

# Social Security (Scotland) Bill

## Stage 2 Consideration, Day 3

22 February 2018

### Written briefing from Citizens Advice Scotland

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*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):

**22\*; 23; 184; 185; 186; 187; 24\*; 25A; 25\*; 67\*; 68\*; 188; 26\*; 189\*; 27\*; 27A; 28\*; 190; 29\*; 30A; 30\*; 31\*; 32\*; 81; 33; 34; 35; 36; 82; 83; 84; 85; 86; 87; 88; 89; 90; 91; 92; 93; 37; 38; 207; 208; 39\*; 191\*; 40; 41; 42; 43; 44; 133; 134; 135; 136; 162; 163; 164; 2; 192\*; 3; 131; 132B; 132.**

\* - Already debated

#### 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.<sup>1</sup> 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 the Bill, which will be considered by the Committee on 22 February and subsequent meetings.

## 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.

## Notification to Applicant

CAS welcomes proposals to require decisions to be communicated to individuals in writing. Whilst we recommend that users of the Scottish social security system are offered a choice of communication methods, including face to face, written letters, online claims, and telephony, CAS recommends that the Scottish Social Security Agency uses written letters to communicate any important information regarding someone's claim. From consultation with CAB advisers, there was a strong preference for use of written letters, which was the preferred option for ongoing communications regarding a claim, communicating decisions regarding a claim, challenging decisions, making complaints and communicating changes of circumstances. In addition, focus groups with CAB clients also showed a preference for written letters, especially when communicating decisions to claimants. Many focus group participants raised concerns that they did not have access to computers and sometimes phones, and in any event, are wary of giving out information over the phone, making these communication methods less favourable.

## **CAS supports amendments 81, 83 and 86 (in the name of Mark Griffin)**

which would require decisions to be communicated to individuals in writing.

### **Re-determination and appeal: Streamlined process for individuals**

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.

At this stage the claimant could be sent a *'Do you wish to continue with your appeal?'* letter, which they must return to the Tribunal Service. This allows an opt-in, but is less onerous on the individual, and would help to make the individual feel that they were on one journey of challenging the decision, rather than two distinct processes.

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 DWP, 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 Tribunal<sup>ii</sup>. This represents the majority of upheld MR claims (72%) and suggests that CAB evidence which illustrates that the two-step system acts as a barrier to claimants is a common occurrence.

CAS welcomes the Scottish Government's amendments, which removes the need for people to have to lodge a separate appeal and resubmit evidence if they wish to continue to appeal. This in effect removes a barrier, and makes it one seamless process from the individual's perspective.

## **CAS supports amendments 82, 84, 85, and 87 to 93 (in the name of the Minister).**

### **Re-determination and appeal: Late requests for re-determinations**

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. Another area where there is room for improvement is the timescales within which a claimant must challenge a decision. Under the current system, claimants have 28 days within which to challenge a decision, but this is often not enough time to gather meaningful supporting evidence and access advice and advocacy

support. In the Mandatory Reconsideration survey carried out by CAS, two advisers raised their concerns:

*"There is not enough time to get supporting evidence [at mandatory reconsideration stage]. The onus is on the client but a lot of health professionals will not supply a letter unless it is requested. Clients are disadvantaged as they feel they are not believed so need to get medical evidence but are unable to do so."*

*"Unfortunately the majority of cases are not successful at mandatory reconsideration without medical evidence (and more than 50% are won at tribunal)."*

As the Scottish Government has recognised, advice and advocacy will play a key role in supporting the new Scottish Social Security System, so processes must be designed with this in mind, allowing enough time for people to access services and book appointments with advisers.

CAS has previously recommended that a reasonable time period would be six weeks for the submission of further evidence (an increase from four weeks in the current system), with no more than four weeks for the decision to be made.

We welcome the Scottish Government's amendments which would allow late requests to be made for redeterminations, and look forward to further engagement around appropriate statutory timescales for redeterminations.

## **CAS supports amendments 33 to 38 (in the name of the Minister).**

### **Medical assessments**

From consultation with several hundred CAB clients and advisers, the highest priority for the Scottish social security system was that the number of unnecessary medical assessments for disability benefits is substantially reduced by making the best use of existing evidence. There was an extremely clear view that the existing PIP assessment process was not working for clients, including not being treated with dignity or respect; poor quality of decision-making; charges for medical evidence; and people on DLA losing their award on reassessment.

CAS has recommended that in assessing people's eligibility for disability benefits, much greater emphasis should be given to evidence from people who know the claimant, including health and other relevant professionals, carers and family members. There should be a tiered approach to assessment, with a face-to-face assessment only carried out in a small number of cases either when a claimant requests one or it has not been possible to gather enough information to make a decision. If an individual's condition or circumstances are unlikely to change, there should be no requirement for them to be re-assessed to continue receiving an award.

CAS welcomes the amendment from Alison Johnstone which would ensure that a medical assessment would only be used where it has not been possible to make a determination from all existing evidence, including from further evidence provided by medical professionals, and those who know the individual best.

## **CAS supports amendments 207 and 208 (in the name of Alison Johnstone).**

### **Recovery of assistance**

The Bill as introduced appeared 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, but 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.

CAS welcomes the Scottish Government's amendments which would rectify the situation where someone would have to make a large repayment for an error which was caused through no fault of their own.

## **CAS supports amendments 40 to 44 (in the name of the Minister).**

### **Offences**

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.

CAS agrees with the approach suggested by Justice Scotland<sup>iii</sup>, and the amendments proposed by them which would ensure that no-one would be criminalised for an unintentional error.

## **CAS supports amendments 94 to 101 (in the name of Pauline McNeill).**

### **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 all devolved benefits are uprated annually in line with the cost of living. Possible methods of doing so include inflation, with the potential for further adjustment in line with benefit related increased costs. Specific benefits are designed to provide support for costs such as energy bills, costs of funerals, fuel costs and average public transport costs all of which have increased by more than inflation in recent years, but could be used as a basis to trigger additional uprating.

CAS welcomes the amendments lodged by Alison Johnstone and by Mark Griffin both of which would provide a statutory process to annually uprate the values of all benefits created in the new system. Whilst the process outlined in the Scottish Government's amendments is

acceptable, CAS would recommend that all payments in the new system are uprated annually, not just disability and employment-injury assistance.

**CAS supports amendments 2 and 3 (in the name of Alison Johnstone) or amendments 133 to 136 (in the name of Mark Griffin).** Either of these blocs of amendments would have a positive effect.

### **Discretionary housing payments**

CAS agrees that the Discretionary Housing Payment (DHP) scheme should largely continue in its present form. The Bill broadly transfers the legislative underpinning for the present scheme into the new Scottish system, and appears to be acceptable. However, to ensure that a DHP system exists in every local authority as long as there is still a need for it, CAS would recommend adding a requirement for local authorities to operate a scheme as long as funding continues to be provided.

**CAS supports amendments 162 to 164 (in the name of the Minister),** which would make provision for this.

### **Procedure for regulations for assistance**

CAS has recommended a robust scrutiny process for social security regulations in the new system. In addition to welcome amendments establishing a Scottish Commission on Social Security, CAS also welcomes the proposed introduction of a 'super-affirmative procedure' for regulations setting out key features of the new benefits, such as eligibility criteria. This would require a public consultation to be held on the regulations.

**CAS supports amendments 131 and 132 (in the name of the Minister),** which would make provision for this, **together with 131B (in the name of Pauline McNeill),** that extends the procedure to regulations related to the Scottish Welfare Fund.

### **For more information or CAB cases, contact:**

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<sup>i</sup> 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>

<sup>ii</sup> 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>

<sup>iii</sup> Social Security (Scotland) Bill: Committee briefing – Justice Scotland, August 2017 <https://2bquk8cdew6192tsu41lay8t-wpengine.netdna-ssl.com/wp-content/uploads/2017/09/JUSTICE-Scotland-Social-Security-Scotland-Bill.pdf>