings for fraud rests solely with COPFS. When deciding on the appropriate action, for example, prosecution or a non-court disposal such as a Procurator Fiscal Fixed Penalty (often referred to as a Fiscal fine), various factors are considered, including the value of the fraud in question and other aggravating factors.

The Scottish Government sought views in the consultation on whether it should introduce alternatives to referring a case for prosecution where small sums of money are involved.

4.3.1 Question 19: do you agree or disagree that Social Security Scotland should have available an alternative to prosecution where small sums of money have been obtained illegally?

Table C.15 and **Table C.16 (Appendix C)** provide the quantitative response to Question 19, and the findings were that:

- almost two-thirds of all consultation respondents who answered Question 19 agreed (65%) that Social Security Scotland should have available an alternative to prosecution where small sums of money have been obtained illegally
- 15% of consultation respondents disagreed with the proposal
- 20% of consultation respondents didn't know.

4.3.2 Question 20: please give reasons for your answer.

Over half of all consultation respondents (59%) answered Question 20, and the main feedback is outlined below.

Respondents who agreed with the proposal

Theme 1: prosecution would be disproportionate for low level offences

Many consultation respondents (third sector organisations and individual respondents) who agreed with the proposal considered prosecution for low level offences disproportionate. Points

raised included that prosecutions could be expensive, time consuming, and stressful or intimidating for people.

These respondents believed that alternative approaches to prosecution would be more proportionate, cost effective and less damaging for people, including those who were vulnerable.

Some of the points raised above are reflected in the following (selected) respondent quote.

“Prosecution should only be used as a last resort where criminal intent has already been proved. An ability to repay the amount at a rate that allows someone to cover their ongoing commitments would be far more advantageous. Any prosecution could result in loss of their employment for example and would have a detrimental effect on the family not just the claimant.”

One Parent Families Scotland

Respondents who disagreed with the proposal

Theme 1: fraudulent activity should always be prosecuted

A few consultation respondents (individual respondents and public sector organisations) were of the view that if fraudulent activity is suspected to have occurred, then it should always be referred for prosecution, assuming that there is sufficient evidence to suggest that a fraud offence has taken place.

Theme 2: provision should be made for legal defence

A few third and public sector organisations were concerned that if fraud cases were to be handled outside the legal system, then there should be an opportunity for people to access a legal defence. It was suggested that automatic penalties could penalise people for genuine mistakes or errors rather than fraudulent activity.

The points raised above are reflected in the following (selected) respondent quote.

“There could be instances where Social Security Scotland have determined that money has been obtained illegally, but there should always be a provision for a legal defence for clients. For example, a case where a client’s partner was claiming a benefit illegally but without the client’s knowledge or consent - yet the client is legally liable.”

NHS Greater Glasgow and Clyde

Respondents who answered don't know to the proposal

Theme 1: proposal was outside respondents' relevant experience

A few third sector organisations stated that they did not have enough relevant experience or expertise to provide comment on the proposal.

A few respondents repeated points made earlier. Namely, that a more proportionate approach might be required for small sums of money and the importance of an appeals process and access to a legal defence.

4.3.3 Question 21: if you agree, please describe what alternatives to prosecution you consider might be appropriate where small sums of money have been obtained illegally?

Less than half of all consultation respondents (41%) provided an answer to Question 21.

Theme 1: repayment and administrative penalties

The main alternative to prosecution identified by consultation respondents (individual, public and third sector organisations) was repayment of monies fraudulently obtained plus a penalty or community payback.

A few respondents highlighted that it would be reasonable and sensible for Social Security Scotland to replicate the current DWP approach. Instead of referring a case for prosecution, the DWP has the option of issuing administrative penalties of up to 50% of the value of the fraudulently obtained overpayment. The minimum administrative penalty is £350, and the maximum is £5,000.

Similar to the previous question, a few consultation respondents highlighted that those subject to administrative penalties should have the right to appeal the Social Security Scotland decision.

A few respondents considered repayment of the fraudulently obtained funds to be sufficient penalty for people.

Some of the points raised above are reflected in the following (selected) respondent quote.

“Where small sums of money are involved, consideration should be given to the use of administrative penalties as currently used by DWP in the interest of limiting costs.”

Stirling Council

Theme 2: community payback orders

Some individual respondents and public sector organisations identified community payback orders as an alternative to prosecution. A related point was that repayment and/or fines might disproportionately impact families that were experiencing financial hardship.

Some of the points raised above are reflected in the following (selected) respondent quote.

“This is a difficult area particularly for people on benefits whereby fines, overpayment deductions, etc result in individuals and families being pushed further into poverty and results in pressure on Foodbanks, Scottish Welfare Fund Crisis Grants.”

North Ayrshire Council

4.4 Overpayment liability where someone acts on behalf of someone else

In some circumstances a person will need someone else to act for them in connection with their award of assistance. The 2018 Act specifies that a person who is entitled to assistance has a statutory liability to repay any overpayment made in error, except where they did not cause or contribute to that error, or if it was the sort of error a person could not reasonably be expected to have noticed. There are various options open to individuals to make this repayment, including through deductions from future entitlement to ongoing benefit, and it can be enforced through litigation in civil courts.

The way in which the 2018 Act currently works means that only the person entitled to assistance has a statutory liability to repay any overpayment. Others who act on behalf of someone else agree to be responsible for repaying overpayments when they agree to receive payments on someone else's behalf. Court action against a third party would be the only way to enforce recovery of the overpayment in these situations, where a person acting on someone else's behalf has also unreasonably refused to agree a repayment plan.

The Scottish Government is considering how to ensure that overpayments can be recovered from the recipient of the payment in whatever circumstances they may arise. The intent is that in all cases, whether the person has someone acting for them or not, Social Security Scotland should seek repayment from the person who actually benefited from the overpayment.

The consultation sought views on the proposal to allow for liability to be placed on both the individual with entitlement and the person who was acting for them when the overpayment happened.

4.4.1 Question 22: do you agree or disagree that third parties, such as appointees, should be included within the scope of statutory liability for overpayments in the way described in the consultation document?

Table C.17 and **Table C.18 (Appendix C)** provide the quantitative response to Question 22. Key points to note include that:

- a vast majority of all consultation respondents who answered Question 22 agreed (75%) that third parties, such as appointees, should be included within the scope of statutory liability for overpayments in the way described
- 10% of consultation respondents disagreed with the proposal
- 15% of consultation respondents didn't know.

4.4.2 Question 23: please give reasons for your answer.

Over half of all consultation respondents (56%) answered Question 23.

Respondents who agreed with the proposal

Theme 1: the need for flexibility

Some consultation respondents (mainly third sector organisations) agreed that flexibility was required to balance the need to protect vulnerable people and to avoid deterring people from volunteering to act on someone else's behalf by a risk to their personal finances. These respondents acknowledged that there might be mitigating circumstances whereby friends or family could be involved in helping someone else and could inadvertently make an honest mistake.

These respondents also agreed with the proposal that the same protections which currently exist for people should also apply to these sorts of third parties. They believed that third parties who act on someone else's behalf should not be held liable where they did not cause or contribute to that error, or if it was the sort of error that a person could not reasonably be expected to have noticed.

In addition, some of these respondents considered that liability should only apply to those who had officially been appointed to act on a person's behalf and not friends and family that had, for example, simply assisted a person to complete a form.

Theme 2: liability only in cases of financial gain

Some consultation respondents (mainly third sector organisations) believed that third parties, such as appointees, should only be liable in cases of their own financial gain. These respondents suggested that, regardless of whether or not a person had acted deceitfully, it would be unfair to hold that person financially liable where they had not received financial benefit.

Respondents who disagreed with the proposal

Third sector organisations who disagreed with this proposal felt that a third party, such as an appointee, might be deterred from volunteering to act on someone else's behalf if they were included within the scope of statutory liability for overpayments. One of these respondents also repeated the point raised that liability should only apply where a third party had gained financially from an overpayment.

Some of the points raised above are reflected in the following (selected) respondent quote.

“If the appointee has not personally profited from the overpayment then it seems unjust and unfair that they should be financially penalised by being made liable to repay it. It is instead the recipient of the benefit that is financially better off and for any other debt it would be their and no one else's responsibility to repay it. However, if the benefit recipient does not have capacity, it would be difficult to establish liability for repayment.”

Inclusion Scotland

Respondents who answered don't know to the proposal

Limited feedback was provided from consultation respondents (a third sector organisation and an individual respondent) who answered 'don't know' to this proposal. Consultation responses referred to the complexity and challenges of proving fraudulent activity of a third party liable for overpayments.

5 Independent advice and scrutiny of social security

The Scottish Commission on Social Security (SCoSS) is an independent, advisory non-departmental public body established by the 2018 Act. It provides independent advice to Scottish Ministers and the Scottish Parliament on social security matters. The Scottish Government and SCoSS agreed to proceed with a review in summer 2022, exploring the remit and organisation of SCoSS. The findings of that review are due to be published in early 2023.

The Disability and Carers Benefit Expert Advisory Group (DACBEAG) was established in April 2017 and provided independent advice and recommendations to Scottish Ministers, both by request and proactively, on policy and practice options being developed on disability and carers benefits. This group's advisory role was different to SCoSS' statutory scrutiny function. DACBEAG's input was used in policy development and was published online where appropriate. DACBEAG reached the end of its initial agreed term, which ran to the end of the 2021/22 Parliamentary year, and was stood down at the end of February 2023.

The consultation therefore sought views on how independent social security advice and scrutiny could and should operate in future, to ensure that these functions remain fit for purpose. The consultation also sought views on whether either of these bodies should carry out the functions currently carried out by the UK Industrial Injuries Advisory Council in respect of Industrial Injuries Disablement Benefit (IIDB), which has been devolved to Scottish Ministers but is currently still being delivered by the DWP under an agreement. The Scottish Government intends to replace IIDB with a benefit called Employment Injury Assistance.

5.1.1 Question 24: to what extent do you think the current arrangements for the provision of independent scrutiny and advice work effectively?

Table C.19 and **Table C.20 (Appendix C)** provide the quantitative response to Question 24. Respondent feedback was mixed, including that:

- 42% of all consultation respondents who answered Question 24 thought that the current arrangements for the provision of independent scrutiny and advice were either partially or fully effective
- 25% of consultation respondents thought that current arrangements were not at all effective
- 33% of consultation respondents didn't know.

5.1.2 Question 25: please give reasons for your answer.

Around two-thirds of all consultation respondents (68%) answered Question 25.

Respondents who believed current arrangements were partially effective

Theme 1: increase diversity of board membership

A few third and private sector organisations who believed current arrangements were partially effective were of the view that the current membership of the SCoSS and DACBEAG lacked diversity and representation of specific groups of people. The groups of people mentioned in their responses included women, disabled people, people from ethnic minority communities, and union representatives.

Additional points raised

Additional points raised, each by one consultation respondent, included that:

- the remits of SCoSS and DACBEAG could be broadened - a comment provided was that not all regulation was referred to SCoSS for scrutiny and DACBEAG did not provide advice on all types of social security assistance
- DACBEAG was limited in its ability to fully fulfil its role and function - a point raised was that members are unpaid so could be remunerated for their time and commitment
- SCoSS could be provided with additional resource to better fulfil its function, in particular to increase engagement with stakeholders and people with lived experience of the Scottish social security system.

Respondents who believed current arrangements were not at all effective

Theme 1: board members should have appropriate expertise

A few consultation respondents (third sector organisations and an individual respondent) who believed current arrangements were not effective also felt that membership and composition of SCoSS and DACBEAG could be reviewed and widened to:

- increase diversity
- ensure a wider representation of different viewpoints and perspectives
- ensure the groups had the right mix of skills, expertise, and capabilities.

5.1.3 Question 26: if the current arrangements were changed, would it be right to: (a) maintain separation between independent scrutiny and advice (b) combine these functions to maximise the effective use of independent expertise and secretariat resources (c) take a completely different approach.

Table C.21 and **Table C.22 (Appendix C)** provide the quantitative response to Question 26.

Consultation respondent feedback was mixed and points to note include that:

- 50% of all consultation respondents who answered Question 26 thought it would be right to maintain separation between independent scrutiny and advice
- 27% of consultation respondents thought it would be right to combine these functions to maximise the use of independent expertise and secretariat resources
- 23% of consultation respondents thought it would be right to take a completely different approach.

5.1.4 Question 27: please give reasons for your answer.

Almost three-quarters of all consultation respondents (71%) answered Question 27.

Respondents who wanted functions to remain separate

Theme 1: removes any potential for conflict of interest

The most common response from third sector organisations who would like SCoSS and DACBEAG to have separate functions was that maintaining separation of functions would help to minimise the potential for conflict of interest. These respondents felt that advice and scrutiny were different functions, and that combining these could lead to a situation where the same body was undertaking scrutiny of policy matters that had been informed by its own advice.

The points raised above are reflected in the following (selected) respondent quote.

“It is important that there continues to be both independent advice to help shape policy making and scrutiny of regulations, however the functions are managed. Maintaining separation of independent advice on policy options before the law is drafted (currently delivered by DACBEAG) from scrutiny of policy choices in draft regulations (by SCoSS) avoids any conflict that might arise from the same body scrutinising policy choices that have already been informed by its advice.”

Child Poverty Action Group in Scotland

Respondents who wanted functions to be combined

Theme 1: more efficient and effective use of resources

The most common response from consultation respondents who would like to see the functions of SCoSS and DACBEAG combined (mostly individual respondents, and a couple of public and third sector organisations) was that this approach could lead to more effective use of resources to support the provision of independent scrutiny and advice.

The point raised above is reflected in the following (selected) respondent quote.

“Independent scrutiny and advice functions should be combined to maximise the use of independent expertise and secretariat resources, subject to monitoring being undertaken to provide assurance on the integrity of adopting a combined approach”

Stirling Council

Respondents who wanted a different approach

Theme 1: create a new agency

Almost all consultation respondents who were in favour of a completely different approach (third and private sector organisations) believed that there is a need for a new independent body or agency to oversee Employment Injury Assistance. The feedback provided by these respondents is captured in more detail at Question 30 which asked respondents specifically about Employment Injury Assistance.

5.1.5 Question 28: there are different options for organising independent advice and scrutiny - for example, formal arrangements in the form of a statutory body like a non-departmental public body and paid board members, or informal arrangements at Ministerial invitation with members participating on a voluntary basis. Please describe your views on how independent advice and scrutiny should be organised in the future.

More than half of all consultation respondents (56%) provided a response to Question 28, and the main feedback is outlined below.

Theme 1: funding for back-office functions and remuneration

Some third sector organisations believed that existing arrangements for the provision of independent scrutiny and advice should be retained, but in order for SCoSS and DACBEAG to function more effectively, consideration should be given to funding for back-office functions and remuneration for members.

These respondents considered this particularly important for DACBEAG, whose members are unpaid, as current arrangements were said to act as a barrier to participation for some. These respondents would prefer a more formal arrangement with remunerated members.

The points raised above is reflected in the following (selected) respondent quote.

“Remuneration [sic] may be necessary to ensure inclusive representation. Providing expert advice involves a time commitment that may exclude representation from smaller grassroots organisations, unless remuneration [sic] can be provided.”

Child Poverty Action Group in Scotland

Theme 2: create a new agency

Some consultation respondents (mainly private sector organisations and one third sector organisation) expressed support for the development of a new body or agency to oversee Employment Injury Assistance. As above, the feedback provided by these respondents is captured in more detail at Question 30 which asked respondents specifically about Employment Injury Assistance.

5.1.6 Question 29: do you agree or disagree that the public body or bodies providing the Scottish Government with independent scrutiny and advice of Scottish Social Security should also provide advice in the future on Employment Injury Assistance?

Table C.23 and **Table C.24 (Appendix C)** provide the quantitative response to Question 29.

Feedback from consultation respondents was relatively mixed and points to note include that:

- almost one-third of all consultation respondents who answered Question 29 agreed (32%) that the public body or bodies providing the Scottish Government with independent scrutiny and advice of Scottish Social Security should also provide advice in the future on Employment Injury Assistance
- 41% of consultation respondents disagreed with the proposal
- 27% of consultation respondents didn't know.

5.1.7 Question 30: please give reasons for your answer.

More than half of all consultation respondents (59%) answered Question 30.

Respondents who agreed with the proposal

Theme 1: expert knowledge required

A prevalent view among respondents who agreed with this proposal (mostly individual respondents and third sector organisations) was that it would be important for SCoSS and DACBEAG members to have the necessary expertise to provide advice on Employment Injury Assistance. This feedback was often framed in the context of the complexity of this new benefit and to ensure the public body or bodies were effective in fulfilling their role and remit.

The points raised above are reflected in the following (selected) respondent quotes.

“It is key that the Scottish Government continue to consult with those with a lived experience, as well as individuals with specific expertise on Employment Injury – for example medical professionals and health and safety inspectors. Therefore, a collaborative approach which incorporates cross-sector advice will be key in the creation of a good social security system.”

Scottish Women's Convention

“It has been well documented that the Employment Injury Assistance and IIDB are particularly complex benefits that require a particular specialism in the field, therefore any independent body whose role is to scrutinize Employment Injury Assistance and related matters should have members who have a background in social security law, social policy, health and safety, and voluntary organisations, or individuals who have a particular knowledge of the current system. There is a wealth of experts within the UK whose involvement could be explored.”

Action on Asbestos

Respondents who disagreed with the proposal

Theme 1: create a new agency to oversee Employment Injury Assistance

A prevalent view among consultation respondents who disagreed with the proposal (private and third sector organisations) was because they expressed support for the development of a new independent agency to oversee Employment Injury Assistance. These respondents felt that the necessary expertise might be lacking within the current membership of SCoSS and DACBEAG, and suggested a different approach was needed.

Some of the points raised above are reflected in the following (selected) respondent quote.

“Thompsons Solicitors Scotland supports the establishment of a Scottish Employment Injuries Advisory Council (SEIAC). The formation of an independent body of this type is crucial in the development of a new modern industrial injury benefit system if lessons are to be learned from the inherent inadequacies and inequalities existing in the UK Scheme being devolved to Scotland.”

Thompsons Solicitors Scotland

Respondents who answered don't know to the proposal

The main feedback from consultation respondents (individual respondents and a couple of third sector organisations) who answered 'don't know' to the proposal about the provision of independent advice in the future on Employment Injury Assistance included that:

- the public body or bodies that provided advice to the Scottish Government on Employment Injury Assistance would need to have expert knowledge in this area
- some of these respondents lacked the necessary knowledge to provide an informed view on the Scottish Government proposal.

6 Coronavirus (COVID-19) measures

At the height of the global coronavirus (COVID-19) pandemic (2020), some temporary changes were made to the way that essential public services, such as social security, operated. Sections 52A and 52B of the 2018 Act were amended into the 2018 Act by the Coronavirus (Scotland) Act 2020. Section 52A means that a request for a re-determination must be considered valid beyond the maximum prescribed period of one year where the reason for the lateness was due to COVID-19. Otherwise, the 2018 Act only allows late requests for a re-determination within one year of the day when a person is informed about the determination, where there is a good reason.

Section 52A also has the effect that an appeal may be brought beyond the maximum prescribed period of one year where the Tribunal gives permission, on the basis that they are satisfied that the good reason for the application not having been made sooner is related to COVID-19. Section 52B then makes provision in relation to applications for assistance. Where eligibility for assistance depends on an application being made by a particular time, section 52B has the effect that a late application can be treated as made within that time, where the reason for the delay is related to COVID-19.

Thanks to the progress in vaccination and treatments, the Scottish Government intends to rely much less on legal restrictions going forward and much more on people and organisations taking basic, sensible steps to reduce the risk of harm from COVID-19.

The consultation sought views on whether timescales should return to their original lengths and asked whether or not the ability to apply late where there is a good reason should apply for reasons other than COVID-19.

6.1.1 Question 31: do you agree or disagree that requests for a re-determination should no longer be able to be treated as valid where they were made more than a year late and the reason for that delay was COVID-19?

Table C.25 and **Table C.26 (Appendix C)** provide the quantitative response to Question 31.

Feedback from consultation respondents was relatively mixed and points to note include that:

- 40% of all consultation respondents who answered Question 31 agreed that requests for a re-determination should no longer be able to be treated as valid where they were made more than a year late and the reason for that delay was COVID-19
- 53% of consultation respondents disagreed with the proposal

- 7% of consultation respondents didn't know.

6.1.2 Question 32: please give reasons for your answer.

Half of all consultation respondents (50%) answered Question 32.

Respondents who agreed with the proposal

Theme 1: COVID-19 restrictions have more or less ended

Consultation respondents (mostly third sector organisations) who agreed that requests for a re-determination should no longer be treated as valid where they were made more than a year late and the reason for that delay was COVID-19, felt that the proposal was reasonable. These respondents felt that the temporary measure had served its purpose and were no longer required.

However, a few third sector organisations also highlighted that flexibility or discretion could be applied in exceptional circumstances, and in recognition of the disproportionate impact of the pandemic on particular groups of people. It was also suggested that there might need to be flexibility to re-introduce temporary measures in response to future external factors and events.

Some of the points raised above are reflected in the following (selected) respondent quote.

“The coronavirus measures brought in have served their purpose. At this point in the pandemic, we believe it is acceptable to remove these provisions. The existing timeline of one year is a reasonable timeframe for clients to be able to request a re-determination. However, we would highlight the importance of having the option to easily reinstate these measures if needed again in the future”.

Christians Against Poverty Scotland

Respondents who disagreed with the proposal

Theme 1: ongoing impact of COVID-19

Most consultation respondents who disagreed with the proposal (predominantly individual respondents, and a few public and third sector organisations) said that the negative impacts of the pandemic were still being felt in society, and that the temporary measure might still be required. Given this, and the current uncertainty of the pandemic, these respondents suggested that the temporary measure should remain in place as it provided much needed flexibility within the social security system. Some of these respondents considered the year timeframe too short as the health implications of COVID-19 could extend beyond this.

Similarly, a few third sector organisations emphasised that they disagreed with the original one-year limit for re-determinations as it stopped people being able to demonstrate continuing good cause.

Some of the points raised above are reflected in the following (selected) respondent quotes.

“Many businesses still have backlogs due to COVID-19 and continued staff absence. If a backlog hinders a client’s ability to gain extra support with re-determinations then I think we still need to provide these exceptional rules”.

Individual respondent

“There is still a high number of COVID-19 cases being reported and the ongoing possibility of a further epidemic outbreak. There are also cases of long COVID-19 illnesses that can last a considerable time and have a debilitating effect on sufferers and their ability to deal with their financial affairs or seek support for benefit issues”.

One Parent Families Scotland

Respondent who answered don’t know to the proposal

One third sector organisation stated that further research, including with Social Security Experience Panels, might be required to better understand the extent to which COVID-19 had been recorded as a reason for a delay to requests for re-determinations before a decision was finalised by the Scottish Government.

6.1.3 Question 33: do you agree or disagree that applications for an appeal should no longer be able to be treated as valid where they were made more than a year late and the reason for that delay was related to COVID-19?

Table C.27 and **Table C.28 (Appendix C)** provide the quantitative response to Question 33. This shows that:

- 41% of consultation respondents who answered Question 33 agreed with the proposal that applications for an appeal should no longer be able to be treated as valid where they were made more than a year late and the reason for that delay was related to COVID-19
- 53% of consultation respondents disagreed with the proposal
- 6% of consultation respondents didn’t know.

6.1.4 Question 34: please give reasons for your answer.

Around half of all consultation respondents (52%) answered Question 34.

Some consultation respondents took the opportunity to repeat points raised to Question 32 such as the need for flexibility and discretion to allow cases to be considered on an individual basis. Other respondents did not provide a response to this question but rather directed attention back to their response to Question 32.

A respondent quote (selected) is provided below.

“The coronavirus measures brought in have served their purpose. At this point in the pandemic, we believe it is acceptable to remove these provisions as long as any backlogs related to the pandemic have been taken into account and do not prevent clients from being able to engage in the appeals process. The existing timeline of one year is a reasonable timeframe for clients to be able to submit an appeal. However, we would highlight the importance of having the option to easily reinstate these measures if needed again in the future.”

Christians Against Poverty Scotland

Points raised by respondents who disagreed with the proposal are reflected in the following (selected) quote.

“It is possible that the client has had long-COVID, other health or social problems that are COVID-related, dispensation should be allowed for this.”

NHS Greater Glasgow and Clyde

6.1.5 Question 35: do you agree or disagree that applications for assistance to Social Security Scotland should no longer be able to be treated as made on time where they were made late and the reason for that delay was related to COVID-19?

Table C.29 and **Table C.30 (Appendix C)** provide the quantitative response to Question 35.

Feedback from respondents was relatively mixed, albeit more disagreed with the proposal. The findings show that:

- 38% of consultation respondents who answered Question 35 agreed that applications for assistance to Social Security Scotland should no longer be able to be treated as made on time where they are made late and the reason for that delay was related to COVID-19
- 56% of consultation respondents disagreed with the proposal

- 6% of consultation respondents didn't know.

6.1.6 Question 36: please give reasons for your answer.

Half of all consultation respondents (50%) provided a response to Question 36.

Social Security Scotland deadlines for applications vary between different forms of assistance. For example, the legislation for Adult Disability Payment gives an initial 8 weeks for an application to be completed. The consultation document explained that the effect of section 52B is that an application for Adult Disability Payment made outside the eight-week period could be treated as made within the initial eight weeks, where the delay was due to a reason related to COVID-19.

There is evidence that a few respondents were confused by the timescales for applications for appeals. These respondents made the assumption that, if applications for assistance to Social Security Scotland were no longer treated as made on time where they were made late and the reason for that delay was related to COVID-19, then individuals would have a window of a year to apply for assistance from Social Security Scotland. Some respondents responded to this question by directing attention to their answer to Question 32 which suggests a conflation of the two distinct proposals.

The confusion around timescales is reflected in the following (selected) respondent quote.

“A year is considered to be a sufficient time period within which submitted applications for assistance will be validated.”

Stirling Council

6.1.7 Question 37: do you agree or disagree that the ability to apply late, where deadlines for making applications for assistance apply, should be extended to reasons other than COVID-19?

Table C.31 and **Table C.32 (Appendix C)** provide the quantitative response to Question 37.

There was widespread support among respondents for the proposal, and points to note include that:

- almost all consultation respondents who answered Question 37 agreed (94%) that the ability to apply late, where deadlines for making applications for assistance apply, should be extended to reasons other than COVID-19
- the remainder of consultation respondents didn't know (6%).

6.1.8 Question 38: please give reasons for your answer.

Half of all consultation respondents (50%) provided a response to Question 38.

Respondents who agreed with the proposal

Theme 1: additional flexibility for all application deadlines

Most consultation respondents who agreed with the proposal (mainly third sector organisations) that the ability to apply late, where deadlines for making applications for assistance apply, should be extended to reasons other than COVID-19, felt that this could provide additional flexibility, discretion, and greater fairness within the social security system. These respondents highlighted that there were many different reasons why an applicant might apply late for assistance, and that greater flexibility could help ensure fairness for all, including particular groups of people such as people with mental health issues.

There was also respondent feedback that a more flexible approach could help ensure the Scottish social security system remained responsive to future external factors or events.

Some of the points raised above are reflected in the following (selected) respondent quotes.

“There are many extraneous circumstances that may prevent an individual from meeting social security application deadlines, with some being more pertinent than others. It is therefore key that flexibility is provided, and a case-by-case basis approach is taken in order to empower claimants and create a more positive system. The barriers in place to claiming benefits are such that they are off-putting, by lifting deadlines to some extent, Social Security Scotland can help alleviate pressure felt by some of the most vulnerable in society.”

Scottish Women's Convention

“The ability to apply late, where there is a good reason, should be extended across the range of benefits offered as this would create a more uniform approach that is in line with the ethos and values of Social Security Scotland. Currently there is a lack of consistency with some benefits, such as the Best Start Grants, having no flexibility built in while the new Adult Disability Payment does. Making all forms of social security the same will make things fairer, more straightforward, and easier for clients to navigate”.

Christians Against Poverty Scotland

Theme 2: more accessible and straightforward application process

A few organisations in the third and public sector felt that the proposal could make application processes more accessible for individuals and more straightforward to assess for Social Security Scotland staff. One respondent felt that the proposal could address confusion over deadlines which may arise as a result of Social Security Scotland's recent creation.

Some of the points raised above are reflected in the following (selected) respondent quote.

“Claimants must have the ability to apply late where they, or an advocate or representative on their behalf, provides a reasonable explanation. Claimants who struggle to engage with the application process for a variety of reasons will be denied payment in arrears if they require to make fresh applications due to missing a deadline, reducing the ability of the system to tackle poverty and advance equality. Difficulty in engaging and with the application process and gathering evidence particularly affects those with mental health conditions and those who continue of necessity to live in an isolated fashion since the pandemic. It must be appreciated that Social Security Scotland is a new institution...will take time to develop, increasing the potential for delayed responses.”

Citizens Advice Scotland

7 Impact assessments

The Scottish Government uses impact assessments, an evidence-based process during the development of proposals, to consider the possible effects and outcomes on people, businesses, and communities. Impact assessments are also undertaken to ensure proposals align with national objectives and outcomes specified in the Scottish Government National Performance Framework¹⁵, and mitigate any potential negative impacts. The Scottish Government wants to improve equality through any changes and avoid any negative impacts on any people, groups, communities, or businesses.

Note: few consultation respondents answered Question 39 to Question 42, and not all points relate to the various target groups or specific proposals outlined in the consultation document.

7.1 Equality impact assessment

7.1.1 Question 39: do you have any information you wish to share on the impact of the proposals on groups who share protected characteristics? Please provide details, making reference to the specific proposal or proposals to which your comments relate.

Around one-fifth (21%) of all respondents (third and public sector organisations) provided information on the impact of the proposals on groups, including those who share protected characteristics. Feedback from:

- some third sector organisations highlighted existing inequalities faced by particular groups of people, including women, disabled people, and veterans – it was considered important that the Scottish social security system continues to be informed by people with lived experience to ensure the system was accessible and inclusive
- one public sector organisation suggested that Social Security Scotland should regularly undertake and publish detailed equalities monitoring information, including disability, intersectionality, and information on agency performance, accessibility and decisions, to increase understanding of the impact of proposals on people with protected characteristics

¹⁵ The Scottish Government, [National Performance Framework](#)

- one public sector organisation reported that eligibility of the Scottish Child Payment was limited by the two-child policy of Universal Credit (a UK Government reserved qualifying benefit for the Scottish Child Payment), as raised in Chapter 3 – they felt that the proposals could create additional flexibility for the Scottish Child Payment to benefit more people, including single parent families
- one third sector organisation felt that the proposal to remove COVID-19 as a valid reason for delays with re-determinations, appeals and applications could have a disproportionate negative impact on disabled people.

7.2 Island communities impact assessment

7.2.1 Question 40: do you have any information you wish to share on the impact of the proposals on island communities? Please provide details, making reference to the specific proposal or proposals to which your comments relate.

Two third sector organisations provided information on the impact of the proposals on island communities. Respondent feedback was general in nature, and not linked to specific proposal(s) outlined by the Scottish Government in the consultation document. Feedback included that:

- the Scottish Government might need to undertake further engagement with island communities to help shape and inform decision-making processes with regards to the social security system in Scotland
- it would be beneficial to consider engaging with intersectional groups, such as women who reside on Scottish islands, to better understand the issues they face
- it would be important that the proposals were island-proofed to ensure the social security system was fair and accessible regardless of where someone lived.

7.3 Fairer Scotland Duty

7.3.1 Question 41: do you have any information you wish to share on the impact of the proposals on reducing inequality caused by socio-economic disadvantage? Please provide details, making reference to the specific proposal or proposals to which your comments relate.

Four organisations from the public and third sector and an individual respondent provided further information on the impact of the proposals on reducing inequality caused by socio-economic disadvantage.

Comments were wide-ranging and not linked to specific proposal(s) outlined by the Scottish Government. Feedback from a few third and public sector organisations was that:

- the proposals to improve client experience and deliver value for money with a principles-based approach might help to tackle existing inequalities faced by particular groups of people, including women and disabled people
- the Scottish Government proposals could possibly go further, and that the system should continue to be informed by people with lived experience of the social security system.

One public sector organisation suggested that the proposals could give greater consideration to the specific needs and circumstances of people who live in deprived areas as well as those who experience digital exclusion.

One individual respondent felt that the proposals could be more forward-looking with regards to combining support available for transport and housing to provide holistic support for children and their families and carers.

7.4 Child rights and wellbeing impact assessment

7.4.1 Question 42: do you have any information you wish to share on the impact of the proposals on children's rights and wellbeing? Please provide details, making reference to the specific proposal or proposals to which your comments relate.

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 - one third sector organisation noted that

the proposals could help advance commitments made in Bright Start, Bright Futures: Tackling Child Poverty Delivery Plan¹⁶

- that adopting a principles-based approach with a focus on dignity, fairness and respect was a significant step forward, and that the proposals would have a positive impact on children's rights and wellbeing.

One third sector organisation largely welcomed the proposals but highlighted a need for longer-term planning to deal with unprecedented challenges arising from the cost-of-living crisis.

Similar to Question 39, one public sector organisation reported that eligibility of the Scottish Child Payment was limited by the two-child policy of the UK Government Universal Credit benefit, as raised in Chapter 3.

7.5 Business and regulatory impact assessment

7.5.1 Question 43. do you have any information you wish to share on the impact of the proposals on businesses or organisations in the public, private or third sector? Please provide details, making reference to the specific proposal or proposals to which your comments relate.

Three organisations in the third and public sector provided further information on the impact of the proposals on businesses or organisations in the public, private or third sector. Feedback from these respondents was that the proposals could have a disproportionate impact on the capacity of third sector organisations that delivered welfare rights advice, financial inclusion advice and mental health support.

Two of the responses suggested that the proposals might put additional pressure and strain on such provision which is already dealing with a range of other challenges (such as cost-living-crisis, and staffing shortages). It was suggested that additional resources might be required to increase capacity within the third sector which engages and supports those with lived experience of the Scottish social security system.

The other response suggested that by making improvements and ensuring the social security system is accessible for most people, the pressures on third sector organisations could be reduced and their resources could be used to focus on supporting people in other ways.

¹⁶ The Scottish Government, [Best Start, Bright Futures: tackling child poverty delivery plan 2022 to 2026](#)

Appendix A: coding of organisation respondents

Table A1: organisations by sector

Sector	Organisation name
Public sector	<ul style="list-style-type: none"> • Glasgow City Council • NHS Greater Glasgow and Clyde • North Ayrshire Council • Social Work Scotland • Stirling Council • The Promise Scotland • The Scottish Association of Social Work (SASW) • The Scottish Courts and Tribunals Service (SCTS)
Private sector	<ul style="list-style-type: none"> • Allan McDougall Solicitors • Thompsons Solicitors Scotland • Union of Shop, Distributive and Allied Workers (USDAW) • Unite Scotland
Third sector	<ul style="list-style-type: none"> • Aberlour • Action on Asbestos • Blesma • Child Poverty Action Group in Scotland • Christians Against Poverty Scotland • Citizens Advice Scotland • Fyne Homes Ltd • Health and Social Care Alliance Scotland (The ALLIANCE) • Inclusion Scotland • One Parent Families Scotland • RNIB Scotland (Royal National Institute for the Blind) • SAMH (Scottish Association for Mental Health) • Save the Children • Scottish Hazards • Scottish Women's Convention • The Action Group and VOCAL • UK Hazards Campaign

Appendix B: publishing of consultation responses

The tables below provide details of respondents that indicated that their response could be published (with or without the named contact of who submitted the response).

Of the 34 responses:

- 19 selected “publish response (with name)”, all of which were organisations, **Table B1**.
- 14 selected “publish response only (without name)”, including five individuals, **Table B2**.
- One organisation selected “Do not publish”.

Table B1: publish response (with name) - organisations

<ul style="list-style-type: none"> • Aberlour • Action on Asbestos • Blesma • Child Poverty Action Group in Scotland • Christians Against Poverty Scotland • Citizens Advice Scotland • Inclusion Scotland • One Parent Families Scotland • RNIB Scotland (Royal National Institute for the Blind) • SAMH (Scottish Association for Mental Health) 	<ul style="list-style-type: none"> • Save the Children • Scottish Hazards • Social Work Scotland • The Action Group and VOCAL • The Promise Scotland • The Scottish Courts and Tribunals Service (SCTS) • Thompsons Solicitors Scotland • UK Hazards Campaign • Unite Scotland

Table B2: publish response only (without name) - organisations

<ul style="list-style-type: none"> • Allan McDougall Solicitors • Glasgow City Council • Health and Social Care Alliance Scotland (The ALLIANCE) • NHS Greater Glasgow and Clyde • North Ayrshire Council 	<ul style="list-style-type: none"> • Scottish Women's Convention • Stirling Council • The Scottish Association of Social Work (SASW) • Union of Shop, Distributive and Allied Workers (USDAW)

Appendix C: closed question responses

Table C.1: question 1: do you agree or disagree that it would be useful to be able to make changes to Scottish Child Payment that were not limited by the current approach that relies on ‘top-up’ powers?

	Total		Organisation		Individual	
	Number	%	Number	%	Number	%
Agree	25	93%	20	91%	5	100%
Disagree	0	0%	0	0%	0	0%
Don't know	2	7%	2	9%	0	0%

N=27. Excludes blank and not answered responses.

Table C.2: organisation breakdown to question 1

	Public sector		Third sector		Private sector	
	Number	%	Number	%	Number	%
Agree	7	100%	13	87%	0	0%
Disagree	0	0%	0	0%	0	0%
Don't know	0	0%	2	13%	0	0%

N=22. Excludes blank and not answered responses.

Table C.3: question 5: do you agree or disagree that a person should be able to withdraw a re-determination request before Social Security Scotland has made a re-determination decision?

	Total		Organisation		Individual	
	Number	%	Number	%	Number	%
Agree	24	96%	20	100%	4	80%
Disagree	1	4%	0	0%	1	20%
Don't know	0	0%	0	0%	0	0%

N=25. Excludes blank and not answered responses.

Table C.4: organisation breakdown to question 5

	Public sector		Third sector		Private sector	
	Number	%	Number	%	Number	%
Agree	6	100%	14	100%	0	0%
Disagree	0	0%	0	0%	0	0%
Don't know	0	0%	0	0%	0	0%

N=20. Excludes blank and not answered responses.

Table C.5: question 7: do you agree or disagree that a new determination should only be made if it gives the person everything they could get from the Tribunal?

	Total		Organisation		Individual	
	Number	%	Number	%	Number	%
Agree	10	40%	7	35%	3	60%
Disagree	11	44%	9	45%	2	40%
Don't know	4	16%	4	20%	0	0%

N=25. Excludes blank and not answered responses.

Table C.6: organisation breakdown to question 7

	Public sector		Third sector		Private sector	
	Number	%	Number	%	Number	%
Agree	2	33%	5	36%	0	0%
Disagree	2	33%	7	50%	0	0%
Don't know	2	33%	2	14%	0	0%

N=20. Excludes blank and not answered responses.

Table C.7: question 9: do you agree or disagree that a person should be asked for their consent before a new determination is made?

	Total		Organisation		Individual	
	Number	%	Number	%	Number	%
Agree	18	72%	14	70%	4	80%
Disagree	4	16%	4	20%	0	0%
Don't know	3	12%	2	10%	1	20%

N=25. Excludes blank and not answered responses.

Table C.8: organisation breakdown to question 9

	Public sector		Third sector		Private sector	
	Number	%	Number	%	Number	%
Agree	4	67%	10	71%	0	0%
Disagree	1	17%	3	21%	0	0%
Don't know	1	17%	1	7%	0	0%

N=20. Excludes blank and not answered responses.

Table C.9: question 12: do you agree or disagree that Social Security Scotland should be able to make payments to a DWP appointee until it completes its appointee process?

	Total		Organisation		Individual	
	Number	%	Number	%	Number	%
Agree	23	96%	19	100%	4	80%
Disagree	1	4%	0	0%	1	20%
Don't know	0	0%	0	0%	0	0%

N=24. Excludes blank and not answered responses.

Table C.10: organisation breakdown to question 12

	Public sector		Third sector		Private sector	
	Number	%	Number	%	Number	%
Agree	6	100%	13	100%	0	0%
Disagree	0	0%	0	0%	0	0%
Don't know	0	0%	0	0%	0	0%

N=19. Excludes blank and not answered responses.

Table C.11: question 14: do you agree or disagree that the Scottish Government should introduce rights of challenge against Social Security Scotland's decision that someone is liable to repay an overpayment?

	Total		Organisation		Individual	
	Number	%	Number	%	Number	%
Agree	25	100%	20	100%	5	100%
Disagree	0	0%	0	0%	0	0%
Don't know	0	0%	0	0%	0	0%

N=25. Excludes blank and not answered responses.

Table C.12: organisation breakdown to question 14

	Public sector		Third sector		Private sector	
	Number	%	Number	%	Number	%
Agree	6	100%	14	100%	0	0%
Disagree	0	0%	0	0%	0	0%
Don't know	0	0%	0	0%	0	0%

N=20. Excludes blank and not answered responses.

Table C.13: question 17: do you agree or disagree in principle that the Scottish Government should undertake recovery of Scottish social security assistance from compensation paid as a result of injury or disease for which a third party is liable?

	Total		Organisation		Individual	
	Number	%	Number	%	Number	%
Agree	9	43%	6	38%	3	60%
Disagree	3	14%	3	19%	0	0%
Don't know	9	43%	7	44%	2	40%

N=21. Excludes blank and not answered responses.

Table C.14: organisation breakdown to question 17

	Public sector		Third sector		Private sector	
	Number	%	Number	%	Number	%
Agree	2	50%	3	27%	1	100%
Disagree	0	0%	3	27%	0	0%
Don't know	2	50%	5	45%	0	0%

N=16. Excludes blank and not answered responses.

Table C.15: question 19: do you agree or disagree that Social Security Scotland should have available an alternative to prosecution where small sums of money have been obtained illegally?

	Total		Organisation		Individual	
	Number	%	Number	%	Number	%
Agree	13	65%	9	60%	4	80%
Disagree	3	15%	2	13%	1	20%
Don't know	4	20%	4	27%	0	0%

N=20. Excludes blank and not answered responses.

Table C.16: organisation breakdown to question 19

	Public sector		Third sector		Private sector	
	Number	%	Number	%	Number	%
Agree	3	75%	6	55%	0	0%
Disagree	0	0%	2	18%	0	0%
Don't know	1	25%	3	27%	0	0%

N=15. Excludes blank and not answered responses.

Table C.17: question 22: do you agree or disagree that third parties, such as appointees, should be included within the scope of statutory liability for overpayments in the way described above?

	Total		Organisation		Individual	
	Number	%	Number	%	Number	%
Agree	15	75%	12	80%	3	60%
Disagree	2	10%	2	13%	0	0%
Don't know	3	15%	1	7%	2	40%

N=20. Excludes blank and not answered responses.

Table C.18: organisation breakdown to question 22

	Public sector		Third sector		Private sector	
	Number	%	Number	%	Number	%
Agree	4	100%	8	73%	0	0%
Disagree	0	0%	2	18%	1	9%
Don't know	0	0%	1	9%	0	0%

N=15. Excludes blank and not answered responses.

Table C.19: question 24: to what extent do you think the current arrangements for the provision of independent scrutiny and advice work effectively?

	Total		Organisation		Individual	
	Number	%	Number	%	Number	%
Fully	1	4%	1	5%	0	0%
Partially	9	38%	7	37%	2	40%
Not at all	6	25%	6	32%	0	0%
Don't know	8	33%	5	26%	3	60%

N=24. Excludes blank and not answered responses.

Table C.20: organisation breakdown to question 24

	Public sector		Third sector		Private sector	
	Number	%	Number	%	Number	%
Fully	0	0%	1	8%	0	0%
Partially	1	33%	6	46%	0	0%
Not at all	0	0%	3	23%	3	100%
Don't know	2	67%	3	23%	0	0%

N=19. Excludes blank and not answered responses.

Table C.21: question 26: if the current arrangements were changed, would it be right to:

	Total		Organisation		Individual	
	Number	%	Number	%	Number	%
Maintain separation between independent scrutiny and advice	11	50%	10	56%	1	25%
Combine these functions to maximise the use of independent expertise and secretariat resources	6	27%	3	17%	3	75%
Take a completely different approach	5	23%	5	28%	0	0%

N=22. Excludes blank and not answered responses.

Table C.22: organisation breakdown to question 26

	Public sector		Third sector		Private sector	
	Number	%	Number	%	Number	%
Maintain separation between independent scrutiny and advice	2	50%	8	73%	0	0%
Combine these functions to maximise the use of independent expertise and secretariat resources	2	50%	1	9%	0	0%
Take a completely different approach	0	0%	2	18%	3	100%

N=18. Excludes blank and not answered responses.

Table C.23: question 29: do you agree or disagree that the public body or bodies providing the Scottish Government with independent scrutiny and advice of Scottish Social Security should also provide advice in the future on Employment Injury Assistance?

	Total		Organisation		Individual	
	Number	%	Number	%	Number	%
Agree	7	32%	6	33%	1	25%
Disagree	9	41%	9	50%	0	0%
Don't know	6	27%	3	17%	3	75%

N=22. Excludes blank and not answered responses.

Table C.24: organisation breakdown to question 29

	Public sector		Third sector		Private sector	
	Number	%	Number	%	Number	%
Agree	2	67%	4	36%	0	0%
Disagree	1	33%	4	36%	4	100%
Don't know	0	0%	3	27%	0	0%

N=18. Excludes blank and not answered responses.

Table C.25: question 31: do you agree or disagree that requests for a re-determination should no longer be able to be treated as valid where they are made more than a year late and the reason for that delay is COVID-19?

	Total		Organisation		Individual	
	Number	%	Number	%	Number	%
Agree	6	40%	5	45%	1	25%
Disagree	8	53%	5	45%	3	75%
Don't know	1	7%	1	9%	0	0%

N=15. Excludes blank and not answered responses.

Table C.26: organisation breakdown to question 31

	Public sector		Third sector		Private sector	
	Number	%	Number	%	Number	%
Agree	1	25%	4	57%	0	0%
Disagree	3	75%	2	29%	0	0%
Don't know	0	0%	1	14%	0	0%

N=11. Excludes blank and not answered responses.

Table C.27: question 33: do you agree or disagree that applications for an appeal should no longer be able to be treated as valid where they are made more than a year late and the reason for that delay is related to COVID-19?

	Total		Organisation		Individual	
	Number	%	Number	%	Number	%
Agree	7	41%	6	46%	1	25%
Disagree	9	53%	6	46%	3	75%
Don't know	1	6%	1	8%	0	0%

N=17. Excludes blank and not answered responses.

Table C.28: organisation breakdown to question 33

	Public sector		Third sector		Private sector	
	Number	%	Number	%	Number	%
Agree	1	25%	5	56%	0	0%
Disagree	3	75%	3	33%	0	0%
Don't know	0	0%	1	11%	0	0%

N=13. Excludes blank and not answered responses.

Table C.29: question 35: do you agree or disagree that applications for assistance to Social Security Scotland should no longer be able to be treated as valid where they are made late and the reason for that delay is related to COVID-19?

	Total		Organisation		Individual	
	Number	%	Number	%	Number	%
Agree	6	38%	5	42%	1	25%
Disagree	9	56%	6	50%	3	75%
Don't know	1	6%	1	8%	0	0%

N=16. Excludes blank and not answered responses.

Table C.30: organisation breakdown to question 35

	Public sector		Third sector		Private sector	
	Number	%	Number	%	Number	%
Agree	1	25%	4	50%	0	0%
Disagree	3	75%	3	38%	0	0%
Don't know	0	0%	1	13%	0	0%

N=12. Excludes blank and not answered responses.

Table C.31: question 37: do you agree or disagree that the ability to apply late, where deadlines for making applications for assistance apply, should be extended to reasons other than COVID-19?

	Total		Organisation		Individual	
	Number	%	Number	%	Number	%
Agree	16	94%	13	100%	3	75%
Disagree	0	0%	0	0%	0	0%
Don't know	1	6%	0	0%	1	25%

N=17. Excludes blank and not answered responses.

Table C.32: organisation breakdown to question 37

	Public sector		Third sector		Private sector	
	Number	%	Number	%	Number	%
Agree	4	100%	9	100%	0	0%
Disagree	0	0%	0	0%	0	0%
Don't know	0	0%	0	0%	0	0%

N=13. Excludes blank and not answered responses.

Appendix D: satisfaction with the consultation

Table D1: how satisfied were you with this consultation?

	Individual	Organisation	Total
Very satisfied	33%	55%	50%
Slightly satisfied	33%	18%	21%
Neither/nor	33%	18%	21%
Slightly dissatisfied	0%	0%	0%
Very dissatisfied	0%	9%	7%

N=14 (11 organisations and 3 individuals). Excludes blank responses.

Table D2: how would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?

	Individual	Organisation	Total
Very satisfied	33%	55%	50%
Slightly satisfied	33%	18%	21%
Neither/nor	33%	0%	7%
Slightly dissatisfied	0%	9%	7%
Very dissatisfied	0%	18%	14%

N=14 (11 organisations and 3 individuals). Excludes blank responses.



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