



Social Security (Scotland) Bill: Stage 3 debate 25th April 2018

Amend. 137: Right of re-determination and appeal on liability for overpayment

1. Child Poverty Action Group (CPAG), Inclusion Scotland, Citizens Advice Scotland, ENABLE Scotland, Shelter Scotland, the Poverty Alliance, One Parent Families Scotland and other members of the Scottish Campaign on Welfare Reform (SCoWR) strongly **urge MSPs to support Amendment 137** in the name of Jeremy Balfour MSP.
2. The Social Security (Scotland) Bill rightly gives individuals the right to challenge decisions made by the new social security agency through a redetermination and appeals process (sections 23 to 29, and government amendment 69). This is in keeping with the principles of respect for dignity, and the promotion of the right to social security set out in section 1.
3. However, **as its stands there in an extremely important gap in people's rights to appeal**. Unlike in the current UK system there are no clear rights to appeal against a decision on whether individuals are liable to repay an overpayment. **Amendment 137 ensures that the Bill's redetermination and appeals provisions, as modified, also apply to decisions on liability for recovery of overpayment.**

It is important that people can appeal whether they are liable for an overpayment

4. There will be occasions when, as result of agency errors, individuals are overpaid assistance. Section 36A of the Bill sets out the circumstances in which individuals have no liability for such overpayments (i.e. where the overpayment is neither their fault nor the kind of error that they could reasonably be expected to have noticed). In a rights based system it is important that people have the right to challenge decisions on this, in the same way they are able to challenge other decisions by the agency.

It is not enough that the Bill already gives a right to appeal an overpayment

5. There will be cases where individuals do not disagree that there has been an overpayment. However they may disagree that they have liability to repay that overpayment. People need to be able to appeal not just whether an overpayment exists, but also whether they are liable for it.

It is not enough that people may be able to appeal deductions from ongoing assistance

6. In many cases people will have no ongoing assistance from which an overpayment debt can be deducted. This may even be the most common situation. Once the agency has decided a person is liable, the next step in these cases will be to 'work towards a mutually

acceptable agreement with the individual to repay monies at an affordable rate' ([Bill policy memo](#) p48). There is no right of appeal at all at this point.

7. For example, you are told you owe £500, and must make a repayment agreement. If you disagree and want to make a case to the agency that you're not liable, there is no process of re-determination that applies, and no right of appeal. If you refuse to pay because you believe you're not liable, then defending recovery action may involve attempting to settle informally ahead of formal proceedings. This is not an appeal. If you refuse to pay because you believe you're not liable, then debt recovery action would progress.

8. Manuscript amendments 146 and 147 are technical amendments giving powers to Ministers to transfer 'some or all of the competence and jurisdiction' that the civil courts have in relation to recovery. They do not in themselves create any right or mechanism for individuals to appeal liability through the redeterminations and appeals process.

8. Requiring people to challenge their liability through the debt recovery process would carry serious risks:

- It will create needless anxiety for people.
- Informal settlements are likely to drive bad practice – for example offers to reduce debt in return for dropping a challenge, instead of applying a legal test of liability.
- People's credit score may be needlessly damaged– with implications for getting a loan, opening a new bank account or buying on credit in the future.

9. Requiring people to challenge their liability for a contested overpayment through a debt recovery process is not consistent with an approach of dignity and respect. Given the Bill creates a process of redetermination and appeal to the First-tier Tribunal then that is the right route to challenge decisions, including overpayment liability decisions, as it is now.

10. Even where people do have ongoing assistance from which a debt might be repaid it is, as it stands, contestable whether there is a right of appeal at the point a decision is made to impose deductions. In any case a decision may be made not to make deduction at that point, but liability will remain and people may be left, potentially for months or years, with debts for which they don't believe they are liable, but can't appeal.

In summary: There is a legal test of liability for overpayment set out in the Bill (in s36/s36A). In order to protect a rights based approach based on respect for people's dignity there must be appeal rights to go along with decisions flowing from that legal test. The process of re-determination and appeal to the First-tier Tribunal, designed expressly for social security matters, is the right route. This is also the current position in social security (including all the benefits being devolved) where there is a right of appeal through the usual social security tribunal route at the point that liability is decided by the DWP. **Amendment 137 ensures that the Bill's redetermination and appeals provisions, as modified, will also apply to decisions on liability for recovery of overpayment.** This will help protect individual's right to challenge their liability, preventing unnecessary anxiety, stress and potential hardship.

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