

# Equality and Human Rights Commission Consultation Response to the Social Security (Scotland ) Bill 2017

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# Equality and Human Rights Commission Response to the Social Security (Scotland) Bill 2017.

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## **Contact details:**

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The Equality and Human Rights Commission is the National Equality Body (NEB) for Scotland, England and Wales. We work to eliminate discrimination and promote equality across the nine protected grounds set out in the Equality Act 2010: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

We are an “A Status” National Human Rights Institution (NHRI) and share our mandate to promote and protect human rights in Scotland with the Scottish Human Rights Commission (SHRC).

### **Question 1: Decision by regulation, not legislation**

Given the criticality of social security the EHRC would prefer that Parliament is given the opportunity to review and comment on decisions made about it prior to their implementation. This is particularly important in the early stages where regulations will make a reality of the commitments in the Bill. We note that a wide number of decisions affecting benefits eligibility and payment will be the subject of regulations rather than primary legislation including carers allowances, winter fuel payments, disability and early years assistance amounts others. Where possible we believe that the accountability that Parliamentary debate brings should be encouraged.

### **Question 2: Principles**

The EHRC has recently published independent research from Ulster University which looks at the operation of dignity and respect in other jurisdictions social security systems (Social security systems based on dignity and respect). The research makes a number of recommendations which are germane to this consultation and we would encourage the Committee to look at this research as a yard stick by which the Governments commitments to dignity and respect could be measured. For example the research looks at issues of adequacy (assistance), engagement, and the administration of the system through the lens of Scotland’s human rights obligations.

In regard to other principles that the Bill could incorporate we would encourage the Government to consider the role of independent scrutiny on the face of the Bill and set out plans for this. We also support the Scottish Human Rights Commission’s call for the principles to incorporate the “progressive realisation” of human rights in the delivery of social security as a balancing mechanism for the principle of efficiency and value for money.

### **Question 3: A social security charter?**

We welcome the establishment of a charter which supports the delivery of the new social security powers. In particular we agree that the creation of a Charter, co-produced with those who are in receipt or could be in receipt of benefits, is a critical step to making a reality of commitments towards engagement and involvement.

Whilst we welcome a clear statement of what is required from claimants and how they can engage and comply with the new systems requirements we would also encourage the development of clear statements about how staff will relate to claimants beyond the day to day administration of benefits. In particular we would support clear statements about the relationship between the claimant and the state and how the system will operationalise an enabling approach aimed at income maximisation within the context of a rights based system.

At this point the status of the Charter is unclear. The EHRC would encourage the Government to view the Charter as being an enforceable statement of rights and responsibilities which would enable claimants a right to remedy should errors occur. This is a matter which would need to be addressed within the body of the current Bill. We would also encourage the Government to place a time limit for review of the Charter within the body of the Bill to enable Parliament to consider if the resulting Act is operating in the way in which was envisaged – for example is it in keeping with the principles set out on the face of the Bill?

### **Question 4: Rules**

In this section we concentrate on the dispute resolution elements of the Bill. Firstly we welcome the commitment of the Scottish Government moving to a rights based approach within the new system. However the detail of how any rights based system that is introduced will work is not set out in the Bill and presumably again this is a matter which will be dealt with by regulation. As above (Q1) we have concerns about this approach and would encourage the Government to seek Parliamentary oversight of this matter. For example clause 8 could be strengthened to include the principle of a right to social security.

Looking specifically at the issues of time limits for appeals we consider that 31 days may not be sufficient time for some people, particularly those with, or who share, a protected characteristic to put forward a defence. This concern particularly relates to people who have communication issues and may require a signer or interpreter, who may not be available within the prescribed time period. The 31 days limit is also dependant on the availability of documentation in a form that is useable by the claimant (for example in

braille) to be fair.

On the issue of debt recovery where an overpayment has been made, whatever steps which are taken to recovery debt must be proportionate to the total income on the household so as not to push the household into destitution or further debt. Ceilings will need to be introduced to limit the extent of recovery. We are also concerned that the time limit for recovery – 5 years – seems an overly long period for an error which was not the fault of the claimant. As above, circumstances within the claimants household may have significantly changed within 5 years and the whilst the principle of recovery is one that we support it should not be used as a blanket measure when proportionality could be a better and more reasonable test.

#### **Question 5: Specific benefits**

The EHRC is not going to comment on these matters as there are specialist agencies who are better placed to do so.

#### **Question 6: Short-term assistance**

The EHRC welcomes the introduction of short term assistance to ensure that claimants who are appealing are not left destitute during the process. This is an important and welcome change from the current UK Government system of sanctions. In itself it signals a significant shift in the relationship between the state and claimants and also the rationale for social security itself. However we note that whilst claimants have one opportunity to appeal the social security agency appears to have two, which somewhat dilutes the notions of fairness established elsewhere.

#### **Questions 7 - 9**

At this point we do not have any comments on the more detailed aspects of the Bill.