

SUBMISSION FROM SCOTTISH ASSOCIATION FOR MENTAL HEALTH (SAMH)

Views on the Bill as a whole

1. Are you generally in favour of the Bill and its provisions?

SAMH recognises that the need for this legislation has been driven by the UK Government's reforms of the welfare system. Given the far reaching implications of UK welfare reform for Scotland, it is appropriate that the Scottish Parliament should seek to establish more time to consider these implications and formulate an appropriate response. As such, we are generally in favour of the Bill, which gives powers to the Scottish Ministers to make provision in consequence of the UK Act for devolved purposes. However, it is ultimately the regulatory detail, as opposed to this enabling Bill, which will determine whether the Scottish Parliament has been successful in this regard.

General Principles Underlying the Bill

2. What are your views on this principle?

In our previous evidence to the Health and Sport Committee, we stated that we would only support opposition of legislative consent if it would mean that the Scottish Government could pass its own legislation to mitigate the impact on disabled people¹. This remains our position; SAMH supports the principles underlying the Bill in so far as they will enable the Scottish Government to mitigate the impact of the UK welfare reforms on disabled people in Scotland.

Universal Credit

3. What are your views on the proposed powers in relation to Universal Credit?

SAMH agrees that Scottish Ministers require the power to make such provision (for devolved purposes) as they consider appropriate in consequence of the provisions in the UK Act which create Universal Credit.

4. Do you have any other comments on the introduction of Universal Credit?

SAMH has concerns about various aspects of Universal Credit and the way it may impact upon people experiencing mental ill-health. In particular, we have raised concerns in relation to sanctions, as Universal Credit will bring increased conditionality. This raises the prospect that people with mental health problems may face sanctions when their condition has meant that they are unable to understand or comply with the various demands placed on them.

Changes to housing benefit – especially in terms of sanctions for 'over-housing' – could also have serious implications for people experiencing mental ill-health, who may be forced to move or spend more money that they do not have supplementing

¹ Scottish Parliament Health and Sport Committee, 4th Report, 2011 (Session 4): Report on the Legislative Consent Memorandum on the Welfare Reform Bill (UK Parliament legislation) - LCM (S4) 5.1 paragraph 204

their housing benefit. Furthermore, the changes do not necessarily take into account the lack of available single bedroom housing stock in parts of Scotland, especially in rural areas.

Personal Independence Payments

5. What are your views on the proposed powers in relation to Personal Independence Payments?

SAMH agrees that Scottish Ministers require the power to make such provision (for devolved purposes) as they consider appropriate in consequence of parts of the UK Act which create Personal Independence Payments (PIP).

6. Do you have any other comments on the introduction of Personal Independence Payments?

The UK has an objective to achieve an overall reduction of 20% in the Disability Living Allowance (DLA) budget, which has formed the basis of DLA reform. SAMH believes that this reform should be based on supporting disabled people to lead fulfilling lives and not primarily concerned with reducing costs. People with mental health problems, particularly those with long-term problems, are among the most socially excluded groups of people in Scotland and should not be further disadvantaged by the effects of welfare reform.

We are concerned about the focus on those with 'greatest need' – this may be counterproductive and significantly disadvantage those eligible to lower rates of benefit, who may still have high disability costs. People with high levels of disability do not necessarily have the greatest disability costs. Furthermore, significant numbers of people currently receiving financial support to meet disability related costs may find that they are no longer eligible for support under the new welfare arrangements.

SAMH, in partnership with other leading mental health organisations, undertook a survey to identify how people currently receiving DLA will fare under the new arrangements. The survey asked people to choose the PIP descriptors that reflected their experience of carrying out the relevant activities which will be assessed for the new benefit. 520 people responded to the survey and the results show that, while some people will see an increase in their entitlement, a significant number will lose out. For Daily Living, about 23% of current claimants claiming solely for mental health will see a reduction in entitlement. For 14% of respondents this means receiving no daily living component at all, where they currently receive the care component.

SAMH believes that the PIP assessment is at serious risk of repeating the mistakes of the current Work Capability Assessment (WCA), which helps decide whether people are entitled to receive Employment and Support Allowance (ESA). Many people have raised concerns that the WCA is not sensitive to mental health needs, and can inaccurately reflect the impact that mental health problems can have on the ability to work. These concerns were also supported by Professor Harrington's

Independent Review of the Work Capability Assessment,² which found that mental health conditions were not being properly assessed by the WCA.

Subordinate Legislation

7. What are your views on the proposed subordinate legislation powers in the Bill?

The Joint Committee on Human Rights published a critical report³ on the UK Welfare Reform Bill which stated:

“The traditional approach to welfare reform—which focuses on a framework in primary legislation accompanied by multiple regulation-making powers—can undermine parliamentary scrutiny.”

The Scottish Parliament has an opportunity to learn lessons from the passing of the UK Welfare Reform Bill, but is in danger of replicating some of the same mistakes. The Scottish Bill states that regulations will only be subject to the affirmative procedure if they add to, replace or omit any part of the text of an existing Act, otherwise they will be subject to the negative procedure. Given the far reaching implications of these regulations, SAMH does not regard such an approach as satisfactory.

Ideally, we would like to see the regulations being subject to the super-affirmative procedure. This procedure provides for a greater degree of parliamentary scrutiny than is the case with instruments subject to ordinary affirmative resolution procedures; giving the Parliament the opportunity to comment on the proposals for a draft instrument before the instrument is formally laid. If time constraints do not allow for this approach then, at the very least, the first regulations made under the new powers should be subject to the affirmative procedure, whether they amend other primary legislation or not.

It is fundamentally important that the regulations are subject to adequate scrutiny, otherwise the proposals may be implemented in a way which could lead to a risk of incompatibility with international human rights standards.

8. Do you have any other comments on regulations that would follow this Bill on ‘passport’ benefits and eligibility for them?

Disability Living Allowance (DLA) is often used as a passport to other benefits or services. As such, the Scottish Government must introduce ways of ensuring that people who lose their DLA entitlement under the new arrangements do not then suffer a domino effect of further loss. We must also prevent a future postcode lottery of entitlement.

² Professor Malcolm Harrington : An Independent Review of the Work Capability Assessment, November 2010

³ Human Rights Joint Committee - Twenty-First Report. Legislative Scrutiny: Welfare Reform Bill, 12 December 2011

This will be particularly important for people currently receiving DLA on mental health grounds, especially given our findings that a substantial number will not qualify for PIP. The Scottish Government must issue instructions to local authorities, health boards and others on new ways of assessing people for entitlement to services.

Effects on Equal Opportunities, Human Rights, Island Communities and Sustainable Development

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

Given that this is an enabling Bill, SAMH is satisfied that the Scottish Government will publish Equalities Impact Assessments as appropriate when it brings forward subordinate legislation under the Bill later in the year.

In relation to human rights, we would refer to our previous point at question 7. It must be ensured that the forthcoming regulations are subject to adequate scrutiny to lay the foundations for a human rights compliant approach. The Joint Committee on Human Rights expressed⁴ regret the UK Bill was not accompanied by a full human rights memorandum. The provision of such information strengthens the principle of subsidiarity: as the case-law of the European Court of Human Rights clearly shows, laws which are passed following detailed and informed parliamentary scrutiny of their human rights compatibility are more likely to withstand subsequent judicial scrutiny.

⁴ Human Rights Joint Committee - Twenty-First Report. Legislative Scrutiny: Welfare Reform Bill, 12 December 2011