



## SOCIAL SECURITY BILL: Call for Views

Social Work Scotland is the professional leadership body for the social work and social care professions. We are a membership organisation which represents social workers and other professionals who lead and support social work across all sectors. Social Work Scotland welcomes the opportunity to comment on the Social Security (Scotland) Bill and to provide comments to the Social Security Committee to assist with their scrutiny of the Bill.

Many users of social work services face multiple disadvantages, including that of poverty. For example, recent research in Scotland noted the strong association between the level of deprivation in an area and the proportion of children who are looked after or whose names are on the child protection register<sup>1</sup>. It is therefore important that individuals receive benefits that are fair and reasonable to be able to access and use other supports to meet their needs and achieve their potential.

### Consultation Questions

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?

**Social Work Scotland accepts that often Regulations are clearer and easier to use for those administering the law. However, scrutiny of the proposed regulations needs to be robust.**

**It is important that the regulations will be subject to consultation with sufficient time for comment. Social Work Scotland believes that any regulations related to Social Security should therefore be super affirmative statutory instruments and as such go through a “pre-legislative scrutiny” period involving formal consultation on a draft followed by approval by a vote in Parliament. The Committee may wish to see an expert group constituted to advise it during this process.**

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<sup>1</sup> [http://www.coventry.ac.uk/Global/08%20New%20Research%20Section/BP\\_Scotland\\_0617.pdf](http://www.coventry.ac.uk/Global/08%20New%20Research%20Section/BP_Scotland_0617.pdf)

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.

**Social Work Scotland supports the inclusion of these principles in law and this is the correct approach. Social Work Scotland particularly welcomes the principle that social security is a human right. This sends a clear and public message that upholds the dignity of individuals entitled to assistance.**

**The understanding of the terms 'value for money' and 'efficiency' will be contested. However, the Scottish Government should make clear how the Charter will manage the process of upholding and balancing the 7 principles.**

**Social Work Scotland welcomes the principle that opportunities are sought to continuously improve the Scottish Social Security System. We note that there are no proposals for a Scottish equivalent to the Social Security Advisory Committee. If the Bill created such a body this may provide advice to Ministers and the Committee in improving the system. We also welcome the fact that the system is to be based on evidence. An Advisory Committee would assist in achieving this principle.**

**Social Work Scotland supports the call by the Poverty Alliance to add a principle to the effect that social security has a role to play in the eradication of poverty in Scotland. Social Security policy should be aligned to the National Outcomes and associated policies to address child poverty.**

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

**Social Work Scotland supports the 7 principles. Their application and adjudication should be dealt with by the Charter.**

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.

**Social Work Scotland supports the idea of a Charter. The Charter creates the opportunity to send a clear public message in relation to the values that will underpin a Scottish Social Security System, and play an important part in changing the public narrative around benefits.**

**The legal status of Charter should be made clear including to whom it applies, how compliance is monitored and the process of its review.**

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

- **A pledge from Scottish Ministers setting out how the principles will be implemented**
- **What individuals should expect by way of rights to information, advice and how they can exercise their rights to claim entitlements**
- **That individuals will be treated fairly, with compassion and in non-stigmatising way by a Scottish Social Security Service**
- **Standards in relation to the administration of social security.**
- **Rights to complain and how these will be dealt with and timescales**
- **How the Charter will be reviewed and what steps the Scottish Government will take to put into action the principle to continuously improve the system**

**Social Work Scotland welcomes the inclusion in the Bill of the duty on Ministers to lay before Parliament an annual report on the Scottish social security system. We appreciate this is a framework bill but expect to see consultation about what should be included in the annual report. Social Work Scotland would propose that performance is measured against the principles of the Bill and be aligned to the national performance framework.**

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?

### Decisions/Determinations

There is no legal provision for making a 're-determination' beyond the regulatory timescales in certain circumstances. Scottish Ministers should have the power to extend the time limit in certain circumstances where this fits with the principles set out in Part 1 of the Act.

Section 30 (1) (2) – Social Work Scotland believes that the wording of this section is not consistent with the principles of the Act. To ensure that individuals are given what they are entitled to under the Scottish Social Security system, a decision should be made on the basis of information available to Scottish Ministers. The present wording means that Ministers may make a determination that an individual is simply ineligible on the basis of not providing all the information requested.

### Challenge to Decisions

Social Work Scotland welcomes the fact that all benefits will be subject to appeal.

Social Work Scotland is concerned, however, that the Bill requires an individual to request a review of the determination by the Scottish Social Security Agency before being able to appeal. This mirrors recent developments in the UK system requiring individuals to request a 'mandatory reconsideration'. While the process seems benign, increasing evidence in relation to mandatory reconsiderations suggests that without a system of checks and balances, and the opportunity for advocacy, the system is burdensome and off putting for individuals. Such a system may be particularly difficult for vulnerable individuals who are users of social work services. If this system replicated in Scotland it may have the unintended consequence of undermining the principles of the Bill, including that of efficiency. Social Work Scotland believes that claimants should have a right to appeal from the outset.

### Overpayments

The Bill should make clear that overpayments due to official error should not be recoverable. This would bring it in line with UK benefit rules and ensure that the Scottish system is in no way less fair than the UK system.

Section 30 (1) (3) – Social Work Scotland believes that this section should be reviewed or given greater clarity in regulations as certain health assessments may not be available to individuals within the timescales provided and this may unfairly penalise them.

### Criminal Offences

Social Work Scotland questions whether it is necessary to create new offences.

In creating a new criminal offence, the Bill runs the risk of reinforcing a message of distrust of the system, and those who use it. This is counter to the principles of this Bill. Current fraud and UK legislation will afford the Scottish Social Security System powers to deal with the tiny minority who claim benefits dishonestly.

Furthermore, Section 39 of the Act specifies sentencing limits. Social Work Scotland does not believe this should be written into the Bill at this stage given that the Scottish Sentencing Council has launched its first public consultation on the principles and purposes of sentencing and there is current public debate on ending jail terms of less than 12 months.

The Bill should place a duty on Ministers to make a determination within a specified timescale to afford people certainty as to their financial position.

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?

**This is a framework bill and therefore Social Work Scotland would welcome the opportunity to comment on specific benefits during consultation on the Regulations.**

**The Bill does not address situations where individuals have no recourse to public funds. The Regulations afford the opportunity to simplify rules in this area in terms of eligibility for those with no recourse to public funds. This area is already extremely complicated in terms of accessing support from DWP and services provided by Councils, including Social Work. Social Work Scotland calls for the Scottish Government to involve those with experience in supporting individuals with no recourse to public funds in the development of the regulations, including those within local authority social work services.**

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?

**Social Work Scotland welcomes short-term assistance. Such assistance is important to promote access to justice during an appeal process and prevent hardship. It is therefore vital in upholding the principles of the Bill. The Bill should make clear that any payments are non-recoverable if an appeal is not found in favour of the individual unless fraud has been committed.**

**The bill should make clear which benefits this section applies to. Given Scottish Ministers have the power to top up UK benefits it should be made clear if short term assistance extends to benefits reserved to Westminster.**

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 does not say how these 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?

**We agree with the principle of the Scottish Government being able to top up reserved benefits and propose new benefits.**

**Any proposed top ups or new benefits should be subject to consultation to ensure their intended impact is based in best available evidence and they are justified in terms of the principles of the Act.**

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?

**Social Work Scotland welcomes this provision in terms of the positive difference it will make for carers and the important message it sends about the value of carers. However, it is not clear why the JSA rate has been decided upon. The Government may want to consult further on what level carers allowance should be increased to so that it is informed by an evidence base that reflects the value carers contribute to society. Social Work Scotland would welcome the Government using the Bill to prevent the loss of benefits now, rather than waiting. For example, preventing the loss of benefits for those people receiving DLA who have yet to move on to PIP.**

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?

**Social Work Scotland believes that devolution of social security affords the opportunity to review and simplify the increase in use of discretionary housing payments to alleviate welfare changes made by the UK government.**

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

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

**Social Work Scotland believes that the term 'determination' in Part 2 Chapter 3 of Act should be changed to 'Decision'. 'Decision' is plain English, better reflects the process and is consistent with the language already in use within the benefits system.**

**Social Work Scotland believes that the Bill should make clear that any lump sums that are paid to individuals (for industrial injuries for example) should be exempt from the benefit cap.**

**Social Work Scotland believes that the Bill should make provision for a complaints system for the Scottish social security agency. Learning from complaints is important in fulfilling the principle of continual improvement (Section 1 (f) of the Bill) and will assist Ministers in their preparation of annual reports for Parliament.**

**Social Work Scotland supports the principles of the Bill and would welcome further opportunities to participate in the development of Regulations and Guidance.**

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