# RNIB Scotland response to the Scottish Parliament Social Justice and Social Security Committee call for views on the Social Security (Amendment) (Scotland) Bill

###### Introduction

The Royal National Institute of Blind People (RNIB) Scotland is the country’s leading charity working with blind and partially sighted people. We support children and adults with sight loss and help them to live full and independent lives, campaigning for their rights.

This response to the Social Justice and Social Security Committee’s call for views draws from previous consultation responses and information gathered from a range of sources including customer experience from RNIB Helpline and Legal Rights Service.

###### Consultation Questions

We understand the committee are keen to hear views on whether provisions in the various parts of the Bill could impact on social security principles. This response considers the amendments and principles where they could relate to the experience of blind and partially sighted people.

### Part 1 - Types of Social Security Assistance

The Policy Memorandum explains that Part 1 of the Bill (Types of Social Security Assistance) creates the legal framework that would allow new benefits for care leavers and for children to be introduced in future. This would allow the proposed Care Leaver Payment to be created and allow Ministers to introduce regulations to change the way the Scottish Child Payment operates and align it more closely with other forms of assistance delivered by Scottish Ministers, such as the Best Start Grants and Best Start Foods.

#### Question 1: Do you have any views on this part of the Bill?

RNIB Scotland does not currently work with care leavers, so we are unable to respond to this particular question.

### Part 2 - Applications for Assistance

The Policy Memorandum explains that Part 2 of the Bill (Applications for Assistance) repeals COVID measures that allowed late applications when the reason for delay was related to Covid-19.

#### Question 2: Do you have any views on this part of the Bill? In particular, do the provisions in Part 2 raise any concerns for you in relation to the social security principles?

Exceptional circumstances should be assessed on a case-by-case basis. It seems acceptable to enable decision makers to use information pertaining to an individual case on whether exceptional circumstances could result in a benefit application being considered after the initial one-year date of claim period due to a variety of factors.

We therefore don’t have any concerns regarding proposals to repeal COVID-19 as an exceptional circumstance.

### Part 3 - Determinations and Redeterminations of Entitlement to Assistance

Part 3 of the Bill (Determinations and Redeterminations of Entitlement to Assistance) sets out changes to the rules about challenging decisions about benefits.

#### Question 3: Do you have any views on this part of the Bill?

#### In particular, do the provisions in Part 3 raise any concerns for you in relation to the social security principles?

We have considered the changes to the rules about redeterminations and appeal and our responses are below.

1. **Allowing requests for redetermination and applications for appeal to be made more than a year late in exceptional circumstances.**

It seems acceptable that requests for a redetermination and application for appeal could be permitted beyond the one-year prescribed period based on exceptional circumstances. These would have to be considered within a case-by-case basis.

1. **Allowing requests for redetermination to be withdrawn and clarifying that Ministers are required to complete a redetermination even if they have missed the deadline for doing so.**

**On the subject of requests for redetermination to be withdrawn.**

On face value, if the claimant instigated the redetermination, it would seem reasonable to allow the claimant to stop the process if the request to withdraw is submitted before the redetermination is made. However, RNIB Scotland has concerns about how this would be implemented in practice; specifically, that such a facility should not be used as a tool to dissuade claimants from exercising their legal right to a redetermination.

We are particularly wary of such a mechanism being part of a practice whereby the claimant submits a redetermination request and then is contacted by the Department to provide an explanation of the original determination or similar. The result being that the claimant withdraws their redetermination request on the erroneous basis that the claim has no chance of success.

As such, we believe protective measures are needed, not least to enable a claimant to reinstate the same request for a redetermination, for example a 14 day ‘cooling off’ period may be a helpful mechanism. We accept consideration would need to be given as to how this would be facilitated, given the requirement to request a redetermination in a timely manner and for the subsequent decision to equally comply with the relevant timescales prescribed within legislation. However, this approach would protect the right of the claimant to reinstate the redetermination and proceed to an appeal, should they choose to take this action depending on what decision is reached.

Making sure claimants are informed of the implications of withdrawing their redetermination and the consequence of doing so is crucial. There may also be a need for claimants to receive independent advice and/or advocacy in this situation so allowing a small period to reinstate the redetermination would be an important protective factor if this situation arises.

We would also encourage the Department to monitor and report on this aspect of a claimant’s interaction with the benefit in question, including ascertaining the reason(s) for withdrawing the redetermination request.

**Ministers are required to complete a redetermination even if they have missed the deadline.**

We are supportive of this initiative as they appear in the explanatory notes to the Bill, specifically on page six where further information is provided which states Ministers remain under the duty to make the re-determination beyond the period allowed, unless an individual opts to exercise their right to appeal, in which case the duty on Ministers falls away. However, if an appeal under section 46 is subsequently withdrawn, the duty on Ministers to make the determination applies again and continues unless the appeal is reinstated.

1. **Allowing Social Security Scotland to offer a better award to a claimant who has lodged an appeal. If accepted, this would end the appeal. This is known as a ‘lapsed appeal’.**

For some people attending an Independent Tribunal in person when a hearing date is set may be seen as beneficial particularly if it gives the claimant, and/or their representative, the opportunity to present in person. Blind and partially sighted people may be given the opportunity to explain in detail how they are impacted by their sight loss condition on a day-to-day basis in person to an independent tribunal, who can consider all the information presented to them.

However, we also recognise the redetermination and appeals process is stressful for claimants. Often it involves gathering additional evidence and supporting statements to back up their reasons for requesting the original decision is looked at again. This can place added pressure, particularly when a claimant must request this from already overstretched, health, social care and third sector services.

It is vital that claimants who have taken steps to submit an appeal to be heard at Tribunal, are aware of ongoing processes and procedures, should Social Security Scotland (SSS) continue to process a redetermination before the Appeal Tribunal has been heard.

We are accepting of a proposal to make a further redetermination that lapses an appeal when the rate is at the highest level achievable for the benefit in question.

Beyond this we consider the following factors:

Should Social Security Scotland “make an offer” of a more advantageous award, the claimant must be given sufficient time to consider the proposed offer. The amount of time needed will vary from person to person, depending on their circumstances.

Claimants should not feel pressurised into accepting the proposed new decision straight away and be given time to seek independent advice or advocacy support. It should also be clearly explained to the claimant they do not have to accept the “offer”, and by continuing with the appeal already submitted a tribunal will look at the case again and make their own decision.

If the claimant has a representative, who has assisted with the appeal, attempts must be made to contact them first or in the event this is not possible that the claimant should be encouraged to discuss the proposal with their representative.

The claimant must also be aware of their right to appeal this new redetermination should they wish to dispute it. We do not believe it necessary for the new redetermination decision (if accepted) to require a further redetermination prior to appeal. Any new redetermination decision should give direct rise to the right to appeal.

The claimant must be informed that if they accept the redetermination and then decide to appeal, the new appeal joins the queue and will not be expedited (if that is the case). It must be considered acceptable for the claimant to both accept the new redetermination and appeal that redetermination.

The proposed new redetermination should be explained in full so that the claimant and their representative (should one be appointed) can make an informed decision against the considered statutory entitlement.

Robust guidance is therefore essential so that Social Security Scotland staff can support clients and their representatives to understand their options and the implications of accepting a new redetermination, and to understand their challenge rights, including an appeal.

It is crucial that Social Security Scotland explain how a new redetermination has been made and give the claimant the opportunity to receive accessible, accurate and up to date information, and independence advice where necessary, before they reach a decision on whether to accept a new redetermination or not.

In addition to protecting their right to appeal, claimants who may decide against accepting a new redetermination, must continue to receive Short Term Assistance, if already claiming.

### Part 4 - Assistance Given in Error

Part 4 of the Bill (Assistance Given in Error) makes changes to the rules relating to overpayments and recovering ‘assistance provided in error’.

The Policy Memorandum explains that currently an individual is not liable for overpayments that are not their fault, or they could not reasonably have known about.

#### Question 4: Do you have any views on this part of the Bill?

Overpayments and assistance given in error may occur for a range of reasons, and we believe the individual's right to challenge an overpayment determination and the recovery of the overpayment determination must be upheld.

Reasons may include administrative errors, and/or the claimant may have been unaware of changes due to inaccessible information. For example, blind and partially sighted people may not be able to access letters sent to them, hence why their right to accessible information, and ability to challenge decisions, at all stages, must be upheld.

We therefore agree with the proposal to secure the right to request a review of the decision to recover an overpayment and the right to appeal to the First-tier Tribunal.

There may be other measures required as part of this process, including the ability for Social Security Scotland to waive or suspend liability of payment from the claimant.

Other processes such as debt management may also be required so that undue financial hardship is not experienced by the individuals and/or family members due to the recovery of any overpayment.

It must also be recognised that a claimant could have inherent vulnerability, and their needs change, particularly if they are affected by a fluctuating condition. For example, a person experiencing poor mental health may be unable to respond to benefit related letters. Blind and partially sighted people may have changes in their vision which make it harder to decipher printed information, even if this has been made available in accessible formats.

Social Security Scotland must therefore recognise its duty to safeguard so that potential recovery or liability issues do not inadvertently result in the claimant experiencing a deterioration in their condition, either due to lack of income or stress involved.

### Part 5 - Appointees

The Policy Memorandum explains that Part 5 of the Bill (Appointees) allows an individual who has been appointed to manage a person’s DWP benefits to also manage their Social Security Scotland benefits. This should be for a brief period.

Where an appointee uses any funds outside of their common law or statutory duties, and does so in bad faith, they will be liable to repay those funds to the individual they represent.

#### Question 5 : Do you have any views on this part of the Bill? In particular, do the provisions in Part 5 raise any concerns for you in relation to the social security principles?

It would seem reasonable for Social Security Scotland to continue with the current Appointee arrangements, in cases where a claimant has been transferred onto a Social Security Scotland benefit from a DWP benefit.

In addition, appointees’ awareness of the responsibility they hold as a person's appointee, when a claimant is transferred to Social Security Scotland from DWP must be clearly communicated to them, including whether they could be held liable to repay those funds paid in error.

Where **new claims** are made for SSS benefits it must be the responsibility of SSS to determine if an appointee is suitable to receive payments on the claimant's behalf.

At the earliest opportunity SSS should arrange a visit with the claimant and the person they want to appoint, whilst also maintaining an individual's right to confidentiality.

### Part 6 - Information for Audit

The Policy Memorandum explains that Part 6 of the Bill (Information for audit) places new duties on clients to provide information to Social Security Scotland.

Currently Scottish Ministers can only request information to determine entitlement to assistance. The Bill would give Ministers the power to require individuals to co-operate with requests for information needed to audit the monetary value of error and fraud in the Scottish social security system as a whole. Ministers will have the power to suspend a client’s benefit if they fail to meet the deadline for providing information.

#### Question 6. Do you have any views on this part of the Bill?

#### In particular, do the provisions in Part 6 raise any concerns for you in relation to the social security principles?

Concerns about these provisions relate to the suspension of benefit should an individual claimant fail to respond to a request for information within a given period. As stated under Part 4.

It is RNIB Scotland’s concern that those claimants most in need of financial assistance due to the severity of their disability or long-term health condition could equally be those who, for a variety of reasons, have the most significant barriers preventing them from engaging with such a request. To this end, we do not support the suspension of benefit.

We understand that SSS believes it has systems in place to protect those who are inherently vulnerable. However, there must be protective measures in place to clarify whether the claimant has vulnerability at the time the information requested, which could limit their ability to respond within a given period.

For example, blind and partially sighted people could also be unable to respond to requests if information is not available in accessible formats. Their agency to decipher information or data is severely compromised when information and the requests for this is not made accessible.

Notwithstanding our objection to the proposed suspension of benefit, it is vital that when requests are made in these circumstances, there is enough time and moderation allowed so a claimant is fully aware of the type of information required, with independent advice and advocacy if necessary available to help them negotiate this.

### Part 7 - Recovery from Compensation Payments

The Policy Memorandum explains that Part 7 of the Bill (Recovery from Compensation Payments) will apply where a person who gets social security payments as a result of injury, accident or disease, is also awarded compensation.

#### Question 7 Do you have any views on this part of the Bill?

RNIB Scotland does not have much experience of this area. However, all recovery processes must be the least burdensome process for the claimant.

It should fall on the responsibility of SSS to deal with the compensator directly and not involve the claimant, including not reducing any payments which could result in financial hardship to the claimant and/or their families.

There may be circumstances where a benefit is in payment before the compensation payment, for example a claimant may have been in receipt of Personal Independence Payment (PIP) or Adult Disability Payment (ADP) for a reason separate to the compensation matter. It should therefore be up to Social Security Scotland to evidence that a claimant is now receiving a higher amount (i.e., standard to enhanced) as a result of an incident/accident. We also agree there should be limits placed on recovery over the course of a relevant period. If a person has acquired a disease or health condition, this may not have an easily identifiable start date so must be factored into decision making.

### Part 8 - Scottish Commission on Social Security

Part 8 of the Bill (Scottish Commission on Social Security) brings additional regulations into the scope of the Scottish Commission on Social Security’s scrutiny and makes changes to its governance arrangements following recommendations from an independent review.

#### Question 8. Do you have any views on this part of the Bill? In particular, do the provisions in Part 8 raise any concerns for you in relation to the social security principles?

RNIB Scotland believes it is crucial that there is a comprehensive, independent process for reviewing and scrutinising the continued delivery of social security in Scotland.

Scrutiny and expertise offered so far, cannot be underestimated, and investment in mechanisms with clarity of purpose and responsibility must be prioritised. This will help ensure there are robust systems to mitigate possible risks and provide further scrutiny on all aspects of Social Security Scotland, as recommended by the Convenor of the Public Audit Committee from 4th of July 2022.[[1]](#footnote-1) The letter states: "It becomes more pressing as activity is expected to increase hugely over the next few years which presents substantial risks, particularly in relation to financial sustainability, staffing, digital solutions and assessing relevant data."

We would also advocate for Audit Scotland's recommendations in its report: "Social security: Progress on implementing the devolved benefits", including:

* More regular public reporting on implementation costs is required to better support transparency and scrutiny.
* Clarity about the intended impact of the investment in social security on outcomes for the people of Scotland to assess value for money over the coming years. [[2]](#footnote-2)

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1. Letter from Convenor of Public Audit Committee, 4th July 2022: [letter-from-public-audit-committee-about-auditor-general-for-scotland-evidence-session-4-july-2022.pdf (parliament.scot)](https://www.parliament.scot/-/media/files/committees/social-justice-and-social-security-committee/correspondence/2022/letter-from-public-audit-committee-about-auditor-general-for-scotland-evidence-session-4-july-2022.pdf) [↑](#footnote-ref-1)
2. [Social security: Progress on implementing the devolved benefits (audit-scotland.gov.uk)](https://www.audit-scotland.gov.uk/uploads/docs/report/2022/nr_220519_social_security.pdf) - May 2022. [↑](#footnote-ref-2)