



Citizens Advice Scotland Briefing Social Security (Scotland) Bill Stage 1 Debate 19 December 2017

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 provides information on rights and helps people solve their problems.

Key points

- Citizens Advice Scotland (CAS) welcomes the general principles of the Bill which has the potential to create a new social security system that will make a positive difference for tens of thousands of Scotland's citizens.
- There are a number of areas that could be included on the face of the Bill as opposed to being left to regulations and guidance.
- The Bill should include a duty on Scottish Ministers to make provision for access to free, confidential and independent benefits advice.
- The system of redeterminations and appeals should be made one seamless process from the claimant's perspective by the Agency passing the review decision directly to the Scottish Tribunals Service, rather than the claimant having to lodge an appeal themselves.
- Timescales for the re-determination process should be set out in the Bill, rather than in regulations.
- A CAS concern is that the Bill appears to make provision for overpayments as a result of an error by the Scottish Social Security Agency to be repaid by the claimant.
- The Bill should contain a common system for uprating the values of devolved benefits rather than determining the same through regulations.
- A common definition of residency should be added to the Bill.
- Given the level of detailed scrutiny of Regulations required, and the importance of these, CAS would recommend that an equivalent body (or bodies) to the existing UK Social Security Advisory Committee should be an essential feature of the new system.
- 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.

Context and General Principles

Citizens Advice Scotland welcomes the publication of the Bill and agrees with its general principles. The devolution of social security powers is an extremely significant development in the history of the Scottish Parliament and represents a unique opportunity to create a new system that has the potential to make a positive difference for tens of thousands of Scotland's citizens.

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.

CAS welcomes the values of dignity and respect that are intended to underpin the new social security system, and the Scottish Government's commitment to make improvements on issues in the reserved benefits system. We also welcome the inclusive approach the Scottish Government has taken to developing the new system. The extensive engagement undertaken, including with those with lived experience of the benefits system has been welcome and will contribute to a system designed around the needs of those who require support from it.

Citizens Advice Scotland accepts the Scottish Government's view that setting out some of the rules for the new benefits should be made in Regulations. Much of the important detail affecting the operation of the social security system is contained in regulations and guidance which are regularly issued and updated. However, CAS believes there are a number of areas that could be included on the face of the Bill as opposed to being left to Regulations and guidance. These are detailed below.

Access to Independent Advice

Independent advice plays a key role in a well-functioning social security system, including support with entitlement, take-up, applications, complaints, appeals, access to information, outreach and continuous improvement. The development of the new Scottish Security System offers a unique opportunity to harness and support the key role of independent advice in Scotland, both to ensure access to quality independent advice through citizens advice bureaux, but also to support the aims of the new system. When respondents from the Scottish Government's Experience Panels were asked about their top priorities for improvement in the new system, 71% listed 'advice and support about claiming' as a priority.²

¹ 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>

² Social Security Experience Panels: About Your Benefits and You – Quantitative Research Findings – Scottish Government Social Research - <http://www.gov.scot/Resource/0052/00527173.pdf>

Issues relating to benefits and tax credits are the most common area of advice provided by citizens advice bureaux, with over 253,000 new issues advised on in Scotland in 2016/17, representing 43% of their work. This equates to 970 new benefit issues for each working day of the year.

In order to continue this role, sustainable, reliable and long-term funding must be in place to ensure that the existing CAB infrastructure of advice, outreach and partnerships continues to support the people across Scotland that rely on it. Given the central importance of citizens advice bureaux and other independent advice providers to the current social security system, it is essential that this role is built into the development of a new Scottish system.³ CAS believes that the Bill should include a duty on Scottish Ministers to make provision for access to free, confidential and independent benefits advice.

Re-determinations and Appeals Process (Sections 23 – 26)

CAS recommends that the new re-determination process should differ in a number of ways from the current mandatory reconsideration process, which can discourage people from appealing entirely, effectively preventing the right to an independent appeal and acting as a barrier to justice. The best way to reduce demand on both the internal review process and the appeals process is by improving the accuracy of initial decisions, including analysis of claimant feedback and a well-designed complaints process.

However, the system of redeterminations and appeals could be improved by making it one seamless process from the perspective of the individual. In our view, the best way to do this is to have the review decision passed directly from the Agency to the Scottish Tribunals Service, rather than the claimant having to lodge an appeal themselves. The complexity of the current system of reconsiderations and appeals has the potential to deter people from appealing and act as a barrier to justice. Part of the problem is that the claimant must have their decision reconsidered internally by the Department, and then, if they disagree with the reviewed decision, undergo the additional step of lodging an appeal.

Official statistics from the Department of Work and Pensions indicate that since the advent of mandatory reconsideration (MR), 323,000 Personal Independence Payment claims were upheld at mandatory reconsideration taken, but not further appealed to a Tribunal⁴. This represents the majority of upheld MR claims (72%) and suggests that CAB evidence that the two-step system acts as a barrier to claimants is a common occurrence.

³ For further information about the role of independent advice in the new system, see pages 169 - 182 of 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>

⁴ Work and Pensions Select Committee PIP and ESA assessments inquiry: supporting statistics – Department for Work and Pensions, December 2017 <https://www.gov.uk/government/statistics/work-and-pensions-select-committee-pip-and-esa-assessments-inquiry-supporting-statistics>

Timescales for Re-determinations (Section 24)

Section 24 (5) of the Bill makes provision for statutory timescales to be introduced within which the review must be carried out, to be made in regulations. Avoiding the lengthy delays that have dogged the current Mandatory Reconsideration process is key to improving the new system. CAS would consider that placing the timescale on the face of the Bill, rather than in regulations would strengthen people's rights and provide a clearer target. We have recommended previously that a reasonable time period would be six weeks for the submission of further evidence, with no more than four weeks for the decision to be made.⁵

Overpayments (Section 36)

The Bill would appear to make provision for overpayments as a result of an error by the Scottish Social Security Agency to be repaid by the claimant, which is of concern. Where the error was made by the Agency, and has led to an underpayment or an overpayment the Agency should pay the claimant any underpayment or backdate the payments accordingly, and the claimant should *not* be required to repay the overpaid benefit. This has been common practice for social security benefits prior to the introduction of Universal Credit, and not only would CAS consider it to be unfair that someone was penalised for an error they were not responsible for, collection of the debt can lead to hardship for individuals.

Whilst the Policy Memorandum accompanying the Bill proposes that "*where overpayments are made as a result of agency error, they will not be pursued, unless under exceptional circumstances such as a very large and obvious overpayment.*"⁶, this is not reflected in the legislation. In any event, CAS recommends that the Bill is amended to provide clarity and certainty that people will not be pursued for overpayments as a result of official error, regardless of how large the overpayment was.

⁵ For further information about timescales for review and appeals, see pages 197 – 199 of 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>

⁶ Policy Memorandum page 46

An East of Scotland CAB reports of a client who is in receipt of Universal Credit. For the first two months of his claim, he received the housing element of his UC into his own account rather than it being paid directly to the Council. The Council were not made aware of this and continued to pay housing benefit for those two months, with the result that the client now has a HB overpayment debt. Whilst arrangements have been put in place to repay his rent arrears, deductions continue to be made from his UC payment, with the net result being that he received a payment into his bank account of £52 Universal Credit for the last month. There is no possibility of him managing to live on this amount of money for a whole month until his next payment and he feels it is unfair that he is in the situation essentially because of a miscommunication and mistakes between the DWP and the Council around payment of his rent.

Feedback and Complaints

Whilst the Bill sets out procedures for redeterminations and appeals, it is silent on people's right to complain about poor service, or where they feel that they have not been treated with dignity and respect. CAS would recommend 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. Precedent for this type of approach can be found in the Patient Rights (Scotland) Act 2011.

CAS agrees with the Scottish Government's proposal to base the system around the existing Scottish Public Services Ombudsman's Statement of Complaints Handling Principles. However it will be important to recognise the unique challenges faced by users of the social security system. 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. These include:

- 'Biting the hand that feeds you' – concern about their complaint influencing any pending decisions on benefits, being sanctioned, or complaining about frontline staff who they may have to continue to deal with.
- 'What's the point' – not feeling that anything would be gained from raising a complaint, not expecting to be listened to, or not wanting to prolong their dealings with the service.

- Not knowing how to complain, having difficulty setting out their complaint comprehensively, or not wanting to ask the person who they wish to complain about how to access the complaints procedure.⁷

Uprating

A common system for uprating the values of devolved benefits may be an area more suitable for the face of the Bill than in regulations. CAS would recommend devolved benefits are uprated in line with inflation as measured by the Retail Prices Index (RPI) as a base, with additional uprating based on the annual increase in particular costs that the benefit is intended to meet the cost of. Examples of costs that could be used to trigger additional uprating include - annual energy bills, costs of funerals, fuel costs and average public transport costs.

Inclusive Communications

In addition, the Bill could set out rules for communicating with people, including ensuring that benefit claim forms are in clear, accessible language, and come accompanied by guidance on how to complete the form; and that written communications should be individualised, written in clear, plain English, avoiding medical jargon, legalistic language and abbreviations. There should also be an acknowledgement immediately sent when any benefit claim has been received with reasonable and realistic timescales that someone can expect their claim to be dealt with included.

Residency

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.

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.⁸ This should ensure that longer-term development of the benefits continues to take place.

⁷ For more information about complaints handling in the current, and new systems, see pages 183 - 191 of 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>

⁸ 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

Fraud and Error (Sections 40 – 41)

It is important to draw a distinction between intentional fraud and unintentional error, such as not reporting a change of circumstances. As it stands, the Bill applies similar levels of offence and penalties to both. CAS would recommend that changes are made in this area, to ensure an appropriate distinction between actions committed with criminal intent to obtain money fraudulently, and failures to notify changes in circumstances which were not committed with malicious intent.

Independent Scrutiny

CAS would recommend that the existing functions of SSAC are reflected in the Bill, establishing in statute an independent expert body to provide advice to the Scottish Government on the development and drafting of regulations. We would also recommend that relevant Scottish Parliament Committees (currently the Social Security Committee and the Delegated Powers and Law Reform Committee) be permitted to make referrals to an independent expert body to allow advice to be provided on regulations to aid the Parliamentary scrutiny process. We welcome the Scottish Government's commitment to bring forward amendments in this area.

Choice of Cash Payments

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 commitment to bring forward amendments in this area.

Independent Advocacy

Independent advocacy also plays a crucial role in a well-functioning system particularly those with specific needs and vulnerabilities. CAS would also support a statutory duty to provide independent advocacy to those who need it. It is important to recognise that independent advocacy is different to independent advice, and that advocacy is most effective when it is undertaken in partnership with independent advice services.

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