



OFFICIAL REPORT
AITHISG OIFIGEIL

Social Security Committee

Thursday 4 October 2018

Session 5



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SOCIAL SECURITY COMMITTEE
19th Meeting 2018, Session 5

CONVENER

*Bob Doris (Glasgow Maryhill and Springburn) (SNP)

DEPUTY CONVENER

Pauline McNeill (Glasgow) (Lab)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)
*Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP)
*Jeremy Balfour (Lothian) (Con)
*Michelle Ballantyne (South Scotland) (Con)
*Mark Griffin (Central Scotland) (Lab)
*Alison Johnstone (Lothian) (Green)
*Shona Robison (Dundee City East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Naeem Bhatti (Scottish Government)
Colin Brown (Scottish Government)
Shirley-Anne Somerville (Cabinet Secretary for Social Security and Older People)

CLERK TO THE COMMITTEE

Anne Peat

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Social Security Committee

Thursday 4 October 2018

[The Convener opened the meeting at 09:00]

Decision on Taking Business in Private

The Convener (Bob Doris): Good morning, and welcome to the 19th meeting in 2018 of the Social Security Committee. I remind everyone present to turn off mobile phones and to turn other devices to silent mode so that they do not disrupt the meeting. We have received apologies from the deputy convener, Pauline McNeill, who cannot be with us this morning.

Agenda item 1 is a decision on taking item 7, on pre-budget scrutiny, in private. Do members agree to take item 7 in private?

Members indicated agreement.

Subordinate Legislation

Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018 [Draft]

09:00

The Convener: Agenda item 2 is subordinate legislation. The committee will take evidence on the draft Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018, which are subject to the affirmative procedure. I welcome Shirley-Anne Somerville, the Cabinet Secretary for Social Security and Older People. I think that this is the first time that Ms Somerville has been at the committee, so I welcome her to her role. We look forward to working constructively with her in the months and years ahead. I also welcome the Scottish Government officials Dorothy Ogle, best start grant policy team lead, and Colin Brown, solicitor. Thank you for coming.

I invite the cabinet secretary to make an opening statement, after which we will move to questions.

The Cabinet Secretary for Social Security and Older People (Shirley-Anne Somerville): Thank you, convener. I am happy to be here to assist the committee in its consideration of the regulations. This is the first set of regulations under the Social Security (Scotland) Act 2018. They set out the rules for a new Scottish benefit and will allow Social Security Scotland to take applications and to process the best start pregnancy and baby grant. Assuming that the regulations are passed, alongside the tribunal regulations, we will be able to begin making payments by Christmas, which is well ahead of schedule. Given the failure of the Department for Work and Pensions to keep to schedule on its implementation plans, officials are now working through options to deal with the consequences and to ensure that our work remains on track.

The best start grants will be a form of early years assistance, which is provided for under section 32 and schedule 6 of the Social Security (Scotland) Act 2018. The grants will support lower income families with children by offering financial support at key transition points in the early years. The grants are intended to improve children's wellbeing and, alongside other interventions in the early years, to provide the best start in life. When fully implemented, there will be three best start grants available and, in keeping with good practice, they will be implemented in stages, to ensure that we have a firm foundation before we move on to the next step.

The three payments are a pregnancy and baby payment of £600 for a first child and £300 for any

subsequent child, which will help with expenses in pregnancy or of having a new child; an early learning payment of £250, which will help with costs of early learning at around the time a child may take up a nursery place, which will support child development; and a school-age payment of £250, which will help with the costs of preparing for primary school. The first pregnancy and baby payments will be made before Christmas 2018. The next stages—the early learning and school-age payments—will be introduced by summer 2019. Therefore, in due course there will be two additional schedules of regulations to provide for the early learning and school age grants. The current draft instrument will be amended to include schedules for all three grants.

The regulations that are being considered today provide detailed rules relating to the pregnancy and baby payment. They include provision for eligibility, including residence, the assistance that will be available, the value of the payments and when to apply. The regulations also include provision for timescales for the processing of redeterminations and certain issues of process relating to application dates.

The regulations have been developed with extensive consultation and user engagement. We provided illustrative regulations to the committee in September 2017, which was followed by a formal consultation running from 23 March to 15 June this year. As you know, the committee took evidence on draft regulations during the consultation period. I took that evidence and the consultation responses into account when making final decisions on best start grants, and I am pleased to be able to confirm two changes to the original policy.

To ensure that more kinship carers will be eligible, the tests for responsibility for a child include receipt of child tax credits, the child element of universal credit or child benefit for that child. Certain legal orders will also be taken as evidence. That means that the test now captures formal and informal kinship carers who have secured a DWP benefit for the child they care for or where there is a legal arrangement in place. If responsibility for a child changes during one of the application windows—for example, where a child moves from living with a parent to a kinship carer—a second payment can be made to the new carer.

For parents under 20, concerns were raised about the grandparent qualifying. In particular, those concerns were about the rights of the child, empowering young parents and the possibility that the young parent might not benefit from the money. In response to those concerns, and in keeping with the social security principles of dignity and respect, we are offering a choice for

young parents. A young parent who is under 18 or who is 18 or 19 and still in full-time education or training can be the qualifying person, or the grandparent can be the responsible person and can qualify for the payment on that basis.

I hope that that is useful to the committee in their consideration and I am happy to take any questions.

The Convener: Thank you very much, cabinet secretary. I have been reviewing some notes, and I have found that you were kind enough to write to me, as convener, on 11 September in relation to the BSGs and that, at the start of your letter, you said:

“As you know, as part of this year’s Programme for Government, we announced last week that we intend to bring forward the first payments of the Best Start Grant (BSG) Pregnancy and Baby Grant to 2018”.

However, the key bit, which you referred to in your opening statement, was that that is

“assuming DWP puts the required systems in place for us to do so.”

You mentioned that the first payments could be in people’s bank accounts before Christmas, which I welcome greatly, as Christmas is a financially straining time for any individual or family, never mind a low-income family with a new child in the household. That will create great expectation and anticipation among some people that the money could come just at the right time for them. I am therefore concerned about the caveat:

“assuming DWP puts the required systems in place for us to do so.”

Will you expand on that, as there is some concern about it?

Shirley-Anne Somerville: Certainly. There have been a number of concerns recently when we have been developing our work on the best start grant, because the DWP has changed its timeframes for a particular area of work that would in essence allow the social security agency to easily access information about applicants. Unfortunately, despite the fact that we began joint planning with the DWP in November 2017 and we had been working to an initial start date of around June 2018 for the agency having access to the customer information system, that will not now be the case. DWP has now informed us that there is a further delay to that work at its end.

However, officials and the agency are working on contingency measures to ensure that we continue with the approach that the First Minister set out in her statement on the programme for Government. We will still work towards payments being made in December 2018. That will be done because of the contingency arrangements within the agency and not because the DWP has

completed its work to ensure that the agency can access the customer information system.

The Convener: Is it an additional expense for the new agency to put in those contingency arrangements?

Shirley-Anne Somerville: It will mean that the process that a client adviser will have to go through to check eligibility with an applicant will be more time consuming and will require more manual input, which will obviously have an impact on the agency. The agency is looking to work through the implications of that contingency. However, it is important to stress that we will move as promised with our timetable to ensure that payments begin before the end of the year.

The Convener: I imagine that that will have a notional cost somewhere down the line. When the Scottish Government or the agency liaises with the DWP in relation to such matters—they can get quite technical and I do not always understand them myself—does the DWP work in a collegiate way? Does it charge a fee for that interaction? What is the relationship?

Shirley-Anne Somerville: On a working level, the relationship between DWP officials, Scottish Government officials and agency officials is good. It is, after all, a joint process. We cannot deliver devolved social security without the DWP. However, there comes a time when, because of the overarching priorities in a very large department such as the DWP, there are implications for the timetables that it is working to and therefore the timetables for its work on devolved benefits will slip. That is exceptionally unfortunate. We try to mitigate that by speaking to the DWP as early as possible in our work so that it knows what we wish to achieve and in what timeframe. The relationship is good at official level, but we remain frustrated that, in practice, the priority that is given to the devolved benefits is sometimes not what I would like to see.

The Convener: Does the DWP charge you for the privilege of getting that relevant information or does it liaise as a matter of course?

Shirley-Anne Somerville: We liaise with officials as a matter of course. If we require the DWP to make changes to its system, there is a cost to the DWP and there is a responsibility on us to meet that cost. There is a difference between our asking the DWP to make changes to the system and simple liaison between officials, which goes on as a matter of course.

The Convener: I am probing the issue because I suspect that, with other benefits, that relationship will have to continue and endure and work will have to be delivered timeously to ensure that the Scottish social security agency can deliver Scottish Government priorities on target. I am

disappointed if the suggestion is that the DWP does not see paying low-income mums much-needed money before Christmas as a priority. If you are suggesting that that is not one of its top priorities, that would certainly disappoint me. Have you previously experienced such delays?

Shirley-Anne Somerville: There is on-going exchange and dialogue between the agency, my officials and the DWP on the timing of all the work that we are doing on every benefit. Of course, there are sometimes changes and slippage in timetables. That is why we try to deal with that as early in a process as possible. My concern is that there have been continual slippages in the important work on accessing the customer information system and we have received the details of the latest slippage very late in the day and very close to the point at which we will go live with the project, as the DWP knows. That obviously has implications. The agency is working on contingency measures so that we can still deliver on time. Obviously, that will become more challenging the more complex the benefits are. We can do it with the initial best start grant payments, but it will be an on-going challenge to the agency to ensure that we have contingency plans in place if the DWP continues to change its timetables.

The Convener: That is helpful to know. This committee would be scrutinising the Scottish Government if targets were set and missed and payments were not made. You would have to come to the committee to explain why that is the situation. It is important that we get the wider picture in relation to the process. However, wrapped up in all that is a good news story: that the payments are still on track and will be made to some of the most vulnerable families in our constituencies, so I appreciate that information.

Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP): On the back of those questions from the convener, will you say whether the DWP has offered any detailed explanation of the reasons for the delay? You have indicated that you do not feel that it has treated the issue as a priority, but have you been offered any detailed explanation as to its stance?

Shirley-Anne Somerville: It has not done so for the delay relating to the customer information system. The challenge is that, as the committee is well aware, the devolution of social security is but one aspect of what the DWP does. We are trying to link into an exceptionally complex DWP system that, to be polite about it, has its own challenges relating to other aspects of what the DWP does. We are not trying to link into a static system. It is constantly changing and therefore the DWP has other priorities in its work on information technology systems. The challenge is when those

competing priorities, which may come about at a wider corporate DWP level, impact on what we are doing. I can certainly check, but I do not believe that we have been given a specific reason why this particular project has been delayed. It is but one project among a number of projects that the DWP is carrying out.

09:15

Dr Allan: Will you say a bit more about what it means in practice to ensure that the payments are made by Christmas? How do you manage that situation to ensure that the payments are made? What do you have to do to make up for the deficit in the DWP's activity?

Shirley-Anne Somerville: As I said to the convener, what the agency will have to do will be more time consuming and labour intensive. Rather than access information on the screen direct from the DWP system, the agency will have to check in a different way and then manually input information into a system. That is obviously more time consuming and we will have to ensure that there are no errors in the manual inputting. It is obviously much easier if we can access the information and use it directly. However, I stress that the agency has been concerned for some time that there might be a delay, because there have been slippages. That is why a lot of work has been done behind the scenes on the contingency arrangements to ensure that agency staff are ready, trained and enabled to take them up. I give the committee the assurance that the agency has been working for some time on the contingency arrangements to ensure that they work and that staff are comfortable about delivering them in due course.

Dr Allan: I take it from what you have said that you have registered your concerns about the situation at a political level. Have you had anything approaching a detailed response to those concerns or a political response?

Shirley-Anne Somerville: I raised my concerns directly with Esther McVey and David Mundell at the joint ministerial working group on welfare in, I think, September. I was in London for that meeting, and I stressed our concern that the issue would impact on our ability to deliver the project in the most efficient manner. The fact that the agency had contingency measures in place meant that our timetable was not under threat. Although those ministers noted my concern, they also noted that the agency had contingency measures in place and that we would be able to deliver the benefit. It is perhaps a concern that there was a reliance on the agency to work out how to deal with the delay, rather than an attempt to deal with the initial problem, which related to the DWP's concerns.

Shona Robison (Dundee City East) (SNP): I agree that it is concerning that, in terms of relative priority, devolved benefits appear to be quite far down the list. It would be helpful to have regular updates on any delays that might impact on the further devolved benefits that are being rolled out in due course. It would be helpful if the cabinet secretary were able to furnish us regularly with information about the impact of those delays.

For clarification, is it still your intention that eventually, once these issues are resolved, this is the information system that you would want to use and that these contingency measures are short term, or is the agency developing an alternative system that would potentially be used in the longer term?

Shirley-Anne Somerville: No, these contingency measures are very much intended to be for the short term. We do not know at present for how short a term. That is because we are waiting to see when access to the system will take place, so I do not have a definitive answer about how long the short term will be, but it is certainly very much our intention to progress to the system in the long term. It is far more effective and it is far better for client advisers to be able to access the information and therefore better for anybody phoning the helpline to get that information as timeously as possible.

Shona Robison: Once these issues are resolved and there is access to the information system, would the access roll forward for the other benefits or would there need to be another set of changes to the information system?

Shirley-Anne Somerville: One of our challenges is that we have to look continuously at what new information we require for every benefit. Once the agency has access to the system, it will be helpful on an on-going basis with the calls. That does not mean that there will not be other challenges when we are moving towards other payments, and we will require assistance from the DWP to be able to link into other parts of the system.

Shona Robison: It would be helpful if you could let us know once that access is gained and those issues are resolved.

Looking forward to the future relationship, I am aware that the Scottish Fiscal Commission wrote to the committee saying that it wanted to have a formal agreement with the DWP, as it does with Her Majesty's Revenue and Customs. There was some support for that. I do not know whether a formal agreement would have helped to resolve any of those issues—possibly not—but do you think that that is something that is important? What does the DWP think about that? Has it

responded? Would it help to avoid these things happening in future?

Shirley-Anne Somerville: It would not have helped with this issue, because this particular issue is a delay to a DWP IT system change, which is solely to do with the DWP and its IT systems.

I have a great deal of sympathy with what the Scottish Fiscal Commission has said about the need for it to have access to information. I note that the Scottish Fiscal Commission has that agreement with HMRC, with which it seems to have a good working relationship. I have written to the secretary of state about the issue, giving my support to the SFC. I have yet to receive a reply to that letter, which was sent only on 19 September, I think. However, I think that it is important that a memorandum of understanding is in place with the DWP to allow the SFC to be able to access the information that it needs, which will also have implications for its advice to Government.

Shona Robison: So, it is about the flow of information and the technical detail. That is helpful.

Mark Griffin (Central Scotland) (Lab): I have a few questions that cover a couple of different areas. The first question continues the discussion that we have been having.

Cabinet secretary, you spoke about the burden on the agency as a result of the failure of the DWP to give access to the information system. Is that going to cause any difficulty for applicants? The way I see it—correct me if I am wrong—is that if you had access to the DWP system, you would be able to check an applicant's entitlement automatically. Is the absence of access to the system going to require an applicant to give proof of an entitlement during that process and put an extra burden on them?

Shirley-Anne Somerville: I can assure the committee that there will be no difference to what an applicant sees or experiences during the process. This is purely about what happens behind the scenes when we are looking at an application. The applicant will have the same assistance, the same support and the same reassurance that they would get from the agency whether that access had been in place or not. The basis of the contingency measures was very much that what we put in place will mean that the applicant's experience will be the same.

Mark Griffin: Will you be able to check their eligibility without them having to provide any extra information?

Shirley-Anne Somerville: There will be no difference in their experience.

Mark Griffin: That is great. My next question is a more technical question specifically on the order concerning the multiple pregnancy supplement. The order says:

“The supplement is to be added to the grant in respect of only one of the children born, or to be born.”

I am looking for an assurance that the multiple pregnancy supplement would cover not just a twin birth but also a triplet birth or anything beyond that, and that there would be a £300 supplement for every additional child that is born.

Shirley-Anne Somerville: Yes, that is my understanding as well.

Mark Griffin: That is great. Thank you very much for that assurance.

My other questions are around the timing of the introduction of the payments. Are you able to say why the pregnancy and baby payment is going start when you have set out, but the early learning and school age payments are being deferred until summer next year?

Shirley-Anne Somerville: Certainly. As the committee knows, our first priority around social security is safe and secure transition to what we do, through a staged implementation. That is what we did for the carer's allowance supplement, when we batched payments. For this benefit, the decision has been taken that we will start with one payment and then move forward with the second and third payments. The reason for that is that, although we are now paying the carer's allowance supplement and the agency is very much up and running, experiencing calls and assisting, the situation with that benefit is entirely different because it involves the first application-based process. It is a different payment system. As with all other aspects, we will work through a staged and managed process to ensure that the applicants get the best possible experience.

Although there is always the wish to do things faster and to try to ensure that the payments are in as quickly as possible, I will not jeopardise our determined policy of doing things in a staged implementation manner so that we can learn lessons along the way, particularly when we are doing things for the first time.

Mark Griffin: My final question is about uptake. What is the Government going to do to boost uptake of the payment, particularly after the discussion and debate that we had in the chamber on Tuesday about the particularly hard-to-reach groups, particularly black and minority ethnic communities?

Shirley-Anne Somerville: We will have to take a number of measures. There will be different measures for the different payments. With regard to best start grants, we are mindful of what has

already happened and of the processes that are already in place to ensure that expectant mothers, for example, are encouraged to take up their entitlements. That is why there has been a great deal of work done with the health services, with midwifery in particular, and also with health visiting and family health partnerships to ensure that the health visiting pathway has information about best start grants, and that is a link with the financial health check that is part of this process.

With regard to the difficult-to-reach groups that you mentioned, when we go forward with the best start grants, we are also linking with a lot of different agencies and stakeholders to make sure that they are fully up to date with what is going on so that they can pass the information on. We are also looking at our communication strategy, which will ensure that we are getting the information out to stakeholders and directing it to individuals.

There is not just one stream of work. There will be road shows, for example, as there were for the carer's allowance supplement. The communication strategy will have a specific eye on how we deal with individuals who may not even know that they are eligible or that there is a payment out there for them, and will encourage people to come forward. We are considering those things very carefully. There will obviously be lessons to learn, and I am more than happy to work with the committee on the lessons that we will learn about the uptake as we go forward.

Alison Johnstone (Lothian) (Green): I will carry on from where my colleague Mark Griffin left off. The Scottish Fiscal Commission projects a 58 per cent take-up of the best start grant by 2022. I appreciate that means-tested benefits tend to have a lower take-up rate and that this figure would be an increase on the take-up of the sure start grant, but that still means that 42 per cent of families will be missing out. I appreciate the steps that you have outlined to Mark Griffin, but will the Government have a really good look at that figure? Are there actions being considered if it becomes apparent that that 58 per cent figure is not being reached and that take-up is not all that it needs to be?

09:30

Shirley-Anne Somerville: This will be a learning process and it is not something that we say that we are going to get right from day 1. We are determined to do everything that we can, but there will inevitably be lessons to be learned around take-up. The numbers that the Scottish Fiscal Commission gave on take-up were lower than those of the Scottish Government's forecast. We had been forecasting a higher take-up, and that was based on the work that we know will be done to encourage people to come forward to get

the payments. It is very difficult to forecast take-up of a new benefit under a new system, and that is why there is a difference between the forecasts from the Scottish Government and Scottish Fiscal Commission.

When it comes to the issue of uptake, anybody who is eligible for a payment but who does not take it up is one too many, so we have to understand the reasons for it and what we can do about it. It will be an iterative process and we are more than open to learning as we go. I would not be satisfied with the Scottish Fiscal Commission's figures, if that is what we reached. We must ensure that we are continuously doing all that we can, particularly for the difficult-to-reach people who will not be coming forward for these payments in the first instance.

Alison Johnstone: Obviously it is a new payment and it is being delivered by a new agency, and I suppose that Social Security Scotland has yet to develop a real presence. People will have to become aware that that is where they need to go. It is not impossible that some people may think that they have to apply to the DWP for the best start grant. The Scottish Fiscal Commission raised that possibility last month in its work on projecting the costs.

Is there something in place to ensure that if someone approaches the DWP to apply for a best start grant, they will be signposted to the right place? The worst thing that could happen is that they go to the DWP and miss out because the DWP does not understand and does not have the information.

Shirley-Anne Somerville: One of the things that we have to recognise is that because we have a system now in which the DWP still pays the majority of benefits in Scotland and Social Security Scotland delivers only 15 per cent, there will be individuals who are not quite sure where payments are paid from. There is a great deal of work being done on communications that the DWP will give out. The agency also gives out information about reserved benefits, which comes from the DWP. I give the example of what happened with the carer's allowance supplement. Before that went live, there were very detailed discussions about what would happen if someone phoned up the DWP about the carer's allowance supplement and what the DWP would say. That work will happen with the best start grant. We are absolutely determined that no one falls through the gap. It is not their responsibility to know what number to phone; it is our responsibility to get the information out to them.

Michelle Ballantyne (South Scotland) (Con): I want to take us on to a slightly different issue. Schedule 2 of the regulations is on the pregnancy and baby grant, and paragraph 4(1) of part 1 of

schedule 2, which is on the residence requirement, states:

“The residence requirement referred to in paragraph 1(c) is satisfied by an individual on a day if, on that day—

(a) the individual is ordinarily resident in Scotland”.

Paragraph 4(2) goes on to list all the other elements of eligibility, starting with the individual being

“(a) habitually resident in the European Economic Area or Switzerland”.

What does that mean in terms of entitlement? Does it mean that someone is eligible if they are in Scotland at the time of the birth or does it mean that they have to be here for a period of time?

Shirley-Anne Somerville: I will bring in one of my officials to go through the detail of the residency requirements, but I can explain the background. I go back to the point that I made to Alison Johnstone, which is that no one can be allowed to fall through the gaps. A concern about the residency requirement as it was initially laid out in some of the draft regulations was that there was the potential for someone to not be eligible for a sure start grant in England and not be eligible for the best start grant in Scotland because of the requirement to be resident in Scotland. The reason for the change is to ensure that no one falls through a gap and that if they are in Scotland and are eligible, the process is an easy one for them to go through.

Colin Brown (Scottish Government): The reason for the requirement for someone to be habitually resident in the European Economic Area or Switzerland is to ensure compliance with the co-ordination arrangements that apply throughout the EEA and Switzerland, whereby nationals of those countries who move to another country within the area will have the same rights of access to social security in that other country while they are resident there. For most people, that condition works through the conditions of the passporting benefits—in most cases, people have to be in receipt of a passporting benefit. The specific provision here refers to the extension for people up to the age of 18 who are not in receipt of passporting benefits, but who will qualify by virtue of their age. It is to ensure that the regulations are compatible with current arrangements.

Michelle Ballantyne: The situation with the passporting benefit is quite clear. If someone is on such a benefit, they are entitled to the pregnancy and baby grant. When I first read the provision, it seemed to be saying that if someone happened to be in Scotland at the time that they gave birth—if they were passing through or were on holiday or whatever—they would be entitled to the grant. Is that not correct?

Colin Brown: It is saying more than that. The person would have to establish that, for the time being, their ordinary residence was in Scotland. Scotland would have to be the centre of their living arrangements at that time. An example might be someone who comes here to study and who is going to be in Scotland for a period of time. They might still have some form of habitual residence in a different country, which they intend to go back to, but at the time they are residing in Scotland, which is more than simply being here on a day. If that were the case, they would qualify on the same basis as somebody who was habitually resident in Scotland.

Jeremy Balfour (Lothian) (Con): Good morning, cabinet secretary. On a positive note, I would like to thank you and your officials for the changes that you have made, which I think came out of our previous session. The changes strengthen the regulations and give greater protection, particularly to children who are very vulnerable and might be moving between different grandparents or parents. In that respect, they are extremely helpful.

The Convener: Cabinet secretary, do you wish to respond?

Shirley-Anne Somerville: I am always happy to receive thanks from Jeremy Balfour.

The Convener: I am glad about the fact that we are having a love-in this morning.

I want to ask a bit more about uptake. When the committee visited Social Security Scotland on Monday, we found that staff had to do a couple of quite specific things with regard to uptake of the carers supplement. In writing to people, they decided to use white envelopes rather than brown ones, because many people who might benefit from the supplement were likely to view a brown envelope negatively, thinking that it might contain a bill or a negative piece of correspondence from an official organisation that wanted to pursue them for money rather than support them. Another thing that the staff had to do was reassure a lot of people on the telephone that it was not a scam, because they thought that it was too good to be true, wondered what the catch was and thought that it could not be right. We heard that when we visited the agency.

I do not underestimate the challenges that will be faced as regards uptake when the best start grant rolls out. Many of us could not get our heads round—this came up strongly in the debate, too—the relatively low uptake of the previous sure start grant. We know that, when people are expecting a baby, there is engagement with midwives, maternity services and the national health service, and there are antenatal classes. A suite of statutory services kicks in and the DWP pretty

much knows which individuals have qualifying passporting benefits that would ensure entitlement to the sure start grant.

As a politician rather than someone who has to deliver the service on the ground, for the life of me, I cannot see why those dots are not joined together better. We know who is having a child, we know which benefits would enable them to qualify for the sure start grant and we know where they stay. Why on earth has no one rattled at their door to tell them that they are qualified for it and to ask why they have not applied for it? Surely there could be some kind of soft automatic enrolment.

That all sounds quite naive. I am sure that it is much more difficult to get one agency to talk to another agency about whose responsibility it is to deliver on the ground. However, given what I said about the carers supplement and having to use white envelopes and to persuade people that it was not a scam, although we know that it is challenging to reach hard-to-reach groups and there might be some people whom we do not know about, we know where most of the people who qualify for the best start grant are. What assurances can you give that there will be a much more co-ordinated approach to uptake on the ground than there was under the previous scheme?

Shirley-Anne Somerville: One of the main differences is that the DWP does not actively promote and encourage uptake of the benefit and the payments. That is a clear difference from what we will be doing. For example, through the work that we are doing with health visitors and the NHS, we are going out and promoting uptake.

That work links to on-going work that is separate from what I do in my remit on, for example, the financial health check guarantee, which will ensure that low-income families will receive personalised advice on income maximisation. There is also the healthier, wealthier children programme, which supports pregnant women and their families who are at risk of experiencing poverty by creating referral pathways between the NHS and money and welfare advice services. Between the work that the agency is doing to promote uptake of the best start grant and the work that is being done within Government to ensure that we are doing all that we can to provide financial health checks to low-income families, we will ensure that we have a better uptake than the DWP achieved. Time will tell whether the uptake is better enough. If there is one person out there who does not receive the benefit who could receive it, that would be a concern and we would need to challenge ourselves to see what more we could do.

The Convener: It would be good to get some more information about the work that is done on the ground, whether by the midwife at the 24-week

pregnancy check or in antenatal classes. It would be good to get an overview of the provision on the ground to mop up access—although not today, obviously.

I say this again, because it was a theme that came through strongly when we visited the agency: people sometimes think that things are too good to be true. What do you think that the Scottish Government could consider doing nationally and locally to raise awareness and to notify and inform people—not just expectant mothers—of the range of benefits that Social Security Scotland will roll out? What could the Scottish Government do to let people know that the new benefits are being rolled out, that it is not a scam, that it is not too good to be true and that they are not handouts but things that people are entitled to? What could the Scottish Government do to drive up the uptake not just of the best start grant but other entitlements?

Shirley-Anne Somerville: You are right to point out that there is a challenge to do with the fact that the agency is new, which means that people will receive a letter from an agency that they might never have heard of in which they are offered money and told that it will go into their bank account. Yesterday, I visited our Glasgow offices, where I spoke to some of the staff who have been working on the initial conversations about the carers allowance supplement. Reactions such as “Is this real?”, “Is it a scam?” and “Is this letter legitimate?” came through. There is an obligation on us to raise awareness of the fact that the agency is in place and of the different benefits that are available.

I will give examples of what we did to improve knowledge of the carers allowance supplement. Roadshows were held, and there were adverts in local papers and on local radio stations. We did a lot of work with trusted organisations, because many people will go to a trusted organisation to check out what is going on and will believe what that organisation tells them over what they are told by a new agency that they have not previously heard of. The situation will develop over time, but the work that we did with Citizens Advice Scotland is the type of work that the agency is looking to do on the best start grant. As I said earlier, there will be a full communication strategy when the grant starts to be paid to ensure that we get publicity for what is going on.

09:45

Mark Griffin: I would like to ask about potential recovery of the best start grant. Most of the people who will be entitled to it will be entitled to it because they receive a qualifying benefit. If there is any error on the part of the claimant or perhaps by the DWP in notifying them of their entitlement

to a qualifying benefit, with that decision subsequently being reversed, will the Scottish Government seek to recover payment of the best start grant?

Shirley-Anne Somerville: It will depend on the circumstances of the case, but the agency would need to understand why DWP decided that a person whom it thought was eligible was no longer eligible and why that reserved benefit was not properly awarded. The agency will look at it on a case-by-case basis. There is also the issue of how we will look at any such case—that will be done with dignity and respect and on the basis of trust. It will not be up to the claimant to prove that they were doing nothing wrong, because we will believe that somebody is innocent unless, for example, they have done something specific such as commit fraud.

We will never act on the basis of trying to catch someone out, nor will we fail to be sympathetic to the position that an individual is in. I cannot give a categorical yes or no answer, because it will depend on the case. However, when the agency looks at any aspect of the process, it will look at what happened in that case with a degree of sympathy for and understanding of the circumstances of the individual case. I give that reassurance in relation to the work that the agency is doing on all such areas. It will not be done in such a way that it is assumed that a person has done something wrong and that, therefore, we will need to claw back money.

The Convener: Thank you.

There being no other questions, we move to agenda item 3. I invite Ms Somerville to move motion S5M-14101.

Motion moved,

That the Social Security Committee recommends that the Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018 [draft] be approved.—[*Shirley-Anne Somerville*]

Motion agreed to.

The Convener: Thank you.

09:48

Meeting suspended.

09:50

On resuming—

First-tier Tribunal for Scotland (Allocation of Functions to the Social Security Chamber) Regulations 2018 [Draft]

First-tier Tribunal for Scotland (Chambers) Amendment Regulations 2018 [Draft]

First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018 (SSI 2018/273)

Upper Tribunal for Scotland (Social Security Rules of Procedure) Regulations 2018 (SSI 2018/274)

Social Security Appeals (Expenses and Allowances) (Scotland) Regulations 2018 (SSI 2018/275)

Scottish Tribunals (Eligibility for Appointment) Amendment Regulations 2018 (SSI 2018/276)

The Convener: Welcome back, everyone. We move to agenda item 4, which is more subordinate legislation. The committee will take evidence on two draft Scottish statutory instruments that are subject to the affirmative procedure and four SSIs that are subject to the negative procedure.

I welcome back the cabinet secretary and her Scottish Government officials, who are Naeem Bhatti, head of complaints, redeterminations and appeals policy; Colin Brown, solicitor; and Susan Robb, solicitor.

The Delegated Powers and Law Reform Committee considered the instruments at its meeting earlier this week and its report was circulated to members on Tuesday. One of the tribunal instruments considered at that meeting, the First-tier Tribunal for Scotland Social Security Chamber and Upper Tribunal for Scotland (Composition) Regulations 2018, has been withdrawn. The DPLR Committee has drawn the First-tier Tribunal for Scotland Social Security Chamber (Procedure) Regulations 2018 to the attention of Parliament due to errors and a lack of clarity, and the Scottish Government has committed to laying an amending instrument to correct those errors.

I invite the cabinet secretary to make an opening statement.

Shirley-Anne Somerville: In line with our principles of dignity, fairness and respect, we have always been clear that people will have a right to

challenge decisions made by Social Security Scotland if they believe that it has not made the right ones. In order to realise that right and ensure that appeals are heard by an independent organisation, we are creating a new chamber in the Scottish tribunals so that people have access to justice, in line with our wider approach.

The six sets of regulations that the committee is considering today are required to establish a new chamber in the First-tier Tribunal and make provision for an Upper Tribunal for Scotland in time for when we start to deliver the best start grant. As the convener noted, on Tuesday the DPLR Committee drew attention to one draft instrument, the First-tier Tribunal for Scotland Social Security Chamber and Upper Tribunal for Scotland (Composition) Regulations 2018. I have withdrawn that instrument and will re-lay a revised version shortly. That is why it is not on the agenda today.

I emphasise that our aim is to create a chamber that will be easy for people to access and that deals with appeals quickly, while ensuring that the dignity and respect of individuals is at the heart of the social security system.

As the committee is aware, we consulted on the draft regulations. The final regulations have been laid as a result of balancing the views of all of those who responded, while ensuring that what is proposed does not lead to operational or other difficulties. I am pleased that there has been broad support for the proposals and I put on record my appreciation to all those who responded to the consultation, including this committee for its contribution earlier this year. I also thank and acknowledge the support provided by the members of the judicial reference group, whose advice and guidance throughout the process has been invaluable.

The Scottish Government report that was published on 13 September alongside the regulations provides a detailed response to the consultation findings. It explains where the draft regulations have been revised to take account of the views expressed and where there is scope for change to ensure that full effect is given to the dignity and respect agenda and, more generally, that the foundations are laid for an effective chamber.

You may recall that when the consultation on the draft regulations was launched, the Social Security (Scotland) Bill was still undergoing its parliamentary process. Some of the provisions in the draft regulations have therefore been updated to reflect the changes that are now in the Social Security (Scotland) Act 2018. That includes reference to the Scottish social security charter, the agency's role in supporting individuals who wish to exercise their right to appeal, creation of

new appeal rights for challenging process decisions, a duty to promote uptake, and inclusive communication. I am happy to take questions from members.

The Convener: I am conscious that there are two affirmative instruments before us and a range of negative ones, so there will be a range of questions for you this morning.

Jeremy Balfour: I have four questions—two overarching ones and two specific ones. I should probably remind members that I used to be a member of the tribunal service.

My first question is a practical one. Cases all come from the DWP, so different appeals—for example a personal independence payment one and an employment one—can be heard on different days. With this change, will different cases be heard on the same day or will Scottish agency cases end up being heard on one day, in one tribunal, with other cases being heard on another day? That may be a question to take away or for one of your officials to answer.

Shirley-Anne Somerville: Unless my officials would like to come in, I might have to get back to the member on that point. I think that there will be two different systems. The tribunal system that we are setting up at the moment is for the devolved benefits; the reserved system is separate from that. It would be difficult to see how those tribunals could necessarily be on the same day, but I will get back to the member if there is an update on that.

Jeremy Balfour: The second issue is in regard to expenses paid to those who sit on tribunals. At present, the lawyer, the doctor and the disabled member are paid different amounts. Will that continue or will there be a single amount for all three individuals?

Shirley-Anne Somerville: I will bring in my official at this point.

Naem Bhatti (Scottish Government): As you know, Mr Balfour, tribunal members are paid differently depending on their experience—legal and medical members are paid differently from lay members. There would be a different cost in harmonising that pay. We want to make sure that people are paid appropriately for giving up their time to be on the tribunal. Those expenses will be set out in due course.

Jeremy Balfour: It just seems slightly strange that three individuals turn up to do exactly the same work and get paid three very different amounts. Perhaps you could come back to me on that in due course.

Thirdly, where somebody either makes an application for a hearing late or does not turn up, my understanding is that the chairman of the

tribunal decides whether the appeal should be heard. From my reading of the regulations, once that decision has been made, another date is set for the claimant's case to be heard by the full tribunal. In regard to the cost of that, and also in order that the claimant in particular does not have to attend twice, could that occur on one occasion? In other words, could the postponed hearing take place on the same day? I may have misunderstood that, in which case I apologise.

Naeem Bhatti: If an appellant is not going to turn up to a hearing, they can inform the tribunal beforehand and the tribunal can decide either to proceed with the case or to adjourn it to allow the appellant and any representative to come to a future hearing. It is up to the chamber president or the legal member to decide whether they have enough information in the paperwork in front of them to make a decision, or whether they want to hear directly from the appellant.

As you know, one of the changes that we have taken forward in the procedure rules, in line with the dignity and respect agenda, is to provide for paper-based hearings. If an individual does not need to attend a tribunal, and a decision can be made based on the papers, it is right that that individual should not be inconvenienced by coming to a tribunal. As I said, it is up to the legal member to decide whether they want to postpone the hearing or go ahead and make a decision. If they make a decision, the individual has a right to ask for that decision to be set aside or to ask for a review of that decision.

Jeremy Balfour: If an individual asks for the decision to be set aside, it comes to a tribunal and the tribunal judge says, "I will set that aside", will the hearing then take place on the same day or does the claimant have to come back a second time once the set-aside has been decided?

10:00

Naeem Bhatti: There is a process for scheduling hearings. It is down to the Scottish Courts and Tribunals Service to schedule hearings to make sure that the appropriate members are available. As you know, being a former tribunal member, tribunals have a number of hearings to consider in a day. It is an operational matter for the SCTS to see how quickly it can reschedule a hearing.

Jeremy Balfour: My final question is on the make-up of a tribunal. I appreciate the way in which you have drawn up the regulations, but there seems to be scope to have either two-member or three-member tribunals. Will tribunals have two members rather than three, or will the practice of having three members continue?

Shirley-Anne Somerville: That is a decision for the chamber president. It is an aspect of the regulations that we withdrew as a result of suggestions by the DPLR Committee. We are happy to take on board any further points that you might have about that.

Michelle Ballantyne: On the point about how tribunals are delivered, I have had conversations with my local citizens advice bureau about concerns that tribunals in rural areas quite often do not happen. I wondered what your plans were about the location of tribunals. How do you ensure that vulnerable people who are appealing, who are probably already in trouble anyway, are able to access them, particularly in rural areas? That seems to be a bit of an issue.

Shirley-Anne Somerville: When we are looking at all aspects of social security, it is particularly important that we take account of the challenges that arise from where people are living, particularly if that is in a rural area. Although the reasons for cancellations are an operational matter and not one involving politicians, I take seriously your point about the stress and difficulty that cancellations cause people. We are mindful of that—we should always bear it in mind when we are looking at all the aspects around tribunals, including how they are delivered in rural areas.

Michelle Ballantyne: I could not find anything in the regulations that reassured me about the expectations around the creation of the tribunals. Will that be encapsulated in the charter? Can we have some reassurance that tribunals will be expected to go out to different places and will not end up centralised in urban areas, with people having to travel to them? Will they have the capacity for that?

Shirley-Anne Somerville: That is not necessarily something for the charter, although the Government is not writing the charter, so we will see what comes from the process that is being developed for that. That issue may not be in the charter, but it needs to be carefully considered. The reassurance that I would give is that there can be travel to different locations for tribunals—they are not something that have to be centralised. The venue that is chosen should be close to the appellant. Obviously, there are operational matters that are not for me to get into, but I very much reassure the member that these things are taken into account. Again, I stress that there is no reason nor any wish for tribunals to be centralised. The process has to be open and available to everyone, regardless of where they are working and living in Scotland. I very much take on board the point about the challenges for people living in rural, remote or island communities.

Alison Johnstone: The Scottish Parliament information centre suggests that about 12,000

tribunal appeals are made every year by Scottish PIP claimants, and it is likely that that figure would be even higher without the system of mandatory reconsideration. I appreciate that the Scottish Government wants to get the decision right every time, first time, which is a laudable aim. However, about 60 per cent of PIP appeals have been successful at tribunal, which indicates that something is fairly wrong with the decision making in the first place. I would like to understand what the Scottish Government intends to do to bring the figure down markedly.

Shirley-Anne Somerville: The level of appeal success shows that the current system is broken, because the appeal success rate should be nowhere near as high as that—that demonstrates a fault somewhere in the system. This relates very much to the points that we discussed when I made my statement and to what my predecessor set out to the committee about how we want to move forward and about getting the right information in the right way at the earliest opportunity. We want to ensure that the initial decision is taken with the right information and that the process does not involve two sides trying to catch each other out; decisions will be taken in a supportive manner, and the agency will encourage the individual who is applying to do so, to get all the information that is required for the decision to be right.

There will be times when the individual does not think that the initial determination was correct. Under our new system, they will be entitled to a redetermination by a completely different team from the one that made the initial decision. I met members of that team yesterday in Glasgow to discuss how it will work. That further step, which is different from how the current system works, is intended to bring down the number of appeals.

The appeal process still has to be there because, as I said in my opening statement, some people will still wish to challenge determinations, but I am confident that we will see a marked decrease, because we are not importing the current system and putting it through our new tribunals process. We have a new system that will go through a tribunals process that is based on a different premise from what currently goes on.

Alison Johnstone: Having met the team yesterday, are you content that the capacity exists to deal timeously with appeals that are unavoidable?

Shirley-Anne Somerville: Very much so. That applies to the redetermination process in the agency and, if a decision requires to go to an appeal and to a tribunal, the capacity will be there for that, too.

The Convener: I was pleased to hear in your statement the other week that there can be

recordings of face-to-face assessments. I hate to say this, but I have had cases in which assessments of my constituents have borne no relation to what happened on the day of the assessment. An audio recording could be a powerful tool to ensure that the accuracy of assessments is much more rigorous—let us put it that way—at the first time of asking.

What is the thinking behind having an audio recording? Will that help the agency to get decisions right first time?

Shirley-Anne Somerville: It will certainly have an impact. Like many members, including the convener, I have had cases in which constituents have said that they were not asked the questions and certainly did not give the answers that have been specified. To have any faith in the system, people need to have much more faith in what happens when they are in a face-to-face assessment. As I said to Alison Johnstone, we hope that the number of face-to-face assessments will dramatically decrease from the figure at the moment but, if such an assessment is required, people will need to have faith in what happens in that room.

It is recognised that people will want to have the information to hand and to go through it afterwards for their own reassurance. That is why it is important for people to have an audio recording, which can be made available for an appeal if that is required later. I hope that that will provide a great deal of assurance to the person who goes through the process that it is not there to catch them out, that the system is there to support them and that there is full transparency about what goes on in the decision-making process.

The Convener: That is helpful. The claimant will have to give permission for an audio recording to be made, and I assume that no judgment will be made either way if the claimant does not want the recording to be made.

A United Kingdom appeal system will run side by side with the Scottish one, because the employment and support allowance support group, for example, will still be under UK rules. In terms of data protection and data sharing, I assume that if a claimant did not wish any data to be passed on, it would not be passed to the individuals who deal with appeals in relation to ESA. What would happen to that data? Would it stay safely with the Scottish tribunal system?

Shirley-Anne Somerville: On your first point, I reassure you that the audio recording will be for the claimant's benefit. However, if they do not wish it to be made, we will respect that wish. Of course there would be no judgment about why somebody did or did not wish to participate. The recording will be there to protect the claimant, and the proposal

has been warmly welcomed by stakeholders and individuals I have spoken to. However, we will ensure that, if someone does not want to take part in that, our system is flexible enough for that.

As for data sharing, two separate systems will be running—the agency is separate from the DWP, and the tribunals for devolved benefits will be separate from the reserved benefits tribunal. If you wish, I will be happy to provide further clarification on data sharing in due course.

The Convener: That would be helpful. Before I call Mark Griffin, I have a final question. Jeremy Balfour raised an interesting point—although the issue is not within the Scottish Government's control—about whether a PIP assessment and an ESA assessment could be done on the same day or at the same time, to make that as easy as possible for claimants. That would involve two different systems, but constituents tell me that, although the DWP deals with everything at the moment, they often have to provide the same information twice—once in relation to PIP and again in relation to ESA—and sometimes the information that they send goes missing once, twice or three times. From what I can see, co-ordination is pretty poor under the one system.

To be honest, I do not even know where the opportunities are, but I see a lack of co-ordination where things currently sit. We are moving to two discrete systems. Will there be any opportunity to have some form of co-ordination of ESA assessments, under one system, and PIP assessments, under another system, for the information that is generated?

10:15

Shirley-Anne Somerville: For the aspects that are or will be devolved to the Scottish Parliament, we are trying to use information that is already available and to ensure that we can access as much of that as possible so that the responsibility is on the agency, rather than having a responsibility on the individual to continuously provide information and jump through hoops at different stages of the process.

I assure the committee that the process will be seamless in regard to the relationship with reserved benefits. Unfortunately, the other aspect is perhaps outwith my gift. As I said, in the agency, we will move to ensure that we have access to as much information as possible that is already there, rather than requiring the applicant to do something twice or three times. However, what happens when they apply for a reserved benefit will—unfortunately—be beyond our control, although we are keen to encourage the DWP to look at what more it can do to make the process easier, rather than more difficult, for someone.

The Convener: That is helpful. The DWP could learn from the new agency's experience and potentially vice versa, but we will wait and see on that.

Mark Griffin: I have a supplementary to the convener's questions about audio recordings. Like the convener, I welcome them, but could a video recording be made to support deaf British Sign Language users in any potential tribunal case? As you can imagine, an audio recording will not be of the greatest use to them.

Shirley-Anne Somerville: I fully take that point on board. When we look at our inclusive communications and at how the policy initiatives will operate in practice, we will ask how the principle of openness and transparency will work for different people and whether they will have different requirements as they go through the process.

The details are still to be developed. We are some time away from delivering the assessment process ourselves, but the details about how it affects individuals will be absolutely taken into account. We will never leave anyone short of information or lacking in transparency simply because they require a BSL translation or anything like that. If that happened, that would completely fail to achieve what we are trying to do in the agency's work.

The Convener: We are moving towards the end of our questions, so if any other member has a question, they should get my attention. Michelle Ballantyne has one.

Michelle Ballantyne: It is just a tiny one, on the back of the concern that I raised earlier about accessibility. Obviously, the regulations are very much set out in legal form, but I am looking for a bit of reassurance on the format of the process for somebody who has been turned down and who wants to appeal. Many people are not au fait with legal process and find very formalised forms quite difficult. There is also the issue about getting somebody to provide support with that. Can you give me some reassurance about the methodology of the appeal and what people will actually be faced with, such as the requirement to submit documents, the type of forms that they might have to use and the conduct of the tribunal? Although I accept that the process has to have a legal format, how will you ensure that someone feels confident and able to go through it without requiring the support of a lawyer?

Shirley-Anne Somerville: You raise an important point about ensuring that people are never put off from going through the next stage in the process, should they require to do so. The committee will be aware that we have been doing a great deal of work on communication about

people's rights under the new system, whether that relates to eligibility, how to interact with the new agency or how to appeal when that process is in place. It is important to bear in mind that, following a redetermination, the agency will give the individual all the information that they require about how an appeal could be taken forward. As we do with all our communications, that communication will be tested to ensure that it makes sense and can be easily understood by people going through the process. We will look at the information that the agency puts out. In many ways, it is about encouraging people to take up their rights and ensuring that there is never a barrier to that.

Another aspect to bear in mind is that the agency will forward the documents that are required, so there will be no responsibility on the individual to collect information to ensure that their case proceeds. The individual will receive all the information about how to appeal from the agency. If they wish to do that, the agency will collate the information that is behind that decision and allow that process to go forward. It is about taking away the responsibility and the pressure from the individual and ensuring that the agency has more of a role. The agency will always be there if people have questions because they do not understand the system.

Michelle Ballantyne: Is the design of the system such that the individual should not need someone to do it for them? Potentially, people will be able to do it themselves and will not need direct support.

Shirley-Anne Somerville: Yes, because if we have got to the point where people require a lawyer, for example, that is a barrier that we need to look at. In everything that we do, we need to be careful that, although we are getting into the territory of a legal process, that is explained in a way that is easily understood and individuals are encouraged to take up their rights should they wish to do so.

The Convener: As there are no more questions for the cabinet secretary, we move on to agenda item 5, which is consideration of motions on the two affirmative instruments. I invite Ms Somerville to move motions S5M-14156 and S5M-14157.

Motions moved,

That the Social Security Committee recommends that the First-tier Tribunal for Scotland (Allocation of Functions to the Social Security Chamber) Regulations 2018 [draft] be approved.

That the Social Security Committee recommends that the First-tier Tribunal for Scotland (Chambers) Amendment Regulations 2018 [draft] be approved.—[*Shirley-Anne Somerville*]

Motions agreed to.

The Convener: We now move to agenda item 6, which is consideration of the four negative instruments. They are SSI 2018/273, SSI 2018/274, SSI 2018/275 and SSI 2018/276. Do members agree simply to note those instruments?

Members indicated agreement.

The Convener: I thank the cabinet secretary and both sets of officials for their attendance this morning.

We will now move on to agenda item 7, which is pre-budget scrutiny and which we agreed to take in private.

10:24

Meeting continued in private until 10:40.

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