

# CALL FOR EVIDENCE RESPONSE FORM

## **SOCIAL SECURITY COMMITTEE**

### **SOCIAL SECURITY (SCOTLAND) BILL**

#### **SUBMISSION FROM NHS Ayrshire and Arran**

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?**

The approach of 7 key principles is to be commended, as is the fact that benefit rules are to be enshrined in regulations. This offers protection to the individual claimant as this offers security that future changes to the regulations will have to be discussed by Parliament and not simply altered by Government.

Given the importance of this bill to individuals applying for assistance and that this legislation requires to meet the individual's needs we are of the view that the Scottish Parliament has to be fully involved in all aspects of the draft Regulations.

Furthermore, the Bill should clarify how the Regulations will be scrutinised. Clarification is required to confirm if there is a role for a Scottish Social Security Advisory Committee or the Scottish Social Security Committee to scrutinise the regulations.

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.

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- 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 agree that principles should be incorporated into the legislation and used to inform the Scottish Social Security Charter.

The regulations or the Charter must fully explain what and how anyone accessing the service will receive a quality service that treats them with Dignity and Respect.

The design of a new social security system should be designed with the individual at it's' core; a safety net to provide security at the time of need and to assist the most vulnerable people in society. By putting people first you invest in society and as a result there will be economic benefits to local communities.

The new social security system has also to meet the requirements of wider society by delivering value for money and this 'investment' can be justified by the positive effect the new approach and benefits will have on the wider economy and other public services. By easing financial pressures on claimants, their mental and physical wellbeing will improve.

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

Consideration should be given to enshrining in the bill that all eligibility to assistance is subject to and in accordance with Human Rights legislation.

Also, there should be a principle of getting benefit calculations right for individuals upon initial application. This will alleviate additional stress over financial concerns for clients at a time when they are particularly vulnerable.

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.**

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A Charter is required as it will publicly confirm a commitment to the key principles and give the public and agency staff an understanding of the of the principles underpinning the legislation

We are of the view Section 2 (2) of the bill should specify the Charter include reference to;

- the quality of services that should be delivered by the Scottish Social Security Agency
- the standard of service individuals and those advice agencies that assist individuals will receive in accordance with the principles.
- reference to a complaints and maladministration procedure.

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

The Charter should define:

- How the Scottish Social Security Agency will meet the Scottish Social Security principles.
- The quality of service and timescales individuals and organisations assisting those individuals should receive.
- Complaints and maladministration procedures including process on what to do if the individual's rights have not been respected
- Information on how the agency will communicate with individuals regarding the decisions made and how to appeal those decisions.
- How to access the service.
- Data Protection.

The Charter should detail maximum response times for processing claims and dispute/appeals process; emphasise claims being assessed accurately and timeously and entitlement to financial compensation to those who are placed at a financial disadvantage due to Agency failure to comply with the terms of the principles or errors in benefit calculations. Also there should be a commitment to being provided with correct advice for individual circumstances.

A public commitment that the principles of the Bill that enshrine the legislation and the rights of other legislation, e.g. UN Convention on the Rights of the Child, European Convention of Human Rights, etc underpin the legislation.

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

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- what criminal offences will be created relating to benefits.

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

The Bill refers to the term “determination” instead of “decision”. We are concerned the use of this terminology will lead to some confusion for claimants and advisers particularly when Section 33 refers to Decisions comprising determinations. Most benefit claimants, decision makers and advisers who assist service users will be unfamiliar with the terminology of determination.

It is long established in Social Security legislation and Caselaw that a determination is a building block in the decision making process e.g the inclusion of a premium in calculating an individual’s Applicable Amount. We are concerned that individuals would be accessing two benefit systems who use different terminology. To avoid confusion we would support replacing “determination” with “decision” throughout the bill as this is long established Caselaw in the benefit world.

Section 30 Obligation to provide information on request is concerning as it does not take into account the “reasonableness” of the individual not being able to provide the information requested.

We do not support Section 36 Liability. This Section will result in all overpayments being deemed to be recoverable regardless of whether or not the individual has contributed to the overpayment. We are extremely concerned that all official errors will be recoverable and that this may cause considerable hardship to individuals and families.

Our view is that the current DWP regulations, Section 71 Social Security Administration Act 1992, that overpayments are recoverable where the individual has misrepresented or failed to disclose a material fact is adequate and provides protection to both the individual and the state. Overpayment recovery can lead to considerable hardship for individuals and families at times pushing them further into poverty.

Section 37 Consideration for debtor’s circumstances applies as to “whether to seek to recover money owed under Sect 36 and the Explanatory Notes confirm this is “where the Scottish Ministers are aware of a person’s financial circumstances”. This appears to indicate that there will be an element of “discretion” as to whether the Scottish Minister seeks recovery of the overpayment. Regulations will need to be specific as to the factors the Scottish Minister will take into account in determining whether to seek recovery.

We are of the view overpayments should only be recoverable where the individual has either misrepresented or failed to disclose a material fact and consideration should be given following this to the individual’s financial circumstances before seeking to recover the overpayment. Where the overpayment has occurred as a

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result of Agency error, repayments should only be sought in circumstances where the Agency can prove that the client would have been aware that the calculation was incorrect and that they were not entitled to the amount of benefit that they receive

The threat of criminal offences should only be considered in circumstances when there has been a clear and uncompromising desire to commit fraud.

Section 37 also carries no appeal rights regarding recovery of overpayments which we would suggest breaches the Scottish Social Security Principles “respect and dignity”.

Section 40 Offence of failing to notify a change in circumstances as soon as reasonably practicable after it occurs. A substantial amount of DWP overpayments are on this basis. Individuals very often advise they phoned, wrote, told DWP official, etc. only to be told there is no record and subsequently appeal DWP overpayment decisions that they “failed to disclose”. Often the appeal tribunal finds there has been no failure to report the change of circumstances and therefore no overpayment.

We would submit that disputes on this should be appealable and be heard at First Tier Tribunal rather than going to court thus avoiding potential stigmatisation of individuals.

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?**

In relation to Carers allowance, we are concerned that the definition of Carers Allowance within Schedule 1 Section 2 (3) only refers to those in receipt of Carers Allowance and not those who have “underlying entitlement” to Carers Allowance. Consideration should be given to include this group of carers.

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There is no reference in the bill as to whether Carers will still be credited with Class I National Insurance contributions.

In general we welcome these proposals however we await the regulations on this before commenting further.

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?**

This is to be commended and prevents financial hardship for individuals who are having their benefits reduced, pending the appeal process. It is not practical however in circumstances where there is an initial decision to refuse a claim for benefit. Benefit, hardship or otherwise, cannot be paid for a benefit not previously in payment, not simply for administrative costs involved, but also potential for client to become dependent on an income that they may not be awarded following an appeal.

We welcome this proposal however will await the regulations to this before commenting further.

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?**

We agree with this proposal in principle, though are still concerned if this "top up" will be taken into account as an income in UK benefits.

Whilst the preference would be for all social security matters to be devolved, as this would allow the creation of a more streamlined and simplified benefits system, the ability to create new benefits and top up reserved benefits without affecting the client's entitlement to means tested reserved benefits is welcome.

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?**

In principle we agree with this proposal though we are still concerned if this "top up" will be taken into account as an income in UK benefits.

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We also are of the opinion that consideration should be given to Carers with “underlying entitlement” to ensure there is no longer winners /losers within the Regulations.”

For the first time this starts to recognise the role of Carers in our society. However this should only be a stepping stone to redesigning benefits for Carers to further recognise the role they provide to society.

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?**

Whilst we recognise the importance of discretionary housing payments, particularly in relation to the Bedroom Tax, we do not support the general principle of “discretionary payments “schemes as this creates a winners / losers situation not only for individuals but can also lead to a post code lottery.

We support a legislated national scheme that lays out the criteria for awards which can be applied nationally.

There is also no right to appeal against DHP decisions. We support the right to appeal

All local authorities should have a requirement to operate a Discretionary Housing Payments scheme. This scheme should continue to be administered by local authorities as they are best placed to have an understanding of local conditions.

### **Q. Do you have any other views on the proposals for discretionary housing payments?**

Whilst it is important that local authorities operate a DHP scheme to take into account local considerations, there needs to be guidelines produced that are nationwide to ensure consistency in decision making.

There should also be guidance that certain benefits required for particular circumstances, e.g. Disability Assistance (DLA/PIP and AA) should not be considered as income for the purpose of calculating DHP. Clients should not be penalised for having a disability.

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**Our colleagues in the North have included their comments in the previous section.**

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

It is difficult to comment on this bill until we have sight of the Regulations.