
**SFHA RESPONSE TO SCOTTISH PARLIAMENT'S SOCIAL SECURITY COMMITTEE
CALL FOR VIEWS ON THE SOCIAL SECURITY (SCOTLAND) BILL**

August 23rd, 2017

Call for Views on the Social Security (Scotland) Bill

1. Who we are

- 1.1. The SFHA represents 119 housing associations and cooperatives who help provide homes for over 280,000 households across Scotland. A significant proportion – about 60% - of housing association rental income comes from housing benefit. It is therefore vital that this income is not disrupted if housing associations are to continue their full range of activities – including sustaining tenancies and developing homes to meet the Scottish Government’s target for affordable housing.
- 1.2. We welcome the opportunity to present evidence to the Social Security Committee on the Social Security (Scotland) Bill. Whilst our main concern in this submission is over the connection between social security and tenancy sustainment, we are also very aware that a significant majority of our members’ tenants need support from social security and that the upholding of principles on Scottish social security are central to the respect of dignity of individuals that our members’ tenants are entitled to expect. These wider concerns are addressed in the submission made by the Scottish Campaign on Welfare reform (SCoWR), which the SFHA assisted with a number of third sector organisations in developing.

2. Executive summary

- 2.1. We recognise that there is a balance that has to be struck between the ambition to forge a distinct social security system that meets the needs and aspirations of the Scottish people and the need for a pragmatic approach to mitigate the perceived shortcomings of the welfare benefit system reserved to the UK.
- 2.2. Whilst Discretionary Housing Payments (DHPs) are at present vital to mitigate UK welfare measures such as the Removal of the Spare Room Subsidy (‘bedroom tax’) and the Benefit Cap, they are only an interim solution. The powers to vary ‘bedroom tax’ and Local Housing Allowance rates, eligible rent and non-dependent deduction charges that were promised in paragraph 45 of the Smith Agreement and enacted in Sections 29 and 30 of the Scotland Act 2016 need to be implemented as soon as possible. In the meantime, those in receipt of DHPs should be covered by the guiding principles of Scottish social security and be consulted on the preparation and review of the Social Security Charter.
- 2.3. The Scottish Social security system should be streamlined so that unnecessary impediments such as the need to make separate applications for redetermination and appeal are removed.
- 2.4. It is essential that payments and measures to tackle fuel poverty are targeted effectively. In the case of Cold Weather Payments and Winter Fuel Payments, additional factors such as the location of the property and whether the property is off grid need to be considered as contributory factors to fuel poverty, as does the coordination of energy saving initiatives with fuel poverty mitigation.
- 2.5. The SFHA appreciates the assistance and cooperation of the Housing Support Enabling Unit (HSEU) in preparing this submission.

3. Main Report

The approach taken in the Bill

3.1. We are supportive of the efforts of the Scottish Government to provide social security for the people of Scotland. We have concerns, shared with a number of organisations, that the balance between the use of primary legislation and regulations is tilted too far towards the latter. Whilst it is appreciated that the current Scottish Government's intent, as outlined in the Policy Memorandum accompanying the bill, is to use secondary legislation under an overarching framework in order to "continuously improve[e] the delivery of social security and to do so with, rather than for, the people receiving assistance", there is the possibility that a future Scottish Government would be more reluctant to work in this way.

The seven guiding principles

3.2. With respect to the fourth principle, we would recommend its amendment to confer upon Scottish Ministers a duty rather than just a role to ensure that individuals are given what they are eligible for under the Scottish social security system, with a corresponding right to the necessary advice, advocacy and support.

3.3. The principles c) to g) refer to "the Scottish social security system", which is defined in Section 7 of the bill as the means of giving individuals assistance under Part 2 and by virtue of regulations made under Part 3 of the bill. This would exclude recipients of Discretionary Housing Benefits (covered in Part 4 of the bill).

3.4. There should be a obligation on Scottish Ministers to see that individuals have access to the necessary advice, advocacy and support, to ensure they get their rightful entitlement from the reserved elements of the social security system. This is especially important where:

- there may be an interconnection between devolved and reserved benefits, such as Discretionary Housing Payments and Universal Credit;
- An individual faces particular challenges in accessing the social security system because of a disability or support need.

The social security charter

3.5. We are concerned that those who are in receipt of Universal Credit Housing Costs, and should therefore be benefiting from the Scottish Government's flexibilities for the payment of those costs, have not been included among those who must be consulted either in the preparation or review of the charter. We would recommend that among those consulted should be those who are in receipt of benefits, the administration of which has been devolved to Scotland and to those whose reserved benefits has been topped up by the Scottish Government.

The rules for social security

3.6. We are concerned that the redetermination and appeal processes will require two separate applications, though the time limit on the social security agency to make its redetermination is an improvement on the open-endedness of the DWP's mandatory reconsideration process. We would support combination of

the redetermination and appeal application; if the redetermination was to find in the individual's favour, then the appeal could be allowed to lapse; if not the case would be sent on to the appeal tribunal without the individual having to make a further application.

- 3.7.** We share the concerns of other organisations if individuals who through no fault of their own have received overpayments and are expected to repay them which may result in hardship. Consideration for debtor's circumstances as outlined in Section 37 of the bill should either be delegated to an independent adjudicator, or the individual should have recourse to appeal the decision of Scottish Ministers.

The Scottish Government's assumption of responsibility for some current benefits

- 3.8.** We appreciate the argument for the retention of the universality of the Winter Fuel Payment as an anti-poverty measure for those currently in receipt of it. Were significant changes proposed, a proper cost benefit analysis and equality impact assessment would need to be undertaken. Having said that, there are considerable challenges to overcoming fuel poverty, not least issues such as those living in off-grid areas.
- 3.9.** Fuel poverty is at unacceptably high levels in Scotland. This being the case, we argue that resources should be targeted on those who are vulnerable and on low income. We suggest that when regulations are set out on who should be eligible for the Winter Fuel Payment, it should be targeted on the fuel poor and people on benefits in line with Scottish Government proposals to address fuel poverty to be set out in the Warm Homes Bill.

Short-term assistance

- 3.10.** The proposal to have short term assistance to support an individual whose payments have been reduced or stopped is welcome, but especially for those social security benefits which lie with the Scottish Government, would a period of notice of reduction or termination of a benefit with an opportunity to appeal be a better alternative?

Top up of reserved benefits

- 3.11.** There is too little detail in the bill to be able to comment on the use of top-up benefits. The principle of top-up benefits is one we would support and would in particular wish to see them used to mitigate the seven day waiting period and the time lapse between the submission of a claim for Universal Credit and the first payment, which is creating a debt trap for claimants and can only perpetuate poverty for the vulnerable. This is not an ideal solution, when what is really required is addressing the design failure of Universal Credit, which Lord Freud alluded to in his evidence to the Work and Pensions Committee on February 8th, 2017¹.

¹ See <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/work-and-pensions-committee/universal-credit-update/oral/46960.html> Q129

The increase of the carer's allowance

- 3.12.** An increase of the carers' allowance is to be welcomed, but we wonder why this has been linked to JSA (Section 47(4)) rather than Universal Credit, which is going to supersede it. It is also regrettable that the carers allowance has been linked to a frozen benefit.

Discretionary Housing Payments

- 3.13.** Discretionary Housing Payments (DHPs) are being used to answer a number of demands that they were never designed to do, most notably to mitigate the 'bedroom tax' and the Benefit Cap. We would like clarity when the powers conferred in Section 29 of the Scotland Act 2016 can be implemented. We look forward to the time when the Scottish Government has control over the determination and calculation of Universal Credit housing costs, allowing DHPs to revert to their original role of providing temporary, discretionary relief.
- 3.14.** The pressure on DHPs is likely to increase because of further changes to housing related benefit entitlement, in particular the planned introduction of the Local Housing Allowance (LHA) cap on social rented housing. This will particularly affect people under the age of 35 years who will only be entitled to the LHA Shared Accommodation Rate, those in supported housing and also anyone living in social rented housing deemed to be larger than their needs. Although the UK Government is still to set out exactly how the new cap on housing related benefit will work, it is possible that the Scottish Government will seek to mitigate aspects of the changes in the future and DHPs would be the obvious vehicle for doing this. This means that the role of DHPs in relieving poverty related to housing costs will become more important than ever.
- 3.15.** If local authorities are to continue to administer Discretionary Housing Payments it will be important to ensure that a ring fence is maintained around the funding. We have a particular concern that DHP funding should not simply be included in each LA's government grant settlement but should be retained as a separate fund to ensure accountability and transparency.
- 3.16.** We cannot understand why the Bill would allow local authorities to refrain from providing a Discretionary Housing Payment scheme. We would prefer Section 49(1) to say that a local authority has a 'duty' rather than a 'power' to give financial assistance.
- 3.17.** Under the current rules on DHPs, an individual must be in receipt of housing benefit or the housing cost element of Universal Credit to be eligible for a DHP. This criterion is carried over into the current bill. We would prefer this to be changed to an individual being liable for rent to a landlord, as there have been some cases of individuals for whom, because their 'bedroom tax' was more than their housing benefit award, it meant that they were not eligible for housing benefit and therefore were ineligible for a DHP.
- 3.18.** We welcome the fact that local authorities will be required to deliver DHP according to Scottish Government statutory guidance and we look forward to being involved in designing this guidance. In the past there has been a lack of consistency in eligibility criteria and the approach taken to length of awards, which has caused problems for those facing housing hardship and their landlords and support workers.

Other comments

3.19. A phrase that is used throughout the types of assistance to be given is “assistance (which may or may not take the form of money)”. This raises concerns that this is at odds with the principle of respect for the dignity of individuals if this was interpreted as offering vouchers rather than cash, with its associated stigmatisation.

4. Conclusion and Recommendations

4.1. The Social Security Bill is a first step to providing the distinct social security system the people of Scotland may aspire to. The establishment of social security principles and the development of a Social Security Charter are positive measures that may need further refinement in the future. Of concern is the absence of details of how and when some powers conferred in the Scotland Act 2016 are to be implemented.

4.2. The SFHA recommends that:

- Section 7 of the Social Security Bill is amended to ensure Recipients of Discretionary Housing Payments are included in the “Scottish social security system”.
- Proposals to implement variations in the ‘bedroom tax’ and Local Housing Allowance rates are brought forward, as are variations in the eligible rent and non-dependent deductions.
- That Section 49(1) of the Social Security bill is amended to place a duty rather than a power on local authorities to provide a Discretionary Housing Benefit Scheme.
- Publications of proposals to implement top-up of reserved benefits should be expedited.

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