

Social security committee: Social Security (Scotland) Bill

1. Introduction

1.1 The Poverty Alliance is the national anti-poverty network in Scotland, established in 1992. We are an independent organisation with over 240 members drawn from the voluntary and public sectors, trade unions, researchers, faith groups and individuals with direct experience of poverty. Our aim is to work with others to enable communities and individuals to tackle poverty. We have a number of key policy areas that provide the focus for our activities; these are addressing low incomes, supporting services to address poverty, enhancing the participation of people with direct experience of poverty in policy development processes, and addressing attitudes to poverty.

2. The Bill

2.1 The Poverty Alliance welcomes the publication of the Social Security (Scotland) Bill, and we believe that this is an opportunity to consider how we think about social security in Scotland. The Poverty Alliance has facilitated conversations around this topic since the Smith Commission began and our activists have repeatedly raised concerns regarding the current delivery of benefits in Scotland. These range from how we access benefits to the level of benefits paid, but the one consistent message that has come across has been about the way people feel judged when accessing the system. It is based on these conversations that the Poverty Alliance has welcomed the decision to include principles in legislation about respect for individuals and recognising that social security is an investment in us all.

2.2 Currently, one in five people in Scotland are living in poverty; this is just over one million people. We believe that alongside paid employment, social security is an important tool for tackling poverty and hope that the new system in Scotland will help lift families out of poverty. For people who need it, it is important that the new social security system is robust and that we get it right. The Poverty Alliance therefore has some concerns regarding the fact that so much of this system will be established in regulations, rather than primary legislation. We believe that Parliament should have a greater role in establishing the new agency and developing the benefits that it will deliver. The decisions made will affect millions of lives in Scotland and they must therefore be subject to parliamentary scrutiny and debate to ensure that they are right from the start. We want a commitment for a review after three years and a requirement for Ministers to bring forward primary legislation in areas that will initially be covered by regulation, specifically related to entitlement criteria.

2.3 While much of the discussion around this bill has been focused on the idea of social security as a right and the importance of taking a rights based approach there are actually few rights for claimants enshrined in the bill, and few duties placed on Ministers to enshrine and protect rights.

2.4 There has also been little consideration given as to the purpose of this bill. We believe that there should be a statement of purpose which describes that the purpose of the bill is to contribute to the eradication of poverty in Scotland and be a real safety net for people.

3. Principles

3.1 We broadly welcome the principles laid out in the bill, in particular those which recognise social security as an investment in society, and for respect for the dignity of individuals to be at the heart of the social security system. However, we do believe that Part 1 Section 1D could be strengthened to ensure that Ministers have a duty to ensure that individuals receive their full social security entitlements, rather than simply a role to play.

3.2 In order to ensure consistency of language, we would support amending Part 1 Section 1F to reflect the rights rather than the needs of the individual.

3.3 For the Poverty Alliance, many of the recommendations we made around which powers should be devolved to Scotland were based on which powers could be effectively used to tackle poverty. We therefore would support adding an extra principle to the effect of the below:

“Social security has a role to play in the eradication of poverty in Scotland”.

3.4 Social security was designed to be a safety net, but we believe it should go further than this to help lift people out of poverty. In recent years it has done the opposite of what it was designed to do and low levels of benefits have trapped people in poverty.

3.5 The new powers coming to Scotland mean that we can start to address the adequacy of benefits, and therefore the inclusion of this principle is vital if we are to make progress in the fight against poverty.

3.6 Given that BME children are twice as likely to be in poverty as their peers, as are almost half of all children living in lone parent households headed by women¹, we believe that there needs to be a recognition of this in the bill, and a specific principle to address it. We would therefore support CRER’s recommendation of a further principle to the effect of:

“Equality is to be embedded within the Scottish social security system to ensure individuals do not face unlawful discrimination when accessing the system.”

4. The Charter

4.1 Poverty Alliance members were consulted in the run up to the publication of this bill on the idea of a charter and were generally supportive, but there were some concerns raised about how meaningful this would be. We believe this could be strengthened by adding an additional subsection under Part 1 Section 2 which states:

“the charter should set out how people can exercise their rights in order to claim their entitlements”.

In order to fulfil, the above it is essential that Ministers make the charter as publicly available as possible and therefore we believe Part 1 Section 4 should be strengthened to say that Ministers

¹ The Scottish Government (2017). [Poverty equality analysis](#).

must make the charter publicly available in all areas where people seek money advice or claim social security benefits, in addition to any other means Ministers deem appropriate.

4.2 The Poverty Alliance would support changing the review period for the charter to every three years. We believe that this is an adequate amount of time for the charter to become fully embedded, without allowing potential issues to run on for too long unchecked.

5. Annual report

5.1 We believe that the annual reports should be made as publicly available as possible and would therefore support strengthening Part 1 Section 6 1b to reflect this.

5.2 As with the charter, we believe that this should be made publicly available in all areas where people claim social security benefits or seek money related advice, in addition to any other areas as deemed appropriate by Ministers.

5.3 The Poverty Alliance would also like to see the annual reports contain information about how the principles set out in Section 1 Part 1 are being upheld, and the contribution that social security has made towards tackling poverty in Scotland.

6 The benefits

6.1 The Poverty Alliance is concerned at the repeated use of the phrase “which may or may not take the form of money” contained next to each of the benefits listed under Chapter 2. The Poverty Alliance has repeatedly called for cash by the default option for payments, as anything else can potentially stigmatise claimants. If claimants choose for payments to be made in the form of goods then this should be an opt-in system and the legislation should be amended to reflect this. This is a position taken after years of consultation with activists and people with direct experience of poverty, who have highlighted numerous instances of receiving poor quality goods, and the stigma they have felt when claiming and spending vouchers or other non-cash benefits. People value choice and providing cash benefits empowers them and treats them with the dignity and respect they deserve.

6.2 While any increase in benefit levels is welcome, simply raising Carer’s Allowance to bring it into line with Jobseeker’s Allowance does not go far enough in recognising the value of the work that carers do. Unpaid carers make a significant contribution to our economy and our society, and for many this will continue to leave them feeling unappreciated.

6.3 It is important that we support carers so that they are able to continue to work or study where possible. This means ensuring that entitlement to carer’s allowance is as broad as possible, and that it is seen as part of a wider package of support available for carers. This should be developed alongside people with direct experience of caring.

7. Determining entitlement

7.1 One of the criticisms of the current system is the overcomplicated application process. We would therefore welcome a commitment on the face of the bill to ensuring that there are numerous ways that people can apply for benefits and that Ministers will not be unreasonable in the evidence they require. The Poverty Alliance strongly believes that the private sector should have no role in

the new social security system, and the people we have worked with have been explicit in saying that all assessments must be carried out by a not for profit agency. This bill should therefore be amended to rule out the use of private sector contractors in social security in Scotland.

7.2 It is important that the new system does not replicate the old system in terms of being digital by default. Our community activists have been very clear that there must be a range of ways to apply for benefits in the new system including online, by phone, in writing and face to face.

7.3 The Poverty Alliance has concerns about entitlement criteria being set in regulations. We believe that this would potentially allow any future governments to change or remove entitlement very quickly. These criteria should therefore be on the face of the bill.

7.4 Under section 22, there should be a time limit in place for Ministers notifying individuals of their entitlement. We believe that this should be within ten business days so that people are aware of their financial situation as quickly as possible. It is also important that people are given the reasons for their decision in writing in order to enable them to understand the decision and enable them to seek a re-determination if appropriate. The letter must also advise the individual of their right to appeal.

8. Re-determination

8.4 We are concerned that the process outlined in the bill mirrors the current UK Government process of Mandatory Reconsideration. Not only is this of questionable legality but we believe it is an additional barrier to justice.

8.5 We would support making appeals an automatic process to ensure that anyone who receives a negative decision is automatically sent for appeal unless they opt out. This is more in fitting with a rights based approach to social security, and would also help ensure that the correct decisions are made first time.

9. Time for appeal

9.1 The Poverty Alliance believes the timescales under this section are too inflexible and do not take into account all the factors that may lead to someone being unable to make an appeal within 31 days. We would therefore support extending the time for appeal to 90 days.

9.2 We are concerned that section 28(3) leaves too much to the discretion of Ministers and the term 'good reason' should be more clearly defined at this stage.

10. Obligation to provide information on request

10.1 Ministers must take into account that it may not be possible for people to collate all the information requested in a short space of time. This is particularly true for medical evidence and it is important that people are not penalised as a result of GP surgeries failing to provide evidence in a timely manner.

11. Recovery of assistance given in error

11.1 The Poverty Alliance strongly believes that individuals should not have to pay for the mistakes made by Ministers. If an error was made in the decision making process, as long as the correct information was provided by the applicant, then it should not be up to the individual to find a way of paying this money back.

11.2 It is also important that any money that is recouped as a result of misinformation is not collected in a way that causes financial hardship to the individual, and we welcome the section on consideration for debtor's circumstances.

11.3 In keeping with the principle of an efficient social security system which delivers value for money there should be a threshold for disregard where overpayments below a certain amount are not recovered. This would ensure that Ministers do not spend more money recovering the debt, and potentially causing financial hardship, than the amount that is owed.

12. Offences and investigations

12.1 The Poverty Alliance is concerned that the punishments for the offences listed in sections 39, 40 and 41 are unduly punitive. We do not believe imprisonment is an appropriate response for someone who has failed to notify Ministers of a change in circumstances. This will often be women, who may not notify Ministers as a result of an abusive relationship. The reasons people may mislead Ministers about their circumstances are complex and we should focus instead on addressing these reasons rather than imprisoning people. Sending people to prison, especially women, can have a devastating impact on the people around them, particularly if they have children. We would therefore suggest that the government revisits this section.

12.2 We are also concerned that this is a policy mismatch with the Scottish Government commitment to reducing the female imprisonment rate. We know that prisons are not the answer to a social problem.

12.3 It is also important to recognise that this limits judicial discretion. There are many other sanctions that could be applied rather than just a fine or imprisonment so it does not make sense that they are the only two options available to judges in these cases.

12.4 If the purpose of this section is to ensure that those committing large scale fraud receive a prison sentence, then a level should be set out in the bill e.g. in cases where more than £100,000 has been claimed fraudulently a prison sentence of up to X months may apply.

13. Top up of reserved benefits

13.1 We would support the strengthening of this section to show a commitment to addressing the adequacy of benefits. The Poverty Alliance strongly supports using the new top up powers and has campaigned for a universal child benefit top up of £5 per week. A recent poll carried out by Survation for the Poverty Alliance found that almost two-thirds of the Scottish public support this proposal. We would also question whether it is possible to have dignity and respect without adequacy.

14. Carer's Allowance

14.1 The Poverty Alliance would support a two tier approach to Carer's Allowance. One level which would be universal and apply to all those who qualify for carer's benefit, and the second would apply only to those on the lowest incomes.

14.2 It is not enough to bring Carer's Allowance into line with Jobseeker's Allowance. This undervalues the contribution carers make to our society every day. It is also important to note that the benefit freeze means Job Seekers Allowance is currently frozen at UK level and so there needs to be an additional commitment to the uprating of Carer's Allowance.

15. Discretionary Housing Payments

15.1 We believe that this bill should require local authorities to have a discretionary housing payment scheme, and that there should be a commitment from the Scottish Government to ensuring this is adequately resourced.

16. What's missing?

16.1 The bill is missing any recognition of the role that social security plays in tackling poverty and inequality in Scotland. We believe that this must be one of the principles in the bill.

16.2 The Poverty Alliance is concerned at the lack of information provided in the bill about how new powers will be used, particularly around creating new benefits in devolved areas and the topping up of reserved benefits. These powers could be powerful tools in the fight against poverty but there is little information as to how the government plan on using them.

16.3 As we have already mentioned, we are extremely disappointed that the bill does not rule out the use of private sector contractors in the delivery of social security in Scotland. This is something that has been highlighted by our activists repeatedly throughout the consultation process on social security, and particularly by those with disabilities. We do not believe using private sector companies is in line with the principles outlined in part 1 of the bill.

16.4 The Poverty Alliance believes there should be a more overt recognition of the role of experience panels in the design and delivery of social security in Scotland. We believe that people with lived experience are the experts and it is important that their expertise is recognised.

16.5 The Poverty Alliance is extremely disappointed that there is no commitment to the uprating of benefits on the face of the bill. The freeze on working age benefits by the UK Government will devalue the incomes of 700,000 families in Scotland² and it is important that people in receipt of benefits delivered by the new Scottish Social Security Agency do not find themselves in a situation where the cost of living is rising but their incomes are not.

16.6 We had previously welcomed the creation of the Jobs Grant by the Scottish Government and were therefore disappointed to see that more details of this were not included on the face of the bill. This grant would be a significant help to those looking for work, and we would hope to see the Government progress this as soon as possible.

² Sheffield Hallam (2016) The impact on Scotland of the new Welfare Reforms
http://www.parliament.scot/S5_Social_Security/General%20Documents/Sheffield-Hallam_FINAL_version_07.10.16.pdf

16.7 It is essential that there is independent scrutiny of the delivery of the new system. The Poverty Alliance has previously suggested that this could be a new Scottish Social Security Advisory Committee, but consideration could also be given as to whether there is an additional role for the Poverty and Inequality Commission. These two could work in parallel similar to what had previously existed at UK level. It is essential that scrutiny is carried out by a body fully independent of government who are able to point to areas where improvements could be made, and work with the experience panels where appropriate.

16.8 There must be a complaints process, and it is disappointing that this is not referred to in the bill, given its link to the ability of people to fulfil their rights. You cannot build a system on the principles of dignity and respect without including somewhere for people to turn when the system has not treated them in the way they had hoped.

Schedules

17. Carer's Assistance regulations

17.1 The Poverty Alliance is concerned that linking the eligibility criteria for Carer's Allowance to someone else's eligibility for disability benefits may leave people unable to access the benefits that they are entitled to. This is particularly worrying without knowing what the assessment process for disability benefits will look like.

18. Disability Assistance Regulations

18.1 It is important that the regulations around disability benefits are developed alongside people with disabilities and the organisations that represent them. The activists that we work with have been highlighting, for many years now, issues surrounding disability benefits. These include the qualifying criteria, the assessment process, and the level of benefits paid.

18.2 People must be able to apply for these benefits, and all benefits, in a variety of ways including paper forms, online, on the phone and in person.

19. Conclusion

19.1 This is an important step forward in developing Scotland's social security system, and we hope it will mark the beginning of a new approach to benefits and the people who rely on them. Now is our opportunity to create a system that takes a radically different approach to welfare and that makes a real, positive difference to the lives of millions of people living in Scotland. Social security is not, and should not be, a theoretical, distant concept. It is something that affects the lives of individuals every day, it is something that affects each of us – either directly or indirectly at some point of our lives, and it is something that we cannot afford to get wrong. We therefore believe that parliamentary scrutiny is vital, and that regulations should be brought into primary legislation once the system has been firmly established.

19.2 This is arguably one of the most important pieces of legislation to be passed since the Scottish Parliament's creation, and it is imperative that the system created is able to grow and adapt as devolution changes and further powers are potentially devolved. The system needs to be able to

react to protect people from poverty, but also be proactive in order to ensure that people are not trapped in poverty as a result of an inadequate social security system.

19.3 We welcome the fact that much of the debate around this bill has been around the principles of dignity and respect, and the need to take a rights based approach. However, we must not forget the purpose of the social security system, and why we have this bill in the first place. It is for this reason that we need that additional principle recognising the role that social security has in eradicating poverty in Scotland.

19.4 Linked to the principles of dignity and respect, is the principle of adequacy. Adequacy of benefits has been raised repeatedly by the community activists we work with, and we would question whether it is possible to fulfil the principles of dignity and respect, without also addressing benefit levels. For too many people in Scotland today, low benefit levels are trapping them in poverty. This need to change and the Scottish Government should make the full use of their new powers to ensure that no-one is trapped in poverty as a result of an inadequate social security system.

19.5 Given that benefit fraud accounts for only 0.7 per cent of benefit expenditure³ there is a disproportionate focus in the bill on offences and investigations. The sanctions listed in the bill are also unduly punitive and at odds with the Scottish Government's policy on women and the justice system.

19.6 Like many of our colleagues across the third sector, we are concerned not only by some of the things contained in the bill but also what is not. It is now widely recognised that what works best is a joined up, holistic approach to social security and therefore the legislation should not be made in piecemeal, disjointed fashion. We need to be able to see the links between different benefits and how they interact with each other. Both between devolved benefits but also how devolved benefits will interact with reserved benefits.

19.7 This is a bill that will be recorded in history as having a significant impact on social security and its delivery in Scotland. It should therefore be developed in the most inclusive way possible – with people who rely on social security and the organisations that represent them. It should be a system built genuinely on trust, not just rhetoric. It should be a system that supports people to achieve their ambitions, not traps them in poverty. It should be a system that recognises the value in each of us, and the value of tackling poverty to all of us. We believe that the existence of poverty is a result of political will, so let this be a real step towards its eradication.

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³ UK Government (2014)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/371459/Statistical_Release.pdf