

Legislative Consent Memorandum

Social Security (Additional Payments) (No. 2) 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) (No. 2) Bill was introduced in the House of Commons on 7 February 2023. The Bill can be found on the UK Parliament website at [Social Security \(Additional Payments\) \(No. 2\) Bill - Parliamentary Bills - UK Parliament](#).

Content of the Social Security (Additional Payments) (No. 2) Bill

2. On 17 November 2022, during his Autumn Statement to the House of Commons, the Chancellor of the Exchequer announced a range of interventions to address the cost of living crisis. This included a number of social security measures including a £900 cost of living payment for those on means tested benefits including Universal Credit, legacy benefits and Pension Credit, to be paid in three instalments over 2023-24. It also included a disability cost of living payment worth £150 to be paid in summer 2023 to those in receipt of non-means tested disability benefits.

3. The UK Government has said that more than 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 cost of the additional payments to be over £8.6 billion.

4. Scottish Government officials estimate that around 750,000 households in Scotland will receive the means-tested additional payment, while around 680,000 individuals will receive the disability additional payment, and around 730,000 households will receive the pensioner additional payment.

5. On 7 February 2023, the Department for Work and Pensions ("DWP") introduced the Social Security (Additional Payments) (No. 2) Bill to establish new powers to make two types of cost of living payments to those in specified categories. This includes those in receipt of non-means-tested disability benefits which are devolved to the Scottish Government as regards Scotland, as well as those in receipt of certain means-tested reserved benefits or tax credits.

6. All of the payments are linked to eligibility on a qualifying day, to be detailed in Regulations. For the means-tested additional payment, the first qualifying day is to be no later than 30 April 2023, the second qualifying day is to be no later than 31 October 2023, and the third qualifying day is to be no later than 29 February 2024. For the disability additional payment, the disability additional payment day is to be no

later than 30 June 2023. Individuals must have entitlement to payment of one of the benefits as set out in the Bill on the relevant qualifying day. 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.

7. The Bill is similar in its detail to the Social Security (Additional Payments) Act 2022, which similarly established power to make two new types of cost of living payments to those in specified categories. The 2022 Act provided for a £650 cost of living payment for those on means tested benefits, to be paid in two stages, as well as a disability cost of living payment of £150 to be paid to those in receipt of non-means tested disability benefits

Provisions which relate to Scotland

8. The Bill contains 12 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 to social security benefits;
- Clause 3 sets out the qualifying entitlements to tax credits;
- Clause 4 sets out the rules where a person has a qualifying entitlement to more than one social security benefit or tax credit in respect of the qualifying day;
- Clause 5 places a duty on the Secretary of State to make a disability additional payment 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 function 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 amendments to other legislation;
- Clause 10 makes provision in relation to the interpretation of the Bill;
- Clause 11 makes provision in relation to the regulation-making powers in the Bill;
- Clause 12 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 12 clauses are relevant provisions relating to devolved matters, triggering the requirement for an LCM.

Reasons for seeking the Parliament's legislative consent

9. 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. They are therefore of the view that the provisions are not for a purpose within the scope of any of the exceptions to the social security reservation at Head F1 of schedule 5 of the Scotland Act 1998. The UK Government took this same view in relation to the Social Security (Additional Payments) Act 2022. However, as with the 2022 Act, 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 5 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 6 to 11 make provision associated with those payments which, in so far as they relate to functions exercisable within devolved competence, also relate to devolved matters.

10. 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. The Scottish Government is supportive of the Bill's policy aims, which are to provide these additional payments to individuals and households in Scotland to help with the rising cost of living, targeting the most vulnerable. The Scottish Government considers that an LCM is required in order to ensure the devolution settlement is properly respected.

11. 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 the significant risk that the provisions of the Bill are not in force in Scotland for clients at the same time as the rest of the UK.

Consultation

12. There has not been sufficient time to consult stakeholders on this LCM. However, it is expected that stakeholders would be supportive of granting consent.

Financial implications

13. DWP estimate the total cost of the measures set out in the Bill to be over £8.6 billion across the UK as a whole.

14. 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

15. 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.

16. The draft motion, which will be lodged by the Cabinet Secretary for Social Justice, Housing and Local Government, is:

“That the Parliament agrees that the provisions of the Social Security (Additional Payments) (No. 2) Bill, introduced in the House of Commons on 7 February 2023, 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
February 2023

This Legislative Consent Memorandum relates to the Social Security (Additional Payments) (No. 2) Bill (UK legislation) and was lodged with the Scottish Parliament on 21 February 2023

Social Security (Additional Payments) (No. 2) Bill – Legislative Consent Memorandum

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