

**Health and Social Care Alliance Scotland (the ALLIANCE)
Social Security Committee: Social Security (Scotland) Bill – Call for evidence
23 August 2017**

Q1. The Scottish Government has chosen to put most of the rules about the new benefits in Regulations. Do you have any views on this approach?

In our view, too much has been left to Regulations rather than appearing in the Bill. Although the Policy Memorandum¹ contends that putting detail in Regulations “should improve Parliament’s ability to scrutinise executive action”, it only allows for MSPs to annul or approve them. We would instead recommend a greater level of scrutiny that allows, for example, for Committee amendments.

Much of the rhetoric surrounding the new system has raised legitimate expectations of new and improved processes, including for assessments of entitlements for disabled people. Dignity, respect and accessibility are highly important for people accessing social security, like the seldom heard people the ALLIANCE consulted on behalf of the Scottish Government². We concur with the MS Society Scotland, which notes, “much of what will make this a reality and help tackle the perceived inequities in the current system, such as rules around assessments, are not addressed in the Bill”.

The ALLIANCE would like to work with MSPs to develop amendments to address other omissions, such as:

- The purpose of the Bill and what it seeks to achieve
- Definitions of key terms, like ‘dignity’ and ‘respect’
- A right to independent advocacy
- A duty on uprating and detail on the inflationary measures used
- Accountability and regular, independent oversight of the law and system
- Complaint and redress mechanisms for people accessing and working in the new system when things go wrong

Q2. What are your views on these principles and this approach? Please explain the reason for your answer. Are there other principles you would like to see included?

We welcome the Scottish Government’s approach, but believe amendments are required to strike a better balance between offering reassurance and ensuring clarity.

Overall purpose

One amendment would be to include a principle setting out the overall purpose of the legislation and what it seeks to achieve. We welcome Principle (a) that social security is an investment in the people of Scotland and believe it is also important to clarify what the purpose of this investment is. Including a purpose will also help define and guide the approaches to be taken by the rest of the system, including a new agency. We would expect reference to be made to addressing inequality and poverty in the overall purpose.

Right to social security

We strongly welcome the reference in Principle (b) to social security as “itself a human right”, however this is not enough to constitute “embedding” human rights in the legislation, as the Policy Memorandum states. To do so, we would expect the AAAQ key elements³ and rights-based PANEL

¹ [http://www.parliament.scot/Social%20Security%20\(Scotland\)%20Bill/SPBill18PMS052017.pdf](http://www.parliament.scot/Social%20Security%20(Scotland)%20Bill/SPBill18PMS052017.pdf)

² http://www.alliance-scotland.org.uk/download/library/lib_5940f03778baa/

³ AAAQ means Available, Accessible, Acceptable and Quality, according to the United Nations international treaties to which Scotland is bound and where the right to social security is found. See: <http://www.ohchr.org/EN/Issues/RightSocialSecurity/Pages/SocialSecurity.aspx>

Principles⁴ to be explicitly referenced in the Bill. Unfortunately, this level of detail is missing, which weakens the Bill's power to help people enjoy this right in practice. ALLIANCE members and others have expressed concerns about human rights principles being included in legislation (e.g. Social Care (Self-Directed Support) (Scotland) Act 2013⁵ and Public Bodies (Joint Working) (Scotland) Act 2014⁶) but then less well evidenced in practice (the 'implementation gap'). The right to social security has been extensively elaborated by the United Nations and International Labour Organisation and there are resources available to support its implementation in Scotland.

Adopting a human rights-based approach means that some wording in Principle (d) – and elsewhere in the Bill – on the role the Scottish Government plays in the new social security system needs to be strengthened. For example, "Scottish Ministers have a *role in* ensuring that individuals are given what they are eligible to be given" (our emphasis) would be changed to 'a duty' because, as state actors, Scottish Ministers have an obligation to make sure people's rights are realised, without discrimination. This should include the creation of a built-in monitoring system so the Scottish Government can identify gaps among groups who are not claiming their entitlements and take steps to address them.

Co-production

Similarly, wording used to describe the role that people will play in the new system needs to be amended if a human rights-based and person centred approach is being taken. Principle (e) indicates that the system will be "designed *with* the people of Scotland" (our emphasis). The Bill and Policy Memorandum also use words like 'consult' and 'involve'. Elsewhere, the Minister for Social Security has highlighted the role co-production has in design and delivery of the new system. Involvement and consultation are not the same as co-production. We recommend stronger and clearer language that directly refers to a truly co-produced system that would allow for people to participate equally and actively in the process to plan policy, design, test, implement and evaluate the future system.

Evidence

Principle (e) also refers to design being undertaken "on the basis of evidence". We ask the Committee to seek clarification from the Scottish Government on what evidence, who it is generated by/with, how it will be resourced and how much weight will be placed on different types of data. There is a significant amount of existing qualitative evidence about the current system and greater clarity is required on how this will influence the new system. Paul Gray's second review of Personal Independence Payment⁷ recommended that both quantitative and qualitative evidence be used as part of an evaluation strategy. This approach will support a system which focuses on real life experiences alongside numerical targets.

Continuous improvement

Principle (f) outlines that "opportunities are to be sought to continuously improve". We do not think this offers a firm enough commitment to actual continuous improvement. 'Seeking opportunities' to improve does not equate to co-production, gathering feedback and acting upon it. Recent engagement work on health and social care systems found that one of the current failings is that people who make comments do not hear anything back about what had been done because of their feedback. 'Closing the feedback loop' must be built into the design and delivery of the social security system.

Q3. Do you agree with the idea of the charter? Please explain the reason for your answer. Is there anything specific you would like to see in this charter?

⁴ PANEL stands for Participation, Accountability, Non-discrimination and equality, Empowerment and Legality. The PANEL principles are UN supported and advocated by the Scottish Human Rights Commission. See:

<http://www.scottishhumanrights.com/rights-in-practice/human-rights-based-approach/>

⁵ <http://www.legislation.gov.uk/asp/2013/1/contents>

⁶ <http://www.legislation.gov.uk/asp/2014/9/contents/enacted>

⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/604097/pip-assessment-second-independent-review.pdf

Accessibility

The Policy Memorandum indicates that the charter is to be an “easy read” version of the Bill. The ALLIANCE agrees that it is important that all elements of the new social security system are well understood by everyone. To this end, a charter, and its language, must be accessible to anyone who is likely to access or work in the social security system, which could theoretically be anyone living in Scotland.

Accountability and legality

If a rights-based approach is being adopted, recognition needs to be given to the potentially lesser legal standing of a proposed charter compared to primary legislation. State accountability must be a main principle guiding the development and application of the charter, which should set out in detail what happens if the Scottish Government, or people acting on behalf of the Scottish Government, do not comply with the charter and, beyond that, how the public can hold the Scottish Government to account. Greater scrutiny and independent oversight of the charter is required - the regular (3-5 years) independent review of the Bill that we are calling for (below) would include the charter.

Co-production

It is imperative that any charter is built upon meaningful, active and constructive dialogue and engagement with people who access the social security system. It should be co-produced with the Experience Panels and involve third sector organisations and others. Beyond those groups already proposed in the Bill, the Scottish Government should also involve people who are likely to be eligible for assistance in the future (e.g. young disabled people and young carers) and third sector organisations working with people who access social security.

Inclusion, fairness and transparency

The charter should apply to people working in and accessing the system. It should contain the principles underpinning the processes used to determine eligibility and undertake assessments for social security to ensure they are conducted in a way that is open, accessible and transparent for people navigating the system.

4. The Bill proposes rules for social security. Do you have any comments on these rules?

Rights-based and person centred

The ALLIANCE is concerned that, if a rights-based approach is being adopted, there is an imbalance in the rules as currently drafted. They appear overly dominated by the Scottish Government’s requirements of people accessing social security and individual’s liabilities, with insufficient detail on State accountability, transparency and fairness. We would recommend more rights-based and person centred language in the Bill and greater detail on how people’s empowerment and participation in decision-making processes will be realised.

Independent review

Whilst the Bill requires Scottish Ministers to keep the charter under review, it does not place any duties on Ministers to review the system and the legislation. We believe an amendment to the Bill needs to be made to require Ministers to undertake an independent review within 3 years of an Act coming into force and every 5 years thereafter. Such a duty would give an opportunity to consider and assess how the new system is operating and if the legislation remains fit for purpose. It would also allow for a public debate on how the legislation has achieved its principles.

Timescales and time limits

We recommend the addition of timescales and time limits related to communication of decisions by the social security agency to people accessing the system. This relates to initial applications, redeterminations and appeals. The Bill contains several timescales related to requests to individuals by the agency, but none related to agency action.

Information

The ALLIANCE welcomed earlier indications from the Scottish Government that the new system would give due regard to self-assessment and third party, professionally founded, supporting information. People we consulted said greater weight must be given to evidence they consider important during assessments; however the Bill indicates that it is for Scottish Ministers to decide what information is required. We recommend the Bill be amended to give people accessing social security a more meaningful role in the decision-making process about information supporting applications.

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. What are your views on this proposal?

The ALLIANCE were commissioned by the Scottish Government to consult seldom heard people to share their views of what the new social security system should look like⁸. Many people we spoke to around Scotland said that financial support should be available while applications or appeals are being processed to avoid hardship, however any such process should not place added burden or stress on people accessing the system.

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). What are your thoughts on this proposal?

We welcome this proposal but call on the Scottish Government to ensure that it is updated in line with increases applied to the National Minimum Wage. We welcome the suggestion in the Policy Memorandum that the Scottish Government intends to establish a Scottish carer's entitlement and call on MSPs to consider the following, as per the National Carers Organisations' briefing:

- Rules that enable carers to study full time, to support them to prepare for when they are no longer in a caring role.
- Allowing people to claim a greater amount of Carers Allowance if caring for more than one person.
- Ensure that rules that prevent other payments from being made, or paid at a lower amount, alongside Carers Allowance where they overlap are not introduced.

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

Accountability and redress

We recommend more detail in the Bill on what people can expect when things go wrong with social security assessments, payments and appeals. Our members have overwhelmingly expressed the view that any new complaint, review or appeals processes must be infused with an innate understanding of people, their dignity, human rights and a level of compassion which is not currently experienced.

Culture change

There has been substantial discussion about the need to fundamentally change the culture of social security in Scotland at the national level and within the system itself. The Bill has a crucial role to play in changing this culture so that people accessing social security are viewed as equal citizens entitled to the human right of social security rather than 'scroungers' or recipients of charity. The language and terminology in the Bill and supporting documents needs to underpin this cultural shift and we therefore recommend words like 'needs', 'benefits' and 'assistance' be updated and replaced by, for example, 'rights', 'payments' and 'entitlements'. Redressing the current imbalance in the Bill between the obligations of individuals vs those of the State will also support culture change.

⁸ http://www.alliance-scotland.org.uk/download/library/lib_5940f03778baa/

Communication and information

Most people the ALLIANCE consulted said the new system must communicate and make information available in a language and format that is easily accessible to them. We recommend a Bill amendment to include a provision that all information and communication relating to the new process is available in a range of different formats and tailored to people's different communication requirements.

Cash vs. in-kind entitlements

We recommend amending the Bill to clarify that individuals accessing social security will have a first right of payment in cash and they will make a free and meaningful choice, with no undue influence, between cash and in-kind entitlements.

Private sector

We recommend an amendment to the Bill to clarify that the new system will not be delivered by the private sector or for profit.

Independent advocacy

The ALLIANCE also encourages the Committee to amend the bill to include a right that anyone engaging with the social security system should have automatic access to an independent advocate – as a distinct form of supported decision-making⁹ – at any point in the process.

Independent advice and advocacy are both valuable parts of the system, but should not be confused with each other. An independent advocate offers support and reassurance during an individual's interactions with the state (which are inherently imbalanced) and puts the emphasis on expressing what the person wants to say informed by the independent advocate's detailed knowledge of the process. Independent advice is usually before or after any face to face assessment and is usually an exchange of information.

The ALLIANCE and the Scottish Independent Advocacy Alliance (SIAA) delivered a Scottish Government funded initiative that delivered independent advocacy support to over 1,000 people accessing social security. Many people said they would not have gone to, or completed, the face-to-face assessment without the support of an independent advocate. The initiative and evaluation proved that independent advocacy:

- Provides an enhanced level of support for people during assessment processes.
- Goes some way to empowering people in an inherently unequal situation.
- Acts as a barrier to inappropriate conduct by assessors.
- Enables a witness to inaccurate recording of findings in such processes.

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⁹ <https://www.siaa.org.uk/us/independent-advocacy/>