

ADDITIONAL AGENDA ITEM

Report To:	Health & Social Care Committee	Date: 24 August 2017
Report By:	Louise Long Corporate Director (Chief Officer) Inverclyde Health and Social Care Partnership (HSCP)	Report No: SW/37/2017/HW
Contact Officer:	Helen Watson, Head of Strategy and Support Services	Contact No: 01475 715285
Subject:	Social Security (Scotland) Bill: Call for Views	

1.0 PURPOSE

- 1.1 To inform the Committee of the 'Social Security Scotland Bill: Call for Views', and seek approval for the attached response on behalf of Inverclyde Council and HSCP.

2.0 SUMMARY

- 2.1 The Social Security (Scotland) Bill gives the Scottish Parliament powers to deliver eleven benefits devolved as part of the Scotland Act 2016. In addition the Bill provides powers to 'top up' reserved benefits and provides a mechanism to pay for an increase of the rate of Carer's Allowance.
- 2.2 The Bill sets out an overarching legislative framework, for the administration of social security in Scotland, making relevant provisions for operational functions such as overpayments, fraud, social security decision making, including re-determination decisions and appeals. A significant body of secondary legislation by way of regulation will be required to provide the specific detail on the operation of social security in Scotland once the Bill has passed into law.
- 2.3 The vision of the Scottish Government is that, 'social security is important to all of us and able to support each of us when we need it'. This vision is supported by a number of principles including, 'respect for the dignity of the individual is at the heart of the Scottish social security system'
- 2.4 The Bill was introduced to the Scottish Parliament by the Cabinet Secretary for Communities, Social Security and Equalities, Angela Constance MSP, on 20th June 2017. The Social Security Committee of the Scottish Parliament is the lead Committee scrutinising the draft legislation. The Committee has issued a 'call for views' on the Bill.

3.0 RECOMMENDATIONS

- 3.1 That the Committee notes the content of the 'Social Security (Scotland) Bill: Call for Views' and agrees to the submission of the attached response to the Social Security Committee on behalf of Inverclyde HSCP.

**Louise Long
Chief Officer
Inverclyde Health & Social Care Partnership**

4.0 BACKGROUND

- 4.1 The Scottish Parliament has gained legislative competence over eleven devolved benefits, the ability to 'top up' benefits that remain reserved to Westminster, and to allow for the creation of new benefits subject to certain restrictions.
- 4.2 The Scottish Parliament will gain power over 15% of social security spend, with 85% remaining reserved to Westminster. Therefore whilst there is some degree of latitude to shape a distinctly Scottish benefits system, the Scottish Parliament cannot redress all of the perceived difficulties that exist within the current UK system.
- 4.3 Transferring devolved benefits will require a significant programme of transition and implementation. The main focus of the Scottish Government is to ensure the safe and secure transfer of benefits to those who receive them. The Joint Ministerial Working Group on Welfare, which comprises Ministerial representatives from the Scottish Government, Scotland Office, and UK Government, is the vehicle for progressing decisions regarding timescales for the transfer and exercise of the new powers.
- 4.4 A new central executive agency will sit at the heart of the social security system in Scotland. The Scottish Social Security Agency will deliver services via enhanced phone and online support to service users and which aims to incorporate face-to-face pre claims advice and support services, co-located, where feasible, in places people already visit. As a central executive agency, the Scottish Social Security Agency will be under the direct control of, and be directly accountable to, Scottish Ministers.
- 4.5 Once payment of devolved social security assistance has been fully implemented, approximately £2.9 billion of Scottish social security spend will come within the responsibilities of Scottish Ministers. In practical terms, this equates to regular benefit payments which will be made to approximately 1.4 million people in Scotland. This will involve processing the same number of payments each and every week that the Scottish Government currently makes every year.

5.0 PERFORMANCE

- 5.1 The response from Inverclyde HSCP to the 'Social Security (Scotland) Bill: Call for Views', will help inform consideration of a piece of legislation that will affect more than 1.4 million, lead to expenditure of £2.9 billion a year and that will have a significant impact on some of the most vulnerable sections of society.

6.0 PROPOSALS

- 6.1 That a response is made from Inverclyde HSCP to the Social Security (Scotland) Bill: Call for Views.

7.0 IMPLICATIONS

Finance

- 7.1 There are no financial implications within this report.

Legal

- 7.2 There are no legal issues within this report.

Human Resources

- 7.3 There are no human resource implications within this report.

Equalities

7.4 There are no equality issues within this report.

Repopulation

7.5 There are no repopulation issues within this report.

8.0 CONSULTATION

8.1 The proposed response to the 'Call for Views', has been prepared in conjunction with officers from Revenue & Benefits

9.0 LIST OF BACKGROUND PAPERS

9.1 Social Security (Scotland) Bill: Call for Views.

Inverclyde Council

Social Security (Scotland) Bill: What do you think?

August 2017

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?

This is the most appropriate legislative route as it will provide a consistent approach to decision making.

An easy to read guide in a format similar to Shelter's "Guide to Housing Benefits", with scenarios and examples would be welcomed by service users. Contributions by popular publishers such as the Child Poverty Action Group to obtain as many views as possible should be considered

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.

The principles and approach outlined are sound. They demonstrate a commitment to supporting benefit claimants, as well as treating individuals with dignity and respect.

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

No

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.

Inverclyde Council agrees with the principle of a charter; it will safeguard policy development, ensuring the Scottish Social Security principles are achieved and maintained, as well as providing clarity and transparency for benefit claimants. Likewise it is important that the charter is reviewed, and the results of the reviews reported to the Scottish Parliament to ensure that the charter meets its objectives and to allow the Scottish Parliament, if required, to respond to external factors such as changes to reserved benefits.

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

The charter should be widely available and easily accessible. It should emphasise that the success of the scheme relies on benefit claimants being open and honest to ensure that benefits reach those individuals in need.

Scrutiny and reporting should be independent and published by the reporting body on behalf of the Scottish Government without interference, providing credibility and complete transparency.

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?

It is important that the Bill includes the rules for application, supporting information, decision making and appeals, repayment of overpayments and the consequences of criminal offences.

The inclusion of Section (32) – "Lifting of duty to notify change of circumstances" is welcomed. Avoiding the need for individuals whose circumstances are determined unlikely to change from being required to apply to renew certain benefits will prevent unnecessary intrusion as well as reducing the administrative burden on the Agency

The Bill allows for a two stage challenge to decision making. A re-determination followed by Tribunal if necessary. The current system of mandatory reconsideration for reserved benefits followed by possible Tribunal is discredited and should not be replicated. Service Users should have direct access to Tribunal without barrier.

In terms of the recovery of official error overpayments where the claimant has not contributed to that overpayment, consideration should be given to whether the claimant could reasonably have been expected to have realised that an overpayment was occurring.

Furthermore, due regard should be given to the claimants health, age and social circumstances Concern is shared with the submission from Social Work Scotland as to the necessity to create new criminal offences relating to fraud:

“Social Work Scotland questions whether it is necessary to create new offences.

In creating a new criminal offence, the Bill runs the risk of reinforcing a message of distrust of the system, and those who use it. This is counter to the principles of the Bill. Current fraud legislation affords the Scottish Social Security System adequate powers to deal with the tiny minority who claim benefits dishonestly.”

The recent findings from the Equality and Human Rights Commission are also noted:

“People instinctively know when they are treated with dignity and respect, and when they are not...In many cases the greater indignity is how claimants are portrayed by politicians, the media and the public or treated in their interactions with the system. The feeling of being treated unfairly or viewed by suspicion by case workers on permanent alert for fraud is reported as particularly demoralising. From this point of view, upholding dignity and respect is as much a matter of social attitudes, and the political and media narratives that help shape them, as one of law.”

Social security systems based on dignity and respect. Published August 2017.

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?

Clarification on how eligibility/entitlement to Carer’s Allowance will be proven is needed, and also whether there will be consideration given to underlying entitlement to Carer’s Allowance where another benefit is in payment. Set hours of care should be clear and claimants should be made aware of the importance of reporting changes that could affect entitlement (e.g. a child being cared for starts to attend nursery or a carer enrolls in a college course). Means testing entitlement to Carer’s Allowance could be considered, but may result in a reduction of family members willing to offer care increasing pressure on social care.

It is noted the design and detail of individual benefits such as Carers Allowance will be determined by Regulation. In terms of Carers Allowance this should include provision for the replication, or even extension, of existing Regulations allowing for time off from caring whilst retaining entitlement, 4 weeks in any 26 week period from temporary breaks in care.

Residence in Scotland should be qualifying criteria for Winter Fuel Payments; this could be evidenced by Council Tax liability. Means testing entitlement to Winter Fuel Payments could

be considered although potentially costly to administer with applications potentially leading to poor take-up by the more vulnerable and excluded.

Funeral Payments should be limited depending on the size of the deceased's estate, whether or not a funeral plan is already in place and the finances of the individual applying for assistance. Payments should also be made within a reasonable timescale to prevent undue stress for the bereaved. Arrangements with funeral directors should be explored to offer basic packages with reasonable costs and an element of understanding when awaiting payment.

Again the points made in the response from Social Work Scotland in relation to the opportunity to address and simplify the rules in terms of eligibility for those with no recourse to public funds is worthy of some detailed consideration. In addition consideration should be given to the prospects for simplifying and removing benefit eligibility restrictions for migrants in general, the legitimacy of which may be questionable in any case. Issues such as, right to reside, habitual residence, and past presence requirements.

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?

The inclusion of short-term assistance is welcomed as this would allow a degree of continuity for the claimant as well as removing reliance on the Scottish Welfare Fund. It will be of particular help where an individual may be without income for a long period of time while challenging a decision.

Consideration should be given to offering short term assistance at a lower rate than the benefit being challenged, and outcomes of challenges should be within set deadlines to prevent hardship.

If fraudulent activity is determined to have resulted in overpayment any short-term assistance provided could be added to the sum of overpayment to be recovered.

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?

The inclusion of the ability to top up reserved benefits is welcomed; however the ability to create new benefits should be included in the Bill unless there are sound legislative reasons not to.

The Scottish Government commitment to Child Poverty reduction should be perhaps the first focus of the new top up powers. Restrictions in eligibility for Child Tax Credit/Child Element of UC to two children should be a priority for mitigating action in terms of utilising the new top up powers. This will have to be in the context of ensuring that any top up payment is excluded from the overall Benefits Cap.

Top ups should not be used to take away the responsibility of an individual to seek employment or engage with support services who prepare individuals for employment.

Any scheme however must be affordable, cost effective and with consideration of the wider Scottish budget responsibilities and should not put undue pressure on the delivery of other policy priorities.

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?

While the proposal to increase Carers Allowance is supported there is an argument to increase Carers Allowance further. JSA is in essence a short term benefit paid at a low rate for six months or less approximately. This in no way reflects the burden of financial costs of those often providing long term care. A higher award would recognise carers' additional expenses e.g. daily travel costs; the possibility that their caring arrangement may be a long term commitment without any expectation of entering the labour market and financial independence; and to recognise carers' contribution to society, limiting the pressure on public services. ESA Support Group rates of benefit would be a more appropriate comparator for those claiming Carers Allowance.

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?

Discretionary Housing Payments should continue to be administered by Local Authorities as the current arrangements allow both national and local priorities.

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

Currently, discretionary housing payments can be made to individuals who are entitled to either Housing Benefits or the Housing Cost element of Universal Credit and have difficulty meeting their rent commitments. Where a Universal Credit claimant is receiving a reduced award (perhaps due to the claimant receiving another income or being affected by the benefit cap) and a UC managed payment arrangement is in place, the Housing Cost element is prioritised and paid in full to the landlord; this results in any UC reduction being taken from the claimants Standard Allowance. In these cases, discretionary housing payments cannot be awarded as financial assistance towards housing costs is not required and so the claimant could be left in severe financial hardship.

Where legacy benefit claimants affected by the benefit cap, and are in receipt of Housing Benefit, the reduction is automatically removed from the Housing Benefit entitlement (regardless of who is receiving the payments), leaving a minimum entitlement of £0.50 per week – this ensures claimants are still eligible to apply for discretionary housing payments. Further consideration should be given to this issue to ensure that UC claimants are not adversely affected compared to those in receipt of legacy benefits.

Funding for discretionary housing payments should reflect the local demand and the financial constraints of population in the area, i.e. child poverty, unemployment figures, food bank referrals, homelessness provision, etc.

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

Close links should be developed with Scottish Local Authorities with Data Sharing Agreements in place to assist the assessment of the Scottish Social Security Agency benefits with reciprocal arrangements to assist Local Authorities assessment of Housing Benefit, Council Tax Reduction, Discretionary Housing Payments, the Scottish Welfare Fund, Education benefits, assistance with home care etc.

It is recommended that rules around implicit consent are in place and to avoid the hindrance of explicit consent provisions incurred by those supporting Universal Credit claimants.

The Bill should contain a clear statement that the right to receive social security is an inalienable right, guaranteeing by statute ‘that people are given (directly) the social security assistance they are eligible for.’

How to submit evidence

The Committee would be grateful to receive 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 (in Word format). Alternatively, [the call for evidence response form](#) can be used. All submissions should be sent electronically to socialsecuritycommittee@parliament.scot.

In addition to this call for views, the Finance Committee have published a [call for views](#) on the Financial Memorandum.

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