

As the representative body for all of Scotland's local authorities, COSLA welcomes the opportunity to comment on the Social Security (Scotland) Bill to assist the Social Security Committee with their scrutiny. COSLA's response covers the questions asked by the Committee and also highlights other elements of the Bill that may benefit from additional information/discussion.

COSLA has also responded to the Finance and Constitution Committee's request for comment on the limited financial information in the Social Security (Scotland's) Bill – Financial Memorandum.

Q1 Do you have any views on this approach?

- 1.1 COSLA recognises that the Bill sets out the framework for the creation of the Social Security system for Scotland and that details about specific benefits will be provided via Regulations. Whilst this has the potential to make things clearer and less confusing moving forward it does leave much of the technical detail to secondary legislation which as the policy memorandum accompanying the Bill states parliament cannot change. COSLA would point out that parliamentary process is not necessarily suitable for scrutiny of technical regulations and this in turn raises questions around the scrutiny of social security in Scotland.
- 1.2 The Bill doesn't not include any provision for the equivalent of a Social Security Advisory Committee (SSAC), or the function currently provided via Industrial Injuries Advisory Council (IIAC) in relation to Industrial Injuries scheme. We would welcome some clarity around how these important functions, present in the existing system, will be serviced moving forward given the commitments around a rights based approach to social security – scrutiny being one of the crucial elements of such a system.
- 1.3 We welcome the commitment the Scottish Government has made around seeking to involve others in the development of the regulations. Given the level of detail that will be required, the timescales are already challenging for the first wave of benefits due to come on stream. The intention around having illustrative regulations available to enhance scrutiny of the Bill is helpful. COSLA and local government expects to be fully involved in processes to support the drafting of regulations moving forward.
- 1.4 The policy memorandum that accompanies the Bill references the National Performance Framework, which provides broad measures of national wellbeing. The policy memorandum highlights that several national outcomes will be affected directly by contributions around social security - it may be beneficial for the Bill to reference this. Given the Social Security Agency will also be covered by the socio-economic duty, due to be introduced by the end of 2017, it may be helpful to include an overall objective around this duty, to which the principles will help contribute in this Bill around reduction of inequality or reduction in poverty etc.

Q2 What are your views on these principles and this approach? Please explain your answer.

- 2.1 COSLA remains supportive, as we were in our original consultation response, to the principles contained within the Bill. The principle of social security as a human right is one which local government recognises as important, and we note the Scottish Human Rights Commissions (SHRC) narrative around the key elements/requirements being around broad availability, adequacy, accessibility and affordability. Whether the Bill as drafted will achieve this principal will be the subject of much discussion during oral evidence sessions. The views of SHRC and others will provide a helpful test in this regard to this principle moving forward.
- 2.2 We are supportive of the role Scottish Ministers have in ensuring individuals are given what they are eligible for – this principle will go some way to assisting many individuals to claim full entitlement however this principle could be further strengthened by reference to the need to provide income maximisation type services such as advice agencies and independent advocacy. The Bill does not introduce any statutory obligation on Scottish Ministers to fund advice/advocacy services unlike Councils and NHS partners who have such duties across various Acts.
- 2.3 The principles, as drafted, contain several terms that would perhaps benefit from definitions for example ‘efficient’ ‘value for money’ ‘continuously improve’ these terms without context may be difficult to test against in the future and some can appear at odds with other principles contained in the Bill.

Q3 Are there any other principles would like to include?

- 3.1 COSLA is generally supportive of the principles, but note there is currently no principle around accessibility and local availability contained within the Bill. Given one of the key elements around social security as a human right is accessibility, an additional principle around this could strengthen this notion further.

Q4 Do you agree with the charter? Please explain the reason for your answer?

- 4.1 COSLA is supportive of the idea of a charter as it potentially provides a real opportunity to set the culture within the Scottish social security agency. Further clarity would be welcome around the enforceability of the charter and the relationship between the outcomes for social security, the principles, charter and secondary legislation.
- 4.2 COSLA is pleased to note that in preparing the charter Scottish Ministers must consult with individuals in receipt of benefits being devolved but would also suggest consultation with those who have applied and not been awarded assistance is important. Wider public sector partners should also be included in the list of those to be consulted given the significant knock on effect devolution of social security has for Communities and the services provided elsewhere by the public sector.
- 4.3 Clarity would be welcomed around who assesses compliance with the contents of the charter on an ongoing basis. Whilst we note the Bill requires Scottish Ministers to publish and review the charter we are unclear how performance against it will be demonstrated and evaluated.
- 4.4 The Bill states the Charter will lay out what will be expected of Scottish Ministers as they exercise their functions in the Scottish social security system. It would be helpful to understand how the social security charter will work alongside any other public sector charters or code of conducts etc. already in place.

- 4.5 COSLA welcomes the intention to review the Charter, however the current timescale of 'within five years' seems like a long time for the initial iteration and we would suggest a shorter review of the first charter. Information on the review process and independent evaluation will also be critical.
- 4.6 The concept of an annual report before parliament on performance of the agency is a welcome one. More detail around what information should be included in the report would further strengthen the accountability and governance of the new agency. Whilst we recognise what needs to be reported over time may change it would be helpful to set out as a minimum what should be included from the beginning.

Q5 Is there anything specific you want to see in the charter?

5.1 Inclusion in the Charter:

- Relevant information on how Scottish Ministers intend to ensure the principles contained within the Bill are implemented and serviced operationally.
- Standards expected in and around the administration of social security including timescales.
- Standards expected from those claiming assistance from the Scottish social security agency.
- The complaints process, including how to complain, how these will be dealt with and importantly timescales for resolution.

Q6 Do you have any comments on these rules?

- 6.1 COSLA is broadly content with the provisions around how applications can be made, how they will be determined and how they can be withdrawn. We note the Bill does not give timeframes for how quickly an initial determination will be made – this could potentially be included in secondary legislation for each of the benefits or indeed be included in the Charter – regardless clarity on how this timescale will be determined would be helpful.
- 6.2 The Bill places a duty to inform individuals of a decisions, COSLA supports the notion that this notification can be communicated verbally but assert that it must also be followed up in writing to allow individuals the opportunity to challenge decisions using written notifications.
- 6.3 We note the Bill contains an obligation on individuals to provide information on request, which we support however the provision that allows Scottish Ministers to determine that an individual does not meet the eligibility rules simply by not complying with a request for information seems at odds with the ethos elsewhere in the Bill. In the interests of natural justice, it may be more helpful for Scottish Ministers when not provided with information to decide based on the information they do hold.
- 6.4 Provisions are contained within the Bill around 'ongoing entitlements' and 'determinations without application' and we recognise these could be used to simplify and reduce the burden of claiming for certain types of assistance however we have reservations how these automatic entitlements fit against the requirements to notify change in circumstances and repay any subsequent overpayments that may occur.

- 6.5 In terms of challenging decisions it is helpful that the ‘right to request re-determination’ will be accompanied by published procedures and timescales and include an option for redress should the agency fail to meet those. We understand the rationale around the ‘redetermination’ stage being quicker and more accessible to applicants and provides the opportunity for a decision to be re-determined at the lowest possible level. That said we are less clear on the requirement for the individual to then subsequently request a first-tier tribunal if they still disagree with their decision following a re-determination. This two-stage process, albeit with clearer timescales, and published procedures will not reduce the barriers many face when seeking access to administrative justice and individuals could perhaps encounter many of the issues they already do with the current mandatory reconsideration process.
- 6.6 On recovery of assistance the Bill prescribes that all overpayments are recoverable including those that have occurred due to an error. We note the overarching policy aim around ‘the right people at the right time’ and to the intention to develop appropriate processes around the recovery of overpayments which are all welcome. However the recovery of all overpayments, even those potentially caused by official error, does not appear to fit with the stated principles of social security.
- 6.7 On offences and investigations, we subscribe to the notion that social security is an investment in the people of Scotland and that attempts to obtain social security by those who are not entitled results in less funding being available for those who need it most to that end we welcome the focus on prevention of fraud, error and overpayments via robust systems and procedures. Section 39 of the Bill specifies sentencing limits. It may be more beneficial to wait until the outcome of the Scottish Sentencing Council public consultation on the principles and purposes of sentencing given calls around ending jail terms of less than 12 months.
- 6.8 COSLA would also welcome a more general discussion across the wider policy landscape in and around the prevention and detection of fraud given Council Tax Reduction, Scottish Welfare Fund, DHPs and other locally provided assistance/services sit out with the remit of this Bill.

Q7 What are your thoughts on the schedules in the bill regarding these benefits?

- 7.1 It is difficult to provide significant thoughts on the schedules themselves given they provide a broad framework each of the topics will follow as opposed to detailed policy choices or administrative clarity.
- 7.2 We note however there is no schedule for ‘short-term assistance’ – it would be helpful to understand whether rules relating to ‘short-term assistance’ will be contained within a specific schedule or will the detail be provided via each thematic set of regulations – given the schedules available within the Bill as drafted don’t mention the giving of short-term assistance.

Q8 What are your views on this proposal?

- 8.1 COSLA recognises the barriers faced by many in taking up their right to challenge decisions and access administrative justice and welcomes the clarity if the provision of short-term assistance does not affect the provision of hardship assistance currently provided by the Welfare Funds (Scotland) Act 2015.

- 8.2 Whilst we recognise the barriers faced by many and welcome Scottish Ministers attempts to reduce some these barriers we would highlight, as stated in the policy memorandum that this short-term assistance is currently not available in the existing social security landscape. This means any financial costs incurred because of the introduction of short-term assistance would be over and above the funding transferred at the point of devolution. COSLA notes this point was made more generally in the inaugural meeting of the External Experts Panel on 13th June 2017 in relation to social security. COSLA notes the introduction of short-term assistance is not specifically identified on the financial memorandum that accompanies the Bill.
- 8.3 In practical terms, there will be a balance to be struck around getting the original decision right first time, ensuring the short-term assistance process works/is fit for purpose and ensuring the appeals process is adequately resourced/completed as quickly as possible.
- 8.4 The original consultation did not seek views on the provision of short-term assistance and we would suggest this is an area for significant discussion moving forward given the implications both practically and financially to this concept.

Q9 Do you agree with these proposals?

- 9.1 The regulations as drafted appear to provide Scottish Ministers with the powers they would require in any event they wished to provide a top up for a benefit not currently devolved to Scotland.
- 9.2 Local government firmly supports the notion of evidence based policy making and would therefore recommend that before any decision is taken to enact a top up for a non-devolved benefit that robust evidence would be gathered, financial implications quantified, public consultations undertaken. Prior to any additional top up being paid the outcomes being affected must be clearly understood and continually evaluated to ensure interventions are delivering better outcomes and contributing to overall national priorities around tackling inequalities and reducing poverty more generally.
- 9.3 Given that any top up would be over and above the funding transferred at the point of devolution there would naturally have to be a conversation in and around how additional funds would be paid for and again this point was made more generally in the inaugural meeting of the External Experts Panel on 13th June 2017 in relation to social security.

Q10 What are your thoughts on this proposal?

- 10.1 COSLA, along with Scottish Government, recognises the contribution made by carers the length and breadth of Scotland and an increase in the rate of Carers Allowance reinforces this notion. As highlighted in our original consultation submission there is still no rationale being given for selecting Job Seekers Allowance (JSA) as the benefit to level Carers Allowance should be in line with. Local government firmly supports evidence based policy decisions and would expect this intervention to be monitored and evaluated to ensure this increase helps delivering better outcomes for carers and contributes to overall national priorities around tackling inequalities and reducing poverty more generally.

Q11 Do you agree that discretionary housing payments should continue largely as they are? Do you have any other views on the proposals for discretionary housing payments?

- 11.1 The Bill commits Scottish Ministers to producing guidance which local authorities must have regard to and further commits local authorities to making information on DHPs available in their local areas. The publication of guidance both a national and local level will assist provide clarity for those in need of assistance via DHP but there will be balance to be struck around the guidance issues at a national level and local authorities ability to use DHPs in a way which compliments their local circumstances. COSLA and councils will of course work with Scottish Ministers to ensure this balance is right.
- 11.2 COSLA agrees that traditional DHPs should continue to be administered largely as they are now. We have long argued that DHP administration funding remains inadequate and care should be taken not to further exasperate.
- 11.3 COSLA is however of the view that the increase in use of DHPs to alleviate many of the welfare changes re-enforce the need for whole system review of how welfare and housing pressures are manifesting themselves. A discussion about transformation and supporting individuals in a more holistic way is called for around the use of DHPS and their interrelationship with the other social security supports which will be available at a devolved level.
- 11.4 It is imperative that there is clarity over the future use of DHPs, as early as possible. Whilst we know the Scottish Government has a commitment to the bedroom tax mitigation for the foreseeable future, our reading of the Bill suggests that there is no duty on Scottish Ministers to provide funding more widely for DHPs going forward. Without clarity, there is a risk that Councils continuing to provide DHPs will find that the funding is not available in the future for this.

Q12 Is there anything else you want to tell us about the Bill

12.1 Residency

The Bill contains no information on residency, and it is not specifically mentioned in the schedules for each of the broad assistance types. We must therefore assume each of the individual supporting regulations will contain eligibility rules around residency requirements to access that specific types of assistance. Rules around residency and eligibility have the potential to become problematic and misaligned with other devolved services and DWP benefits. Care should be taken to prevent confusion through for individual assistance types have different residency requirements. Issues for those accessing devolved social security living/working, and/or those with caring responsibilities, across the Scotland/England border need to be suitably addressed moving forward.

12.2 No recourse to public funds

The Bill is silent on this point as are the schedules for each of the broad assistance types. We must therefore assume each of the individual supporting regulations will contain eligibility rules, around those with no recourse to public funds our other conditions due to immigration status, to access that specific type of assistance. Again, this area is already extremely complicated in terms of accessing support from DWP and services provided by Councils such as housing and Council Tax Reduction. Scottish Government should seek to involve those with experience in supporting those, with varying immigrations status and conditionality, navigate the already complicated system as early as possible to prevent unintended consequences and potential crisis situations post devolution.

12.3 Backdating

The Bill does not provide any principles around backdating of benefits – whilst we realise much of how this might work in practice will be contained in the secondary legislation it may be helpful to put some broad detail around this subject on the face of the Bill. The alternative would see backdating considered as each new set of secondary legislation was passed which could lead to differences across the piece which could in turn increase complexity.

12.4 Annual Uprating

The financial memorandum that accompanies the Bill discusses the uprating of Scottish social security in the context of varying assistance in line with inflation however the Bill as drafted does not require Scottish Ministers to consider uprating on a yearly basis. This would appear to be a situation which is less than satisfactory given the current legislation requires UK ministers to consider uprating on at least an annual basis.

12.5 Payment in kind

COSLA notes each of the specific types of assistance to be provided may or may not take the form of cash, we recognise Scottish Ministers have committed to social security being paid in cash however given the experiences to date around the Scottish Welfare Fund and the principles around dignity, choice and respect it would be helpful perhaps to include detail around how 'payments in kind' might work whilst still preserving the principles laid down elsewhere in the Bill.

12.6 Private Sector involvement

COSLA notes the Bill as drafted does not contain a commitment around private sector companies not being involved in the devolved social security, whilst we accept Scottish Ministers have been clear it is their intention in terms of future provision it may be helpful to include this on this face of the Bill.

12.7 Finance and budget scrutiny

On finance and budget scrutiny generally the Scottish Parliament's Budget Process Review Group, the recommendations of which COSLA fully supports, has recommended an approach which gives Parliamentary Committees more flexibility to scrutinise the budget process overall, prior to firm spending proposals being announced. Importantly the group recommends that scrutiny should focus on the interdependent nature of the policies which the budget is seeking to deliver. We agree that more informed scrutiny over the lifetime of policy delivery is needed and this is very much the case for the newly devolved social security powers.

13. **Summary**

13.1 In summary, local government in Scotland remains supportive of Scottish Government's aims around simplification of devolved social security. The principles contained within the Bill and the process for establishing/reviewing a Charter will go some way to achieving a Scottish system that is fairer, more transparent and puts the needs of those accessing support at the centre of the design. Local Government does not underestimate the task ahead, and will continue to work with the Scottish Government, to ensure the policy decisions, regulations, and integration are right and deliver the best outcomes across Scotland.

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