

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

24 April 2018

Our position

SCVO, our members, and the wider third sector welcome the significant progress that has been made to strengthen the Bill at Stage 2. However, as we enter Stage 3 SCVO, our members, and colleagues across the third sector have a number of outstanding concerns:

Scrutiny: All Scottish social security regulations must be within scope for scrutiny with no exceptions. (Support amendment 145)

Independent advocacy: There is a need for independent scrutiny of advocacy services, however, to ensure the independence of these services the Scottish Government cannot take on the role of regulator (Oppose amendment 35).

Offences: The possibility of the criminalisation of genuine error is a gross oversight that must be urgently addressed (Support amendments 81-88)

Split payments: To ensure access to an independent income Universal Credit payments must be automatically split into individual payments (Support amendment 144)

Overpayments: Individuals must not be liable for overpayments that result from agency error and must have the right to appeal decisions on overpayments (Support amendments 133- 136 and 137)

Terminal illness: The system should achieve the best possible outcomes for people with a terminal illness, their families and those who help care for them (Support 111 and 113).

Introduction

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 on the right to social security. There are, undoubtedly, still opportunities to improve the legislation through regulations to better meet the Scottish Governments aims of creating a social security system that recognises people's rights and is built on dignity and respect.

SCVO, our members, and the wider third sector welcome the significant progress that has been made to strengthen the Bill at Stage 2. The restriction of private-sector involvement in medical assessments, the introduction of the Scottish Social Security Commission to provide independent scrutiny, restrictions on the circumstances in which overpayments are recovered, a duty to consider the effects of inflation on the value of devolved assistance and to uprate disability and employment- injury assistance in line with inflation, are just a few of the changes welcomed by SCVO and colleagues across the third sector. However, as we enter Stage 3 SCVO, our members, and colleagues across the third sector have a number of outstanding concerns.

Scottish Social Security Commission and balance between Primary and secondary legislation 145 (in the name of Pauline McNeil MSP)

SCVO and organisations across the third sector have welcomed the introduction of the Scottish Commission on Social Security and the Government's commitment to a super affirmative procedure for regulations. The Scottish Government's Expert Advisory Group on Disability and Carers Benefits (DACBEAG) has, however, raised a number of concerns as to the extent to which the Bill ensures such an approach is taken. SCVO, the Child Poverty Action Group (CPAG), the Scottish Campaign for Welfare Reform (SCoWR) Steering Group, and others across the third sector agree with these concerns and stress that there should be **no exceptions to Scottish social security regulations that are within scope for scrutiny.**

Amendment 145 in the name of Pauline McNeil MSP will ensure adequate scrutiny of regulations that do not require the full super-affirmative procedure by placing a duty on Ministers to refer to the Commission proposals for regulations not already covered by s55. This procedure will ensure expert, independent scrutiny of often complex secondary legislation, as recommended DACBEAG. SCVO stress that such legislation is likely to have an impact upon the rights of individuals, their entitlements, and their experience of the Scottish system.

SCVO believe this amendment takes a balanced approach to addressing the very valid concerns of the DACBEAG and colleagues across the third sector while also ensuring the Commission can apply their expertise to regulations by responding in the most appropriate way. An in depth from the CPAG Scotland is available [here](#).

Advocacy 29, 31, 32, 34 35 (in the name of the Minister)

SCVO, the Scottish Independent Advocacy Alliance (SIAA), the Health and Social Care Alliance (the ALLIANCE), AdvoCard, Disability Action Scotland (DAS) and over 60 organisations across the third sector and civil society, believe in universal access to advocacy for those accessing social security system. Therefore while we recognise the Scottish Government's amendments 29, 31, 32, and 34 as progress from a starting position of no provision – and agree that independent advocacy services should be provided to disabled people who want it – we don't believe the Scottish Government amendment goes far enough as it falls short of universal access.

SCVO urges MSPs to **oppose the Scottish Government's amendment 35.**

SCVO appreciates the need to ensure the quality of advocacy services and protect vulnerable people. Regulation of independent advocacy is an important issue that merits wider consideration, however, SCVO are concerned that this amendment suggests the Scottish Government would regulate independent advocacy services. Across all other professional fields it is professional bodies, not Scottish Ministers, which set and evaluate service standards. Advocates will support people challenging decisions made by the new Scottish Social Security Agency. Like other professional fields, for advocacy to be meaningful and effective it must remain independent of Scottish Government.

To maintain the independence of advocacy organisations, avoid a conflict of interest, and ensure the scrutiny of advocacy services paid for through social security, SCVO believe that there is a need for independent scrutiny of advocacy services. An open and transparent consultation process should take place to define any regulations and ensure organisations with expertise, such as SIAA, who produced some years ago, a suite of principles, standards, and a code of practice for independent advocacy organisations, could feed in.

Without a commitment to independent scrutiny and open and transparent consultation process for regulations SCVO cannot support amendment 35. SCVO, and a numbers of our members, including the SIAA, the Food Train, Advocard, and the Health and Social Care Alliance (the ALLIANCE), are seriously concerned about this amendment. This amendment puts the independence of advocacy organisations at risk and has the potential to set a dangerous precedent for Scottish Government influence over third sector service providers.

Offences 81, 82, 83, 84, 85, 86, 87, 88 (in the name of Pauline McNeill MSP)

SCVO, many of our members and colleagues across civic society, are frustrated that the criminalisation of genuine error remains possible despite assurances from the Scottish Government and a Scottish Government amendment to the Bill. This is a gross oversight and must be addressed urgently to protect people in Scotland from criminalisation.

Currently, if an individual does not report a change in their circumstances, for example, this could be considered an offence. SCVO stress 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 based on advice from Justice Scotland. Not agreeing to these amendments will be detrimental to the people and communities we work with.

A full briefing from Justice Scotland, an all-party law reform and human rights organisation working to strengthen the justice system, is available [here](#).

Split-payments 144 (in the name of Mark Griffin MSP)

SCVO, the ALLIANCE, Engender, Carers Scotland, Close the Gap, One Parent Families Scotland (OPFS), The Poverty Alliance, Scottish Women's Aid, the Scottish Refugee Council and many other organisations across the third sector welcomed the Scottish Government's commitment to offer individual, not household, payments of Universal Credit in February 2017. These organisations, like 88% of the respondents to the Scottish Government consultation on social security, recognise that offering household payments of Universal Credit by default is bad for equality. Women are twice as dependent on social security as men. Automatic split-payments would encourage the financial independence of women, reducing their economic inequality, is in-keeping with a rights-based approach, and would reinforce the Scottish Government's commitment to achieving the Sustainable Development Goals (SDGs).

A joint briefing is available [here](#).

Exclusion from overpayment liability 133, 134, 135, and 136 (in the name of Mark Griffin MSP) and Re-determination and appeal on liability for recovery of assistance 137 (in the name of Jeremy Balfour MSP)

The Scottish Government's Stage 2 amendments on overpayment liabilities and recovery of overpayments were welcomed by SCVO, and many organisations across the third sector. However, SCVO, the Child Poverty Action Group (CPAG), Inclusion Scotland, One Parent Families Scotland (OPFS), and other members of the Scottish Campaign on Welfare Reform (SCoWR) are concerned that the test of liability to repay is stricter than the majority of UK-wide DWP entitlements. For example, as amendment 134 states, an individual should not be liable to repay overpayments where the agency have made an error when deciding an individual's entitlements.

Similarly, it is our view 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. As currently drafted, the Bill requires people to challenge their liability for a contested overpayment through a civil court debt recovery process, this is inconsistent with a rights based approach which should include the right to appeal all decisions, with use of court procedures only as a last resort. SCVO urge further consideration of these issues, which are central to an individual's experience of the new system, and support for these amendments. A full briefing is available [here](#).

Terminal Illness definition and special rules 111 and 113 (in the name of the Minister)

SCVO joins Marie Curie Scotland, MND Scotland, and a diverse range of colleagues from across the third sector and civil society, in welcoming the Scottish Government's 'manuscript amendment' to alter its amendment on terminal illness. SCVO supports a definition of terminal illness based purely on clinical judgment.

At a UK level, those defined as terminally ill can receive entitlements more quickly through a system of special rules. SCVO and colleagues across the third sector therefore welcome amendment 113 on special rules. Together, we believe that these amendments will achieve the best possible outcomes for people with a terminal illness, their families and those who help care for them. These changes are also in keeping with the Scottish Government's commitment to a social security system based on dignity and respect.

Other areas for improvement

SCVO, support a number of additional amendments as part of the Scottish Campaign for Welfare Reform (SCoWR) Steering Group. SCoWR is a broad coalition of third and civil society organisations with a shared vision for a social security system which prevents poverty, treats people with dignity and respect and supports everyone to flourish. The SCoWR briefing is available [here](#).

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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