

**SOCIAL SECURITY COMMITTEE  
SOCIAL SECURITY (SCOTLAND) BILL  
SUBMISSION FROM ARGYLL AND BUTE COUNCIL**

## **The Social Security Bill: What do you think?**

Control of a number of existing social security benefits is being passed from the UK Government to the Scottish Government. The Parliament would like your views on the Scottish Government's plans before they become law. The Social Security Bill is the proposed law.

1. The Bill aims to provide a framework for the creation of the Scottish social security system. In addition the Scottish Government has chosen to put most of the rules about the new benefits in Regulations. It believes that putting the rules in Regulations will make things clearer and less confusing. Parliament cannot change Regulations, only approve or reject them. The Scottish Government intends to develop Regulations with external help.

### **Q. Do you have any views on this approach?**

We are disappointed that so little of the detail is in the draft bill and that the majority of the rules will be put into the detailed regulations. Regulations are subject to only very limited scrutiny through the Scottish Parliament (negative or affirmative resolution as provided at section 55). We would prefer that the approach of the UK government is taken where much more of the principles of the detailed rules is set out in the Act. We do not accept the argument that this makes the legislation confusing to follow. It is still perfectly possible for the detailed regulations set out in Scottish Statutory Instruments to be fully comprehensible on a standalone reading even though they cross reference to the main Act.

The Financial Memorandum only assumes that there will be different costs for Carers Allowance and Best Start Grant. For all other benefits being devolved, it is assumed that the costs will be the same as currently experienced by the UK Government. That can only be the case if eligibility rules, upratings and take-up are all identical. Whilst understandably there is an intention to minimise change for current recipients, the purpose of the benefits being devolved is that the Scottish Government can make their own decisions about priorities. It is therefore most unlikely just to mirror UK Government approaches in future.

This approach with providing so little detail in the Bill alongside a Financial Memorandum which assumes no changes in cost gives great uncertainty over what is planned.

2. The Bill proposes that the Scottish social security system will be based on the following seven principles:

- Social security is an investment in the people of Scotland.
- Social security is a human right. It is essential to accessing other human rights.
- Respect for the dignity of individuals is at the heart of the Scottish social security system.
- The Scottish Government has a role in making sure that people are given the social security assistance they are eligible for.

- The Scottish social security system will be designed with the people of Scotland, and based on evidence.
- The Scottish social security system should always be trying to improve. Any changes should put the needs of those who require social security first.
- The Scottish social security system is efficient and delivers value for money.

**Q. What are your views on these principles and this approach? Please explain the reason for your answer.**

We note the addition of 2 new principles 1 (b) and 1 (d) along with the other principles previously consulted on. We would like to see principle 1 (d) extended to including signposting to reserved benefits which the applicant is found also to be eligible for.

We had hoped that the principles would recognise the need for the overall system to be affordable (which is different to being efficient and value for money). This Financial Memorandum recognises that any changes to benefits once they will be devolved may need to be supported from the Scottish budget. Such choices are not easy and this necessity of recognising choices between social security and other priorities such as Health provision is considered an omission from the principles.

**Q. Are there other principles you would like to see included?**

See above

3. The Bill proposes that there will be a publicly available social security 'charter'. This will say how the Scottish Government will put the seven principles above into practice. It will also say what is expected from people claiming benefits. A report on the charter will be produced by the Scottish Government each year.

**Q. Do you agree with the idea of the charter? Please explain the reason for your answer.**

Yes – this is good practice and helps to ensure that applicants and other users have a clear and realistic expectation of how the service will be delivered, to what standards etc.

**Q. Is there anything specific you would like to see in this charter?**

Unfortunately no details of what will be in the charter are given. This is most regrettable. We believe that this is a very important element and the primary legislation should give a good outline of the areas to be covered by the charter.

Specific areas which it should cover include:

- Timescales for response to calls, complaints, for making decisions and re-determinations and appeals;
- Commitment to resolving queries at first time of contact
- Treating customers with respect and dignity
- How to access services and provide access to information
- Using plain English

4. The Bill proposes rules for social security which say:

- how decisions are made and when they can be changed
- how to apply and what information people have to provide
- how decisions can be challenged
- when overpayments must be repaid
- what criminal offences will be created relating to benefits.

**Q. Do you have any comments on these rules?**

We are content with the high level details provided in chapters 3, 4 and 5 in the main. However much of the necessary detail in order to provide a full assessment of proposals is not provided in the Bill. We would like to see proposed timelines for making determinations, how applications are to be submitted (and support provided to applicants for this purpose), and timescales for submitting and considering re-determinations requests and how these are to be submitted/ supported, supporting information to be provided, how and when changes of circumstances are to be reported, the broad principles for determining recovery in comparison with financial circumstances, and more detail on when an offence would be deemed to be committed.

We note the policy objective that it must be clear what activity will be considered a criminal offence, and the intention for a more proportionate approach, but do not consider that the Bill clearly achieves this. The use of civil penalties by DWP provided a useful route where the level of fraud did not mean that prosecution was appropriate / cost-effective.

We also note that the level of housing benefit fraud cases being prosecuted in Scotland has dropped dramatically since responsibilities were passed from local authorities to DWP, and that Audit Scotland has reported their concerns on this. The framework set out in this Bill could support either a much more stringent regime or an even laxer regime.

5. The Scottish Government will take over responsibility for some current benefits. The Bill does not explain how they will work in detail. This will be set out in Regulations at a later date. The current benefits which will be run by the Scottish Government are:

- disability assistance (including disability living allowance, personal independence payment, attendance allowance and severe disablement allowance)
- carer's allowance
- winter fuel payments
- Industrial injuries disablement benefit
- cold weather payments
- funeral payments
- sure start maternity grants

**Q. What are your thoughts on the schedules in the bill in regard to these benefits?**

Again we find that the schedules are very high level generally saying that Ministers may make regulations (but do not have to) with regard to certain factors. We would prefer that this is changed to a requirement for Ministers to make regulations with regards to certain factors so that the relevance of these can be properly debated and agreed. Too much flexibility for future change without due scrutiny is provided.

6. The Bill proposes that a new type of short-term assistance will be introduced. This will be for someone who is challenging a decision to stop or reduce a Scottish benefit.

**Q. What are your views on this proposal?**

We welcome this innovative proposal which recognises the difficult financial circumstances faced by many people when a benefit stops, particularly when they consider that the wrong decision has been made and that eligibility should continue.

We would trust that this does not detract from the need to provide high quality decisions in the first instance, so that the need to seek re-determinations or appeals is minimised. We would expect careful review of the level of decisions that are overturned at these two key stages.

We agree that there is a need to protect an individual's right to challenge and to access administrative justice but this could provide an incentive for everyone to challenge all such decisions irrespective of the merits of their case simply in order to retain previous higher levels of assistance for a longer period. This should be avoided as it could encourage many badly founded appeals which are unlikely to succeed adding substantial administrative and other costs to the system. We think that the parameters of such further assistance should be defined and subject to full scrutiny and debate.

7. The Bill includes the power for the Scottish Government to be able to top up 'reserved' benefits (ones controlled by the UK Government), but does not say how these will be used. The Scottish Government also has the power to create new benefits. This is not included in the bill.

**Q. Do you agree with these proposals?**

This provides very broad powers and very limited restrictions. All details would be provided under regulations. We think that the parameters of such further assistance should be defined and subject to full scrutiny and debate.

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?**

We support this proposal as a temporary measure prior to considering further the longer term replacement with a new Scottish carers benefit.

9. The Bill proposes that discretionary housing payments continue as they are. They will still be paid by local authorities. The Bill does not require any local authority to have a discretionary housing payments scheme but if they do, they must follow Scottish Government guidance on running it.

**Q. 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?**

The vast bulk of discretionary housing payments (DHPs) relate to mitigation of the bedroom tax. On the one hand the local authority has to restrict housing benefit by the amount of the bedroom tax and then separately administer a claim for DHP to reinstate it. This is administrative nonsense for the claimant. We need the legislation amended so that the initial deduction is not made at all.

The guidance must be accompanied by appropriate funding for local authorities which allows all these costs to be met in full. The Bill suggests that local authorities could have a choice as to whether to offer DHPs or not, but there is in effect little discretion where the guidance states that the payment in certain circumstances is mandatory.

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

Argyll and Bute Council welcomes the Bill, and the opportunity to comment. The Council is encouraged by the principled approach, the proposal to have a charter, and formal annual reporting on this important matter, and the broad framework for determinations, re-determinations and appeals.

However we would welcome the opportunity to comment in more detail on the individual benefits that are being devolved, the eligibility rules and arrangements for assessment and pre-claims support. These details are not being provided at present and we will have to wait for the more detailed regulations.

We are disappointed that the opportunity to increase the level of joint working with local authorities is not being taken. This provided a golden opportunity to have a single shared assessment for disability providing access to both care and benefits.