

Legislative Consent Memorandum

Social Security (Additional Payments) Bill

Background

1. This memorandum has been lodged by Shona Robison, Cabinet Secretary for Social Justice, Housing and Local Government, under Rule 9B.3.1(a) of the Parliament's standing orders, and is supported by Ben Macpherson, Minister for Social Security and Local Government. The Social Security (Additional Payments) Bill was introduced in the House of Lords on 15 June 2022. The Bill can be found on the UK Parliament website at <https://bills.parliament.uk/bills/3187>.

Content Of The Social Security (Additional Payments) Bill 2022

2. On 26 May the Chancellor of the Exchequer announced, in the House of Commons, a range of interventions to address the cost of living crisis. This included a number of interventions on social security including £650 in cost of living payments for those on means tested benefits including Universal Credit, legacy benefits and pensions credit. It also included a disability cost of living payment worth £150 which from September 2022 will be paid to those in receipt of non-means tested disability benefits.

3. The UK Government has said that approximately 8 million people across the United Kingdom will receive extra payments, the need for which has arisen from ongoing pressures on the cost of living. The UK Government expects the total package of support to be over £6 billion.

4. On 15 June, the Department for Work and Pensions (DWP) introduced the Social Security (Additional Payments) Bill to establish new powers to make two new types of cost of living payments to those in specified categories. This includes those in receipt of devolved non-means-tested disability benefits, as well as those in receipt of certain means tested reserved benefits or tax credits.

5. All of the payments are linked to an eligibility date of 25 May. Individuals must have entitlement to payment of more than 1 pence of one of the benefits named in the Bill. For the £150 disability additional payment, these include Disability Living Allowance (DLA), Personal Independence Payment (PIP) and Attendance Allowance (AA), which are devolved to the Scottish Parliament and are being delivered by the DWP on behalf of the Scottish Government under an Agency Agreement. It also includes Child Disability Payment (CDP) and Adult Disability Payment (ADP) which are currently being delivered by Social Security Scotland.

Provisions which relate to Scotland

6. The Bill contains 11 clauses:

- Clause 1 places a duty on the Secretary of State and HMRC to make additional payments to individuals who qualify for them as a result of entitlement to one of the reserved means-tested benefits listed;
- Clause 2 sets out the qualifying entitlements;
- Clause 3 sets out the rules where a person has a qualifying entitlement to more than one social security benefit in respect of the qualifying day;
- Clause 4 places a duty on HMRC to make a payment to individuals who qualify as a result of entitlement to Child Tax Credit or Working Tax Credit;
- Clause 5 places a duty on the Secretary of State to make disability additional payments to those individuals with entitlement to one of the non-means-tested disability benefits listed;
- Clause 6 relates to the administration of the payments;
- Clause 7 places a duty on the Secretary of State and HMRC to cooperate in exercising their functions in relation to the additional payment;
- Clause 8 provides for the additional payments to be disregarded for the purposes of a person's liability to tax, or entitlement to social security and tax credits;
- Clause 9 makes provision in relation to the interpretation of the Bill;
- Clause 10 makes provision in relation to the regulation-making powers in the Bill; and
- Clause 11 provides for the Bill's extent to the United Kingdom and in connection with the commencement and short title of the Bill.

It is the view of the Scottish Government that each of the 11 clauses are relevant provisions relating to devolved matters, triggering the requirement for an LCM.

Reasons for lodging a legislative consent motion

7. The UK Government has not requested the Parliament's consent for this Bill. The UK Government has stated that the provisions in the Bill are a reserved matter as they are payments to respond to the rising costs of living. However, it is the view of the Scottish Government that the provisions of the Bill relate to the provision of assistance falling within the scope of Exception 7 to that reservation. Clauses 1 to 6 of the Bill make provision for the making of payments to individuals to meet or help to meet short-term needs to avoid the risk of harm to their wellbeing, which is a devolved matter by virtue of Exception 7. Clauses 7 and 8 make provision associated with those payments which, in so far as they relate to functions exercisable within devolved competence, also relate to devolved matters.

8. It is therefore the view of the Scottish Government that it is within the legislative competence of the Scottish Parliament to pass legislation which would provide for payments to people in Scotland as set out in the Bill. Although the Scottish Government is supportive of the Bill's policy aims, an LCM is required in order to

ensure the devolution settlement is properly respected and a precedent for overriding it is not established.

9. The only alternative to consenting to the UK Government making provision for Scotland in its Bill would be to bring forward equivalent Scottish primary legislation. The Scottish Government considers that seeking to progress primary legislation on an expedited basis in the Scottish Parliament generates risk and would not be appropriate in these circumstances. Such primary legislation would need to come into force at the same time as the UK Bill. This would entail truncated development time, truncated parliamentary scrutiny and the need to request truncated Royal Assent, all of which would generate significant risk.

Consultation

10. There has not been sufficient time to consult stakeholders on this LCM. However, stakeholders are unlikely to be supportive of any activity that was perceived to slow down or obstruct the making of payments to Scottish clients by the DWP.

Financial implications

11. DWP estimate the total cost of the measures set out in the Bill to be over £6 billion across the UK as a whole.

12. The LCM will not result in a material increase in cost to the Scottish Government. This is because the additional expenditure resulting from the Bill will be funded by the UK Government.

Conclusion

13. For the reasons set out above, the Scottish Government believes that it is necessary and appropriate for these additional payments to be made, and for the provision authorising them to be made by the UK Parliament.

14. The motion being lodged by the Cabinet Secretary for Social Justice, Housing and Local Government at the same time as the memorandum is:

“That the Parliament agrees that the provisions of the Social Security (Additional Payments) Bill, introduced in the House of Commons on 15 June 2022, so far as they relate to matters that fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”

Scottish Government
June 2022

This Legislative Consent Memorandum relates to the Social Security (Additional Payments) Bill (UK legislation) and was lodged with the Scottish Parliament on 21 June 2022

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