SOCIAL SECURITY COMMITTEE - SOCIAL SECURITY (SCOTLAND) BILL

CALL FOR EVIDENCE

About Us

NHS Health Scotland is a national Health Board working with public, private and third sectors to reduce health inequalities and improve health.

Our corporate strategy, A Fairer Healthier Scotland, sets out our vision of a Scotland in which all of our people and communities have a fairer share of the opportunities, resources and confidence to live longer, healthier lives.

Our mission is to reduce health inequalities and improve health. To do this we influence policy and practice, informed by evidence, and promote action across public services to deliver greater equality and improved health for all in Scotland.

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We are content for our response to be made available to the public and to be contacted in the future.

Key Messages:

- In addition to the seven agreed principles, the Social Security Bill should also include a principle to protect the physical and mental health of people and their families.
- The social security powers being devolved to Scotland provides a substantial opportunity to progress the human rights agenda in Scotland, including the Right to Health.
- The Scottish Parliament could reflect on whether the Bill needs to include mechanisms to recognise and respond to the unintended, adverse consequences of changes in the reserved benefits system, since these will in future have direct and indirect financial costs for the Scottish Parliament.
QUESTION 1: Do you have any views on this approach?

1. We agree with the approach the Scottish Government has chosen to put most of the rules about the new benefits in Regulations.

QUESTION 2: What are your views on these principles and this approach? Please explain the reason for your answer. Q. Are there other principles you would like to see included?

2. We agree with the seven principles. However, an additional principle should be included: the Scottish social security system will protect the physical and mental health of people and their families.

“Income is considered to be the most important social determinant of health”. The Bill could reflect the role of the Scottish social security system in reducing poverty, including child poverty.

Whilst the main working age and pension benefits remain reserved, health is a devolved responsibility. Where reserved benefits do not provide sufficient income to protect health, the Scottish social security system should provide this protection where it has the powers to do so.

QUESTION 3: Q. Do you agree with the idea of the charter? Please explain the reason for your answer. Q. Is there anything specific you would like to see in this charter?

3. We agree with the idea of a publicly available social security 'charter' and support the accountability mechanisms outlined in section 6 (Annual report). This could include a duty to report on the impact of the social security system on the health and wellbeing of people using the service and staff working in the service.

The Scottish Parliament could consider independent scrutiny of Scottish social security arrangements. This could be a mechanism to scrutinise social security arrangements in isolation or a mechanism to scrutinise a wider range of policy delivery arrangements collectively. Consideration could be given to establishing a scrutiny body. The mechanism for scrutiny of social security could have a broader remit than overseeing decision-making standards and could include (for example) quality of service and be able to make recommendations to improve the system. Learning from the Expert User Panel involvement might inform ways to involve individuals using the social security service in this scrutiny role.

There are specific things we would like to see in the charter. A collaborative social security system, that minimises or avoids barriers (cost, accessibility, discrimination, stigma) to people accessing and navigating its services, is likely to contribute to reducing health inequalities. Accessibility should be defined clearly in the charter in order to effectively measure performance relating to all aspects including accessible information formats, locations, opening hours, cultural responsiveness, literacy, physical ease of access, social and health support. The charter should explain in plain language, the rights and entitlements of individuals using the social security service and staff working in the service. The charter
should support people to understand their rights, encourage individuals using the service and staff to suggest ways to improve the system and empower them to exercise these rights. The charter should incorporate key public service reform objectives demonstrating the social security service is built around people, effective in partnership, prioritising prevention, reducing inequalities and promoting equality and continually improving performance. Existing frameworks could be used to develop a performance framework for the Charter, including: the Scottish National Action Plan for Human Rights; The Fair Work Framework; and Christie Commission on the Future of Public Services.

The social security powers being devolved to Scotland provides a substantial opportunity to progress the human rights agenda in Scotland, including the Right to Health. There would be value in building on the PANEL\textsuperscript{iii,iv} framework and stated principles: Participation; Accountability; Non-discrimination; Empowerment and Legality. Using a rights based foundation for the social security charter has the potential to support a change in social attitudes.

The charter should enable success against putting the seven principles in practice. This could also be judged, in part, by whether when mistakes are made, they are put right. This currently happens in fewer than half of cases where mistakes are made in UK social security system\textsuperscript{v} (e.g. 57% of PIP Claimants who had experienced difficulties or problems in 2015/16 reported that these had not been resolved).

**QUESTION 4: Do you have any comments on these rules?**

4. The rules proposed in the Bill should aim to either avoid completely or (if this is not possible) minimise as much as possible psychological distress and economic hardship among people claiming social security benefits and their families. This applies to both the process of claiming and appealing and the outcomes associated with receiving benefits.

A system that is good for health would have the following characteristics:

- It is collaborative and minimises or avoids barriers to people accessing and using it.
- Financial support provided is adequate to maintain a healthy standard of living.
- The decision-making process (including appeals process) is fair and transparent.
- Decision-making quality is high and the time taken to make decisions minimal.
- A proportionate, evidence based approach is taken to take-up rates, underpayments, overpayments, debt and fraud.

**Avoiding additional, unnecessary psychological distress**

The roll-out of UK welfare reforms since 2013 has been accompanied by increased anxiety among groups likely to be claiming devolved benefits. In the period 2008-11, 29% of adults in Scotland who were ‘permanently unable to work due to ill health’ had anxiety symptoms of moderate to high severity. In the period 2012-15, this increased to 40%. Increased levels of anxiety were also reported for people claiming other state benefits\textsuperscript{vi} (many of whom are likely to be claiming disability benefits).
Change and uncertainty can have a bearing on anxiety levels therefore rules should cover how decisions can be changed as well as how and when original decisions are made.

The decision-making process (including the appeals process) is seen as fair and transparent.

Reduced sense of control\textsuperscript{viii}, and perceived organisational injustice\textsuperscript{viii ix}, has a detrimental impact on the health of working-age adults. Variation in satisfaction by people claiming different benefits suggests fair or unfair treatment is not inevitable. In 2013, 10\% of DLA claimants reported being treated unfairly by the system, compared to less than 2\% of people claiming the State Pension\textsuperscript{x}. In 2015/16, dissatisfaction with transactions varied from 2\% for AA to 26\% for PIP (for new claims) and from 16\% for DLA to 26\% for PIP (for reassessments)\textsuperscript{xi}.

Barriers to administrative justice are minimised, decision-making quality is maximised, and the timescales are reasonable.

Alternatives to the proposed two-tier appeals system should be considered. The proposed system is likely to create additional barriers to access the service, with negative implications for health inequalities\textsuperscript{xii}.

We would also recommend the Scottish Parliament incorporate into the Bill clauses about accessibility and the rights to information under the UN Convention on the Rights of People with Disabilities, both for people making claims and appeals. This would avoid some of the challenges of the current system for disabled people e.g. in the current system there is no way for some people with visual impairments to appeal without support because the current system requires them to download an appeals form and then complete it in writing before posting it to the tribunal.

For disability benefits (especially PIP/DLA) decision-making quality in the current system is poor. The tribunal system currently deals with a similar volume of decisions as in 2011/12 but the proportion of original decisions upheld has declined from 57\% to 35\%\textsuperscript{xiii}. The problems evident from the administrative data are supported by the claimant experiences. Two-thirds (65\%) of PIP claimants who had asked the DWP to reconsider or appeal a decision were dissatisfied with the way the process was handled\textsuperscript{xiv}.

Delays and mistakes can lead to increased economic hardship for individuals making claims. For example – the risk of poverty among a working-age adults claiming DLA/PIP was 24-25\% in 2015/16. For those in households where someone was disabled but where the household was not in receipt of disability benefits, this risk increased to 30\%\textsuperscript{ xv}. Loss of control and sense of unfairness is also likely to be damaging to claimants’ health and could result in additional public and private costs (e.g. through tribunals, travel costs and time to claimants and advice services, opportunity costs to the Scottish Social Security agency of putting things right).
A proportionate, evidence based approach could be taken to take-up rates, overpayments, underpayments, debt and fraud.

Chapter 4, Section 36: Liability, partly contradicts the principle that “the Scottish social security system should always be trying to improve. Any changes should put the needs of those who require social security first.” A more reasonable response would be to limit an individual’s liability for error to situations where assistance was given on the basis of information which the claimant could reasonably have known to be incorrect at the time.

Legislation on overpayments due to claimant error should also take into account (a) the limited evidence base that exists for the benefits being devolved and (b) the scale of the problem.

It would be helpful for the Bill to consider setting out its approach to underpayments and take-up as well as overpayments. This would be consistent with the principle that “the Scottish Government has a role in making sure that people are given the social security assistance they are eligible for.”

Individuals using the service should not be overburdened with providing information that is already held in the system or another public service system from which it is reasonable and legal to access, since this is likely to create further barriers to access which are unlikely to reduce health inequalities.

QUESTION 5: What are your thoughts on the schedules in the bill in regard to these benefits?
5. The schedules in the Bill appear reasonable to inform what the regulations may cover.

QUESTION 6: Do you agree with these proposals?
6. We support the proposal to have a new type of short-term assistance because of the poverty risks highlighted in our response to Q4. We interpret this to mean that benefits being received are not reduced or stopped until appeal processes are exhausted and that no one would have to repay benefits that they receive if they lost the appeal. This should be made clearer in the wording in the Bill.

QUESTION 7: What are your thoughts on this proposal?
7. In terms of the Scottish Government being able to top up ‘reserved’ benefits, the Bill could include a commitment to top up reserved benefits or create new benefits where there is evidence of reserved benefits creating possible or actual harm to health. Where reserved benefits do not provide sufficient income to protect health the Scottish social security system could provide this protection where it has the powers to do so. Monitoring of the impact of welfare reforms on health, currently commissioned by the Health Impact Delivery Group (HIDG) should continue, as this will provide evidence of the health impacts to prevent or mitigate. Increased data linkage would improve the quality and value of monitoring reports of this kind.
QUESTION 8: The Bill proposes that carer’s allowance should be increased as soon as possible to the level of jobseeker’s allowance (from £62.10 to £73.10 a week). Q. What are your thoughts on this proposal?

8. We welcome the proposal to increased Carers Allowance to the level of jobseeker’s allowance, however, £10 a day is still too low a level for some people to maintain an adequate standard of health\textsuperscript{viii} \textsuperscript{ix}. More work also needs to be done to understand the reasons behind, and implications of, the increased growth in the numbers of lone parents claiming carers allowance as this may present an additional challenge in tackling child poverty.

QUESTION 9: Do you agree that discretionary housing payments should continue largely as they are? Q. Do you have any other views on the proposals for discretionary housing payments?

9. As proposed in the Bill, Discretionary Housing Payments (DHP) should remain largely as they are in Scotland. These arrangements should be subject to evaluation and review to inform ongoing improvement, ensuring DHPs are accessible to those people who need support most and provide sufficient support to prevent poor health and wellbeing outcomes.

QUESTION 10. Q. Is there anything else you want to tell us about this Bill?

10. We are concerned that UK Welfare reform is having unintended, adverse consequences for health, and this partly explains the stability in Employment Support Allowance and the rise in DLA/PIP and carer’s allowance caseloads since 2012, in Scotland as well as the rest of the UK.

The Scottish Parliament could reflect on whether the Bill needs to include mechanisms to recognise and respond to the unintended, adverse consequences of changes in the reserved benefits system, since these will in future have direct and indirect financial costs for the Scottish Parliament. If this is not possible, perhaps it could include (in the annual report?) a requirement to note developments in the reserved system and the impact on devolved benefits.

\textsuperscript{i} Income, Wealth and Poverty, NHS Health Scotland, April 2017.
\textsuperscript{ii} Health Inequalities. What are they? How do we reduce them? NHS Health Scotland, July 2015.
\textsuperscript{iii} http://www.scottishhumanrights.com/careaboutrights/whatisahumanrightsbasedapproach
\textsuperscript{v} DWP claimant service and experience survey 2015 to 2016.
\textsuperscript{vi} Scottish Health Survey, NHS Health Scotland analysis.
http://www.sciencedirect.com/science/article/pii/S1353829216000241#f0005

DWP claimant service and experience survey 2013.

DWP claimant service and experience survey 2015 to 2016, table 1.2.


HMCTS: Tribunals Quarterly and Annual reconciled returns, NHS Health Scotland analysis.

DWP claimant service and experience survey 2015 to 2016.

DWP Households Below Average Income: 1994/95 to 2015/16.

For DLA, current estimates of overpayment due to error are still based on a one-off, 2004/05 review: the figures are 0.6% from claimant error and 0.8% from official error. For carers’ allowance, estimates of overpayments due to error are based on a one-off, 1996/97 review: the figures are 1% for claimant error and 0.6% for official error. No estimates are available for the other benefits being devolved.

Estimates of underpayments are estimated to be 2.5% for DLA and 0.1% for carers’ allowance (on the same limited and dated sources as for error and fraud). Estimates for the other devolved benefits are unavailable.

Estimates of take-up for AA, DLA/PIP and carers allowance are not available, at least in part because of the methodological difficulties in producing these statistics. However, the DWP has previously published feasibility studies which could be used as a starting point to achieve this aim.
