

Social Security (Scotland) Bill - Consultation Response

Govan Law Centre

Govan Law Centre welcome the opportunity to respond to this consultation. The following response has chosen to focus on those issues that we deem most relevant to the legal advice and service we provide to clients from some of the most disadvantaged communities.

Response to Question 2 - Overarching Principles

The acknowledgement that social security be seen as a means to invest in our citizens, provide assistance where it is required and enable citizens to realise their human rights and for our citizens to be treated with dignity and respect are to be welcomed.

The requirement for the system to be evidence based and deliver value for money is recognised as important in the effective delivery of any scheme of social assistance, however there is a concern that rather than focussing on the effectiveness of a system to meet the needs of its citizens that the principles instead chose to focus on efficiency.

There is a concern that this could be understood as prioritising the running of the system above the needs of the citizens it is intended to benefit.

It is noted that fairness and accountability of the awarding bodies have not been included within the Bill's overarching principles.

Certain elements of the Bill as it stands appear to have taken little account of these principles, in particular those sections pertaining to processes of redetermination/appeal, the recovery of overpayments and an anomaly with those sections relating to the provision of discretionary assistance and discretionary housing payments.

These elements require to be addressed before regulations come into force.

Response to Question 3 – Social Security Charter/Accountability

The Bill proposes that a charter, outlining the duties and expectations of awarding bodies and recipients, will be created in consultation with those deemed to be most likely beneficiaries of the schemes of assistance proposed. It proposes that this Charter will be published and regularly reviewed by Scottish Ministers again in consultation with groups representing beneficiaries.

There is no provision for breaches of the charter to be held to account.

At present, the only reference within the bill to accountability refers to a duty to provide an annual report for Scottish Ministers to discuss as to how the Scottish Security System has performed.

The Bill needs to provide a framework for any issues identified with the system to be addressed in a meaningful way. The Bill sets out a model of self-assessment of

performance for Scottish Ministers. As such, the annual reports on performance are subject to accusations of bias. A report, in itself, has no power. Reports are often ignored. For a system of Scottish Social Security to be credible, it needs to make itself open to scrutiny by an independent body.

Response to Question 4 - Determination of Entitlement, Review/Appeal process

Chapter 3 Determining Entitlement and Redetermination/Appeal

The bill as it stands replicates the widely criticised two-stage process of reconsideration/appeal, which was introduced by the Welfare Reform Act 2012. It is acknowledged that there are some alterations proposed to lessen the effect such as a time bar in which the awarding body must reconsider the decision under dispute before a citizen may progress to an independent appeal hearing. The onus remains on the claimant to then submit to a further process if they are to access their right to independent review by a tribunal.

Prior to the changes made to most reserved benefits, a person disputing a decision only had to make one request for appeal – this request was reconsidered as part of the process, and then forwarded so that an independent hearing of the case could be heard by a Tribunal, if the decision was unchanged.

To place barriers on citizens seeking to ensure that their right to a fair hearing of their dispute appears to contradict the proposed principle of social security as a human right. Evidence has shown that the introduction of a two-tier system has led to less individuals pursuing their right to an independent hearing of their case.

The Bill proposes that in addition to social security being recognised a human right that the Scottish Security System is to be evidence based and that the system should continuously improve to put the needs of those who require assistance first.

Often it is the most vulnerable citizens who find it the most difficult to negotiate and understand processes and most likely to either ‘give up’ their challenge or not recognise that there are further steps they may take to pursue their dispute.

It is submitted that the proposed two-tier system of appeal does not take account of the evidence or the needs of those who most require support.

Chapter 4 (Sections 36-38) – Recovery of assistance given in error

The Bill expressly states that anyone who has been provided with assistance incorrectly (overpayment of assistance) is liable to repay the value of that assistance. No consideration is given to overpayments that have arisen through no fault of the individual and solely caused by official error.

Awarding bodies must be held to account for their own errors and not divert financial responsibility for their mistakes to faultless citizens.

There is a concern that as the bill stands some of the most vulnerable recipients of assistance will be held liable for errors of governing and official bodies. This contradicts the principle of dignity and respect the Bill purports to uphold.

The part of the Bill pertaining to overpayments requires to be amended to clearly state that any overpayment of benefit caused by an official error of the awarding body is not recoverable from the recipient of assistance.

Discretion not to recover – section 37

For those overpayments that are not caused by an error of the awarding body, section 37 does stipulate that some discretion may be used when considering recovery of overpayments of assistance. This section fails to take account of the range of circumstances that might cause hardship to those deemed to have been overpaid.

Consideration is to be given to a “debtor’s circumstances” when considering whether to use discretion to recover or the method by which money owed should be recovered. This section focusses solely on the “debtor’s” financial circumstances and takes no account of other circumstances that may cause hardship of recipients liable for assistance deemed to have been paid in error.

The inclusion of other circumstances to be considered, when deciding if an overpayment is to be recovered and the method of recovery would enable the Bill to meet the Scottish Governments stated intent that any Scottish Social Security system has at its heart the principles of dignity and respect for human rights.

Circumstances, other than financial circumstances, that could be included for consideration are; the impact of mental health on a recipient, the impact of domestic abuse or coercion by others and whether the recipient deemed to have been overpaid, could have reasonably been expected to recognise this and understand their duties as a claimant of assistance.

Response to Question 5 – Schedules for devolved benefits

Due to the lack of detail in the bill as to how regulations will be set out Govan Law Centre have no comment other than that the regulations require to be subject to scrutiny.

Response to Question 6 - Provision of short term assistance

Chapter 2 Section 18 Provision of Short Term Assistance

That provision of assistance should continue to individuals who are in the process of disputing a determination that they are no longer eligible for such assistance is to be welcomed.

Response to Question 8 – Carers Allowance – temporary provision

This proposal is welcomed as a step in the right direction to recognising the value of carers. This proposal does not go far enough, however it is acknowledged that it is only temporary

and that further discussion is still to be had as to how the fully devolved system of assistance carers will operate.

It is noted that those carers who have no other income coming into their household or significant capital can already claim a 'top up' from income support bringing their total household income to above the proposed amount and will thus see no increase in their overall income. As the amount of carers allowance paid is deductible from the total amount of income support payable, care needs to be taken to ensure that carers are not overpaid income support, and thus incurring debt, as an unwanted consequence of the Bill's intention to improve assistance to carers.

Response to Question 9 - Discretionary Housing Payment Scheme

Allowing Local Authorities to 'opt out' of providing ANY discretionary financial assistance scheme is not acceptable and has potential for assistance to become 'postcode lottery' dependent on the local authority in which a citizen lives.

The regulations allow Local Authorities to use discretion as to whether they will use their discretionary powers. Allowing Local Authorities to apply a blanket policy of not providing this assistance is arguably promoting the fettering of discretion and subject to legal challenge.

It is noted that discretionary housing payments are currently used to mitigate the hardship caused due to changes within the reserved benefits system. A large proportion of citizens are claiming discretionary assistance to assist them to pay their rent and mitigate the hardship caused by the reduced benefit cap, underoccupancy restrictions (the "bedroom tax") in addition to several other changes that have led to those on low incomes being provided with less assistance.

Whilst it would be preferable, that mitigation of hardship was not required. It is recognised that there are a great many individuals facing hardship due to changes in reserved benefits under control of Westminster. The availability of discretionary housing payments to mitigate these changes has been a lifeline for many and assisted many to avoid eviction and homelessness.

To allow individual Local Authorities to opt out of using those powers available to them would undermine the efforts and assurances that have been given by Scottish ministers to mitigate the worst effects of cuts to reserved housing benefits - the 'bedroom tax' and the forthcoming restrictions on housing costs assistance to younger citizens. The Bill's proposal, as it stands, could lead to assistance available to those citizens and families on the lowest incomes being dependent on the area of Scotland in which they live.