DAS response to Finance and Constitution Committee – Comments on the financial memorandum relating to the Social Security Bill (Scotland)

About Disability Agenda Scotland (DAS)

DAS was founded in 1998 and together our experience, expertise and interests cover physical disability, sensory impairment, learning disability, communication support needs and mental health. Working closely with the thousands of disabled children, young people and adults, families and carers involved with the member organisations, DAS aims to influence public policy and legislation to help disabled people and the people around them; provide a forum for decision makers and influencers to obtain advice and information; and promote a better understanding of the diverse experiences, needs and aspirations of disabled people. The members of DAS are Action on Hearing Loss Scotland, Capability Scotland, ENABLE Scotland, RNIB Scotland, SAMH (Scottish Association for Mental Health) and Sense Scotland. DAS focuses on the issues that will have the most impact for disabled people in Scotland. Key policy areas of interest include employment, social security, and stigma and discrimination.

Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

DAS responded to the Scottish Government consultation preceding the publication of the Bill and participated in a number of discussions related to the devolution of key aspects of social security. We highlighted the extent to which disability benefits are being devolved and the related budget, but also significant concerns regarding the impact cuts in recent years have had on people. In this submission, we have focused on key issues we believe to be most relevant to the Finance and Constitution Committee. We would welcome the opportunity to discuss this submission with the Committee and/or answer any queries you may have.

Language and principles

We very much welcome the principles and the tone of much of the language that the Minister for Social Security and the Scottish Government have used in talking about the Bill and the new system. We are keen to focus on how we ensure we make those words, and the principles laid out, a reality.

While we welcome and support the principles in theory, there needs to be further consideration of the precise wording and intention of each of the principles. In particular, the use of words like “efficiency” and “deliver value for money” are important but can be understood to mean different things to different people; and whether the system is delivering efficiency and value for money for the state and/or individuals. We recognise the need to manage the public purse and the need for efficiency, particularly to ensure claimants/applicants receive the money they need and are entitled to as soon as possible. However, there is an inherent tension between the principles such as human rights, dignity and people receiving what they are entitled to, with some interpretations of an efficient system that provides value for money, as well as with some of the points raised in the financial memorandum, such as challenges with forecasting. There needs to be firm commitment of the principles in reality, and greater clarity on the purpose and role of social security to benefit individuals and wider society.

Contents of the Bill and scrutiny

1 More information is available on our website: www.disabilityagenda.scot.
While the Scottish Government has set out the rationale for a short Bill, that it is intended to be a high level, enabling Bill, its brevity means a lot remains unclear about the new system and in some ways, makes it difficult to comment on key aspects.

We are also concerned that the lack of scrutiny of secondary legislation could lead to unintended consequences or things being missed including elements that could have financial implications for the Scottish Government but also for individuals and their families. There are a number of key areas on which there is currently nothing or very little even in terms of framing legislation, in the Bill. We have focused on key points that need to be addressed within the Bill and/or regulation and guidance. We welcome the fact that regulations will be positive rather than negative instruments, although further consideration is needed to the level of scrutiny that will be given to the regulations. We also need an explicit commitment on level of public consultation over changes to individual benefit areas.

We welcome the input of the Disability Benefit Expert Group and Disability and Ill-Health Benefits Reference Group, and the expert panels that have been established should provide important lived experience. However, there is also a need for technical expertise and scrutiny, which we believe a Committee and/or working groups, with the input of welfare rights advisers, academics and lawyers, for instance would provide. We would ask that the Committee, and the Scottish Government, considers the creation of an independent scrutiny body, which would provide additional scrutiny and technical expertise for regulations and future changes. It would be useful for this to be developed as soon as possible. One model would be the Social Security Advisory Committee (SSAC) in Westminster although we are not tied to this, and believe it would be worth considering what would work best in Scotland for the new system, including a role in assessing how devolved and reserved powers and benefits interact.

Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?

Purpose of social security

We believe that there should be more in the Bill about the purpose of social security. In particular, for disabled people, social security should play a key role in negating additional financial costs and the high levels of poverty faced by disabled people.

Disability benefits account for the overwhelming majority of funds being devolved – around 84% according to the forecast expenditure in Scotland for 2017-18 in the financial memorandum. Reform of social security in Scotland must address the failure of the benefits system to adequately compensate disabled people for the extra financial costs they face to live an independent life. This is one of several reasons there are higher rates of poverty among disabled people. Another is that costs associated with disability average £550 per month. For instance, braille displays can cost thousands, £4,000 for a wheelchair, and/or additional costs for transport, cleaning, other support and equipment. A recent report found that 39% of people in poverty are in a household with at least one disabled person.

The changes to the social security system in recent years have undermined disabled people’s right to live independently and their right to family life in contravention of articles 19 of the UN Convention on the Rights of People with Disabilities (UNCDP) and Article 8 of the United Nations Convention on Human Rights (UNCHR). This has been highlighted by comments and investigations from the UN. This affects

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2 [http://www.scope.org.uk/campaigns/extra-costs/what-are-costs](http://www.scope.org.uk/campaigns/extra-costs/what-are-costs)
disabled people, carers and others around them and the wider society and economy. For all people, the social security system should be about improving income for people so they are able to participate fully in, and can contribute to, society.

The Scottish system being developed therefore needs to ensure the principles on human rights, dignity and access to what people are entitled to, are respected, and the new system goes further than the current one does.

DAS is also keen that the Committee and others consider the introduction, through the Bill and the reporting in the Bill, a disability poverty reduction target. With the recent precedent of a target in the Child Poverty Bill (Scotland), we believe it is possible to develop a target to work to and ensure poverty amongst disabled people is reduced in the coming years.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

Opportunities for improvements

DAS believes that a number of improvements and efficiencies could be made within the new system, which would benefit applicants. For instance, by reducing the number of face-to-face assessments for Personal Independence Payments (PIP). Assessments should be more personalised to a person’s condition and avoiding irrelevant questions and repeat assessments for long term conditions. Better use could be made of the application form and paper evidence, including medical and other evidence. This would reduce the number of assessments and the negative impact this process can have on people and those around them due to stress etc.

Should the system work more effectively that the current system, there would be more effective decision making and a significant reduction in appeals, which can be costly. Nearly two-thirds of appeals over PIP decisions are successful at tribunal. According to statistics from the Tribunal Service, the success rate for PIP appeals in the last quarter of 2015/16 was 63%, up from 53% in the same period of the year before. The rate of successful appeals has gone up quarter by quarter since PIP was introduced – and the number of appeals heard has also gone up very significantly, from 3,826 to 15,971. The DWP introduced “mandatory reconsideration” as an extra step claimants have to complete before going to appeal, but even with this, a clear majority of cases that go to appeal find in favour of the claimant. Beyond the stress to the people who apply for these entitlements, a burden and significant costs are being placed on the Tribunal Service. As has been acknowledged, the mechanism designed and implemented for a Scottish appeal process will have an impact on the Scottish Courts and Tribunal Services (SCTS).

There is also an opportunity for social security to be better coordinated with other systems of support and referral, such as the Welfare Fund; and signposting people to other forms of advice and support. This does not mean using benefits to pay for social care and similar costs.

More could also be done to link social security and employment, in a positive and supportive manner, for those who are able to work. This would work towards the Scottish Government’s stated aim of “at least halving the disability employment gap”. Despite the employment rate improving and the advent of the Equality Act, there is still a significant difference in the number of disabled people in employment compared to those who are not disabled. The number of disabled people in employment is

5 https://www.independentliving.co.uk/advice/pip-esa-appeals/
6 www.gov.scot/Publications/2016/12/3778
42%, compared to the overall figure of 73.4%. Employment rates have actually fallen in recent years among some disabled. There is a lot of evidence that disabled people being in work, where possible, can have economic and social benefits for individuals, the people around them and beyond. Often, disabled people want to work but find that there is either inadequate support available to help them achieve this, or that employment is difficult to obtain when they are work ready.

**If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?**

**Advocacy and advice**

Everyone accessing social security in Scotland should have a legal right to independent advice and advocacy. The level of successful appeals, particularly when advocacy is provided, highlights this. Additional information is also drawn from the detailed interviews and evaluation undertaken during the Welfare Advocacy Support Project. Access to such support will help to ensure the principles laid out for the new social security system are realised. This requires some additional resourcing but is invaluable to the people who need it and these are often the most vulnerable. And there are costs – economic and social – from not providing this support, including greater costs to the state from supporting disabled people who, if they do not have sufficient funds to live an independent life, such as higher healthcare costs, will result in a lower likelihood that they will (re-)enter the jobs market or volunteer work, for example.

As the financial memorandum, and other Scottish Government documents highlight, it is expected that the introduction of a Scottish social security system will cause additional requests for information and support. This could impact on existing advice services although the Scottish social security agency will help mitigate this impact through the provision of pre-claims support services. The extent of additional support required will be dependent on the timing and extent of change to the social security system in Scotland. The Scottish Government will continue to engage with advice service provider, as the programme to implement the social security system in Scotland progresses.

The preferred option for the agency may include co-location with local authorities, but may also include co-location with other public sector bodies. As for local authorities, the expectation is that the full cost incurred in facilitating the provision of face-to-face pre-claim and support services would be recharged to the agency. This will be important for people across Scotland to access the support they need in an accessible manner, and avoid some of the problems with the current system.

There is also an opportunity for social security to be better coordinated with other systems of support and referral, which colocation may encourage; and wider signposting people to other forms of advice and support. While we believe this to be the Scottish Government’s intention, there isn’t anything in the Bill which would legislate for this.

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**For more information, or to discuss the contents of this submission, please contact:** Layla Theiner (layla@disabilityagenda.scot; 07876 865342).

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7 https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/regionallabourmarket/apr2017
