About Scottish Refugee Council
In 2015 Scottish Refugee Council celebrated 30 years of working to ensure that all refugees in Scotland are treated fairly, with dignity and that their human rights are respected. Our vision is for a Scotland in which all people seeking refugee protection are welcome. As an independent charity, we provide essential information and advice to people seeking asylum and refugees in Scotland, campaign for political change, raise awareness about issues that affect refugees, and work closely with local communities and organisations.

Introduction
We welcome the opportunity to contribute to the consultation and would be happy to provide further information on the points raised in our submission. In our response, we draw on our more than thirty years’ experience of working with refugees and their communities in Scotland. Our focus is on the impact of social security on refugees in Scotland and we therefore do not provide comments on all areas of the consultation. In it, we build upon our response to Scottish Government's November 2016 social security consultation which contains useful information on social security and refugees.

The general approach
There are many elements of the Bill which signify a step forward in the way that Social Security will be dealt with in Scotland including the enshrining of principles which put claimants at the heart of the delivery model and the introduction of a more generous carer’s allowance system than previously in place. However, the bill does not contain enough detail about how the new devolved benefits should work and too much has been left to the Scottish Government to put in regulations which lack the level of scrutiny and oversight of primary legislation. The bill also lacks detail on when and how benefits will be uprated.

Recommendation: the Bill should be amended to provide details about the parameters of the benefits, a duty to up-rate benefits and create rights-based indicators and introduce limitations on when and how benefit regulations can be altered before further primary legislation is required.

It is disappointing that the Bill contains no provision for advice and advocacy. Scottish Parliament’s Equality and Human Rights Committee's recent report on destitution clearly recognised this as a gap in the system leading to increased risk of destitution for asylum seekers and new refugees. Like many groups, advice and advocacy is key to ensuring individuals are able to access their entitlements and challenge the system where necessary.

Recommendation: the Bill is amended to include provision for independent advice and advocacy, tailored to the needs of different groups in society.

Principles
We welcome the fact that the Scottish Government has chosen to enshrine its principles in legislation and that, since the last consultation, the principles have been amended to include reference to social security as a human right. However, as mentioned in our response to
Scottish Government’s November 2016 social security consultation, these principles should expand on Scotland’s human rights approach in line with the requirements of the UN Covenant on Economic and Social Rights addressing issues of availability, adequacy; accessibility; non-discrimination and equality; inclusivity and the proactive promotion of rights; using maximum available resources to achieve the full realisation of economic, cultural and social rights; A commitment towards the progressive realisation of social security rights for all; and the consideration of the needs of women, non-nationals, minorities and other groups. Furthermore, the Bill should explicitly state that the new agency will be bound by the requirements of Scotland’s Economic and Social Duties.

The principles should also explicitly reference the European Pillar of Social Rights which, among other things, seeks to ensure all people have adequate access to social protection, unemployment benefits, a minimum income and equal opportunities. This will ensure that, after the UK exits European Union, Scotland will not be left behind, will keep pace with the European Union on issues such as social protection and will make clear that Scotland will be a leader in these matters.

**Recommendation:** the principles should be amended to include reference to its responsibilities under the UN Convention on Economic and Social Rights and European Pillar of Social Rights

We agree with the principle of creating a role for Scottish Ministers in ensuring people access their entitlements. However, in order to make a truly distinctive system this principle should be changed to create a responsibility for Scottish Ministers to ensure people access their entitlements with no detriment to their other entitlements. Our suggestion regarding automatic entitlements to carers allowance outlined below is an example of how this responsibility could be fulfilled in practice:

**Recommendation:** the principle at section 1 (b) is amended to replace the word “role” with the word “responsibility” and to include the principle of no detriment

**The charter**

We welcome an approach that the rights of individuals are detailed in a document. However, there is currently a lack of clarity on what the charter is intended to do. We consider that any charter should set out in user-friendly terms individual rights and responsibilities and should be a source of legally enforceable rights for claimants. Without this a charter loses considerable meaning:

**Recommendation:** the Bill should be amended to specify that the contents of the charter are legally enforceable.

The bill states that the Charter should outline how the Scottish Government develops social security policy which appears to confuse its purpose as a legally enforceable document.

**Recommendation:** Scottish Ministers report separately on its policy ambitions based on its progress towards achieving the human rights principles set out above.

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1 International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 9, available at: [http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx) and UN Committee on Economic, Social and Cultural Rights (2008), General Comment No. 19: The right to social security (Art. 9 of the Covenant), available at: [http://www.refworld.org/docid/47b17b5b39c.html](http://www.refworld.org/docid/47b17b5b39c.html)
Scottish Refugee Council response to Scottish Government Consultation on Social Security in Scotland

**Rules for social security claims, challenges**

We outlined in our response to Scottish Government's November 2016 consultation how refugees find the social security system over-complicated and confusing. While the changes suggested relating to challenging decisions make some improvements (in particular relating to setting time limits for internal reconsiderations), this system retains key elements of mandatory reconsiderations, requiring people to proactively request referral to tribunal which is an unnecessary barrier. A system similar to the “pre-2013” system (or the one currently used in Housing Benefit challenges) would remove this barrier.

**Recommendation:** the challenge process should be amended to require the completion of one form only which will then lead to a reconsideration and, in the event of an unsuccessful reconsideration, an automatic referral to a tribunal.

Although we welcome some of the progressive aspects of the recovery proposal (for example having regard for people’s financial position before recovery and the 5 year limitation period) the proposed system implies liability to repay overpayments caused by official error (para 36(1)). This is contrary to the principle of respect, dignity and human rights as it punishes people for systemic mistakes and replicates the UK government’s unfair Universal Credit recovery system.

**Recommendation:** recovery should only be possible where benefit has been paid as a result of misrepresentation or failure to disclose a relevant fact.

**The Schedules relating to devolved benefits**

We note that the legislation allows for regulations to be set for many of the devolved benefits (including disability and carer’s benefits) to be subject to residence or presence tests. We set out in our response to Scottish Government's November 2016 social security consultation how past presence tests in disability and carer’s benefits have been found to be unlawful.

**Recommendation:** the Bill should strictly prohibit imposition of past presence tests in all devolved benefits on presentation of documentation proving right to reside (for example a passport, biometric residence permit or evidence of their nationality of an EEA state).

The bill also states that assistance from many of the benefits “may or may not take the form of money”. We consider that paying benefits in cash where at all possible (taking into account the genuine informed choice of the claimant) is fundamental to ensuring the principles of respect, dignity and human rights are followed and we echo the call made by Child Poverty Action Group that these parts of the Bill are changed.

**Recommendation:** that the parts of the Bill referring to “may or may not take the form of money” be reworded to “claimants should be given the choice of the nature of the payment, with cash available whenever possible”

The current system of benefits discourages the claiming of certain benefits as it is not linked up. For example, although many people become entitled to carer’s allowance as a result of a successful claim for Personal Independence Payments, the system expects that person to know their rights and make a separate claim. The Bill is an opportunity to change this.

**Recommendation:** the schedule is reviewed to provide for automatic entitlement to benefits if the agency becomes aware of an existing entitlement. This should be a step in moving towards a single benefit for disabled people and their carers.

**Short term payments**

Although the Scottish Government’s proposals go some way to remedying injustices caused by the introduction of mandatory reconsiderations, the system proposed is over-complicated as it requires people to make a claim for another benefit while they wait for an appeal to go
through. The outcome would be better achieved if existing claims remained in payment pending a review and appeal, ending only when a tribunal has confirmed the payments must come to an end. There is no need to introduce a new benefit for this and, combined with our suggestion above that claims are automatically referred to appeal tribunals after internal reconsideration, all barriers to appeal can be effectively removed by taking this step. **Recommendation:** short term payments are replaced by continued payment of existing entitlements until a tribunal has confirmed the removal of the benefit.

**Topping up and creating new benefits**

Both the All-Party Parliamentary Group on Refugees at Westminster report, recent integration report and the Scottish Parliament Equalities and Human Rights Committee recent report on destitution confirmed that the UK refugee protection system is ‘two-tiered’. Women, men and children seeking protection in the asylum process (including those who get a positive decision) receive a different, lesser and far more restrictive form of accommodation, financial support and entitlement to work than those who enter the UK through humanitarian or resettlement programmes. This can aggravate the trauma and isolation for those seeking asylum. They confirmed that destitution pervades the asylum experience in Scotland including for those who receive status but suffer high levels of homelessness during the asylum-refugee transition phase. One theme in the report was, again, the corrosive harm exerted by the asylum process upon those in it. The Cabinet Secretary for Communities, Social Security and Equalities recognised this when speaking on the proposed amendment on refugee and asylum poverty during the Social Security Committee’s consideration of the Child Poverty (Scotland) Bill. **Recommendation:** Serious consideration is given to the creation of a new devolved benefit – a one-off starter grant – that new refugees who are in Scotland are entitled to assist in their transition from the difficult asylum process into their new lives and integration in Scotland. This can support the Scottish government’s excellent New Scots refugee integration framework and provide crucial practical assistance and choice to refugees keen to accelerate their contribution to Scottish life. This should also be considered for other groups transitioning from difficult processes.

We also support the call of CPAG, SCoWR and others for a £5 top-up of child benefit to alleviate child poverty for all new refugee families with children.

**Discretionary Housing Payments**

Discretionary Housing Payments (DHPs) are a key mechanism for combatting housing-related poverty, particularly in the light of the egregious welfare reforms put in place by the UK Government around the bedroom tax and benefit cap. This is also a key opportunity for the Scottish Government to use the DHP system address the cross-cutting issues of housing and inequality.

**Recommendations:**

- All Local Authorities should be required to have a DHP scheme
- DHPs should be made available to all homeless people waiting for a Community Care Grant to be paid in order to move into settled housing
- The system as a whole is reviewed to ensure it is equipped to combat the bedroom tax, benefit cap and the impending social housing LHA maxima.

**For further information, please contact:**

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