SOCIAL SECURITY (SCOTLAND) BILL
POLICY POSITION PAPER

SOCIAL SECURITY PRINCIPLES AND A RIGHTS BASED APPROACH

Introduction

This paper is one of a series through which the Scottish Government aims to support scrutiny of the Bill by setting out its current policy thinking on key matters to be examined during stage 1. This specific paper is focused on the principles set out at section 1 of the Bill and the Scottish Government’s commitment to a human rights based approach.

The Core Principles

The Scottish Government has made clear it will use opportunities presented by devolution to take a different approach to social security. The intention is to eradicate the adversarial nature of the present system, replacing it with a new, distinctly Scottish system founded on dignity, respect and human rights. In line with the strong support for this approach evident in the Consultation on Social Security, all aspects of the design, development and delivery of this new system will therefore be defined by adherence to the key principles set out in section 1 of the Bill, as introduced. The Scottish social security principles are:

a) social security is an investment in the people of Scotland,
b) social security is itself a human right and essential to the realisation of other human rights,
c) respect for the dignity of individuals is to be at the heart of the Scottish social security system,
d) the Scottish Ministers have a role in ensuring that individuals are given what they are eligible to be given under the Scottish social security system,
e) the Scottish social security system is to be designed with the people of Scotland on the basis of evidence,
f) opportunities are to be sought to continuously improve the Scottish social security system in ways which put the needs of those who require assistance first,
g) the Scottish social security system is to be efficient and deliver value for money.

As is acknowledged in the Scottish Human Rights Commission’s submission to the Committee, these seven core principles deliberately correspond to some of the fundamental aspects of the right to social security, as set out in key human rights instruments such as the International Covenant on Economic, Social and Cultural Rights, the Universal Declaration of Human Rights and the European Social Charter. These principles are the foundation upon which all aspects of the new system will be built. They are established on the face of the Bill, in line with strong stakeholder and public support, with the intention of embedding the more positive, supportive ethos of the Scottish system from the very outset.
The Bill includes the principle that “Scottish Ministers have a role in ensuring that individuals are given what they are eligible to be given under the Scottish social security system.” This reflects the Scottish Government’s commitment to help maximise people’s incomes and to ensure that those who are eligible, but who are not currently making claims, receive the assistance to which they are entitled. The Scottish Government is already giving practical effect to this principle by delivering a programme of activity throughout this Parliamentary term, to raise awareness of social security assistance, and ensure that people are receiving what they are entitled to. This will include a benefit take up campaign, to help ensure people maximise their incomes and a new Financial Health Check service for people on low incomes. In addition, in 2016/17 the Scottish Government provided around £21 million of funding for advice service-related projects and a similar level of investment is planned for 2017/18. Placing this principle on the face of the Bill cements this commitment in legislation, making it an intrinsic part of the Scottish system.

The Scottish Government notes some concern that the final principle that “the Scottish social security system is to be efficient and deliver value for money” may conflict with the other principles. The Scottish Government understands this concern. However, as the preceding principle makes clear, the needs of those who require assistance will always be the first and most important consideration. Achieving efficiency and value for money simply reflects the need to ensure that every penny of public money achieves maximum value for those who should benefit most from the system – the people who rely on social security. As the other principles and our wider approach make clear, this is principle is firmly not, and never will be, about using public finances as an ideological excuse to breach or undermine people’s rights.

The evidence submitted to the Committee contains many thoughtful and worthwhile proposals to adapt or expand on the principles contained in the Bill. The Scottish Government is committed to working with the Committee, stakeholders and those with direct lived experience of social security to consider whether the principles identified through the previous consultation process can be improved in light of these proposals.

A Human Rights Based Approach

The new system will seek to reverse the stigma currently associated with accessing assistance and will seek to support and encourage people to exercise their rights to the fullest possible extent. This is reflected in the principle that “Social security is itself a human right, essential to the realisation of other human rights.”

That said, the Scottish Government recognises that its commitment to human rights must go well beyond articulating these values in legislation. A rights based approach must be the cornerstone of the new system; from policy development and service design, all the way through to the delivery of benefits, the way that agency staff are recruited and trained, and the interaction between staff and the people who use the new service. The work to develop the full services, systems and procedures that will be necessary to operate the new system is still in its relatively early stages. As a consequence, the full picture of all of the different ways in which a rights based approach will be given practical effect will only fully emerge over time. However, the
Scottish Government considers that its actions and commitments so far demonstrate that a rights based approach is at the core of everything that it is doing on social security. For example:

- Public campaigns to raise public awareness of entitlement, with the ultimate aim of improving take-up.
- The commitment to increase Carer’s Allowance to the level of Job Seeker’s Allowance, including early introduction through an interim, supplementary payment.
- The commitment to bring forward a new package of support for young carers.
- The commitment to increasing Carer’s Allowance for carers looking after more than one disabled child.
- The substantial increase in support offered by Best Start Grant (BSG) in comparison with the UK’s Sure Start Maternity Grant. For a family with two children, the BSG will provide £1900 of support over the period of their early years, compared to £500 that is currently available from the UK Government.
- The commitment to end unnecessary re-assessments for the disability benefits, and to reducing as far as possible the need for face to face assessments.
- To ensure that, where assessments are required, they are not carried out by the private sector, instead being conducted by trained professionals with expertise of the conditions they are tasked with assessing. Profit will never be put before people.
- The recruitment of over 2,400 people with direct experience of the current system to help design a new and better social security model for Scotland.
- The agency will provide locally accessible face-to-face pre-claims advice and support co-located, where possible, in places people already visit.
- Commitment to ensure agency staff are trained in a way that is consistent with the principles and Charter and to see people as individuals with specific needs and to be responsive to the specific help and support that each person requires.

To ensure that all aspects of its work continues to meet the very high standard of a rights based approach, the Scottish Government is working closely with the Equalities and Human Rights Commission (EHRC) and the Scottish Human Rights Commission (SHRC). These expert organisations are acting as a critical friend and sounding board, advising the Scottish Government on where it can deepen and improve its approach. For example, they have agreed to develop sessions for Scottish Government officials to ensure they fully understand and apply a rights based approach in all of their work to develop the new system. Similarly they are advising on the best way of ensuring that all agency staff undertake mandatory training on applying a rights based approach in their everyday interactions with the people using the system.

The Scottish Government will also seek to learn and apply lessons from the research recently published by the University of Ulster on international examples of public services founded on dignity and respect. The Scottish Government is confident that the new system will itself come to be regarded as an international exemplar in this regard.
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SOCIAL SECURITY CHARTER AND INDEPENDENT SCRUTINY

Introduction

This paper is one of a series through which the Scottish Government aims to support scrutiny of the Bill by setting out its current policy thinking on key matters to be examined during stage 1. This specific paper is focused on the social security charter and independent scrutiny.

The Charter

The idea of a publicly accessible charter, communicating in clear terms what people are entitled to expect from the new system, received strong support both in response to the consultation and in wider public and stakeholder engagement. The Scottish Government has since committed to developing the charter in partnership with the people of Scotland, starting from a ‘blank sheet of paper’ and has made express provision for this on the face of the Bill.

The following, therefore, are high-level functions that the Scottish Government presently believes the charter could encompass (based on feedback from stakeholders and the public to this point). These will be fed in to the drafting process but, of course, the final draft will also be dependent on the input of others. The Scottish Government’s position, going in to the drafting process, is that the charter could:

- Provide a clear, plain English statement of what people are entitled to expect from the new system.
- Translate the core principles from high level statements into commitments to deliver specific, measurable outcomes, establishing a strong link between the principles and the way that the system actually performs.
- Be developed in close partnership with stakeholders and those with direct lived experience of the system.
- Involve a statutory requirement for Ministers to report to Parliament on progress made against the commitments contained in it.

In terms of what kind of product the charter should be, subject to the outcome of co-design, the Scottish Government’s initial view, again at arrived at in line with public and stakeholder feedback, is that it should be short, clear and analytically rigorous. Such a charter could:

- Provide an accessible and understandable articulation of people’s rights.
- Be analytically robust, setting out clear outcomes and indicators of how those outcomes will be evidenced; avoiding the risk of the charter amounting to little more than warm platitudes.
- Set out clear and robust arrangements for individuals or organisations to seek redress in circumstances where it is felt rights have not been fulfilled.
At systemic level, provide for strong scrutiny and accountability – there should be little dubiety over whether outcomes are being achieved.

**Reporting and Evidence**

The Bill places a statutory duty on Ministers to report to Parliament on what they have done to meet the expectations of them set out in the charter. The Scottish Government has noted the concern that it may be difficult to demonstrate progress against relatively subjective concepts such as ‘dignity’ and ‘respect’. The Scottish Government is therefore thinking carefully about how it might employ techniques of a more qualitative nature such as survey data, feedback from individuals, focus groups or an on-going role for Experience Panels.

Introducing such techniques to support formal scrutiny would be a progressive step, in keeping with the commitment to do things differently and to take an open and person centred approach to public service design and delivery. It would also enable the assembly of a formidable aggregate picture of how the system is performing against the charter at both a systemic and individual level.

**Driving Systemic Progress**

The charter should be intrinsic to the system, defining its ethos and setting standards of performance that will ensure this ethos is translated into procedures and behaviours that deliver a positive experience in the first place for everyone interacting with the system. The rights contained in the Charter, and the ethos they represent, should infuse all aspects of service delivery, and this is itself an important aspect of realising and protecting people’s rights.

The proposed process should also be capable of driving improvements for individuals. For example, if reporting mechanisms revealed that some aspect of the system was falling short of the rights set out in the charter e.g. high rates of complaints on similar issues, then this would clearly be something that Parliament would scrutinise and that Ministers, where appropriate, would seek to address, either through reviewing policy or by issuing operational guidance to the agency. This should then translate into an improved service and therefore a better experience for individuals. Similarly, the agency’s complaints and appeals procedures will also be strongly reflective of the values and standards set out in the charter, again strengthening the nature of the redress that is available to individuals. In this way, the charter can be seen as a mechanism to support the Scottish Government and Parliament to assess what is not working and where improvements require to be made.

Of course, all individuals who use the social security system will also have the right to access the services of a First-tier Tribunal (for appeals) and the Scottish Public Services Ombudsman (for complaints), as well as onward to further judicial review, if required.
Rights and Redress

The Scottish Government is strongly committed to ensuring that meaningful redress is available to individuals where it is felt that some element of the system is failing to live up to the charter. It has therefore paid close attention to the view, expressed by a number of stakeholders and Committee members, that the charter should be legally enforceable. The Scottish Government recognises the legitimacy of these arguments and accepts they are worthy of careful consideration in line with the rights based approach it is committed to delivering.

That said, there are also a number of potential disadvantages to a legally enforceable charter and it is important that these are also reflected in this conversation. For example, if the charter is to be a legal document there is a risk that it becomes necessary to draft it with legal precision, perhaps detracting from its original purpose as something more accessible than legislation. The recent research published by the University of Ulster also finds that the Courts, including the European Court of Human Rights, are often reluctant to find that Parliaments have exceeded their authority to determine social and economic policy, concluding that the Courts “represent an inefficient means of protecting dignity and respect on a systematic scale” and that “it is through the legislature that most rights will continue to be realised.”

The Scottish Government has yet to arrive at a final position on the best model for achieving meaningful redress, in relation to the charter. Indeed this is likely to be one of the key matters to be considered during the co-design process.

Similarly, while the Scottish Government is clear that there is a need for independent scrutiny, it has yet to arrive at a final position on how this might best be realised. The Minister for Social Security, Jeane Freeman MSP, has written to the Convener of the Social Security Committee and has commissioned work from the Scottish Government’s Expert Advisory Group on Disability and Carers’ Benefits, to ask that they both consider the issue of scrutiny of the Scottish social security system. The Scottish Government awaits the results of both bodies’ consideration and will provide a further update on this matter, once their advice is available.

With that caveat, the Scottish Government’s position, at this time, is that it might be possible - subject to the agreement of Parliament - for a body convened to provide advice and scrutiny on Scottish social security matters, to also champion people’s rights in relation to the charter.

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