

Social Security (Scotland) Bill

Stage 2 Consideration, Day 2

8 February 2018

Written briefing from Citizens Advice Scotland

Citizens Advice Scotland (CAS), our 61 member Citizen Advice Bureaux (CAB), the Citizen Advice consumer helpline, and the Extra Help Unit, form Scotland's largest independent advice network. Advice provided by our service is free, independent, confidential, impartial and available to everyone. Our self-help website Advice for Scotland provides information on rights and helps people solve their problems.

In 2016/17 the Citizens Advice network in Scotland helped over 310,000 clients in Scotland alone and dealt with over one million advice issues. With support from the network clients had financial gains of over £120 million and our Scottish self-help website Advice for Scotland received over 4 million unique page views.

Summary

Citizens Advice Scotland (CAS) supports the following amendments (in Marshalled List order):

13; 116; 117; 14 (already debated); 15; 16; 118; 18; 80; 173; 174; 175; 176; 177; 178; 179; 180; 181; 20A; 20B; 20C; 20; 182; 21; 183; 22A; 22B; 22C; 22; 23; 184; 185; 186; 187; 24A; 24B; 24C; 24; 25A; 25; 67; 68; 188; 26A; 26B; 26C; 26; 189; 27; 27A; 28A; 28B; 28C; 28; 190; 29A; 29B; 29C; 29; 30A; 30; 31A; 31B; 31C; 31; 32.

Introduction

In 2016/17, Scotland's CAB network provided advice on 94,301 new issues relating to the benefits being devolved, representing 37% of benefits advice given by Scotland's citizens advice bureaux in that year. CAS has provided a substantial body of evidence based on CAB clients and advisers' daily experiences of engaging with the current system, together with their priorities for the new Scottish system.¹ We look forward to continuing to work with the Scottish Parliament and Scottish Government to ensure the new system is fair, equal and responsive with Scotland's citizens at the heart of it.

This briefing covers the remaining amendments to Part 1 of the Bill, and amendments to Part 2 up to Section 18, which will be considered by the Committee on 8 February.

Effect of charter: Complaints

Whilst the Bill sets out procedures for redeterminations and appeals, it did not make provision for people's right to complain about poor service, or where they feel that they have not been treated with dignity and respect. CAS has recommended that the Bill guarantee people's right to complain without prejudicing their claim, clearly setting out how people can make a complaint and receive redress. In addition to making the process clearer, this would also strengthen the rights-based approach to the design of the system. There are unique challenges faced by users of the social security system and from consultation with CAB advisers, there are a number of barriers their clients face which discourage those clients from raising a complaint under the current social security system.

CAS welcomes the Scottish Government's amendment which would give people a right to complain if the service they receive does not meet the expectations set out in the Social Security Charter. The amendment would also require complaints to be fully investigated, allowing the possibility of redress for the individual and a culture of continuous improvement to be facilitated. The amendment also strengthens the role of the Charter in guaranteeing individuals' rights in the new system.

CAS supports amendment 18 (in the name of the Minister).

Right to social security

CAS welcomed the addition of the principle in the Bill as introduced that recognised social security as a human right. We welcome amendments drafted by the Scottish Human Rights Commission that would further strengthen these provisions by requiring Ministers to have due regard to the right to social security and relevant human rights covenants when exercising their functions.

CAS supports amendment 116 and 117 (in the name of Mark Griffin).

Annual report and other accountability mechanisms: Independent Review of Act

Given the challenges in developing a new Scottish social security system, CAS would support recommendations made by other organisations for an independent review of the operation of the Act, the new system and structure of the benefits after three years of the system being in operation.ⁱⁱ This should ensure that longer-term development of the benefits continues to take place.

CAS supports amendment 80 (in the name of Mark Griffin), which would make provision for this review to take place.

Scottish Commission on Social Security

As drafted, the Bill made no provision for the independent scrutiny of regulations by expert advisory bodies. CAS has recommended that the existing functions of the current UK Social Security Advisory Committee (SSAC) are reflected in the Bill in a Scottish context, establishing in statute an independent expert body. Its role would be to provide advice to the Scottish Government on the development and drafting of regulations. In addition, the relevant Scottish

Parliament Committees should be permitted to make referrals to the independent expert body to allow advice to be provided on regulations to aid the Parliamentary scrutiny process.

We welcome the Scottish Government's amendments in this area which would provide for a robust independent scrutiny process for regulations establishing the new benefits, together with any further changes over time.

CAS supports amendments 13, 15, 118 (in the name of the Minister).

Residence conditions

A further area where common rules for the devolved benefits are required relates to residency requirements for making a claim. However this is not currently on the face of the Bill, nor is there a clear residency definition. To ensure consistency, we recommend that the rules are set out in the Bill, rather than in different sets of regulations. CAS recommends that Scottish benefits are paid to individuals who are present and resident in Scotland.

Whilst we note the amendment from Jeremy Balfour (64), this would add a past presence test to every benefit delivered under the new system (requiring an individual to have been present in Scotland for at least two of the past three years), as opposed to the current reserved system where a past presence test only applies to disability, carers and industrial injuries benefits. CAS is concerned about potential unintended consequences arising from this and would recommend a further amendment is brought forward at a later part of Stage 2, or at Stage 3 to include suitable residency requirements.

More than one cared-for person

As part of developing a Scottish Carer's Benefit, the eligibility criteria should be reviewed with a view to broadening it to ensure that carers do not unfairly lose out on support. As part of consultation with CAB clients, some participants raised the issue of people who care for more than one person, feeling it was unfair that they only received payment of Carer's Allowance for one, as it did not provide recognition of their role.

CAS welcomes the amendments from Alison Johnstone, which would enable regulations to be drafted to make people who care for more than one person eligible for further assistance, if that is the outcome of the review of the eligibility criteria.

CAS supports amendments 173 to 181 and 183 (in the name of Alison Johnstone).

Form of assistance

Whilst CAS agrees that the new social security system should offer the option of providing goods or cash, we would be supportive of clarification within the Bill that people will always be given a choice of cash payments, even if an in-kind option is offered.

We welcome the Scottish Government's amendments in this area, together with Mark Griffin's further amendments which would ensure that individuals are always offered cash payments and only receive support in kind if they choose to.

CAS supports amendments 20 to 32 (in the name of the Minister), together with amendments 20A to 20C, 22A to 22C, 24A to 24C, 26A to 26C, 28A to 26C, 29A to 29C, and 31A to 31C (in the name of Mark Griffin).

Means-testing

CAS believes that entitlement to disability assistance and winter heating assistance should remain universal, non-means tested benefits, as their reserved predecessors currently are. As part of an online survey of CAB advisers, the majority of participants thought that disability benefits should remain universal. 80% of advisers responding to the online survey thought that entitlement to disability benefits should be universal, whereas only 9% thought it should be means-tested. Participants saw universality as important for the message it sent to society; one of inclusion, equality, dignity and non-discrimination.

"It ensures that all are treated with the same respect and not to be able to pick out individuals and stigmatise poverty".

"All people with disability should be treated equally and helped to improve their quality of life".

Similarly, CAS does not support a move away from universal provision of the Winter Fuel Payment (WFP). While it is nominally related to fuel poverty, the WFP is in essence an old-age benefit, and plays a general role in the social security system in that regard. There is therefore a risk that a reduction in the WFP, or a restriction on who receives it, could result in a loss of income for some consumers. Citizens Advice Scotland believes a universal approach within the target populations is the most effective and efficient means of achieving the desired outcome: maximising the incomes of low income and vulnerable households for help with their heating costs during the winter months. CAS believes that without sufficient evidence to suggest otherwise, the risks of vulnerable consumers not receiving payment with selective payment methods is too high.

CAS supports amendments 184, 185, 186, 187, 25A, 188, 27A, 190 and 30A (in the name of Mark Griffin) which would prevent disability assistance or winter heating assistance being means-tested.

Terminal illness

Currently, if an individual is diagnosed with a terminal illness with less than six months to live, they can apply for disability benefits (PIP) under a fast-track system. This is very helpful, in that it removes the need for a stressful face-to-face assessment at a difficult time, and cuts the often lengthy wait for their claim to be processed. However, a number of terminal conditions have a more uncertain prognosis (e.g. Motor Neurone Disease), and as a result the person will need to go through the regular lengthy and stressful process at a time when they are already facing great challenges in their lives. CAS therefore welcomes the proposed amendment from



Jeremy Balfour which would extend the fast-track system to people diagnosed with a terminal condition with less than 24 months to live, together with those from Mark Griffin which make arrangements for special rules for the terminally ill for disability and carers benefits.

CAS supports amendments 67 and 68 (in the name of Jeremy Balfour) and amendments 182, 189, 191 and 192 (in the name of Mark Griffin).

For more information or CAB cases, contact:

Rob Gowans

0131 550 1087 or rob.gowans@cas.org.uk

ⁱ A New Future for Social Security: Consultation on Social Security in Scotland – Response from Citizens Advice Scotland, October 2016 <http://www.cas.org.uk/publications/designing-social-security-system-scotland-consultation-new-powers>

ⁱⁱ Response to A New Future for Social Security in Scotland: Consultation on Social Security in Scotland – Disability Agenda Scotland, October 2016 http://www.disabilityagenda.scot/images/das_documents/DAS-response-to-scot-social-security-consultation-FINALversion.pdf