

**Scottish Campaign on Welfare Reform (SCoWR)
Social Security (Scotland) Bill
Draft Stage 2 Committee Briefing for 22nd February 2018 (onwards)**

The Scottish Campaign on Welfare Reform (SCoWR) is a broad coalition of voluntary sector organisations, trade unions, faith groups and others established in 2006 out of a shared concern about the direction of 'welfare reform'. Members have developed a shared vision for a new approach to social security. These are set out in the five principles of the SCoWR [Manifesto for Change](#) and in a Holyrood [supplement](#) to the Manifesto setting out priorities for the use of the new powers devolved by the Scotland Act 2016.

Key amendments that SCoWR members collectively urge MSPs to support are:

On the scope of regulations under scrutiny of the new Commission:

Amendment 131B (in the name of Pauline McNeil MSP)

SCoWR members strongly welcome the establishment on a statutory footing of the Scottish Commission on Social Security and supports the recommendations of the Disability and Carers Expert Advisory Group (DACBEAG). The statutory scrutiny function of the new Commission goes some way toward addressing the concerns members have over the extent to which the detail of new benefits are being left to regulations rather than being included within primary legislation.

In particular members welcomed the DACBEAG recommendation that: "there should be no exceptions to Scottish social security regulations that are within scope for scrutiny".¹

However as the Bill stands, statutory scrutiny of regulations by the Commission are restricted to provisions about entitlement conditions. This does not go far enough. 'Technical' rules on applications and decision making, on overpayment and fraud, have real impacts on people's money and experience of the system. They should all be in scope for scrutiny.

SCoWR members therefore support Amendment 131B (and 131 and 132) to extend the scrutiny function of the Commission to all regulations.

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http://www.parliament.scot/S5_Social_Security/Inquiries/Scrutiny_Workstream_DACBEAG_final_report.pdf,
(Page 5)

On the balance of primary and secondary legislation:

Amendment 211 (in the name of Mark Griffin MSP)

SCoWR members understand that it is reasonable that some details of benefit rules are set out in regulations as policy evolves, and needs change. However, members are concerned that the Bill, as it stands, goes much further and, for example, enables government to create entirely new forms of disability or carer's assistance through regulations alone, without the consultation and parliamentary scrutiny that primary legislation demands.

Members have welcomed the government's commitment to apply a form of super affirmative procedure to regulations made under Part 2 of the Bill and support further consideration of the views of the Delegated Powers and Law Reform Committee on the extent to which the Bill ensures such an approach is taken.

Members also believe that at the very least substantive changes to social security that could reduce or limit existing standards – retrogressive changes – should receive the appropriate level of stakeholder consultation and parliamentary consideration.

SCoWR members therefore support amendment 211, in the name of Mark Griffin MSP, which would ensure that the regulation making powers provided for in the Bill do not include the power to make retrogressive provision.

At the very least SCoWR members urge the government to **commit to bringing forward further primary legislation as and when substantive changes are to be made to the types of assistance set out in the Bill.**

Redeterminations and appeals

SCoWR members believe the process for redeterminations and appeals should make it as easy as possible for people to choose to proceed to independent appeal if they challenge a decision, whilst still ensuring the new social security agency has an opportunity to undertake internal redetermination. Members welcome the Bill's provisions for the redetermination period to be time-limited, and **further welcome Scottish Government amendments 84, 87, 88** that seek to make the second application, for an independent appeal, easier to manage (by having the agency send an appeal form with the redetermination notice for people to return).

However many SCoWR members continue to be concerned claimants will still need to make a second application if the agency redetermination has not led to a successful outcome for them. This concern is based on members' experience of the current two stage process introduced by the UK government ('mandatory reconsideration'), and the extent to which the need for a second application to reach independent appeal has led to a significant drop off in the numbers of people proceeding to appeals.

Many members therefore urge the Committee to support Amendments 33A, 193, 84A, 194, 87A, 88A, 195 in the name of Pauline McNeil. These amendments build on the government amendments to provide further choice for individuals. They enable individuals to choose at the outset whether to proceed to independent tribunal, without the need for a second application if the internal stage of redetermination does not give them an improved award. Members believe this would better enable people to realise their right to a fair hearing in lines with the SCoWR manifesto principles that ‘human rights and dignity should be the cornerstone of social security’ and that ‘the system should be radically simplified.’

Recovery of assistance

Members of SCoWR have urged government to bring forward amendments to make provision for regulation on the circumstances when recovery of overpayments would, or would not, be made. Members **welcome government amendments 40-45** in that they introduce a legal test of whether an individual has to repay an overpayment, rather than leaving it to discretion. The amendments mean that in many cases people will not have to repay overpayments that were not their fault. However members are concerned that the test of liability to repay is too strict - and is stricter than nearly all UK-wide DWP benefits.

SCoWR members are also concerned that **people will still have no right to appeal the recovery of an overpayment (a right they have currently)** when the circumstances are disputed or recovery would mean facing real hardship. This risks running counter to the SCoWR principle that ‘human rights and dignity should be the cornerstone of social security’, as well as the principles laid out in the Bill.

Members **urge committee members to ensure further amendments are brought forward at Stage 3 to address these issues.**

Offences

Amendments 94, 95, 96, 97, 98, 99, 100, 101 (in the name of Pauline McNeill MSP)

Members believe **the Bill must be amended to ensure the government’s policy intent not to criminalise genuine error is reflected in statute.** Despite government amendment the Bill still means that if a person does not report a change in their circumstances as required, this might be considered as an offence *even if this resulted from wholly innocent reasons*. Unlike the current system, there are not different general rules about reporting changes which might result in an overpayment, and other fraud rules that might result in prosecution. There is just one set of rules relating to fraud, despite fraud being statistically a minor issue in terms of benefit expenditure and delivery.

Members believe that, in line with the principle of treating people with dignity and respect, individuals should only ever be at risk of prosecution if they knowingly or dishonestly mislead the agency.

SCoWR members therefore **urge MSPs to support amendments 94, 95, 96, 97, 98, 99, 100, 101 in the name of Pauline McNeill MSP.**

On uprating

SCoWR members believe that Principle 1 – that social security is an investment in the people of Scotland – needs to be backed by a **statutory requirement for annual uprating of benefits** – at the very least in line with inflation. At present, in UK benefits, there is a statutory requirement to uprate carers' allowance, disability allowance, attendance allowance, personal independence payment, industrial injuries disablement benefit and severe disablement allowance. Therefore a failure to include a similar commitment in statute in relation to devolved social security risks downgrading current requirements.

Members therefore **warmly welcome government amendments 47 and 48** which provide for statutory uprating of disability assistance and industrial injuries assistance. However members believe statutory annual uprating needs to be extended, at the very least to carers assistance, and therefore **urge support for amendments in the name of Mark Griffin MSP, especially 47A and 48A.**

Furthermore, members believe that all devolved benefits should be uprated annually in line with inflation and are supportive of **amendment 2 and 3 in the name of Alison Johnstone MSP**

Members of SCoWR include

AdvoCard
Child Poverty Action Group in Scotland
Disability Agenda Scotland (DAS)
Engender
Health and Social Care Alliance Scotland (the ALLIANCE)
HIV Scotland
Inclusion Scotland
NAWRA
One Parent Families Scotland
The Poverty Alliance
Scottish Council for Voluntary Organisations
Scottish Federation of Housing Associations
Scottish Independent Advocacy Alliance
Scottish Refugee Council
Scottish Women's Aid
Shelter Scotland