

CONSULTATION ON SOCIAL SECURITY

1.0 EXECUTIVE SUMMARY

- 1.1 The Social Security (Scotland) Bill was introduced in the Scottish Parliament on 20 June 2017. The Social Security Committee issued a call for views on 30 June 2017 about the Bill with written submissions due to be returned by 23 August. The bill was accompanied by a financial memorandum and the Finance and Constitution Committee also launched a call for written evidence on the estimated financial implications of the Bill. This closes on 18 August 2017.
- 1.2 The Council responded to the previous consultation on social security which covered the principled approach being proposed, the developed benefits and operational policy.
- 1.3 The draft response to both consultations is attached for consideration.

CONSULTATION ON SOCIAL SECURITY

2.0 INTRODUCTION

2.1 The Social Security (Scotland) Bill was introduced in the Scottish Parliament on 20 June 2017. The Social Security Committee issued a call for views on 30 June 2017 about the Bill with written submissions due to be returned by 23 August. The bill was accompanied by a financial memorandum and the Finance and Constitution Committee also launched a call for written evidence on the estimated financial implications of the Bill. This closes on 18 August 2017.

3.0 RECOMMENDATIONS

3.1 Policy & Resources Committee is asked to consider the draft responses attached at Appendix 1 and 2 and comment on them.

4.0 DETAIL

4.1 The draft Bill is accompanied by a Policy Memorandum, Explanatory Notes, Financial Memorandum, statements on legislative competence and delegated powers memorandum. The Bill itself is relatively short comprising 57 sections split as follows:

- Part 1: Principles, Charter and Accountability
- Part 2: Assistance to be given according to determination of entitlement
 - Types of assistance to be given
 - Determining Entitlement
 - Recovery of Assistance given in Error
 - Offences and Investigations
- Part 3: Supplementing assistance under other enactments
- Part 4: Discretionary Housing Payments

4.2 The types of assistance to be given are as follows:

- Carer's assistance
- Cold-spell heating assistance
- Winter heating assistance
- Disability assistance
- Early years assistance
- Employment-injury assistance
- Funeral expense assistance

- Short term assistance

- 4.3 For the first seven of these, there are Schedules attached which give a brief outline of the types of eligibility provisions, further criteria and types of assistance to be given around which detailed regulations may be laid by Ministers. These are very high level and most give no detailed clue as to whether the proposals may be more or less generous than the similar benefits being devolved from the UK Government.
- 4.4 The exception to this is for Carer's allowance which is to be a temporary benefit providing a top-up, paid in two 6-monthly instalments to bring the UK government's carer's allowance in line with Job-Seeker's Allowance. It is payable to those already in receipt of carer's assistance, carer's allowance or invalid care allowance. This is to be launched first in Summer 2018 with an estimated additional cost of £37m for 2018-19. This is to be a short term measure prior to development of a replacement Scottish carer's assistance.
- 4.5 The new Best Start Grant (referred to as Early Years Assistance) will replace the Sure Start Maternity Grant and, along with Funeral Assistance, is expected to come in next by Summer 2019. Others will be provided in a staged approach. The Best Start Grant is the only other benefit which is expected to cost more than the amounts being devolved from the UK government – an estimated allowance of £17m per annum. However the bill itself provides little information about how this is likely to differ.
- 4.6 The Policy Memorandum explains why so little information is provided in the draft Bill. This is because the Scottish Government believes that the clearest approach is to put the rules together in a single piece of subordinate legislation. As such regulations have not been drafted, this makes it very difficult to comment in any detail on the draft Bill. It also means that the detailed regulations will not be subject to as much parliamentary scrutiny as if they were part of the Bill.
- 4.7 The Council previously commented on all the proposed benefits in its previous consultation response with the exception of "Short term assistance". This is a new type of assistance which does not replace any UK benefit. It aims to cover the gap when someone is appealing a decision to stop their benefit so they do not face hardship during that time. This new benefit has not been costed. This is likely to reduce hardship and should be welcomed.
- 4.8 Two new principles have been added since the previous consultation. One is that social security is a human right and essential to the realisation of other human rights. This is a rights based approach, as opposed to the UK system where entitlement arises from operation by law.
- 4.9 The other new principle is that Ministers have a role in ensuring that individuals are given what they are eligible to be given under the Scottish Social Security system. This flows from the decision that virtually all the new benefits are to be delivered by the new Scottish Social Security Agency which is directly accountable to Ministers. The agency will be highly centralised body with c 1500 employees primarily offering services digitally with some enhanced phone and on-line support along with face-to-face pre-claims advice and support services co-located where possible in places people already visit (which may include local authority

premises). The only role for local government is to continue to deliver Discretionary Housing Payments – but this will be under new guidance from Scottish Ministers. Little is being said about how assessments will be delivered – only that this will not be outsourced to a private company. These decisions follow an options appraisal and outline business case. Both the Council and Cosla argued in the previous consultation that there should be a greater role for local authorities particularly locally and in ensuring joined up assessments with health & social care. Unfortunately this now looks to be most unlikely to happen.

4.10 The Council is already engaging with the new agency to discuss the opportunities for co-location.

4.11 The draft responses are attached for consideration. The main point included is the difficulty of commenting about the Bill because of the lack of detail being provided at this stage. This applies also to the financial memorandum as it is very difficult to cost changes in benefits without knowing much about the eligibility criteria or amounts to be paid. The policy memorandum suggests that there will be a more generous approach than with the current UK benefits, but it is difficult to that this will be delivered with the costs described, and this conflict is pointed out. In addition our disappointment at not having a greater role for local government is highlighted and we welcome the flexibility from the proposed ne short term assistance.

5.0 CONCLUSIONS

5.1 Policy & Resources Committee is asked to consider and comment on the draft responses attached at Appendix 1 and 2.

6.0 IMPLICATIONS

6.1 Policy: Affects levels and types of social security benefits to be paid in Scotland.

6.2 Financial: About £2.9bn of benefits are being devolved, with most being disability related. It is important that the new or changed benefits will be affordable.

6.3 Legal: The proposed bill will be supported by detailed regulations which will set out the detailed legislation.

6.4 HR: A new devolved social security agency is to be set up to deliver the new benefits. Local authorities are now unlikely to have a significant part to pay in delivery.

6.5 Equalities: A partial EQIA was previously provided which did not identify significant equalities impacts.

6.6 Risk: Continuity of payment will be very important for existing recipients of benefits to be devolved.

6.7 Customer Service: The Scottish Government is keen that respect for the dignity of individuals is at the heart of the new agency and the new / reformed benefits. High levels of customer service will be key in achieving this.

Appendices

1 Draft response to Social Security Committee

2 Draft response to Finance and Constitution Committee

Background reports

Consultation on Social Security: Policy & Resources Committee 27 October 2016

Douglas Hendry
Executive Director Customer Services
17 July 2017

Policy Lead: Councillor Rory Colville

For further information please contact Judy Orr, Head of Customer and Support Services Tel 01586-555280 or Fergus Walker, Revenues and Benefits Manager, Tel 01586-555237

Appendix 1: Draft response to Social Security Committee

From: SocialSecurityCommittee [<mailto:SocialSecurityCommittee@parliament.scot>]

Sent: 30 June 2017 11:31

To: SocialSecurityCommittee

Subject: Social Security (Scotland) Bill - call for views

Dear all,

I am emailing to make you aware of the Social Security Committee's call for views on the Social Security (Scotland) Bill. Please find attached a link to it below.

<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/105193.aspx>

It will soon be available in a number of accessible formats including BSL, Easy Read, audio and large print. These will be available via the link above within the next couple of weeks.

Please also find attached a link to the video that has been produced to promote the call for views. We would be grateful if you could share it with any other interested parties / organisations you may be aware of.

<https://youtu.be/aMVZdgZhHE0>

The Committee would be grateful to receive written submissions by **Wednesday 23 August 2017**.

You can keep up to date with the progress of Bill and the Committee's work in general by following us on Twitter [@SP_SocialSecur](https://twitter.com/SP_SocialSecur).

For any questions, the Social Security Committee clerking team can be contacted by email at SocialSecurityCommittee@parliament.scot or on 0131 348 5320.

Kind regards

Suzanne Lyden
Committee Assistant
Social Security Committee
Scottish Parliament

Telephone (Direct Dial): 0131 348 5320
Calls via RNID Typetalk: 18001 0131 348 5320
Email: suzanne.lyden@parliament.scot

The Social Security Bill: What do you think?

Control of a number of existing social security benefits is being passed from the UK Government to the Scottish Government. The Parliament would like your views on the Scottish Government's plans before they become law. The Social Security Bill is the proposed law.

1. The Bill aims to provide a framework for the creation of the Scottish social security system. In addition the Scottish Government has chosen to put most of the rules about the new benefits in Regulations. It believes that putting the rules in Regulations will make things clearer and less confusing. Parliament cannot change Regulations, only approve or reject them. The Scottish Government intends to develop Regulations with external help.

Q. Do you have any views on this approach?

We are disappointed that so little of the detail is in the draft bill and that the majority of the rules will be put into the detailed regulations. Regulations are subject to only very limited scrutiny through the Scottish Parliament (negative or affirmative resolution as provided at section 55). We would prefer that the approach of the UK government is taken where much more of the principles of the detailed rules is set out in the Act. We do not accept the argument that this makes the legislation confusing to follow. It is still perfectly possible for the detailed regulations set out in Scottish Statutory Instruments to be fully comprehensible on a standalone reading even though they cross reference to the main Act.

The Financial Memorandum only assumes that there will be different costs for Carers Allowance and Best Start Grant. For all other benefits being devolved, it is assumed that the costs will be the same as currently experienced by the UK Government. That can only be the case if eligibility rules, upratings and take-up are all identical. Whilst understandably there is an intention to minimise change for current recipients, the purpose of the benefits being devolved is that the Scottish Government can make their own decisions about priorities. It is therefore most unlikely just to mirror UK Government approaches in future.

This approach with providing so little detail in the Bill alongside a Financial Memorandum which assumes no changes in cost gives great uncertainty over what is planned.

2. The Bill proposes that the Scottish social security system will be based on the following seven principles:

- Social security is an investment in the people of Scotland.
- Social security is a human right. It is essential to accessing other human rights.
- Respect for the dignity of individuals is at the heart of the Scottish social security system.
- The Scottish Government has a role in making sure that people are given the social security assistance they are eligible for.
- The Scottish social security system will be designed with the people of Scotland, and based on evidence.

- The Scottish social security system should always be trying to improve. Any changes should put the needs of those who require social security first.
- The Scottish social security system is efficient and delivers value for money.

Q. What are your views on these principles and this approach? Please explain the reason for your answer.

We note the addition of 2 new principles 1 (b) and 1 (d) along with the other principles previously consulted on. We would like to see principle 1 (d) extended to including signposting to reserved benefits which the applicant is found also to be eligible for.

We had hoped that the principles would recognise the need for the overall system to be affordable (which is different to being efficient and value for money). This Financial Memorandum recognises that any changes to benefits once they will be devolved may need to be supported from the Scottish budget. Such choices are not easy and this necessity of recognising choices between social security and other priorities such as Health provision is considered an omission from the principles.

Q. Are there other principles you would like to see included?

See above

3. The Bill proposes that there will be a publicly available social security 'charter'. This will say how the Scottish Government will put the seven principles above into practice. It will also say what is expected from people claiming benefits. A report on the charter will be produced by the Scottish Government each year.

Q. Do you agree with the idea of the charter? Please explain the reason for your answer.

Yes – this is good practice and helps to ensure that applicants and other users have a clear and realistic expectation of how the service will be delivered, to what standards etc.

Q. Is there anything specific you would like to see in this charter?

Unfortunately no details of what will be in the charter are given. This is most regrettable. We believe that this is a very important element and the primary legislation should give a good outline of the areas to be covered by the charter.

Specific areas which it should cover include:

- Timescales for response to calls, complaints, for making decisions and re-determinations and appeals;
- Commitment to resolving queries at first time of contact
- Treating customers with respect and dignity
- How to access services and provide access to information
- Using plain English

4. The Bill proposes rules for social security which say:

- how decisions are made and when they can be changed
- how to apply and what information people have to provide
- how decisions can be challenged
- when overpayments must be repaid
- what criminal offences will be created relating to benefits.

Q. Do you have any comments on these rules?

We are content with the high level details provided in chapters 3, 4 and 5 in the main. However much of the necessary detail in order to provide a full assessment of proposals is not provided in the Bill. We would like to see proposed timelines for making determinations, how applications are to be submitted (and support provided to applicants for this purpose), and timescales for submitting and considering re-determinations requests and how these are to be submitted/ supported, supporting information to be provided, how and when changes of circumstances are to be reported, the broad principles for determining recovery in comparison with financial circumstances, and more detail on when an offence would be deemed to be committed.

We note the policy objective that it must be clear what activity will be considered a criminal offence, and the intention for a more proportionate approach, but do not consider that the Bill clearly achieves this. The use of civil penalties by DWP provided a useful route where the level of fraud did not mean that prosecution was appropriate / cost-effective.

We also note that the level of housing benefit fraud cases being prosecuted in Scotland has dropped dramatically since responsibilities were passed from local authorities to DWP, and that Audit Scotland has reported their concerns on this. The framework set out in this Bill could support either a much more stringent regime or an even laxer regime.

5. The Scottish Government will take over responsibility for some current benefits. The Bill does not explain how they will work in detail. This will be set out in Regulations at a later date. The current benefits which will be run by the Scottish Government are:

- disability assistance (including disability living allowance, personal independence payment, attendance allowance and severe disablement allowance)
- carer's allowance
- winter fuel payments
- Industrial injuries disablement benefit
- cold weather payments
- funeral payments
- sure start maternity grants

Q. What are your thoughts on the schedules in the bill in regard to these benefits?

Again we find that the schedules are very high level generally saying that Ministers may make regulations (but do not have to) with regard to certain factors. We would prefer that this is changed to a requirement for Ministers to make regulations with regards to

certain factors so that the relevance of these can be properly debated and agreed. Too much flexibility for future change without due scrutiny is provided.

6. The Bill proposes that a new type of short-term assistance will be introduced. This will be for someone who is challenging a decision to stop or reduce a Scottish benefit.

Q. What are your views on this proposal?

We welcome this innovative proposal which recognises the difficult financial circumstances faced by many people when a benefit stops, particularly when they consider that the wrong decision has been made and that eligibility should continue.

We would trust that this does not detract from the need to provide high quality decisions in the first instance, so that the need to seek re-determinations or appeals is minimised. We would expect careful review of the level of decisions that are over-turned at these two key stages.

We agree that there is a need to protect an individual's right to challenge and to access administrative justice but this could provide an incentive for everyone to challenge all such decisions irrespective of the merits of their case simply in order to retain previous higher levels of assistance for a longer period. This should be avoided as it could encourage many badly founded appeals which are unlikely to succeed adding substantial administrative and other costs to the system. We think that the parameters of such further assistance should be defined and subject to full scrutiny and debate.

7. The Bill includes the power for the Scottish Government to be able to top up 'reserved' benefits (ones controlled by the UK Government), but does not say how these will be used. The Scottish Government also has the power to create new benefits. This is not included in the bill.

Q. Do you agree with these proposals?

This provides very broad powers and very limited restrictions. All details would be provided under regulations. We think that the parameters of such further assistance should be defined and subject to full scrutiny and debate.

8. The Bill proposes that carer's allowance should be increased as soon as possible to the level of jobseeker's allowance (from £62.10 to £73.10 a week).

Q. What are your thoughts on this proposal?

We support this proposal as a temporary measure prior to considering further the longer term replacement with a new Scottish carers benefit.

9. The Bill proposes that discretionary housing payments continue as they are. They will still be paid by local authorities. The Bill does not require any local authority to have a discretionary housing payments scheme but if they do, they must follow Scottish Government guidance on running it.

Q. Do you agree that discretionary housing payments should continue largely as they are?

Q. Do you have any other views on the proposals for discretionary housing payments?

The vast bulk of discretionary housing payments (DHPs) relate to mitigation of the bedroom tax. On the one hand the local authority has to restrict housing benefit by the amount of the bedroom tax and then separately administer a claim for DHP to reinstate it. This is administrative nonsense for the claimant. We need the legislation amended so that the initial deduction is not made at all.

The guidance must be accompanied by appropriate funding for local authorities which allows all these costs to be met in full. The Bill suggests that local authorities could have a choice as to whether to offer DHPs or not, but there is in effect little discretion where the guidance states that the payment in certain circumstances is mandatory.

10. Q. Is there anything else you want to tell us about this Bill?

Argyll and Bute Council welcomes the Bill, and the opportunity to comment. The Council is encouraged by the principled approach, the proposal to have a charter, and formal annual reporting on this important matter, and the broad framework for determinations, re-determinations and appeals.

However we would welcome the opportunity to comment in more detail on the individual benefits that are being devolved, the eligibility rules and arrangements for assessment and pre-claims support. These details are not being provided at present and we will have to wait for the more detailed regulations.

We are disappointed that the opportunity to increase the level of joint working with local authorities is not being taken. This provided a golden opportunity to have a single shared assessment for disability providing access to both care and benefits.

How to submit evidence

The Committee would be grateful to receive written submissions by **Wednesday 23 August**. Before making a submission, please read the Parliament's [policy on treatment of written evidence by subject and mandatory committees](#) (the policy is also available in BSL video format and audio format).

In general, written submissions should be concise, no more than 4 sides of A4 and it is helpful if they are set out in numbered paragraphs. Submissions should be sent electronically (in word format) to socialsecuritycommittee@parliament.scot.

For any questions, the Social Security Committee clerking team can be contacted on the same email address or on 0131 348 5320.

Appendix 2: Draft response to Finance and Constitution Committee

From: Finance and Constitution Committee [<mailto:Finance.Constitution@parliament.scot>]
Sent: 04 July 2017 12:32
Cc: Hawthorne C (Clare) <Clare.Hawthorne@parliament.scot>; Johnston JD (James) <James.Johnston@parliament.scot>; Herbert S (Stephen) <Stephen.Herbert@parliament.scot>
Subject: Social Security Bill Financial Memorandum - call for evidence

Dear all,

The [Social Security \(Scotland\) Bill](#) was recently introduced in the Scottish Parliament. The Bill makes provision relating to certain social security assistance following changes to the devolution settlement enacted in the Scotland Act 2016.

As with all bills, the Finance and Constitution Committee invites written evidence on the estimated financial implications of the Bill as set out in its accompanying [Financial Memorandum](#) (FM). The purpose of this email therefore, is to invite you or your organisation to submit a response to the questions set out in the Committee's FM questionnaire by no later than **18 August 2017**.

A copy of the Committee's FM questionnaire can be accessed on the [Committee's website](#).

For information, the Social Security Committee is the lead committee with responsibility for considering the Bill's general principles and has issued a separate call for evidence on the Bill's policy provisions.

Before making a submission, please read our [Policy on Treatment of Written Evidence by Subject and Mandatory Committees](#). If you have any queries, please do not hesitate to contact the Committee clerking team on Tel: 0131 348 5409 or by emailing Finance.Constitution@parliament.scot.

Regards,

Alan

Alan Hunter
Assistant Clerk
Finance and Constitution Committee
The Scottish Parliament
Edinburgh
EH99 1SP

Telephone: 0131 348 5409

Finance and Constitution Committee Questionnaire

This questionnaire is being sent to those organisations that have an interest in, or which may be affected by, the **Social Security (Scotland) Bill's — Financial Memorandum (FM)**.

In addition to the questions below, please add any other comments you may have which would assist the Committee's scrutiny of the FM.

Consultation

1. Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

Yes, the Council responded to the consultation on social security in Scotland on 28 October 2016. The consultation covered the principled approach, specific benefits being devolved and operational policy. We made some comments about affordability in the context of upratings, the need to review eligibility of Universal Credit claimants instead of treating all as being in receipt of a qualifying benefits given the range of circumstances now included in UC, and for winter fuel and cold weather payments to be more targeted to households in fuel poverty. However, it was possible top comment on detailed financial assumptions as these were not known.

2. If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?

Not applicable

3. Did you have sufficient time to contribute to the consultation exercise?

Yes, sufficient time was allowed to respond.

Costs

4. If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.

The main implications for local authorities are through co-location of agency staff on local authority premises, and the continued responsibility for delivery of Discretionary Housing Payments. We are disappointed that the opportunity has not been taken to provide for more joint working with local authorities, particularly the use of a single shared assessment for care and disability benefits. As such, there are no significant new burdens on local authorities – this being restricted to providing some office space to support face-to-face pre-claims and support services which will be recharged at market rates. These are not quantified directly but we have been assured that they have been built into the estimates of running costs for the new agency.

We would respectively highlight that the costs of Discretionary Housing Payments are currently in the main non-discretionary as the bulk of the funding is directed to mitigating the bedroom tax. We understand the policy intent is to have no significant change but the bill provides for new guidance to be provided by Scottish Ministers. The funding provided in future will need to reflect the new or amended guidance.

5. Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

The only new costs identified are for the increase to Carers Allowance and for Best Start Grant. No savings are identified.

It is pointed out that future policy differentials between Scotland and the UK for uprating and eligibility could put new pressures on the Scottish budget. With no allowance for any such additional costs, and a clear intent to initially replicate existing benefits for existing claimants, it is difficult to see what difference there will be for benefit recipients in terms of amounts received or eligibility. The main difference will simply be having to deal with a different government agency.

The Policy Memorandum describes the desired move to a rights-based approach to social security as supposed to one where entitlement arises by operation of law. This implies that there is a desire to be more generous, but no financial allowance is made.

There is also an emphasis on improving take-up with Scottish Ministers being given a role in ensuring this happens – but no increase in take-up is provided for.

The Bill itself just provides a broad framework of high level eligibility criteria with the detailed rules to be set in future regulations. This makes it impossible to comment on the financial effects of the new eligibility rules.

Implementation costs are estimated to be c £308 – well above the £200m provided by the Fiscal Framework. Running costs are estimated at £144 - £156m, also well above the baseline amount under the Fiscal Framework of £66m. These additional costs need to be provided for from the Scottish budget.

Overall, it is difficult to assess the estimated costs because of these unknowns. However, it seems very unlikely that the aspirations set out in the Policy Memorandum and in the Bill itself can be met within the costs set out.

6. If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

As described at 4 above, the main costs for local authorities will be in providing some accommodation for pre-claims support, and in continuing to administer Discretionary Housing Payments. In addition, they will continue to provide welfare rights assistance and advocacy services to people in need of such assistance. It is expected that accommodation costs and Discretionary Housing Payments will be met in full. In terms of welfare rights assistance and advocacy services, these costs will depend on changes in level of demand which will in turn depend on changes to eligibility rules and the quality of service provided by the new agency. Given the intention to minimise upheaval for existing claimants, it is likely that we will be able to meet these costs at least initially.

7. Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?

No, we do not believe it reflects the uncertainties described in our answer at question 5 above.

Wider Issues

8. Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?

As described in our responses at question 5 and 7 above, we do not believe that it is possible to capture all costs associated with the Bill at this stage. This is because the bill just provides a broad framework for future subordinate legislation, rather than providing more details as would be usual. Whilst the policy memorandum states that this is deliberate, and helps users understand the legislation more easily, we do not concur. We believe that it creates uncertainty and does not allow for the necessary detailed discussion about the Bill itself, and leaves too much flexibility for later regulations which may not be subject to the same level of scrutiny by the Scottish Parliament.

9. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

It is very likely that subordinate legislation could bring additional costs. It is not possible to quantify these costs as the bill itself puts very little restriction on the subordinate legislation, providing only a very broad framework.