

Housing and Social Security Group

Meeting 4

Paper 3: Social Security Bill

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Social Security Bill: General Approach

The social security Bill is currently being drafted. The purpose of this note is to give a sense of the approach the Government is taking to the work.

Designing for clarity and accessibility

At the heart of the Scottish Government's approach is a desire to make the legislation as clear and accessible as possible. Partly because of the way it has evolved over time, clear and accessible are not adjectives often applied to UK social security legislation. In a 2008 case about Discretionary Housing Payments, an appeal court judge remarked that:

“... the appellant cannot be criticised for either ignorance or incomprehension of the statutory regime ... it remains an apparently non-eradicable blemish on our operation of the rule of law that the poorest and most disadvantaged in our society remain subject to regulations which are complex, obscure and, to many, simply incomprehensible.”

Freestanding legislation

We have an opportunity to start with a blank page for the types of social security powers being transferred. Rather than amend the existing UK legislation, which would add to it yet another layer of complexity, the Scottish social security Bill will stand on its own.

General outline of Bill

Work to develop the Bill is ongoing. This note provides some reflections on areas that the Bill may cover. It should not be taken as an indication of the contents of the published Bill.

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Part 1 – Principles

The Scottish Government is committed to embedding, in its legislation, the principles of the Scottish social security system (as set out in its paper, “[Creating a Fairer Scotland: A New Future for Social Security in Scotland](#)”, published in March 2016).

So, the first thing the Bill will do is embed in legislation the principles of the Scottish social security system, including a commitment to a human-rights based approach. The Bill will also include a requirement for the Scottish Government to create a “[publicly accessible charter to communicate](#)

[clearly what the public are entitled to expect from the Scottish system¹](#), which will be informed by the principles. And it will require the Government to report to the Parliament on their delivery against the charter.

Part 2 - 'Legislative Machinery'

The Bill will also set out the basic machinery through which the Government will provide social security dealing with everything from applications through to appeals. As a significant amount of the existing, UK legislation provides an administrative background to the delivery of individual benefits, the Scottish Government will need to consider how much of this should be replicated - and/or amended where appropriate. This includes (but is not necessarily limited to) such areas as : -

- General benefits administration - e.g. a requirement to apply and powers to prescribe how applications are to be made and what is to happen to them, and how payments are to be made. Also the ability of the delivery agency to revisit awards that have been made and about length of awards.
- Uprating of benefit amounts.
- Appeals and complaints handling within and from the benefit system.
- Data protection/sharing of information.
- Passporting between benefits and other entitlements.
- General definitions. For example - entitlement to benefits in the current GB system generally depends on habitual residency, but with variations. We are considering whether we can develop some general definitions of this type that might apply across all benefits, with specific variations or powers to vary where appropriate.

Part 3 – The Devolved Benefits

The benefits in the areas being devolved by the welfare sections of the 2016 Scotland Act are:-

- Ill Health and Disability Benefits. Currently these are Disability Living Allowance (DLA) and Personal Independence Payment (PIP), Attendance Allowance (AA), Severe Disablement Allowance (SDA) and Industrial Injuries Disablement Benefit (IIDB).
- Benefits for carers, currently Carer's Allowance (CA).
- Benefits for maternity expenses, currently the Social Fund Sure Start Maternity Grants.
- Benefits for funeral expenses, currently provided as a Social Fund payment.
- Assistance with heating costs in cold weather, currently provided as Cold Weather Payments to benefit recipients for weeks of exceptionally cold weather and annual Winter Fuel Payments to older persons.
- Discretionary Housing Payments.

¹ As announced by Jeane Freeman MSP, Minister for Social Security, in her statement to Parliament on 22 February.

This part of the Bill will give a brief description of each of type of assistance, and confer powers on the Government to set out the rules for eligibility and entitlement in subordinate legislation.

The split between primary and subordinate legislation

Putting the detailed rules in subordinate legislation is key to the Government's approach to making the legislation accessible. These rules will have to change from time to time to reflect changes in economic and social conditions. The Government is committed to continuously improving the delivery of social security and to do so with, rather than for, the people receiving assistance. Putting the rules entirely in primary legislation would impair their responsiveness to circumstances.

In UK legislation, a hybrid approach has been taken in some cases. This means the rules are partly in primary legislation, but that primary legislation needs to be read alongside further rules in subordinate legislation. In the Scottish Government's view - this approach is one of the factors which makes UK social security legislation difficult to follow. Accompanying this note is a diagram which uses Carer's Allowance legislation to illustrate the problem.

The Government's view is that the clearest approach to setting out the rules relevant to a particular type of assistance is to put the rules together in a single piece of subordinate legislation. As the rules change over time, the regulations can be consolidated so that an up to date version of the text can be presented.

Parliamentary control

The Government has considered carefully how the advantages of putting the rules in subordinate legislation can be realised. Its view is that taking this approach should improve Parliament's ability to scrutinise executive action and, furthermore, that this can be done without reducing Parliament's ability to determine the rules during the passage of the Bill. The Government proposes to have a schedule linked to each power to make subordinate legislation. The schedule will set out what any subordinate legislation made under the power may, must or must not contain.