

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

07 February 2018

Our position

The Scottish Government's aspirations 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.

Achieving a rights-based Social Security System: Due Regard (amendments 116 and 117)

A human rights-based approach is a conceptual framework based on international human rights standards. 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, a rights-based approach must be embedded throughout the legislation, failure to do so, will allow future governments to ignore the Scottish Government's aspirations.

SCVO and colleagues across the third sector, including the Scottish Campaign for Welfare Reform (SCoWR), believe that the 'due regard' duty recommended by the Scottish Human Rights Commission (SHRC) and lodged by Mark Griffin MSP is essential if we are to realise in practice the human rights aspirations of this Bill.

The 'due regard' duty would require Scottish Ministers and all public authorities to fully consider the internationally established right to social security when implementing the devolved social security powers. The duty would also mean courts and tribunals are required to take full account of this right when making decisions regarding social security.

The Scottish Government have recognised that through a rights-based approach to social security we can achieve a more just Scotland and fulfil the rights of the people and communities who live here. These amendments can ensure these aspirations are realised.

Balance between Primary and Secondary Legislation and Scottish Social Security Commission (13, 15, 16, 118, 49, 53, 54)

SCVO and many of our members are concerned about the balance between primary and secondary legislation. Primary legislation provides opportunities for the third sector and others to reflect on legislation and share their expertise, this ensures policy proposals are

effectively securitised. If most of the rules about the new benefits are to be set out in regulations, this opportunity will be lost.

SCVO, and much of the third sector, have therefore consistently highlighted the need for a statutory independent scrutiny body. As such, we are pleased to see the introduction of the Scottish Commission on Social Security (13, 15, 16) which we believe is a significant improvement. We are also pleased that this body will draw on expertise from those with lived experience by including a member with personal experience of having a disability arising from a physical or mental impairment; again this answers the call of organisations across the third sector.

However, SCVO have a number of concerns:

- The Commission must not be a substitute for parliamentary scrutiny. Any draft regulations should be laid before both Parliament and the Commission to be scrutinised. SCVO, highlight that laying draft regulations before Parliament for pre-scrutiny is the most common element of “super-affirmative” procedures.
- SCVO believe the amendments, as currently drafted, could result in the Commission being informed of proposals as policy choices, or similar, rather than draft regulations. This must be amended to ensure appropriate scrutiny.
- Within the details there is no duty on the Commission to consult the Social Security Citizen Panels (‘User Panels’), the third sector, civil society groups or others, or to utilise public consultation. SCVO continues to believe that such consultation and engagement is essential to ensure those with experience of the system continue to have a central role in its development. We believe that after being laid before parliament draft regulations should be shared with both the Commission and published for wider consultation. Further, when Scottish Ministers outline their view on the Commission’s position they should also share their views on any other submissions they have received, we believe that this level of engagement and transparency is both essential and is in keeping with the Scottish Governments Open Government ambitions.

SCVO therefore believe that parliamentary scrutiny and independent scrutiny are two separate but complimentary processes through which draft regulations must pass.

In addition, SCVO have concerns around the remit and membership of the Commission.

- As currently drafted the amendments (118) do not seem to allow the Commission to take forward its own workstream. SCVO believe that the Commission should have the right to take forward any work it deems necessary to ensure the right to social security is fulfilled. Similarly, to be truly independent, we believe that the Commission should have the right to decline requests for reports from Ministers and the Scottish Parliament.
- The maximum membership of the Commission is just five members. SCVO have called for the body to include a broad range of civil society organisations, this is not possible with so few members.

Forms of Assistance (20-31 and 20a, 20b, 20c, 22a, 22b 22c, 24a, 24b, 24c, 26a, 26b, 26c, 28a, 28b, 28c, 29a, 29b, 29c, 31a, 31b, 31c)

SCVO were pleased to see the amendments tabled by the Scottish Government to restrict giving assistance in forms other than money (20-31). However, we feel that these amendments can be improved to ensure that money remains the default form of assistance. Cash must always be offered in first instance. SCVO, both individually and as part of the Scottish Campaign for Welfare Reform (SCoWR), support Mark Griffin MSP's amendments to this effect – 20a, 20b, 20c, 22a, 22b 22c, 24a, 24b, 24c, 26a, 26b, 26c, 28a, 28b, 28c, 29a, 29b, 29c, 31a, 31b, 31c. These amendments reflect SCVO's belief that a rights-based system must protect the right to cash entitlements. The Bill must be amended to ensure social security assistance is always provided in cash unless a clear choice has been made by the claimant that their cash entitlement be used to provide a good or service that they need.

Other upcoming areas for improvement

SCVO sit on the Steering Group of the Scottish Campaign for Welfare Reform (SCoWR). SCoWR is made up of a diverse range of third sector organisations with expertise on social security and its impact on the people and communities they work with. As part of this group, SCVO support a number of additional amendments. Key areas in which SCoWR members agree the Bill must be strengthened include: uprating, overpayments, the criminalisation of genuine error, and redetermination. We understand that the majority of these issues will be discussed in the coming weeks and SCVO will circulate a briefing on these issues as they arise.

In addition, SCVO, Marie Curie, MND Scotland and others across the third sector, believe that the definition of terminal illness must be extended to the last 24 months of life. This change is in keeping with SCVO's messages, and the Scottish Government's commitment, to a social security system based on dignity and respect. As such we will support Jeremy Balfour MSP on amendments 67 and 68. SCVO also support a system of special rules for those with a terminal illness and SCVO and Marie Curie will support Mark Griffin MSP on amendments 182, 189 191, 192. SCVO, and many colleagues across the sector, cannot support amendment 69. We will further outline our position on this next week.

Conclusion

If we are to realise our ambitions of a compassionate, effective and dignified social security system for Scotland this Bill must realise its potential. To achieve this members of the Social Security Committee must fully consider both these changes and the other proposals made by our third sector colleagues. 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

Contact

Sheghley Ogilvie
Public Affairs Officer (Engagement)
Scottish Council for Voluntary Organisations,
Mansfield Traquair Centre,
15 Mansfield Place, Edinburgh EH3 6BB
Email: sheghley.ogilvie@scvo.org.uk
Tel: 0131 474 8000
Web: www.scvo.org.uk