

CALL FOR EVIDENCE RESPONSE FORM

SOCIAL SECURITY COMMITTEE

SOCIAL SECURITY (SCOTLAND) BILL

SUBMISSION FROM Glasgow City Council

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 advantage of having the benefit rules contained within regulations will allow for future changes to be introduced quickly and will avoid the need for a new act of the Scottish Parliament to make such changes.

The disadvantage is that this will mean that the opportunity for scrutiny and amendment will not be there. The intention contained within the Act is for the regulations governing the different benefit entitlements to be introduced by the Affirmative procedure, which will require that Parliament has a vote on the regulations, unfortunately this will only be to adopt or reject and no scope for amendment. It would be preferable at least for first version of the regulation to have wider scrutiny. It is welcomed that Scottish Government will seek external help in drafting the initial regulations. There should be an opportunity for consultation on draft regulation so that any unintended consequences or deficiencies may be detected prior to the Parliament vote.

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.

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- 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.

Placing the principles at the forefront of the Bill is an important signal of intent and as such is welcome.

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

There is an opportunity to add a further principle

- Social Security has a role in helping to reduce and eradicate poverty in Scotland and provides an important safety net.

Including this principle will complement the other principles and will further enshrine the Scottish Government's commitment to working towards a Fairer Scotland.

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. A public charter in a self-contained document will be visible to many more people than would chose to read the regulations. It will help to ensure clarity and understanding of what both claimant and those involved in administration can expect in relation to the new Social Security arrangements in Scotland.

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

In addition to those areas outlined in the Social Security (Scotland) Bill the charter should also indicate:

- What people can expect from the service
- A commitment to the principals contained within the Bill
- How the service will be delivered
- How to make contact if something is not right or has gone wrong both the timescale and process which will be used to “uprate” benefits.

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?

The proposed Bill appears to mirror the current UK wide system in relation to re-consideration of initial decisions. Care and consideration needs to be given as to how individuals will understand this process. There is a need to ensure that individuals clearly understand that a re-determination is not the end of the appeal process.

In addition the Bill does not outline the manner in which individual claimants will be informed of decisions. Glasgow City Council has already highlighted in earlier responses the importance of decisions being outlined in writing to claimants and the opportunity should be taken to include that commitment in the proposed Bill.

Determinations (Chapter 3)

There is a concern that new terminology for the decision making process is potentially confusing. The word ‘decision’ is widely understood by those claiming benefits. It would also be consistent as we will still be referring to decisions in other areas of benefit entitlement.

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Re-determinations (S23)

The redetermination process appears to be a renamed version of the UK Government Mandatory Reconsideration (MR) which has been frequently criticised as a barrier to establishing appeal rights. For many the MR process is mistaken for an appeal and claimants having had two negative decisions do not have confidence that a further appeal will deliver a different outcome. It also introduces into the process an unnecessary delay to the process.

Prior to introduction of MR it had long been the case within DWP benefits that where someone lodged an appeal there was a provision that enabled the decision maker to make a correction or more favourable decision which may avoid the need for appeal. In the absence of a more favourable decision that matter will proceed to an appeal.

This was a simpler and quicker process and one which could be applied to the devolved benefits.

In the recent Upper Tribunal Decision CE/766/2016 the barrier to appeal imposed by a refusal to carry out a late MR is considered to be unlawful.

If the re-determination process is to be part of the bill then there needs to be a provision for allowing a late request and for this not to fall foul of the deficiencies of the MR process with regard to accessing an appeal.

Obligation to Provide Information (S30)

Where a person does not provide information requested then a decision should be made on the available evidence rather than a decision that they fail to meet the eligibility rules. This may amount to the same effective decision.

Placing a requirement to provide information, including a report that may not exist at the time of the request is made, may place an obligation that is impossible to complete. For example, patients do not always get copies of specialist reports. Often these are only provided to the GP.

Overpayments (Chapter 4)

The proposed rules for recovery of overpayments do not take into consideration that some overpayments are made by official error and are not attributable to the claimant having misrepresented or failed to disclose material facts. An overpayment as a result of an official error might still be recoverable. The test for whether or not a payment is recoverable should be consistent with DWP benefits. There has been considerable case law in this area and as such the principles are well-established.

Scottish Government might consider having a tribunal determine whether or not there has been a misrepresentation or failure to disclose in relation to an overpayment, which could inform any decisions to proceed to prosecute an offence.

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This may prevent some cases having to be heard in court to establish the same facts.

The intention to take a claimant's financial circumstances into consideration is a welcome new provision.

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?

As acknowledged, it is the Regulations which will provide the critical operational detail for each of the benefits, as such it is difficult to provide meaningful comment. However, in relation to each schedule, it is noted that no mention is given to the role of the Regulations in outlining the process for uprating the individual benefits, consideration should be given to including this in the schedules.

In the previous consultation entitled 'A New Future for Social Security' (July 2016), there were proposals to develop a Job Grant. It is difficult to understand if this is no longer intended to be introduced or if it will be subsumed into the new employability provision devolved to Scotland. Clarification on this would be useful.

Sections 11 to 18 all make reference to payments which may or may not be in cash. While we do not have an objection to having the power to enable imaginative future arrangements we are keen to see claimants have the choice of how they use their entitlement.

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There is reference to possible payment for industrial injuries and disability benefits as lumps sum payments in some circumstances. As receipt of such weekly benefits will serve as an exemption to the UK Benefit Cap we need to ensure that any lump sum payments bring about the same protection for the same period as a weekly benefit.

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 a welcome proposal which should protect individuals where benefit has been withdrawn and they disagree with that decision and want to pursue this through redetermination and appeal process.

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?

With regard to top up to reserved benefits the bill only enables the creation of regulations. The details will be contained within the regulations and it is not possible to speculate what they may contain.

It seems odd that no such similar enabling provision is included with regard to creating new benefits even if there is no intention to create any new benefits at this time.

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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?

This is a reasonable proposal. It is however important that all carers are treated equally and do not miss out through technicality.

For example: Two pensioners both claim carers allowance for looking after another person.

Pensioner A gets their state retirement pension which is paid at a rate higher than carer's allowance. As you can only receive the one that is paid at the higher rate they will not be paid carer's allowance, they will only receive the state retirement pension but are advised of an underlying entitlement to carer's allowance.

Pensioner B has not paid sufficient National Insurance Contributions and only has an entitlement to a small state retirement pension below the level of carer's allowance. They will be paid the carer's allowance as it is the higher amount.

Assuming no other income in both cases they will qualify for a top-up of pension credit which will include a carer's premium. Both pensioner will have exactly the same amount of money and both will be regarded as carers by DWP. However only the one who actually receives the carer's allowance will satisfy the rules for the proposed carers supplement. The rules as they stand do not recognise underlying entitlement to carer's allowance.

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?

The lack of a legislative requirement for a Local Authority (LA) to have a discretionary housing payment scheme carries with it the risk for individuals being subject to a postcode lottery for help and assistance with housing costs. This would be avoided if the Bill required all LAs to have such a scheme and the Bill should consider the benefits of introducing this. There should be a common framework to ensure consistency across Scotland.

There are limitations and potential areas of challenge within the current Discretionary Housing Payment (DHP) scheme and it would be helpful if these could be addressed in the bill.

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The proposed Part 4 does not seem to resolve the power to recover DHP duplicate/over-payment when Housing Benefit or Universal Credit subsequently is due to be paid for the same period. An example would be following a successful appeal – as it stands, 52(2)(d) mentions value of assistance given in error or following a breach of any of the conditions. The current position is that LAs rely on goodwill, and have no technical mechanism for offsetting a recovery, so although recovery may be reasonable, it's not straightforward or practical. Ideally, LAs need wider provisions for recovery, including the ability to offset against a Housing Costs payment due for the same period.

There are practical challenges around the eligibility for Discretionary Housing Payment for Universal Credit (UC) claimants, including when an Alternative Payment Arrangement (APA) is in place. LAs are unable to work out what the UC claimant receives in housing costs. This is a result of how the Universal Credit calculation is made up of elements, which are added together before the UC award is assessed. This means that claimants with other income could be receiving a reduced amount of UC. Where an APA is in place for Rent Costs to be paid direct to the Landlord, the Landlord will receive the value of the eligible rent, regardless of the UC assessment.

This is exacerbated by the limited availability of shared data from DWP systems that the LA has access to for administrative purposes. The value of the Housing Element is not a data item on CIS (DWP's Customer Information System), which means that either a physical copy of the UC award letter is required, or telephone contact with DWP UC Service Centre is needed prior to DHP assessment.

The definition of "award of universal credit includes an amount for rent" is not clear enough to be able to make an award before a UC assessment date. The LA risks paying out-with powers if it decides to make a Discretionary Housing Payment ahead of the award in UC. Housing Costs may never form part of the award. This is a concern especially in the 1st assessment period, but it would be true of any period where DWP was still to be verified or assessed.

Similarly, the definition of "entitled to housing benefit" causes difficulty. This is particularly related to Housing Benefit (HB) for payment in advance/deposit for new claimants. Housing Benefit is related to the period of Rental Liability, and this means paying DHP prior to a rent liability would only be possible if the claimant was already in receipt of Housing Benefit, meaning that new claimants are potentially disadvantaged.

While Scottish Government is seeking to mitigate the Removal of the Spare Room Subsidy in DHP, LAs are required to manage the situation where there is no actual discretion/financial consideration for RSRS cases. DHP is awarded even if the applicant does not require financial assistance to meet, or help towards meeting, their housing costs. This is not the case for all DHP applications, for example, where a bedroom calculation forms part of the LHA rate, a financial judgement will be

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made. Ideally the bill will deal with this to help avoid complaints of LAs fettering discretion, or challenges that inequality is arising from tenure.

The current regulations allow payment to claimant or landlord. Part 4 is silent. It may be that the LA wishes to pay either claimant or landlord, and for a range of reasons. It's generally accepted in HB that the payee in HB cases, is the HB claimant. LAs are currently under pressure to pay DHP direct to Landlords in UC cases, but if an APA, or UC flexibility, means that housing costs are being paid direct to Landlord, it may be prudent to make the award to the claimant. It would be helpful to clarify this.

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

It would be useful to be able to examine the detail of the proposed statutory guidance to ensure that LAs are fully guided and protected by the system as a whole. Without this detail, it's not clear whether there is an intention to cover current administrative difficulties in the statutory guidance, rather than in the bill.

Mitigation of 14% or 25% reductions is not efficient in UC cases. The lack of automated data share from DWP and insufficient data being available on CIS, mean that there is a substantial amount of administration in just ensuring that the LA is paying DHP consistently and within its powers. There is so much more individual contact with applicants than with those in receipt of HB. Phone calls are costing much more in terms of time and resources. It would be useful for Scottish Government to obtain improvements to data sharing which will reduce the administrative costs and risks to LAs of paying out-with their powers. Without improved data share, additional funding for administration is required, and guidance on how LAs might be expected to manage the accuracy of awards would be helpful in ensuring similar treatment across the country.

The bill does not contain any financial limits or restrictions on the value of a DHP award, merely giving the LA the power to give financial assistance towards housing costs if the applicant is a qualifying individual. 52(2)(a) indicates that the guidance may include rules to apply in deciding the amount or period of award. The current limits are helpful in some cases, restricting the value of a regular award. If there are no restrictions in the bill, it could be that each Local Authority will take a different approach, leading to inconsistencies across the country, and may bring additional pressures to pay above the eligible rent.

Between the Scottish Welfare Fund and DHP we have two distinct discretionary supports administered by LAs. There may be merit in bringing these into one single process.

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

An interim provision has been included to assist carers in recognition that the replacement benefits will be a few years away. There should also be an interim provision for people in Scotland who are currently receiving DLA so as to prevent them being re assessed under the PIP rules and the risk of losing benefit. This should also be applied to avoid those turning age16 having to end their DLA and claim PIP. A possible solution would be to adopt the current DLA regulations as they stand from UK government as “Interim DLA Scotland Provisions” with no further person being required to undergo the PIP reassessment. This would prevent people from potentially losing some entitlement under an unnecessary transition to PIP only to have some benefit restored under Scottish disability benefit rules.