

Social Security (Scotland) Bill

SCVO response to Social Security Committee

24 August 2017

Our position

The Scottish Council for Voluntary Organisations (SCVO) welcome the opportunity to respond to the Social Security Committee's call for evidence. The Scottish Government's aspirations to take a rights based approach to social security has been welcomed by SCVO, our members and the wider third sector who recognise that a rights based approach will enable the development of a system that respects, protects, and fulfils everyone's right to social security. This commitment presents a real opportunity to take a fresh approach that empowers individuals from all walks of life to claim their rights. SCVO and our members, recognise that ensuring a smooth transition of powers to Holyrood is a challenge, however, if we are to realise our ambitions of a compassionate, effective and dignified social security system for Scotland it is essential that the new powers are transitioned and human rights embedded in the legislation in parallel.

To ensure that human rights are fully embedded in the new system SCVO and many of our members believe that several aspects of the Bill require strengthening including, the principles, the charter and information on how these will be put into practice, and details on the process of redress available to claimants. SCVO also believe that the legislation must include commitments to the right to independent advice, the right to independent advocacy, entitlements in cash, and must make clear that parts of the new system will not and cannot be passed to for profit organisations. SCVO and many of our members are also concerned about the balance between primary and secondary legislation and continue to advocate for an independent expert advice and scrutiny body that draws on expertise from those with lived experience. Such a body is essential to the continuing development of this legislation and to ensure transparency and continuing engagement going forward.

The devolution of these powers is a real opportunity to create a cultural shift around entitlements and create an asset based system that offers a connected streamlined process that facilitates access to full entitlements. This change will be measured through the experience of claimants. To measure progress the role of technical expertise and expert panels must not be underestimated and annual reporting must be utilised to ensure continual feedback on both the design of the system and how it operates. As part of the annual reporting process data collection and monitoring must be built in from the outset. The implementation of these robust reporting mechanisms is essential to ensure

transparency on the extent to which the new system fulfils its ambitions. These measures would also ensure policy coherence between the new social security legislation and the Scottish Government's commitments to human rights and the Sustainable Development Goals (SDGs) as part of the Open Government National Action Plan.

We urge the Scottish Government to fully consider both these changes and the other proposals made by our third sector colleagues and to continue to work with the sector and wider civil society to ensure that this Bill realises its potential. Together we can create a social security system that is truly rights based and that delivers a fairer Scotland with improved outcomes for all.

Consultation Questions

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?

SCVO and our members have concerns about this approach and believe that several aspects of the Bill require strengthening to achieve a rights based approach. For example, universal rights to access both independent advice and independent advocacy, is essential to achieving a rights based approach, but is absent from the Bill. The ALLIANCE, Citizens Advice Scotland, Disability Agenda Scotland (DAS), the Scottish Independent Advocacy Alliance (SIAA), and others, highlight that both the tailored exchange of information (advice) and the support and reassurance of an independent advocate (advocacy) removes barriers and empowers claimants. Similarly, accountability is a central pillar of a rights based approach yet the processes for complaints and redress are absent from the Bill. SCVO and many of our members, recommend that the Bill include more detail on what claimants can expect from duty holders when things go wrong with social security assessments, payments and appeals. While it may be appropriate for some issues to be further defined in regulation, it is our view that commitments on access to independent

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advice, access to independent advocacy, and access to redress are central to a rights based approach and must feature in the primary legislation.

SCVO are also concerned that the Bill fails to fulfil the principles it outlines as very few rights for claimants are enshrined in the bill, and few duties are placed on Ministers to enshrine and protect rights. If the Scottish Government is committed to realising a rights based approach, rights must be better articulated in the primary legislation. Failure to do so, makes it easier for future governments to ignore the principles outlined by the Scottish Government and their aspiration for a rights based approach to social security.

There is also a need to clarify who will provide 'external help'. Primary legislation provides opportunities for the third sector and others to reflect on and share their expertise on legislation, this ensures policy proposals are effectively securitised. If most of the rules about the new benefits are to be set out in regulations, this opportunity will be lost. As such there is a need for another avenue through which independent expert advice and scrutiny can take place. Currently there is no Scottish equivalent of the Social Security Advisory Committee (SSAC) to provide this independent expert scrutiny. The initial consultation suggested the creation of an independent body to scrutinise Scottish social security arrangements. SCVO, the ALLIANCE, Alzheimer Scotland, Camphill Scotland, and others in the third sector, believe that if this approach is to be taken forward an independent statutory advisory committee is essential to ensure that voices from outside government with expertise in social security are involved in the development of the social security system in the longer term, this will provide an extra level of accountability. It remains SCVO's view that this body should become a statutory body to oversee decision making standards. The statutory Social Security Advisory Committee (SSAC) could serve as a model to ensure that the Scottish Government's actions are subject to expert independent scrutiny. The selection process should ensure that a broad range of civil society organisations are represented. This body should continue to work with civic society groups, utilise public consultation, and engage with the Social Security Citizen Panels ('User Panels') to ensure those with experience of the system continue to have a central role in its development. A formal statutory requirement for this level of engagement should be included in the legislation alongside further details on independent expert advice and scrutiny.

SCVO also feel that we have a duty to highlight that the decision to put the rules regarding the new benefits into regulations rather than solidifying them in legislation fails to future proof the new system by allowing future governments to more easily make changes. Many of our members have expressed concerns that this decision is short sighted and provides fewer protections for vulnerable individuals, failing to protect their rights. The Scottish Government must then set a date for rules in regulations to be integrated into the main Bill.

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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.
- 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.

SCVO welcome these principles, the emphasis on dignity and the Scottish Government's aspirations to take a rights based approach. However, to realise a rights based approach these principles must go further. We refer the Committee to the response from the Scottish Human Rights Commission (SHRC) who explain in detail how these principles can be revised to reflect the PANEL principles. The PANEL principles are one way of breaking down what a human rights based approach means in practice and include; Participation, Accountability, Non-discrimination & equality, Empowerment, and Legality. SCVO stress that a rights based approach to social security should ensure maximum use of available resources in order to progressively realise the right to social security.

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

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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SCVO believe a charter could help to foster a human rights culture where individuals feel able to articulate and claim their rights. The charter would serve to communicate these rights and duties in straightforward language, and would provide for updates over time. SCVO, the Scottish Campaign on Welfare Reform (SCoWR), and many of our members, feel that the charter must go further explaining what the right to social security is and how it can be achieved. The charter should not only explain what is expected of those claiming entitlements but should also explain what is expected of those with a duty to ensure the right to social security is fulfilled, this includes the Scottish Government, the Scottish Parliament and the staff involved in the new agency. The status of the charter is also unclear. The charter must be reinforced in primary legislation if it is to carry weight as is the case, for example, with the Tribunals (Scotland) Act.

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

The charter should outline the rights which everyone engaging with social security are entitled to, including: the internationally recognised right to claim social security; to be treated with dignity and respect; to receive a person-centred service with choice over how and when their entitlement is paid; to an adequate standard of living; to independent advice; to independent advocacy; to be treated in a fair and timely manner; to be kept informed at all stages; and to choose face-to-face meetings if preferred to digital communication.

The charter should also outline the duties and responsibilities of social security delivery staff (whether part of a new agency or another body), including: treat everyone with dignity and respect; provide timely, clear and concise communication; inform individuals of their full entitlements; and act in a transparent and open way.

When drafted, the charter must also detail the avenues open to individuals if they feel that the duties set out in the charter are not fulfilled. The ability to hold those with a duty to fulfil rights to account is a key element of a rights based approach.

The legislation should also ensure that future action cannot run counter to the charter.

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

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- when overpayments must be repaid
- what criminal offences will be created relating to benefits.

Q. Do you have any comments on these rules?

A key concern of the new Social Security Agency must be to reduce any unnecessary stress for claimants yet the Bill does not specify a timeframe in which claimants should receive a decision on applications for assistance. Timescales must be set which are realistic and not subject to delay or postponement without clear and justified reasons. In keeping with a rights based approach and the aims of both the Fairer Scotland Action Plan and the Open Government Partnership, and in accordance with the general practice of good governance, individuals have the right to be kept informed of the progress of their claim – as should be outlined in the charter.

SCVO, the Child Poverty Action Group (CPAG), Inclusion Scotland, the Poverty Alliance, and others, are also concerned that the Bill presents challenges to the right of appeal. For example, the proposed 'redetermination' stage looks very similar to the Mandatory Recommendation stage introduced by the DWP in 2014, which caused claimants stress and uncertainty, delaying and stifling appeals. SCVO, SIAA and many other in the third sector support making appeals automatic so that claimants who receive negative decisions are appealed automatically unless they opt out. We believe that this automatic process better reflects a rights based approach.

In addition, the Bill as currently proposed contains provisions which provide a weaker rights framework at various stages than currently provided by the DWP. For example, there is no mention of any right of appeal during the application process and the Bill suggests that claimants can not apply twice for the same type of assistance. The Scottish Government should recognise that there are possible valid exceptions and that these rules could unfairly invalidate a claim.

Transparency and accountability are central to a rights based approach. With this in mind SCVO and many in the third sector including, Citizens Advice Scotland, Camphill Scotland, Disability Agenda Scotland (DAS), Engender, the Poverty Alliance and others, are concerned that the Bill currently suggests that an individual would be liable for departmental errors. Claimants should be able to rely on those who administer the new system to fulfil their duty to correctly calculate their entitlements and should not be held to account when the system fails. This level of trust is essential if we are to realise a rights based culture. In cases where all of the correct information has been submitted by the claimant and an overpayment has occurred due to department error, recovery should not be an option.

SCVO accepts that fraud is an offence and that with rights come responsibilities but SCVO, Engender, Shelter Scotland and others, question if imprisonment for up to five

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years is proportionate to the offence.

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?

SCVO refer to the responses from Age Scotland, the ALLIANCE, Alzheimer Scotland, Carers Trust Scotland, Citizens Advice Scotland, Disability Agenda Scotland (DAS), Energy Action Scotland, Engender, Inclusion Scotland, MND Scotland, MS Society Scotland, Scottish Association for Mental Health (SAMH), Support in Mind Scotland and other leading third sector organisations who have expert knowledge on how these schedules may affect the communities they work with.

SCVO would highlight, however, that if the Scottish Government is to uphold its commitment to ensure claimants receive the maximum to which they are entitled they must address the problems of the current system which is prohibitively complex, not accessible to all, and where there is often a lack of clarity around what is expected from claimants. To achieve a rights based approach and ensure people from all walks of life receive their entitlements every claimant must be able to apply in a way which is most appropriate for them, with support, including independent advice and independent advocacy, provided through the entire process.

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?

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SCVO welcome the provision of short-term assistance, which we believe is to be the first of its kind in the UK. SCVO agree that claimants who are challenging a decision should not have their entitlements reduced until the full appeals process has concluded. These new proposals should protect claimants deemed ineligible for entitlements from facing hardship whilst successfully appealing against decisions. We are, however, concerned that the Bill currently lacks much of the detail needed. A more detailed schedule should be outlined. This schedule should include details on the level of payment and the connection of short-term assistance to the appeals 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?

SCVO support top-up benefits in principle. Like many of our colleagues across the third sector, we believe that the use of powers to top up 'reserved' benefits could have a significant impact on lifting people from poverty. There is too little detail in the bill to comment on the use of top-up benefits in more detail.

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?

SCVO welcomes the proposed increase in Carer's Allowance. The work of carers currently saves the public purse upwards of £10bn every year. However, caring responsibilities can place onerous burdens on individuals, often requiring carers to reduce, or in some cases give up, work commitments, significantly reducing their incomes. In addition, carers have poorer health and wellbeing outcomes, alongside reduced abilities to participate socially. Support for carers must therefore be seen within a comprehensive strategy designed to lift them out of poverty, increase their respite opportunities and decrease social isolation. If the Scottish Government is to achieve this, it is the view of SCVO and many of our members including Alzheimer Scotland, the Carers Trust Scotland, and Engender that this proposal is not ambitious enough. As a starting point, there is a need for a proactive effort from the Scottish Government to identify carers so they are aware of their entitlements. Such efforts are central to the Scottish Government's commitment to ensure claimants from all walks of life receive the maximum to which they are entitled. Similarly, while the Scottish Government has identified carer employment and education as a key issue, to date no action has been taken to broaden entitlement criteria for Carer's Allowance. SCVO and many of our members believe the current 35 hour measurement is far too restrictive

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and the rules do not support people who are able to combine caring with work or full-time study.

To ensure that the current proposals and any future additional social security payments provide a real increase in earnings for carers SCVO believe that their impact on other entitlements must be considered. Currently, any increase in the rate at which Carer's Allowance is paid reduces income from other benefits for those on the lowest incomes as a result of means testing. A potential solution would be to both invest in Carer's Allowance itself, and to top-up the premiums within the means-tested benefits system that those eligible for Carer's Allowance are able to access.

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?

SCVO, the Housing Support Enabling Unit, the Scottish Federation of Housing Associations (SFHA), and others, believe that there is an opportunity to review the expectations and the intended outcomes of discretionary housing payments and whether these remain the best vehicle for mitigating the 'bedroom tax' and 'benefit cap' given their ongoing nature. There are also concerns in the sector that there is no duty on local authorities to provide a discretionary housing payments scheme or on the Scottish Government to ensure this scheme is adequately resourced. If local authorities are to continue to administer discretionary housing payments it is important to ensure that a ring-fence around the funding is maintained. A ring-fenced fund would also ensure accountability and transparency.

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

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

No role for profit-driven organisations

SCVO strongly believes that the Scottish Government must avoid the use of profit-driven private sector organisations to deliver benefits and services. Many individuals who have undergone the disability assessments have spoken of the inhumane process. As well as

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breaching human rights, the services delivered by private sector companies have made the system less transparent and decision makers less accountable. Use of such private sector companies would clearly contradict the aims of the Scottish Government's Fairer Scotland Action Plan and the aims of encouraging greater transparency and accountability as part of the Open Government Partnership. The Cabinet Secretary has also given assurances that assessments would not be carried out by for profit organisations. To future proof these assurances the legislation should clearly state that parts of the new system will not be passed to for profit organisations.

Third sector, not for profit and social enterprises, however, could play a vital role in certain aspects of the delivery system. These organisations already have experience of providing much needed support to individuals in vulnerable situations in a dignified and respectful way. Proper resourcing is essential to ensure this expertise can be utilised

Entitlements in cash

Individuals should always be given the choice over how they receive their full entitlements. As the Bill is currently drafted, it gives future governments the power to remove entitlements to cash benefits entirely through secondary legislation. This is not in keeping with a rights-based approach to social security. SCVO, the ALLIANCE, Child Poverty Action Group (CPAG), Citizens Advice Scotland, Engender, Inclusion Scotland the Poverty Alliance, the Scottish Campaign on Welfare Reform and many others in the third sector, stress that for all entitlements payment in kind should be available as an opt-in choice only. A rights based approach should ensure choice now and in the future.

Data as evidence

There is a growing debate around data on individuals and how this is shared and accessed for evidence when entitlements are claimed. Trust, transparency, and a robust system of data sharing are essential elements of the new system. SCVO believe that individuals have the right to own their data. There are questions as to how this right can be protected under the new arrangements for the social security system.

Effective monitoring

SCVO, SIAA, the Coalition for Racial Equality and Rights, and others, believe that effective monitoring needs to be built into the new social security system. Through effective monitoring the Scottish Government could identify groups who are underrepresented amongst claimants and take proactive steps to ensure these groups understand their entitlements. Such measures could play a role in ensuring the Scottish Government uphold their commitment to ensure claimants receive the maximum to which they are entitled. Access to reliable and transparent data is also essential if we are to achieve a rights based approach and to meet the aims of greater transparency and accountability as part of the Open Government Partnership.

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Conclusion

SCVO welcomes the Scottish Government's aspirations to foster a human rights culture where individuals are able to articulate and claim their rights. However, SCVO and our members believe that if a rights based approach is to be achieved several aspects of the Bill require strengthening. We must seize this opportunity to create a social security system that is truly rights based: a system that offers claimants the advice that they need; that ensures everyone has access to an independent advocate; that empowers claimants to make decisions on how to receive their entitlements; and that has a clear process for complaints and redress. The principles, the charter and the Bill itself must clearly detail the rights of claimants, the duties of the state to claimants, and what a rights based approach means in practice. The Scottish Government's plans are ambitious. To measure their success and ensure positive progress beyond this legislation effective data collection and monitoring is essential. Similarly, the Scottish Government must protect this progress by enshrining in the primary legislation their commitment that parts of the new system will not be passed to for profit organisations and by setting a date for rules in regulations to be integrated into the main Bill. We believe that by creating this solid foundation, and committing to statutory independent expert scrutiny the Scottish Government can begin to realise a progressive, rights based social security system for Scotland that aligns with their commitments to human rights more broadly, the Fairer Scotland Action Plan, the Sustainable Development Goals (SDGs) and Open Government. |

About us

The Scottish Council for Voluntary Organisations (SCVO) is the national body representing the third sector. There are over 45,000 voluntary organisations in Scotland involving around 138,000 paid staff and approximately 1.3 million volunteers. The sector manages an income of £5.3 billion.

SCVO works in partnership with the third sector in Scotland to advance our shared values and interests. We have over 1,900 members who range from individuals and grassroots groups, to Scotland-wide organisations and intermediary bodies.

As the only inclusive representative umbrella organisation for the sector SCVO:

- has the largest Scotland-wide membership from the sector – our 1,900 members include charities, community groups, social enterprises and voluntary organisations of all shapes and sizes

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- our governance and membership structures are democratic and accountable - with an elected board and policy committee from the sector, we are managed by the sector, for the sector
- brings together organisations and networks connecting across the whole of Scotland
- SCVO works to support people to take voluntary action to help themselves and others, and to bring about social change.

- Further details about SCVO can be found at www.scvo.org.uk.

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