

Social Security Committee Call for Evidence – Social Security (Scotland) Bill **Response from the Scottish Campaign on Welfare Reform (SCoWR)**

The Scottish Campaign on Welfare Reform (SCoWR) is a broad coalition of voluntary sector organisations, trade unions, faith groups and others established in 2006 out of a shared concern about the direction of ‘welfare reform’. Members have developed a shared vision for a new approach to social security. These are set out in the five principles of the SCoWR [Manifesto for Change](#) and in a Holyrood [supplement](#) to the Manifesto setting out priorities for the use of the new powers devolved by the Scotland Act 2016. This evidence paper draws on these manifestos as well as the SCoWR response to the Scottish Government 2016 consultation on social security. It has been developed by members of the SCoWR steering group (see below) but has not, as yet, been endorsed by the full membership. A wider members meeting will consider the response on 30 August.

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?

1.1 SCoWR members have concerns over this approach and the extent to which the detail of new benefits are being left to regulations rather than being included within primary legislation. Members understand that there is a balance to be struck, and that it is reasonable that some details of benefit rules are set out in regulations as policy evolves, and needs change. However, the Bill as introduced goes much further and, for example, enables Government to create entirely new forms of disability or carer’s assistance entirely through regulations, without the consultation and parliamentary scrutiny that primary legislation demands.

1.2 Members are concerned about the risk that this creates in terms of parliamentary accountability with potential consequences over time for individuals’ rights to social security. Future governments will be able to make fundamental changes to benefit entitlements with limited public consultation or parliamentary scrutiny. Furthermore individuals will have less security in terms of primary legislation to draw on when they need to challenge decisions. Relying upon guidance and regulations to ensure that claimants’ rights are protected can create problems with consistency and interpretation.

1.3 Members have experience of the problems that are created when more benefit rules are left to secondary legislation. An example is the ease with which the UK Government recently (Feb 2017) reduced entitlement to personal independence payment (PIP), overturning legal judgements on key assessment rules without the consultation or parliamentary scrutiny that would have been required if the rules were laid out in primary legislation. This has left many vulnerable claimants with no future entitlement to PIP. Equivalent rules in disability living allowance are set in primary legislation and have provided greater security to claimants.

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.

2.1 SCoWR members welcome the placing of the principles in legislation. Several of the principles echo SCoWR's manifesto principles - for example the SCoWR manifesto principle that 'human rights and dignity should be the cornerstone of a new approach to social security' and that there is a need to 'invest in the support needed to enable everyone to participate in society'. While SCoWR members support the principle of an efficient social security system a drive for value for money should not come at the cost of protecting people from hardship. The principle must recognise the user's experience of the Scottish social security system and take into account the costs of poverty associated with inadequate social security.

2.2 However members of SCoWR believe that:

- a) The principles need to be strengthened to ensure they are grounded in international human rights law.
- b) There needs to be explicit reference to the accountability mechanisms that are needed to monitor the extent to which the right to social security is being realised.
- c) Principle 1 – that social security is an investment in the people of Scotland – needs to be backed by a statutory requirement for annual uprating of benefits – at the very least in line with inflation. At present, in UK benefits, there is a statutory requirement to uprate carers' allowance, disability allowance, attendance allowance, personal independence payment, industrial injuries disablement benefit and severe disablement allowance. Therefore a failure to include a similar commitment in statute in relation to devolved social security risks downgrading current requirements.
- d) Further explanation and definition should be included in the legislation detailing exactly what the terms 'dignity' and 'respect' mean for claimants.
- e) Principle 5 – The Scottish social security system will be designed with the people of Scotland, and based on evidence - needs to be backed up with a right to access independent advocacy to ensure that the most vulnerable people are supported to take part in the design of the social security system. The establishment of Experience Panels has been a welcome development, however SCoWR members would welcome further detail on the future role of these panels. Funding and resources should be available to ensure that long-term and meaningful engagement with Panel members is achieved to shape the new system.

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

2.3 Yes, that 'Social security has a role to play in the eradication of poverty in 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.

3.1 SCoWR members agree with the idea of a charter as one means of embedding the principles in legislation and welcome the Scottish Government attempting to include claimants in the design of the charter through the introduction of experience panels. It is critical the existence of the charter is publicised widely and consistently to help realise the intent behind the creation of it with the annual report published promptly. A role for the experience panels in scrutinising the impact of the charter should be considered.

SCoWR members believe there must be a clear and practical purpose to the charter and it must be enforceable. When the charter sets out the expectations on individuals, there must also be clear avenues for people to take if they feel that their experience of the system does not meet the standards set out within the charter.

3.2 However, some SCoWR members have expressed concerns over the accessibility of the initial focus groups, with some feeling that the people they work with were not given sufficient chance to be heard. The Scottish Government must continue to work openly with the full range of third sector agencies working with people with experience of the social security system, to ensure the views of their service users are fully taken into account. The Government must provide timely information on any changes that it proposes to make and allow for input from all involved. It must ensure that advocacy is provided for those who have difficulty being heard.

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

3.3 SCoWR members have previously suggested that the charter could include –

- a commitment to review the uprating of benefits – beyond uprating in line with inflation,
- measures of accountability for when things go wrong and people feel the charter has been breached,
- clear detail on how claimants can exercise their rights and the support they can expect when they require it.

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?

4.1 Members of SCoWR have expressed concern that the process of **redetermination** set out in the Bill retains key characteristics of the current UK mandatory reconsideration process.

Members are concerned that, by creating unnecessary barriers to administrative justice, this runs counter to the SCoWR manifesto principles that ‘human rights and dignity should be the cornerstone of social security’ and that ‘the system should be radically simplified.’ It therefore also risks contradicting the principles set out in the Bill in relation to human rights and dignity.

Members welcome the Bill's provisions for the redetermination period to be time-limited and for short-term assistance to be available during this period. However, the requirement for a second application to progress to an independent hearing if an initial internal redetermination is unsuccessful, as is the case under the current UK mandatory reconsideration system, will create an unnecessary barrier to a fair hearing. SCoWR members are concerned that statistics clearly show dramatically fewer people managing to make an appeal. SCoWR members believe that this is not because of early resolution of disputes but because people find the process extremely daunting and many vulnerable people simply give up before managing to make a second application.

4.2 Overpayments: Members of SCoWR have concerns that the Bill enables automatic recovery of benefit overpayments, even if these result from official error. Whilst members recognise that the policy intent is not to recover overpayments where they result from agency error, there is no actual power in the Bill to make regulations on the circumstances when recovery would, or would not, be made. This also means that people will have no right to appeal the recovery of an overpayment (a right they have currently) even when recovery would mean facing real hardship, again breaching the SCoWR principle that 'human rights and dignity should be the cornerstone of social security', as well as the principles laid out in the draft Bill.

4.3 Offences: Members have further concerns that whilst the policy intent is not to criminalise genuine error, the Bill as introduced means that if a person does not report a change in their circumstances as required, this might be considered as an offence even if this resulted from wholly innocent reasons. Unlike the current system, there are not different general rules about reporting changes which might result in an overpayment, and other fraud rules that might result in prosecution. There is just one set of rules relating to fraud, despite fraud being statistically a minor issue in terms of benefit expenditure and delivery. Members are further concerned that the sanctions for the offences listed in sections 39, 40 and 41 are unduly punitive.

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?

5.1 There is concern amongst members of SCoWR that Schedule 4 – Chapter 2 paragraph 6 states that eligibility (for disability benefits) could be dependent on the individual being in receipt of another type of assistance. There is no policy intention explained for this provision making it difficult to know what lies behind it or to scrutinise it.

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?

6.1 There should be guarantees that claimants won't have to repay any short term assistance if they lose their redetermination or appeal.

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 the Bill does not include any provisions on how this 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?

7.1 In recognition of concerns around the inadequacy of current benefits entitlements, SCoWR members believe there is an opportunity to use the Bill to increase support for low-income families through this legislation.

One option to achieve this is through legislating for a top up to child benefit. Child benefit has a high take-up rate and provides near-universal support with the costs of raising children. Increasing its value would protect family incomes from erosion. This would strengthen the role of universal benefits within the Scottish social security system in line with the SCoWR principle to 'radically simplify the social security system'.

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?

8.1 SCoWR members support this proposal. The current level of support provided by carer's allowance and the arbitrary entitlement rules excluding those balancing caring with work or study are in urgent need of reform. This has a particular impact on women who make up a disproportionate number of carers in Scotland.¹ However, it is important to ensure that any additional social security payments provide a real increase in income for carers on the lowest incomes. 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. SCoWR members also believe there should be a broader entitlement criteria for carer's allowance – the current 35 hour measurement is far too restrictive and the rules do not allow people who are able to combine caring with full-time study or more than a small amount of work, for example. Proactive efforts must also be made to identify carers so they are aware of their support entitlement.

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?

9.1 Members of SCoWR see discretionary housing payment (DHPs) as currently a vital way to support people who may be struggling to meet their housing costs for a variety of reasons including lower local housing allowance (LHA) rates, the benefit cap, the two-child limit, and changes brought about through the introduction of universal credit. Members believe there needs to be continuity in this support, that Ministers commit to ensure the scheme is adequately funded and that resources allocated to local authorities for assistance with

¹ <http://www.gov.scot/Publications/2015/03/1081/2>

housing costs are used for that purpose. There is real concern that there is no duty on local authorities to provide a DHP scheme.

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

9.2 Members of SCoWR believe there is an opportunity to both review the expectations and intended outcomes of the scheme, whether it remains the best vehicle for mitigating the bedroom tax and benefit cap given their ongoing nature and whether the resources being allocated to it are adequate to meet the intended outcomes. Members highlight that DHPs should not just be seen as an important response to the 'bedroom tax' and other recent welfare reforms, but are a long-standing and vital way of supporting people with housing costs who find themselves in difficult circumstances for a range of reasons.

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

The following issues have been raised as concerns amongst SCoWR members:

10.1 The Bills includes a provision that the various forms of Scottish social security **assistance 'may or may not take the form of money'**. Members believe social security support should always be provided in cash unless a clear choice has been made by the claimant that their cash entitlement be used to provide a good or service that they need.

The Bill as introduced does not protect this right to cash assistance, and members believe this is at serious odds with the SCoWR principle that 'respect for human rights and dignity' should be the cornerstone of social security provision. It also risks contradicting the principles contained within the draft Bill.

Whilst members understand the Scottish Government's policy intention to enable provision of in kind support only when this is the choice of the claimant, the Bill introduces more flexibility than is needed to deliver this aim – and in doing so removes the right that should be fundamental in the system: the right to assistance in the form of cash.

10.2 The Bill does not include any information on the administration of **universal credit housing cost flexibilities** and how these will operate as UK Government universal credit (UC) full service is rolled out. Whilst members understand that as these devolved flexibilities relate to a reserved benefit these may be the subject of regulation rather than primary legislation, clarity from the Government on its intentions in relation to UC housing cost flexibilities would be helpful.

10.3 Further detail in the Bill on the **role of advocacy and advice** – as distinct but equally important services – in supporting people to access the system and exercise their rights to social security would strengthen the Scottish Government's asserted principle (Clause 1(f)) that they are prepared to seek opportunities to 'put the needs of the people who require social security first'. Members of SCoWR believe consideration should be given to creating a legal right to independent advice and advocacy.

10.4 There is no legislative provision to prevent the **use of private companies in benefit assessments** in line with the stated Scottish Government policy intention.

10.5 When it comes to residency rules SCoWR members, as set out in our response to the 2016 Scottish Government consultation on social security, believe that the recent UK change to a two year 'past presence' test for disability and carers benefits should be abolished.

Note:

This response has been produced by SCoWR steering group members including;

AdvoCard
Child Poverty Action Group in Scotland
Disability Agenda Scotland (DAS)
Engender
Health and Social Care Alliance Scotland (the ALLIANCE)
HIV Scotland
Inclusion Scotland
NAWRA
One Parent Families Scotland
Oxfam
The Poverty Alliance
Scottish Council for Voluntary Organisations
Scottish Federation of Housing Associations
Scottish Independent Advocacy Alliance
Scottish Refugee Council
Scottish Women's Aid
Shelter Scotland