



1. Duty of the Scottish Ministers to have regard to the Scottish social security principles

Page 1, Line 3, at end insert the following new section:

("Duties of the Scottish Ministers

(1A) The Scottish Ministers must, in carrying out their functions under this Act, have regard to the Scottish social security principles in Section 1. ")

Effect

To ensure the Scottish Ministers, in carrying out their functions under this Act, have regard to the Scottish social security principles.

Reason

We welcome the set of Principles set out in the Bill particularly those in regards to Social Security being an investment in the people of Scotland and that dignity and respect for individuals will be at the heart of the new Scottish system.

However disabled people tell us that they are not treated with "dignity and respect" within the current UK benefits system. They are instead regularly subjected to indignity and total disrespect – being treated as fraudulently trying to obtain benefits to which they are in fact genuinely entitled and subjected to a never ending series of "assessments".

Therefore although the Principles contained in the Bill are largely positive it is at present unclear how they will be applied and even more importantly exactly who is responsible if they are not. By placing a clear duty on Scottish Ministers to have regard to the Principles when making decisions or taking action in relation to Social Security (for example when framing Regulations and Guidance and in overseeing the operations of the new social security Agency) we hope to achieve far greater accountability of Ministers and the social security Agency to Parliament, users of the Scottish social security system and the wider Scottish public. Such a duty would also foster the sort of rights based culture and approach within the new Scottish social security Agency that Ministers have been keen to promote.

2.Duties of the Scottish Ministers to establish the Scottish Social Security Agency

Page 1, Line 4, at end insert the following new section:

("Scottish Social Security Agency

(1B) Scottish Social Security Agency

(1) There is established a body to be known as the Scottish Social Security Agency ("the Agency"), having the functions conferred on it by virtue of this Act and any other enactment.

(2) The Agency must, in carrying out its functions under this Act and under any other enactment, have regard to the Scottish social security principles in Section 1.

(3) The Scottish Ministers may, by order or regulations make provision about —

(a) the functions of the Agency;

(b) the status and structure of the Agency;

(c) any such further provisions as the Scottish Ministers may consider necessary and expedient to establish the Agency; and

(d) any such further provisions as the Scottish Ministers may consider necessary and expedient to support the management and operation of the Agency.

(4) The Agency must, as soon as reasonably practicable after the end of each financial year—

(a) prepare and publish a report on its activities during the year;

(b) lay a copy of the report before the Scottish Parliament; and

(c) send a copy of the report to the Scottish Ministers.

(5) A power of the Scottish Ministers to make an order or regulations under this section shall be exercisable by statutory instrument.

(6) A statutory instrument introduced under this section containing an order or regulations may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Scottish Parliament.

(7) In this Act—

" the Agency" means the "The Scottish Social Security Agency. ")

Effect

To ensure the establishment of the Scottish Social Security Agency is on the face of the Bill, and that the new agency is established, and operates, in a way which is accountable and transparent.

Reason

The Scottish Government is proposing to establish the Scottish Social Security Agency to manage, and to provide assistance under, the new social security system for Scotland. The establishment of the new agency is not, however, on the face of the Bill. Key details about, for example, the status, structure and functions of the Scottish Social Security Agency are also missing.

Our organisations are aware of the strategic role which the Scottish Social Security Agency will have in relation to the development, management and operation of the social security system for Scotland. We, therefore, believe it is vital that the establishment, and the arrangements for the operation of the Scottish Social Security Agency, are placed on the face of the Bill. We believe this is necessary to ensure that the new agency is established, and operates, in a way which is both accountable and transparent. The inclusion of the Social Security Agency on the face of the Bill will provide clarity for all those involved in the Agency and for stakeholders engaging with the Agency. Doing so will also help to promote the rights based culture within the agency which the Minister is keen to foster.

We take the view that New Section 1B is necessary to address our concerns by incorporating key details about the establishment and operation of the Scottish Social Security Agency into the Bill. This new section would strengthen the accountability and transparency of the Scottish Social Security Agency. New Section 1B would, for example, ensure that the Scottish Social Security Agency, in exercising its functions under this and any other relevant legislation, must have regard to the Scottish Social Security principles in Section 1 of the legislation.

New Section 1B would also strengthen the accountability and transparency of the Scottish Social Security Agency by requiring the latter to submit an annual report about its activities to the Scottish Ministers and to the Scottish Parliament. This would support the Scottish Ministers and the Scottish Parliament to evaluate the effectiveness of the Scottish Social Security Agency in exercising its functions, and in particular its providing of assistance under the legislation.

3. Duty of the Scottish Ministers to establish a social security advisory committee

Page 1, Line 18, at end insert the following new section:

("Scottish Social Security Advisory Committee

(1A) Duties of the Scottish Ministers to establish the Scottish Social Security Advisory Committee

(1) The Scottish Ministers shall by order or regulations establish the Scottish Social Security Advisory Committee (and hereafter in this section and in the following section referred to as "the Committee").—

(a) to give (whether in pursuance of a reference under this Act or otherwise) advice and assistance to the Scottish Ministers in connection with the discharge of their functions under this Act, and under any other relevant enactments; and

(b) to perform such other duties as may be assigned to the Committee by or under this Act, or under any other relevant enactments.

(2) The Scottish Ministers may from time to time refer to the Committee for consideration and advice such questions relating to the operation of this Act, and of any other relevant enactments, as the Scottish Ministers think fit (including questions as to the advisability of amending any of them).

(3) The Scottish Ministers shall provide the Committee with such information as the Committee may reasonably require for the proper discharge of its functions.

(4) In each reporting year the Committee must:

(a) make a written report summarising the advice and assistance it has provided to the Scottish Ministers during the reporting year; and

(b) lay a copy of the report before the Scottish Parliament.

(5) An order or regulations under subsection (1) above may make provision about—

(a) the status, constitution and membership of the Committee;

(b) the proceedings of the body;

(c) the Committee's arrangements for reporting to the Scottish Ministers;

(d) the period within which the Committee must report to the Scottish Parliament; and

(e) the matters which must be covered in a report prepared under subsection (4) above

(6) A power of the Scottish Ministers to make an order or regulations under this section shall be exercisable by statutory instrument.

(7) A statutory instrument introduced under this section containing an order or regulations may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Scottish Parliament.

(8) In this section and the following section—

"the Committee" means the "The Scottish Social Security Advisory Committee. "

Effect

To ensure that the Scottish Ministers receive independent advice about the operation of this Act, and of other relevant enactments.

Reason

The UK Social Security Advisory Committee (SSAC) is a Non Departmental Public Body established in statute (see Section 9 of the Social Security Act 1980 and Part XIII Sections 170 through 174 of the Social Security Administration Act 1992).

The (SSAC) provides independent, impartial advice on social security and related matters. It scrutinises the complex secondary legislation that underpins the UK's social security system. The Westminster Secretary of State for Work and Pensions must publish the SSAC's formal advice and respond to its recommendations¹. The SSAC also comment on wider social security related issues through their own independent work programme however the government has no obligation to act on this.

Section 33 of the Scotland Act (2016) effectively prevents the UK Social Security Advisory Committee from providing scrutiny and advice to Scottish Ministers by stating that Section 53 of the Scotland Act (relating to Scottish Ministerial Functions) does not apply.

The balance of the current Social Security (Scotland) Bill is heavily weighted towards future social security law being created through secondary legislation in the form of Regulations. Social Security regulations can be very complex and yet are subject to considerably less scrutiny than changes to primary legislation.

Therefore we believe that the establishment of a similar body in Scotland is a necessity. Without such a body neither Scottish Ministers nor the Parliament will have access to expert advice on secondary legislation and the delivery of social security benefits. Whilst we accept that MSPs on the Social Security Committee have a key role in the scrutiny of legislation this task will be made much more difficult if they cannot rely on the independent expert advice of a Scottish SSAC.

The current Expert Group on Disability and Carers Benefits has a great deal of professional expertise and lived experience to call on but its membership was appointed by the Social Security Minister and the it could go into abeyance or be disbanded at any point at the discretion of the Minister. We believe that a Scottish SSAC as a standing body, established by statute would have both greater independence and permanence.

Appointments to it would then be made through the normal public appointments process to Non-Departmental Public Bodies but with a provision that users of the social security benefits service, or their representatives, should be included as full members of the advisory body.

¹ For example the UK Government recently responded to the SSAC's report on decision-making and mandatory reconsideration. See here - <https://www.gov.uk/government/publications/government-response-ssac-report-on-decision-making-and-mandatory-reconsideration>

4. Amendment to ensure the Scottish social security charter is subject to parliamentary scrutiny

Section 2, Page 1, Line 21, at end insert the following new subsections:

("(1A) The Scottish Ministers shall by order or regulations:

- (a) introduce the Scottish social security charter; and
- (b) make any changes to the Scottish social security charter.

() A power of the Scottish Ministers to make an order or regulations under this section shall be exercisable by statutory instrument.

() A statutory instrument introduced under this section containing an order or regulations may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Scottish Parliament.")

Effect

To ensure that the Scottish social security charter is subject to parliamentary scrutiny.

Reason

At present Parliament is being asked to approve the principle of a Social Security Charter without having sight of its contents or even any indication of what it might contain. Whilst we understand why this is the case (i.e. because the Charter is to be co-produced in partnership with future users of the Scottish social security benefits system) it means that a lot is being done on the basis of trust rather than through proper scrutiny. The above amendment would go some way to redressing this by making the Charter subject to both Parliamentary scrutiny and approval when it is eventually produced. We also hope that this likely to result in the Charter being more robust in conveying clear rights to users of the Scottish social security system.

5. Duty of Scottish Ministers to consult the Scottish Social Security Committee about proposals for regulations

Page 1, Line 18, at end insert the following new section:

("Duty of Scottish Ministers to consult the Committee about proposals for regulations

(1B) Duty of the Scottish Ministers to consult the Committee about regulations

(1) The Scottish Ministers must refer the proposals for regulations under this Act, in the form of draft regulations or otherwise, to the Committee.

(2) The Committee shall consider any proposals referred to it by the Scottish Ministers under this section, and shall submit a report to the Scottish Ministers containing such recommendations with regard to the subject-matter of the proposals as the Committee thinks appropriate.

(3) After receiving a report from the Committee under subsection (2) above the Scottish Ministers shall lay before the Scottish Parliament any regulations or draft regulations which comprise the whole or any part of the subject-matter of the proposals referred to the Committee.

(4) The Scottish Ministers shall lay with the regulations or draft regulations a copy of the Committee's report and a statement showing—

(a) the extent (if any) to which the Scottish Ministers have, in framing the regulations, given effect to the Committee's recommendations; and

(b) in so far as effect has not been given to them, their reasons why not.")

Effect

To require the Scottish Ministers to consult the Scottish Social Security Advisory Committee about proposals for regulations under this Act.

Reason

The balance of the current Social Security (Scotland) Bill is heavily weighted towards future social security law being created through secondary legislation in the form of Regulations. Social Security regulations can be very complex and yet are subject to considerably less scrutiny than changes to primary legislation. This can result in serious unintended consequences if regulations are poorly drafted or are insufficiently scrutinised due to time constraints and/or lack of technical knowledge of their likely impact.

By requiring the Ministers to consult the Scottish SSAC about proposals for regulations Ministers will have their expert, independent opinion and recommendations on proposed changes available prior to their final drafting and subsequent Parliamentary consideration. We believe this will result in improved regulations and a reduction in unintended consequences.

6. To ensure those requiring assistance are entitled to choose if the assistance they receive takes the form of money or some other form of assistance

Page 3, Line 33, at end insert the following new section:

("Form of Assistance

(8)(A) Where the Scottish Ministers provide an individual with assistance of a type described in Chapter 2, that assistance must take the form of money unless the individual entitled to such assistance has given their prior consent in writing to the assistance being in a form other than money. ")

Section 11, Page 4, Line 29, after ("which") insert ("subject to Section 8A ")

Section 12, Page 5, Line 2, after ("which") insert ("subject to Section 8A ")

Section 13, Page 5, Line 11, after ("which") insert ("subject to Section 8A ")

Section 14, Page 5, Line 20, after ("which") insert ("subject to Section 8A ")

Section 15, Page 5, Line 31, after ("which") insert ("subject to Section 8A ")

Section 16, Page 6, Line 3, after ("which") insert ("subject to Section 8A ")

Section 17, Page 6, Line 14, after ("which") insert ("subject to Section 8A ")

Section 18, Page 6, Line 23, after ("which") insert ("subject to Section 8A ")

Effect

To ensure that the assistance provided to an individual requiring assistance takes the form of money unless the individual has given their prior, written agreement to the assistance being in a form other than money.

Reason

This is an issue that has already caused considerable disquiet, hardship and inappropriate assistance being offered in the operation of the Scottish Welfare Fund therefore we were surprised and dismayed to see it re-emerging in the current wording of the Social Security Bill. Parliament intervened to ensure that the provision of Social Welfare Fund assistance should be the default position and that provision of assistance in another form should only be provided through the agreement and choice of the claimant.

Whilst we accept that Scottish Ministers require some flexibility as to the future form that social security assistance may take we believe that the current wording of the Bill gives far too much latitude and would allow cash benefits to be replaced by assistance in kind - even in cases where this was against the wishes of current recipients.

At present all the devolved disability and carers benefits (i.e. Disability Living Allowance (DLA), Personal Independence Payments (PIP), Attendance Allowance, Severe Disablement Allowance, Industrial Injuries Pension and Carers Allowance) take the form of cash/financial assistance. Where assistance of another nature is provided, for example through the Motability scheme of vehicle leasing, this is a choice made by the benefit's recipient. They

nevertheless retain an underlying entitlement to cash assistance. All that happens is that the Mobility component of PIP or DLA is simply paid direct to the provider of the Motability vehicle rather than to the disabled person. Much in the same way as Housing Benefit to pay rent is paid direct to landlords rather than to the tenants.

When we engaged with disabled people last year they were very firmly and unanimously opposed to payments in kind replacing cash benefits unless this was a choice made by the disabled person themselves.

By making a change to the primary legislation which would require Scottish Ministers to provide social security via cash assistance unless the individual chooses otherwise we are building in a safeguard preventing future Ministers from easily replacing cash support with support in kind via a change in regulations.

Note: We understand that the Bill team may table their own amendment to these sections of the Bill but wish to ensure that the change is robust enough to guarantee that cash assistance can only be substituted if the individual recipient of support so chooses.

7. Duty on Scottish Ministers to secure feedback

(Duty to ensure arrangements are put in place to secure feedback

Page 4, Line 25, at end insert the following new section:

“(10A) Annual feedback survey

(1) The Scottish Ministers must, as soon as practicable after the end of each reporting year undertake, or make arrangements for the undertaking of, a feedback survey of those persons who applied for assistance under this Act in that reporting year.

(2) The survey shall seek the feedback and views of individuals who applied for assistance on the following issues and matters:-

- (a) The extent to which the determination of their entitlement to assistance under this Act complied with the Scottish social security principles in Section 1, and with the Scottish social security charter in Section 2.
- (b) The processes and procedures involved in the determination of their entitlement to assistance;
- (c) The effectiveness and appropriateness of the assistance received;
- (d) The quality and effectiveness of advice and information received in support of their application for assistance under this Act, and at all stages of the determination of their entitlement to assistance; and
- (e) Any other matters relevant to their application for assistance under this Act.

(3) The Scottish Ministers must, as soon as reasonably practicable after publishing a feedback survey under subsection (1) above, lay a copy of the annual feedback survey before the Scottish Parliament.”)

Effect

To ensure Scottish Ministers put in place arrangement to receive feedback on an annual basis from those applying for assistance under this Act, including on issues such as the extent to which the determination of their entitlement to assistance complied with the Scottish social security principles in Section 1, and the Scottish social security charter in Section 2.

Reason

It is our understanding that the Social Security Charter is not intended to confer rights on individuals. Instead it is likely to focus on the performance standards of the new social security Agency. The problem this creates is that it will be the Agency evaluating and reporting on its own performance. Thus it will be the Agency itself that determines the form and content of customer satisfaction surveys and it is known that focusing on performance targets can often distort operational delivery to the detriment of service users.

This amendment would ensure that claimants themselves would be directly involved in evaluating the social security Agency’s performance. By focusing on the Agency’s

adherence to the principles set out in the Bill it would help to ensure that the principles have “teeth” making the Agency and Ministers more accountable to Parliament, service users and the wider Scottish public. By asking about the processes used in determining entitlement to assistance such evaluation could also identify failures or weaknesses in the system contributing to continuous improvement. By asking about the effectiveness and appropriateness of the assistance provided it could also assist in identifying unmet need and again contribute to continuous improvement.

The Minister and last year’s consultation paper (“A New Future for Social Security in Scotland”) expressed high aspirations for the future delivery of social security in Scotland. These were reinforced by the recent Ministerial announcement on the social security Agency including plans for local delivery. The Minister has also been keen to involve users of social security benefits in Experience Panels and the Expert Group and it would therefore be consistent to involve them in evaluating the new Agency’s performance.

Thus the amendment would seek to ensure that the Agency strived to meet these aspirations and that the advice Agency staff supplied was of a high quality and effective in providing people information on, and access to, the benefits that users of their services are entitled to.

Requiring a feedback survey of service users to be compiled and reported on to Parliament annually would ensure much greater accountability being placed on Ministers and the Agency. This accountability would be directly to claimants as well as Parliament. The Minister has also been keen to utilise the experience of claimants in the Social Security Experience Panels. Also involving them in evaluating the new Agency’s performance would be consistent with this “bottom-up” approach to continuous service improvement.

Amendments to ensure that the regulations introducing rules for, and other key aspects of, the types of assistance being introduced under Chapter 2 are subject to the Super-affirmative procedure.

1. Section 55, Page 21, Line 25, Leave out:

("any section in Chapter 2 of Part 2 and")

2. Section 55, Page 21, Line 26, at end insert the following new subsection:

("(2A) Regulations under any of the following provisions are subject to the Super-affirmative procedure: any section in Chapter 2 of Part 2. ")

3. New Section 55A, Page 21, Line 32, at end insert the following new section:

("(55A) Super-affirmative procedure

(1) Subsections (2) to (6) apply where regulations are introduced under any section in Chapter 2 of Part 2.

(2) The regulations must not be made unless a draft of the statutory instrument containing the regulations has been laid before, and approved by resolution of, the Scottish Parliament.

(3) Before laying a draft instrument before the Parliament under subsection (2), the Scottish Ministers must consult—

- (a) individuals requiring assistance under this Act;
- (b) organisations working for, or on behalf of, individuals requiring assistance under this Act; and
- (c) any such other persons as they consider appropriate.

(4) For the purposes of such a consultation, the Scottish Ministers must—

- (a) lay a copy of the proposed draft instrument before the Parliament;
- (b) publish in such a manner as the Scottish Ministers consider appropriate a copy of the proposed draft instrument; and
- (c) have regard to any representations about the proposed draft instrument that are made to them within 60 days of the date on which the copy of the proposed draft instrument is laid before the Parliament.

(5) In calculating any period of 60 days for the purposes of subsection (4)(c), no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.

(6) When laying a draft instrument before the Parliament under subsection (2), the Scottish Ministers must also lay before the Parliament an explanatory document giving details of—

(a) the consultation carried out under subsection (3);

(b) any representations received as a result of the consultation; and

(c) the changes (if any) made to the proposed draft instrument as a result of those representations.

Effect

To ensure the regulations which will introduce the rules for, and other key aspects, of the types of assistance available to individuals under Chapter 2 of Part 2 of this Act are subject to the Super-affirmative procedure.

Reason

The Scottish Ministers will introduce the rules for the types of assistance available under this Act through regulations. Inclusion Scotland and Camphill Scotland believe that these regulations will potentially form a key part of the new Scottish social security system. The regulations will, for example, determine the levels, and types, of assistance available under the legislation. Given the importance of these regulations we believe it is vital that the regulations are subject to robust parliamentary scrutiny. We also consider it is essential that input from stakeholders, including those requiring assistance under the legislation and organisations working for and/or their behalf, should help to shape and inform the regulations.

The Bill, as currently drafted, provides that the regulations introduced under Chapter 2 of Part 2 will be subject to the affirmative procedure, and to the approval of the Scottish Parliament. The above amendments would ensure that such regulations are subject to the Super-affirmative procedure. This will strengthen levels of accountability and scrutiny in relation to the regulations. It would, for example, require the Scottish Ministers to consult stakeholders, including those requiring assistance under the legislation and organisations working for and/or their behalf, on the draft regulation before they are submitted to the Scottish Parliament.

These amendments would also require the Scottish Ministers to confirm to the Scottish Parliament if any changes were made to the regulations as a result of the consultation process, and also the representations made by stakeholders in response to the draft regulations. This would help to raise the Scottish Parliament's awareness of the regulations, and help to inform and strengthen MSPs' scrutiny of the regulations.

By way of further background, Subsection (3) requires that the Scottish Ministers, before laying a statutory instrument containing regulations, must consult individuals requiring assistance under the legislation, organisations working for and/or behalf of the latter, and such other persons as they consider appropriate. For the purposes of the consultation, the Scottish Ministers must lay a copy of the proposed draft instrument before the Scottish Parliament, publish the proposed draft instrument as Scottish Ministers consider appropriate, and have regard to any representations about the proposed draft instrument that are made to them within 60 days of the date on which the copy of the proposed draft instrument is laid before the Scottish Parliament. Subsection (5) provides that in calculating the 60 day period,

days when the parliament is dissolved or in recess for more than 4 days are not to be counted. Subsection (6) provides that when the draft instrument is laid before the Scottish Parliament, Scottish Ministers must lay before the Scottish Parliament an explanatory document giving details of the consultation carried out, any representations received as a result of the consultation, and the changes (if any) made to the proposed draft instrument as a result of those representations.

Super-affirmative procedure

(1) Subsections (2) to (6) apply where subordinate legislation under this Act is subject to the super-affirmative procedure.

(2) The subordinate legislation must not be made unless a draft of the statutory instrument containing the subordinate legislation has been laid before, and approved by resolution of, the Scottish Parliament.

(3) Before laying a draft instrument before the Parliament under subsection (2), the Scottish Ministers must consult—

(a) such persons who are under 21 years of age as they consider appropriate, and

(b) such other persons as they consider appropriate.

(4) For the purposes of such a consultation, the Scottish Ministers must—

(a) lay a copy of the proposed draft instrument before the Parliament,

(b) publish in such a manner as the Scottish Ministers consider appropriate a copy of the proposed draft instrument, and

(c) have regard to any representations about the proposed draft instrument that are made to them within 60 days of the date on which the copy of the proposed draft instrument is laid before the Parliament.

(5) In calculating any period of 60 days for the purposes of subsection (4)(c), no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.

(6) When laying a draft instrument before the Parliament under subsection (2), the Scottish Ministers must also lay before the Parliament an explanatory document giving details of—

(a) the consultation carried out under subsection (3),

(b) any representations received as a result of the consultation, and

(c) the changes (if any) made to the proposed draft instrument as a result of those representations.

Crime and Courts Act 2013

SCHEDULE 23 Super-affirmative procedure

Prior consultation

1 If the Secretary of State is proposing to make an order under section 2, the Secretary of State must consult those persons whom the Secretary of State considers would be affected by the proposed order.

Draft order

2(1) If, after such a consultation, the Secretary of State considers it appropriate to proceed with the making of the order, the Secretary of State must lay before Parliament—

(a) a draft order, and

(b) a document which explains the order.

(2) The Secretary of State may not act under this paragraph before the end of the period of twelve weeks beginning with the day on which the consultation began.

Draft order approved

3(1) The Secretary of State may make an order in the terms of the draft order laid under paragraph 2 if, after the expiry of the 40-day period, the draft order is approved by a resolution of each House of Parliament.

(2) But the procedure in paragraph 4 is to apply to the draft order instead of the procedure in this paragraph if—

(a) either House of Parliament so resolves within the 30-day period, or

(b) a committee of either House charged with reporting on the draft order so recommends within the 30-day period and the House to which the recommendation is made does not by resolution reject the recommendation within that period.

Scrutiny extended

4(1) The Secretary of State must have regard to—

(a) any representations,

(b) any resolution of either House of Parliament, and

(c) any recommendations of a committee of either House of Parliament charged with reporting on the draft order,

made during the 60-day period with regard to the draft order.

(2) If after the expiry of the 60-day period the draft order is approved by a resolution of each House of Parliament, the Secretary of State may make an order in the terms of the draft order.

(3) If after the expiry of the 60-day period the Secretary of State wishes to proceed with the draft order but with material changes, the Secretary of State may lay before Parliament—

(a) a revised draft order, and

(b) a statement giving a summary of the changes proposed.

(4) If the revised draft order is approved by a resolution of each House of Parliament, the Secretary of State may make an order in the terms of the revised draft order.

Interpretation

5(1) For the purposes of this paragraph an order is made in the terms of a draft order or revised draft order if it contains no material changes to its provisions.

(2) In this Schedule, references to the “30-day”, “40-day” and “60-day” periods in relation to any draft order are to the periods of 30, 40 and 60 days beginning with the day on which the draft order was laid before Parliament.

(3) For that purpose no account is to be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than four days.

Social Security (Scotland) Bill

**Amendment to ensure people requiring
assistance under the Act can access
independent advocacy services**



Scottish
**Independent
Advocacy
Alliance**



Camphill Scotland

The membership body for Camphill communities in Scotland

a city-wide advocacy project

AdvoCard

for users of mental health services



Inclusion Scotland

Disabled People's Organisation

Our voices ■ Our choices



ALLIANCE

HEALTH AND SOCIAL CARE
ALLIANCE SCOTLAND
people at the centre

**Disability
Agenda
Scotland**

DAS

Amendment to ensure people requiring assistance under the Act can access Independent advocacy services

After Section 8, Page 3, line 33, at end insert new section-

("(8A) Independent advocacy support and representation

(1) Where an individual applies for assistance of a type described in Chapter 2, the individual shall be entitled to support from independent advocacy services at all stages of the determination of their entitlement to assistance where the individual requests the support of independent advocacy services.

(2) The Scottish Ministers must advise the individual of any independent advocacy services which are available to assist individuals to apply for assistance under this Act, and at all stages of the determination of their entitlement to assistance.

(3) The Scottish Ministers may by order or by regulations make provision for, or in connection with-

(a) the provision of independent advocacy services for individuals applying for assistance under this Act, and at all stages of the determination of their entitlement to assistance; and

(b) the requirements that must be met for organisations providing independent advocacy services to be independent for the purposes of subsection (1) above

(4) A power of the Scottish Ministers to make an order or regulations under this section shall be exercisable by statutory instrument.

(5) A statutory instrument introduced under this section containing an order or regulations may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Scottish Parliament. ")

Effect

To ensure that individuals requiring assistance under this Act are entitled to support from independent advocacy services, and that the Scottish Ministers inform individuals requiring assistance of the availability of such services to support their applications for assistance and at all stages of the determination of their entitlement to assistance. The amendment would also give the Scottish Ministers the powers to make provision for, or in connection with, independent advocacy services.

Reason

Our organisations (listed below) believe that the Social Security (Scotland) Bill must be strengthened by the inclusion of provisions relating to independent advocacy. This is vital if the Social Security (Scotland) Bill is to improve outcomes for those requiring assistance under the legislation.

We welcome the Bill recognising social security as a human right. Our organisations consider independent advocacy as a human right. Independent advocacy helps people to access other human rights and fits with the PANEL principles (Participation, Accountability, Non-discrimination, Empowerment and Legality) because it:

- enables people to participate in systems and processes;

- holds decision makers to account;
- fights discrimination;
- empowers people;
- promotes equality; and
- ensures that decision makers work within the law

Our organisations believe that:

- (a) Anyone engaging with the social security process should have an independent advocate, when they ***feel they*** need one and at any point in the process;
- (b) The Scottish Government should have a duty to fund independent advocacy in each area according to local need, including both individual and collective advocacy; and
- (c) The proposed Scottish Social Security Agency should have a duty to inform people going through the social security process about the right to independent advocacy and contact details of the local advocacy provider.

We believe New Section 8A of the Social Security (Scotland) Bill would help to ensure that anyone who needs independent advocacy support is able to have it where they request such support. New Section 8A would require the Scottish Ministers to inform individuals requiring assistance under this Act of the availability of independent advocacy services to support their applications for assistance and at all stages of the determination of their entitlement to assistance. It would also give the Scottish Ministers powers to make provision for, or in connection with, independent advocacy services, including the funding of such services.

Independent advocacy is vital to ensure that the rights of those who cannot properly communicate their needs are upheld. Independent advocacy helps people to:

- access advice and services that they would otherwise be unable to engage with due to communication needs;
- be understood;
- be heard by professionals and services which make decisions that affect their lives;
- better understand and navigate systems;
- understand their rights, and what to do when those rights are not met;
- think through their choices;
- make informed decisions; and
- influence the design and delivery of systems and services

Advocacy is not:

- mediation;
- giving advice;
- making decisions for someone; or
- speaking up for someone when they are able to express themselves.

We believe that independent advocacy will help to ensure that people are treated with respect and dignity. People who have used advocacy often report that they are more likely to be listened to and treated with respect when their advocate is present. Not only do people benefit from the 'moral support' of an advocate but their advocate helps them prepare for stressful and complex meetings (such as assessments), and to debrief after these have occurred.

The Scottish Government funded 4 advocacy organisations as part of the Welfare Advocacy Pilot Project between March 2015 and August 2016. The 4 organisations were based in Glasgow, Dundee, Falkirk and Edinburgh and were funded to support people going through the PiP and ESA assessments and mitigate the impact of welfare reform. Over the 18 months the organisations were funded they worked with more than 1001 people, 92% of the people supported received a positive result of their claim. In total the Project helped people gain more than £2.7 million in benefit entitlements. Participants reported having a better understanding of the process, being better prepared for their assessment, being listened to and feeling more confident to communicate the impact of their mental illness on their lives.

Independent advice and advocacy are both valuable parts of the system, but should not be confused with each other. An independent advocate offers support and reassurance during an individual's interactions with the state (***to offer redress to the inherent power imbalance***) and puts the emphasis on expressing what the person wants to say informed by the independent advocate's detailed knowledge of the process. Independent advice is usually before, or after, any face to face assessment and is usually an exchange of information.

We believe that the Bill should clearly recognise and state the difference between independent advocacy and advice. We believe that advocacy and advice play very different roles in supporting people who are vulnerable, face discrimination and marginalisation.

Including independent advocacy in the Social Security Bill is consistent with the Scottish social security principles in Section 1 of the legislation, and would enable people to access a range of other rights, help people to reach their full potential and make a positive contribution to society.

Further information can be obtained from:

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