

Briefing Paper: Stage 2 Reading of Social Security (Scotland) Bill – Part 3

21 February 2018

Our position

The Scottish Government's aspiration to take a rights-based approach to social security has been welcomed by SCVO, our members, and the wider third sector who recognise that a rights-based approach can create a system that respects, protects, and fulfils everyone's right to social security.

However, SCVO and many of our members are concerned that the Bill fails to fulfil the human rights principles it outlines, as very few rights for claimants are enshrined in the Bill, and few duties are placed on Ministers to protect rights. If the Scottish Government is committed to realising rights, we believe a rights-based approach must be embedded throughout the legislation.

That the 'due regard' amendment drafted by human rights experts, the Scottish Human Rights Commission (SHRC) and lodged by Mark Griffin MSP was not agreed at Stage 2, was therefore a disappointment to SCVO, organisations across the third sector, and wider civil society.

We stress that a human rights-based approach is a conceptual framework based on international human rights standards. To ensure the Scottish Government realises their human rights aspirations we would urge the Scottish Government to further engage with the SHRC ahead of Stage 3. There are, undoubtedly, still opportunities to improve the legislation to better meet the Scottish Government's aims of creating a social security system that recognises people's rights and is built on dignity and respect.

Redeterminations and appeals 33 - 36, 82, 84, 85, 87 - 90 (in the name of the Minister) and 33A, 193, 84A, 194, 87A, 88A, 195, (in the name of Pauline McNeill MSP)

SCVO, Citizens Advice Scotland, the SCoWR Steering Group, and many others, welcome the Scottish Government's amendments on redetermination and appeals (33 - 36, 82, 84, 85, 87 - 90). However, SCVO and the majority of the SCoWR Steering Group believe that there is scope to build upon these amendments to ensure that it is as easy as possible for people to challenge decisions and proceed to independent appeal should they choose to.

We believe that amendments 33A, 193, 84A, 194, 87A, 88A, 195, lodged by Pauline McNeill MSP complement the Scottish Government's amendments by allowing people to decide up front if they would like to go to an independent tribunal if the internal stage of redetermination does not improve their entitlements. These changes are central to ensuring that people are aware of and can easily take forward their right to appeal.

Offences 94, 95, 46, 96, 97, 98, 99, 100, 101 (in the name of Pauline McNeill MSP)

SCVO and many of our members are disappointed that the criminalisation of genuine error remains possible despite assurances from the Scottish Government and a Scottish Government amendment to the Bill. If an individual does not report a change in their circumstances, for example, this could be considered an offence. This is a gross oversight and must be addressed urgently to protect people in Scotland from criminalisation.

It is the view of SCVO and our members that an offence has taken place only if an individual has knowingly provided false information for gain. If this issue is not addressed the Scottish legislation will be far poorer than the current UK legislation. Criminalising claimants, many of whom are vulnerable and may struggle to navigate the system, is clearly inconsistent with a rights-based approach. SCVO, the Scottish Campaign for Welfare Reform (SCoWR), and our wider membership, therefore strongly support the amendments lodged by Pauline McNeill MSP (94 – 101) – based on advice from Justice Scotland. Not agreeing these amendments will be detrimental to the people and communities we work with.

Uprating 47 and 48 (in the name of the Minister) 48A, 48B, 48C, 133, 134, 135, 136, 137 (in the name of Mark Griffin MSP) 2 and 3 (in the name of Alison Johnstone MSP)

To ensure entitlements keep pace with the cost of living, this legislation must include a statutory requirement for the annual uprating of entitlements (at the very least) in line with inflation. SCVO, the SCoWR Steering Group, Citizens Advice Scotland, and many of our members, therefore welcome the Scottish Governments amendments to introduce a duty to consider the effect of inflation on entitlements (47) and to uprate disability and employment-injury assistance (48). Similar requirements are already in statute at UK level, and we therefore stress that failure to agree these amendments would result in the Scottish legislation being weaker than corresponding UK legislation – leading to people and communities in Scotland being disadvantaged.

It should be remembered that, at UK level, these duties also extend to carers allowance. SCVO, the SCoWR Steering Group, and many carers organisations therefore support amendments 48A, 48B, 48C, lodged by Mark Griffin MSP, to ensure these duties are extended to carers.

SCVO would like to see these duties go further and be extended to all entitlements, we believe that anything less is potentially discriminatory. As such SCVO, Citizens Advice Scotland (CAS), and several other third sector organisations support the amendments lodged by Alison Johnstone MSP (2 and 3) to review all types of assistance and report on any decisions not to increase the amount payable. We believe that this is both fair and provides a level of transparency essential to realising a rights-based approach.

Recovery of assistance given in error 40 – 45 (in the name of the Minister)

The Scottish Government amendments on overpayment liabilities and recovery of overpayments (40-45) are welcomed by SCVO, many of our members, and many organisations across the third sector. These amendments give assurances that in many cases people will not have to repay overpayments that were caused by official error. SCVO do hold reservations that the test of liability to repay is stricter than the majority of UK-wide DWP benefits.

In addition, SCVO, the Child Poverty Action Group in Scotland (CPAG), and the SCoWR Steering Group, believe that the legislation must go further to ensure that individuals have the right to appeal decisions on overpayments and how they are recovered – as is currently the case under UK legislation. SCVO urge further consideration of these issues ahead of Stage 3.

Procedure for regulations for assistance: Scottish Social Security Commission and balance between Primary and secondary legislation 131B (in the name of Pauline McNeil MSP) 211 (in the name of Mark Griffin MSP)

SCVO, and much of the third sector, have consistently highlighted the need for a statutory independent scrutiny body. As such, we were pleased to see the introduction of the Scottish Commission on Social Security, which will offer a significant improvement. Despite this, SCVO and many of our members continue to have concerns regarding the balance between primary and secondary legislation.

SCVO, the Scottish Campaign for Welfare Reform (SCoWR) Steering Group, and organisations across the third sector welcome the Government's commitment to a super affirmative procedure to regulations. However, the Delegated Powers and Law Reform Committee has raised a number of concerns as to the extent to which the Bill ensures such an approach is taken. SCVO understands that these issues will be revisited at Stage 3 and believe there is scope to make progress and offer further clarifications regarding this process ahead of the Stage 3 debate.

We believe the remit of the Scottish Commission on Social Security should be extended to ensure that the statutory scrutiny of regulations by the Commission applies to all entitlement conditions – as recommended by the Disability and Carers Expert Advisory Group (DACBEAG). SCVO, as part of the SCoWR Steering Group, therefore support amendment 131B lodged by Pauline McNeil MSP.

The SCoWR Steering Group also urges the Social Security Committee to ensure that substantive changes to social security - that could reduce or limit existing standards -should receive the appropriate level of stakeholder consultation and parliamentary consideration.

Amendment 211 lodged by Mark Griffin MSP would ensure that the regulation making powers provided for in the Bill do not include the power to make such retrogressive changes.

Other areas for improvement

SCVO continue to support improvements to the definition of terminal illness and a system of special rules for those who are terminally ill. We understand that terminal illness will be revisited at Stage 3 and SCVO will continue to engage with Marie Curie, MND Scotland, colleagues across the sector, the Scottish Government and MSPs to ensure the system takes a rights-based approach and achieves the best possible outcomes for people diagnosed with a terminal illness, their families and those who help care for them.

We also believe more should be done within the legislation to recognise the wide range of caring responsibilities and situations and to ensure that appropriate support is provided to carers. SCVO and many of our members across the sector therefore look forward to the Consultation on Carers Assistance Regulations. However, we remain of the view that the legislation should be amended at Stage 3 to provide Carers Assistance to those who care for more than one person. This is, in our view, an anomaly that should be urgently addressed to allow carers in this situation access to entitlements as early as possible.

Conclusion

If we are to realise the ambition of creating a compassionate, effective and dignified social security system for Scotland, some improvements to this Bill must be introduced – reflecting the advice of Scotland's third sector organisations and the practical amendments put forward by MSPs of various parties.

To achieve this members of the Social Security Committee and Members from across the chamber must fully consider both these changes and the other proposals made by our third sector colleagues. We believe that, together, we can create a social security system that is truly rights-based and that delivers a just Scotland with improved outcomes for all.

About us

The Scottish Council for Voluntary Organisations (SCVO) is the national body representing the third sector. There are over 45,000 voluntary organisations in Scotland involving around 138,000 paid staff and approximately 1.3 million volunteers. The sector manages an income of £5.3 billion.

SCVO works in partnership with the third sector in Scotland to advance our shared values and interests. We have over 1,900 members who range from individuals and grassroots groups, to Scotland-wide organisations and intermediary bodies.

As the only inclusive representative umbrella organisation for the sector SCVO:

- has the largest Scotland-wide membership from the sector – our 1,900 members include charities, community groups, social enterprises and voluntary organisations of all shapes and sizes
- has governance and membership structures which are democratic and accountable - with an elected board and policy committee from the sector, we are managed by the sector, for the sector
- brings together organisations and networks connecting across the whole of Scotland
- works to support people to take voluntary action to help themselves and others, and to bring about social change.

Further details about SCVO can be found at www.scvo.org.uk

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