



Introduction

The Scottish Commission for Learning Disability (SCLD) is an independent charitable organisation and the lead strategic partner to the Scottish Government in the delivery of learning disability strategy and policy. We aim to be a knowledge hub – offering support, information and new ideas about learning disability in Scotland by:

- Promoting engagement and dialogue with people with learning disabilities and carers; and professionals, policy officials and service providers.
- Leading innovation and collaboration in service design and delivery; and practice, support and advocacy.
- Building and disseminating evidence about: lived experiences of people with learning disabilities; what works to drive better outcomes

We welcome the opportunity to respond to the Social Security Committee Call for views on the Social Security Bill (Scotland).

Summary - SCLD would welcome:

- Inclusion of the PANEL principles and the AAAQ key elements to help embed a human rights based approach to legislation, policy and practice.
- The overall purpose of social security to be set out within the Bill.
- More explicit reference to co-design and co-production as distinct from consultation and involvement.
- Greater clarity about what the nature of the evidence used to design the social security system will be and who will generate it.
- Consideration of an additional principle being inserted that: “The social security system is accessible and fair.”
- Accountability as a key principle guiding the development and application of the charter.
- Inclusion within the Charter of the principles which underpin eligibility, assessments and decision making.
- A more rights based approach to the rules for social security.
- Further detail in the Bill on the right to redress if the principles are not met.
- Inclusion of the right to free and independent advice, advocacy and representation throughout the claim, review and appeal process.
- Clarification that individuals will have the right to receive assistance in cash while also having the choice to receive a proportion of their payment in-kind.

1. The Scottish Government has chosen to put most of the rules about the new benefits in Regulations. Do you have any views on this approach?

The Social Security (Scotland) Bill provides an overarching legislative framework for the new system and makes provision for operational functions such as overpayments, fraud, error, re-determinations and appeals. The Scottish Government belief is that taking this approach will help make the legislation more accessible, will enable changes from time to time to reflect shifting economic and social conditions and will improve Parliament's ability to scrutinise executive action. However, the Scottish Parliament is only able to approve or reject regulations and we are concerned that this approach may reduce opportunities for detailed scrutiny.

Furthermore, there are a number of areas that people with learning disabilities have told us are important to their outcomes that are not included in the Bill:

- Right to accessible communication
- Right to independent advocacy
- Rules around assessments
- Uprating of social security payments

We believe the Bill has potential to play a crucial role in changing culture so that people with learning disabilities are empowered to access social security as equal citizens and be active participants in realizing their human rights. To that end we would like every opportunity to be taken to ensure that a human rights based approach is embedded into every aspect of legislation, policy and practice. In our view inclusion of the PANEL principles and the AAAQ key elements could help to create a stronger base for such an approach.

2. The Bill proposes that the Scottish social security system will be based on seven principles. What are your views on these principles and this approach? Please explain the reason for your answer. Are there other principles you would like to see included?

We welcome the Scottish Government's approach to setting out principles of the new social security system within the draft legislation. However, we think it would be helpful for the Bill to set out the overall purpose of the social security system. We would like the principle "Social security is an investment in the people of Scotland" to go further and explain what this investment seeks to achieve. For example it could make reference to addressing inequality and poverty, providing a safety net that protects people financially in times of need or improving life chances by ensuring people have the means to live a safe, fulfilling and dignified life.

We welcome the inclusion of designing the system with the people of Scotland and the importance of continuous improvement in the principles. However, we would like to see a more explicit reference to co-design and co-production as distinct from consultation and involvement. This would ensure genuine involvement in planning,

designing, testing, implementing and evaluating the new system and it is essential that people with learning disabilities are given the opportunity to participate equally and actively in this process. The principles also refer to the design of the social security system being 'based on evidence'. However, we would like to see greater clarity about what the nature of the evidence will be, who will generate it or the level of credence that will be on different forms of evidence.

We think there could be merit in an additional principle being inserted that: "The social security system is accessible and fair." In order for social security to deliver effective outcomes for people with learning disabilities it is crucial that they are not in any way disadvantaged by complex claim process or inaccessible communications. Therefore, it is essential that people with learning disabilities have the right to a preferred method of communication e.g. online, in writing, by telephone or face to face. They should also have the right to say how they wish to be contacted, to receive clear, plain, easily understandable communication as well as accessible information and advice in multiple formats. This should include an overview of the process, and information about what will be required of them at each stage.

It is also important that application forms are shorter and easier for people with learning disabilities to understand. They should enable people to fully explain the impact of their condition(s), and be framed in as positive a way as possible. Support needs to be widely available to help people navigate the system. This support should be available from multiple sources, and independent from the decision-making process. It is important that people with learning disabilities are kept fully informed of all decision-making and have the right to speak to advisers with a good knowledge social security and learning disability issues at any point in the process. Lastly they should have the right to timely assessment, decision and payment of benefits and to have a decision reviewed within a specified timeframe.

3. Do you agree with the idea of the charter? Please explain the reason for your answer. Is there anything specific you would like to see in this charter?

We support the idea of the Charter and believe it can be an effective means of strengthening and communicating the guiding principles by embedding them in a practical sense. We welcome the Scottish Government's desire to embed dignity and respect within the new system and believe the charter offers an opportunity to more clearly define these terms. It will be important that staff receive training on the Charter to increase awareness of respective rights and responsibilities, and to promote delivery of a respectful and dignified service.

The charter should set out in a clear and accessible way what people should expect from the social security system. We welcome the intention for the charter to be in an "easy read" format. A clear, accessible, and widely available charter will make it easier for people with learning disabilities to understand their rights and empower them to challenge service delivery and seek redress where the principles are not upheld. In our view accountability should be a key principle guiding the development and application of the charter. The Charter should set out how people can hold the Scottish Government to account helping to ensure that a high quality level of service

delivery is maintained. Furthermore, we believe it is important that included within the Charter are the principles which underpin eligibility, assessments and decision making. This will help to ensure they are conducted in an open, accessible and transparent way. We think these principles should be applicable to assessors, decision makers, and service providers as well as people accessing social security.

It is imperative that the charter is built upon meaningful, active and constructive dialogue and engagement with people who access the social security system including people with learning disabilities. As already mentioned we believe the Scottish Government needs to go beyond consultation to co-produce charter and its contents. We believe there is scope to not only involve the Experience Panels in this process but also The Keys to Life Expert Group.

4. The Bill proposes rules for social security. Do you have any comments on these rules?

We would welcome a more rights based approach to the rules for social security. At present, the Bill provides a lot of detail on the requirements placed on people assessing social security and their liabilities, but less on accountability, transparency and fairness. We would like to see further detail in the Bill on people's rights to redress if the principles are not met. We think it would be helpful for it to include:

- the right to an easily accessible and confidential complaints process which is responsive to feedback within strict time limits.
- the right to free and independent advice, advocacy and representation throughout the claim, review and appeal process.

At present there is no duty on ministers to review the system and legislation. We believe such a duty would present an opportunity to consider and assess how the new system is operating and if the legislation is fit for purpose. Additionally we think there is merit in considering the establishment of a new statutory body which is independent of the Scottish Government and the Scottish Social Security Agency, responsible for independent scrutiny of decision making and standards.

5. What are your thoughts on the schedules in the bill in regard to disability assistance (including disability living allowance, personal independence payment, attendance allowance and severe disablement allowance)?

It is vital to ensure that the way in which social security assessments are carried out does not discriminate against people with learning disabilities. The devolution of disability benefits provides the opportunity to substantially reduce the number of unnecessary medical assessments by making the best use of existing evidence. 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.

We would like to see the Bill confirm 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. Face-to-face assessment should only be carried out by a suitably qualified professional at a location that is local and accessible to the claimant, and should not involve for profit organisations. The timing of any reassessments should always be appropriate to the person's condition(s) and circumstances. People should have the right to identify the best people to give evidence in their case, and for all evidence to be accepted. We would also like to see confirmation that 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 assistance.

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. What are your views on this proposal?

We believe that if someone challenges a decision to stop or reduce their entitlement then it should only be stopped once they have exhausted all appeal processes.

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

We believe independent advocacy has the potential to make the system more accessible and responsive to the needs of people with learning disabilities. Our engagement with people with learning disabilities has indicated that advocacy can help people to navigate the claims process and provide an enhanced level of support for people during the assessment process. The Scottish Government funded the Welfare Advocacy Pilot project between March 2015 and August 2016, which found that advocacy support throughout the assessment process of both ESA and PIP:

- Reduced the stress and anxiety for applicants
- Increased confidence about communicating and understanding of the process
- Positively impacted the behaviour of assessors
- Increased the accuracy of assessment outcomes

We think there should be a right for anyone engaging in with the social security system to have access to an independent advocate at any point in the process.

There is little in the Bill about how the new system will be integrated and work effectively with other services such as social care and employment support. It could, for example, include more detail on how the system will interact with reserved benefits such as ESA and how the data will be shared between different agencies.

We think there would be merit in the Bill being amended to clarify that individuals accessing social security will always have the right to full payment in cash while also being entitled to choice around whether a proportion of their payment is used to provide in-kind support such as reduced energy tariffs, travel concessions, and/or a range of aids and adaptations. This must always be a genuine choice and people should not be pressurised into using their benefit in this way. Additionally this option should not be seen as a substitute for wider action by the Scottish Government and local authorities to improve energy efficiency, provide appropriate aids and adaptations, reduce public transport costs, or provide more accessible public transport.

For further information please contact:

Lorne Berkley
Policy Development Officer
Lorne.b@sclld.co.uk
Scottish Commission for Learning Disability (SCLD)