

Carers Scotland response to Social Security Committee Call for Evidence - Social Security (Scotland) Bill

About carers in Scotland

- There are 759,000 adults carers in Scotland - 17% of the adult population.
- Every year over 160,000 take on a caring role
- 171,000 people care for 35 hours a week or more
- 3 in 5 of us will become carers at some point in our lives.
- Over 250,000 people juggle caring with holding down a job.
- The main carers' benefit is worth just £62.70 for a minimum of 35 hours.
- Almost half (44%) of carers are struggling to pay utility bills, 47% have been in debt and half are struggling to make ends meet, cutting back on food and heating as a result.
- 8 in 10 carers say their health is worse because of caring.
- By 2037 the number of carers in Scotland will have increased to around 1 million.
- Carers save the Scottish economy £10.3 billion - close to the cost of providing NHS services in Scotland.

About Carers Scotland

Carers Scotland is the Scottish nation office of Carers UK. We are a carer led organisation which works to make life better for carers. Working as part of Carers UK: we give expert advice, information and support; we connect carers so no-one has to care alone; we campaign together for lasting change; and we innovate to find new ways to reach and support carers.

The Social Security Bill

Carers Scotland warmly welcomes the Social Security (Scotland) Bill. We believe it offers the opportunity to develop a system, linked with services and support across sectors, that has the potential to offer a more holistic approach.

1. General Approach

Carers Scotland believes that there are pros and cons to the Scottish Government's approach. We recognise the intention that containing benefits to individual regulations aligns with the phased implementation of the Scottish social security system as it develops within this Parliamentary session and beyond. This approach also allows for the Scottish Government to respond more quickly when circumstances change, for example, to introduce new payments, to respond to changes in the reserved benefit system, or to act if regulations are not working as intended.

We welcome the commitment that regulations will be affirmative, allowing Parliamentary scrutiny and debate. However, we note that the Scottish Government intends to develop these regulations with external help and, we believe that this offers the opportunity for the experience panels and wider networks of individuals and representative organisations to be a key part in both co-producing and scrutinising such regulations for unintended consequences before they are laid.

However, the flip side of the simplicity of change of regulations is a concern that this ease of change could in future offer the ability to reduce entitlement. This concern is borne out of experience of the UK benefit system where changes to personal independence payment were made which was detrimental to thousands of disabled people. This remains a real concern for carers, disabled people and representative organisations.

To ensure there is balance between primary and secondary legislation and to address concerns it is important that there is robust and independent scrutiny in place. This could include, for example, the establishment of a Scottish Social Security Advisory Committee to provide advice to Ministers and the Scottish Parliament as well as an ongoing role for the Social Security Committee and wider Parliament.

2. Principles

Carers Scotland welcomes the principles and further welcomes that these will be included in primary legislation.

We have some concern over principle 7. We agree that it is important that public services are efficient and good value, but for carers and those they care for, access to social security is a lifeline and vital to ensure that they are not further disadvantaged. Carers have identified this as a concern, with some carers stating a fear that value for money would be prioritised over other principles in a constrained fiscal environment.

We also agree with the view of the Poverty Alliance and others that an amendment should be made to principle 6 to reflect rights as well as needs. We recommend it should read *“The Scottish Social Security should always be trying to improve. Any changes should put the rights and needs of those who require social security first.”*

Additional Principles

We agree with the view of the Poverty Alliance that the inclusion of an extra principle which recognises that social security is not only an investment in our people but is also a vital tool in tackling poverty. We therefore, in line with their suggestion, that this new principle should read “Social security has a role to play in the eradication of poverty in Scotland.” Social security is by no means the only tool but a vital one; recognised in principle that social security is itself a human right. Secondly, we would urge consideration of a principle that enshrines equality of access; recognising that some of our citizens may find it harder to access social security including, for example, people from minority ethnic communities and those with learning disabilities. In practice, a principle of this kind would enshrine the right to access to accessible information, advice, representation and independent advocacy to support people to navigate their way through the benefits system.

3. Social Security Charter

We are in favour of the social security charter. However it is difficult at this point to understand how the contents of the charter will be achievable in practice. Carers welcomed a bold commitment to transparency, clear expectations and accountability, but there are also concerns around monitoring and scrutiny. Whilst we welcome the requirements to consult and co-produce with citizens, there is a need for wider external review and scrutiny of the charter, rather than simply a review from Ministers only. Equally, the annual report should include an action plan to deliver the continuous improvement set out in the principles. The external review and scrutiny of the Charter and the monitoring of implementation of any action plan could be a role for a Scottish Social Security Advisory Committee to provide advice to Ministers and the Scottish Parliament as well as an ongoing role for the Social Security Committee and wider Parliament

The Bill in its current form notes obligations regarding people using the system, but less on what the State’s obligations are to people and the consequences if they do not comply with these obligations. We feel that much more clarity is needed to ensure that citizens are able to achieve redress if the Charter and its principles are not met. We would also like to see timescales set out in the Charter for processing of applicant claims, reviews and appeals.

4. Rules for Social Security

We have a number of comments in relations to the rules set out within the Bill.

(a) Determining Entitlement

We welcome the commitment that individuals will be able to apply for benefits in a number of ways and that Ministers. As was made clear in the earlier consultation on social security, individuals want a range of ways to apply, including face to face rather than an approach that is digital by default. We further welcome the commitment made that the private sector will have no role in new social security system in Scotland. However, we believe that the Bill should include this commitment to enshrine this in legislation.

(b) Challenging decisions

Our first area of concern relates to re-determination. We reflect the views of other organisations who are concerned that this approach in effect mirrors the current DWP mandatory reconsideration, which has resulted in delays including backlogs for tribunals. We have been reassured to some extent by the policy memorandum which outlines that clear timescales and (if these are not met) a right immediately to appeal to the First Tier Tribunal and of the commitment to set aside the decision and go through a new process of making a new decision. However, this setting aside of the original decision is a little more like the earlier DWP process of review in DLA. We welcome the commitment to allow individuals to submit further evidence at the redetermination phase.

In this respect, we support the view of the Child Poverty Action Group which recommends *“an improvement to this proposed re-determination process, which would retain a re-determination in every case but require just one application to reach an independent appeal. This would mean people would not have to make another*

application if there was no change at the internal redetermination stage but would have the option to withdraw at that point if they chose.”

We also support the Child Poverty Action Group view that First-tier Tribunal power to determine entitlement should be able to consider those issues raised by the appeal and not be required to consider other issues¹. At present disability benefit appeals focus just on mobility difficulties, or just on daily living needs, and tribunals can choose to deal with just those particular aspects of the award that are at issue in the appeal. If they had to deal with all aspects in all cases, this places additional and unnecessary stress on individuals and their carers (who are often the main support for the person they care for.)

We would also note the fact that there is no information about timescales and time limits for decisions to be communicated to individuals (although there are timescales that individuals are required to meet). There is an imbalance here that counters the idea of a person-centred and rights-based approach. Many carers struggle to cope with the inflexibility of the current social security system and a new system that does not respect and empower citizens will not alleviate these issues.

(c) Overpayments

The Bill appears to allow the Social Security Agency to recover overpayments regardless, in some cases, whether or not the overpayment was the responsibility of the Agency. We believe strongly that if an error is made in the decision making process, then it should not be for an individual to have to repay. However, we would also note that even where the error is by the individual, consideration should be given to the complexity that many people will be facing in claiming benefits from both the Scottish Social Security Agency and the DWP. Equally, where a decision has been made to recover monies, this should be based on the financial circumstances and likelihood of hardship any recovery may have.

5. Benefits Schedules

We have in the main contained our comments to the schedule relating to assistance for carers. We look forward to further detail about the potential for change eligibility and rules for this assistance. Whilst we welcome the interim supplementary payment to top up Carers Allowance to the level of Carers Allowance, carers have been clear that they are keen to see more fundamental changes.

We echo the response from our fellow carer organisation, Carers Trust Scotland regarding Schedule1, P1, C2, S4 which contains details of regulations on more than one person providing care for another person. We appreciate the detail of the regulations is still to be fully considered, this Schedule should also contain details of eligibility for the carers' assistance for those carers who are looking after more than one person. Currently, people with multiple caring roles, who may need significantly more support and are less likely to take up paid work, are either only entitled to the current Carers Allowance benefit, or do not meet the criteria if they are looking after more than one person but do not exceed 35 hours per week in one of the caring roles only. This group of carers is significantly disadvantaged by the current rules on Carers Allowance and we urge the Committee to include this issue in the schedules.

Cash v in kind support

Across more than one schedule is the proposal that benefits could be paid in cash or in kind. Whilst we understand the motivation behind this flexibility i.e. to offer people the choice to choose in kind support instead of, or to replace part of, their cash payment. However, we are concerned over the wording of this section. For example, the carers' assistance schedule this reads: "Carer's assistance is assistance (which may or may not take the form of money)..." We believe that this should be amended to ensure that it is completely unequivocal that this is at the **choice** of the individual and that **first and foremost** benefits should be paid in cash with any choice to sacrifice any of this payment for an in kind benefit at a later date (e.g. as in the case of DLA/PIP to sacrifice some or all of the mobility element to lease a Motability car).

6. Short Term Assistance for people challenging decisions

Whilst we welcome the commitment to provide short term assistance to protect the incomes of those challenging a decision, we believe that this should be in the form of the benefit they are currently receiving i.e. PIP/DLA/AA. There are significant consequences for an individual and their carer if an existing benefit does not continue until the determination of an appeal is made. This includes other passported support and benefits but also, significantly, in the view of Carers Scotland, an impact on the benefits of carers. Carers receiving Carers Allowance or any underlying entitlement will cease to be entitled as soon as a person's qualifying benefit is

¹ Section 29 of the Bill, as drafted, may require a tribunal to make a complete redetermination (if not simply upholding the decision under appeal).

removed. This means that carers will see an immediate impact on their incomes and may be subject to a requirement to seek employment alongside their caring role.

We support the suggestion by Child Poverty Action Scotland that short term assistance can be improved by providing an automatic run-on of carers' and/or disability assistance whenever an award ends or is reduced, regardless of whether the decision is challenged. This would give people time to adjust. It would also allow premiums and passports to continue – because it would be a continued entitlement to the same benefit. Time-limited run-ons of benefit already exists in the current system e.g. in carer's allowance after the person receiving care dies.

7. Topping up benefits

We support the ability to top up reserved benefits and we welcome discussion on how this could be best used to reduce poverty amongst carers and those to whom they provide support.

8. Carers Allowance increase

We are of course in favour of increasing Carers Allowance and believe that this should happen as soon as possible. However, in line with the view of Carers Trust Scotland, we would note that it may not be helpful to compare Carers Allowance with Jobseekers Allowance. JSA is intended to be a temporary payment that is provided until income is secured through paid employment. Carers Allowance is often received on a long-term basis because caring roles are long term and prevent carers from seeking or retaining full time employment. It is important that those carers who are unable to work because they are caring are provided with adequate income. Even at the rate of Jobseekers Allowance, Carers Allowance does not adequately recognise in financial terms the significant contribution that carers make to the life and economy of Scotland. This continues to be disappointment, given that it is an 'earnings replacement benefit' which even at the new rate would only recompense carers at the rate of £2.00 per hour based on a 35 hour caring week.

We know that caring can significantly affect carers' finances: almost half of carers are struggling to pay utility bills and are struggling to make ends meet, cutting back on food and heating as a result. We welcome the intentions of the Scottish Government to explore a Scottish carer's entitlement and urge the Committee to consider changes to the criteria outlined in the schedules to the Bill that can make positive changes for carers and their families. Equally, we believe there is a need to consider support within other devolved benefits, for example, in providing winter fuel and cold weather payments and access to funeral payments and in considering other elements of support which could assist in supporting carers' incomes and wellbeing such as concessionary travel and access to employability schemes.

9. Discretionary Housing Payments

The development of the Bill and social security agency provides an opportunity to review systems and processes and identify any barriers that exist in enabling people to claim discretionary housing payments. This includes ensuring equity and a consistent approach across each of the 32 local authorities in Scotland.

10. Additional Comments

The Bill does not appear to make a commitment to uprating. We believe that this should be enshrined in legislation with a duty to increase assistance, at a minimum, annually in line with inflation. We believe that this should be linked to the retail price index not consumer price index. As the Committee will be aware, whilst both measure inflation, CPI leaves out the costs of people's homes. It cannot be assumed that individuals are in receipt of other financial support through the benefit system (devolved or reserved) to cover such costs, and rises in mortgage payments, rents and council tax may have a significant impact on incomes.

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