



## **A New Future for Social Security: Consultation on Social Security in Scotland National Carers Organisation Briefings: Briefing One: Principles and Process**

### **Introduction**

The Scotland Act 2016 will devolve a number of social security powers to the Scottish Parliament. This includes powers over a number of benefits. These include:

- **Disability benefits for people of all ages.** These are: disability living allowance, personal independence payment, attendance allowance, industrial injuries disablement benefit and severe disablement allowance.
- **Carers Allowance**
- The **Regulated Social Fund** – this includes cold weather payments, funeral payments, the Sure Start maternity grant and winter fuel payments.
- **Discretionary Housing Payments**
- Some flexibility over **Universal Credit**, for example, the ability to pay housing costs direct to landlords, payment frequency and split household payments.

The Scottish Government's is consulting on developing a new social security system for Scotland. This consultation looks at how we can best use these powers in the short, long and medium term, including in creating and developing support in the areas of social security that are being devolved. You can read the full consultation at: <https://consult.scotland.gov.uk/social-security/social-security-in-scotland>

The national carer organisations are gathering carers' views directly and we have produced summary versions of relevant sections in the consultation to help you get involved. This is the first briefing which covers principle and process. The remaining briefings: Briefing Two on Carers Benefits and Briefing Three on Disability Benefits can be found on each of the national carer organisations websites and on the Carers Scotland website at <http://www.carersuk.org/scotland/policy/policy-library>

We have also produced this survey of key questions which will help us inform our response to the Scottish Government. This can be found at: <https://www.surveymonkey.co.uk/r/SocSec16>

We are also supporting events for carers to discuss the issues. A number of local carers centres will be holding discussion sessions and we are also supporting some small national events. If you would like to find out more about attending event, in the first instance, please contact Claire Cairns at the Coalition of Carers in Scotland [coalition@carersnet.org](mailto:coalition@carersnet.org).

**This briefing focuses on the principles, processes and delivery of the new Social Security system and the suggestions within the consultation for how this can be developed.**

## Principles and Vision

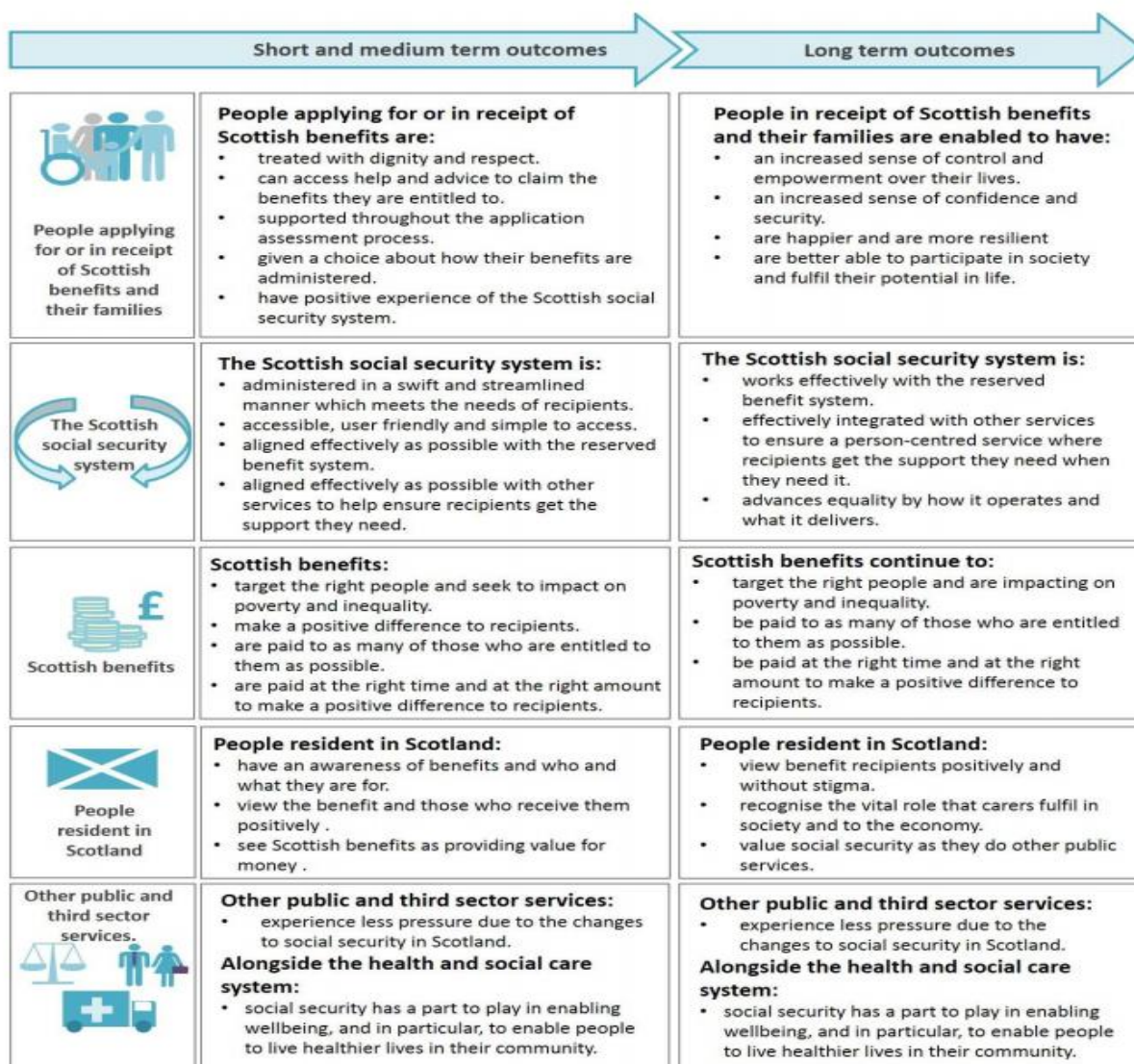
There are principles and a vision at the heart of the development of a new social security system in Scotland. The vision is that 'Social security is important to all of us and able to support each of us when we need it'. The principles are:

1. Social security is an investment in the people of Scotland
2. Respect for the dignity of individuals is at the heart of everything we do
3. Our processes and services will be evidence based and designed with the people of Scotland
4. We will strive for continuous improvement in all our policies, processes and systems, putting the user experience first
5. We will demonstrate that our services are efficient and value for money

The consultation discusses how these can be delivered and fixed into legislation. It suggests options as to how this could be done. These include embedding them in legislation or developing a charter for people claiming social security. It also asks if there are other ways to do this. This might include doing both or doing something completely different.

## Outcomes

The consultation suggests a range of short/medium and long term outcomes for the development of a social security system and to help evaluate its impact and success in future years. The Scottish Government have suggested the following and ask if these are the right high level outcomes. Are there ones missing or ones that you think are the wrong? Are there ones which are more of a priority for you?



## **People's Experience**

From the "Fairer Scotland" discussions which many carers took part in, it was clear that communication, involvement and information and how these were presented had a huge impact on people's experience of social security. The devolution of some social security enables the Scottish Government to have a different approach.

This includes:

### **Communication**

Ensuring that all communications, for example, letters from the Social Security Agency, are clear, accessible and written in plain English and that individuals should be able to choose the best method of communication for them.

Face to face communication is also important and the consultation stresses the fact that many people have said that one of the problems with the current system is the negative way it makes them feel.

The consultation discusses how the language and tone of communication should be respectful, considered and should not stigmatise people, for example, the important distinction from the term "welfare" to using "social security" instead. The Scottish Government will work with people who use social security to ensure that communication is appropriate and in developing information in range of accessible formats.

### **Designing systems**

As this will be a new system, there is a good opportunity to ensure that processes and systems are designed in a way to enable anyone who needs to use the system to understand it and to be able to access it in a way that suits them. The consultation notes that in designing any system people who use it will be involved in design, development and testing to ensure that this works well.

### **Co-production**

The Scottish Government makes clear in the consultation that they want to co-produce systems and processes with people, enabling them to shape the system and how it is developed. This will include on-going discussion as the system rolls out.

## **Delivery**

The Scottish Government will set up a new Social Security Agency for Scotland. This will have responsibility for the system and have certain core elements e.g. the ability to make payments to people. The Scottish Government is seeking views on how this configured.

These include what responsibilities it should have and what it should be able to offer. For example, the Social Security Agency could be responsible for the payment of all social security benefits or should existing public sector organisations, such as local authorities, have a role with this and with other aspects of delivery. The Social Security Agency could have the ability to offer a choice of cash or goods if that was people's preference. The consultation also asks whether there is a role of the third and non-profit sector, social enterprises or the private sector. The question of delivery of medical assessments for disability related benefits is raised and an opinion sought on who should be responsible for carrying these out.

The consultation also explores what role digital services could have in social security delivery e.g. online, online chat, skype etc. and whether there should also be some provision for face to face contact.

### **Independent advice and scrutiny**

At the moment, social security at UK level is scrutinised by the Social Security Advisory Committee and the Industrial Injuries Advisory Council. After benefits are devolved, these will have a role only with reserved benefits and would need to be replaced. The Scottish Government now seeks views on what could be set

up to deliver scrutiny and expert analysis in Scotland. In the past, the Scottish Government set up an Expert Group on Welfare which considered the changes being made at that time by the UK Government.

There are a number of options including an independent body, which could be established in law or otherwise. This also includes considering the need for an independent body to oversee standards of decision making, a role previously undertaken by the Administrative Justice and Tribunals Council (now abolished).

### **Advice, representation and advocacy**

The Scottish Government in this consultation reaffirms its commitment to ensuring that people who need it have access to the right advice services. They are seeking views on how this could be done. This includes ensuring that there are services to provide casework, representation, signposting and independence advocacy. They are seeking views on the public advice services that are currently provided and how the devolution of social security benefits can bring about improvements and more holistic support, including advice on other aspects of people's lives such as housing, debt advice, energy efficiency etc. This includes what role advice should play within the new social security system and considering what the impact of devolution of benefits might be. For example, we know that people may have to manage claiming from two distinct systems, the Scottish Social Security System and other reserved benefits from the DWP.

### **Complaints, reviews and appeals**

Whilst the Scottish Government want to ensure that individuals claiming devolved benefits receive the service they expect, to the standards they expect at the first time of asking, as with any system which will provide services to over a million people, there will be disagreement over some decisions and there needs to be robust system to make sure disagreements are resolved.

They put forward some options for enabling people to make complaints and have these resolved. This includes:

- For complaints, the new agency could follow the Scottish Public Ombudsman's statement for complaints handling principles. This aims to provide a procedure that is: user focused; accessible; simple and timely; thorough, proportionate and consistent; and objective, impartial and fair. This includes ensuring there are opportunities to seek early resolution and to ensure that complaints help drive forward improvements.
- For decisions, there could be internal reviews where if an individual disagrees with a decision, they can appeal this. This process under the DWP is known as a "mandatory reconsideration". In this system, the decision maker has the power to reverse a decision made.
- For decisions, where an individual still disagrees with a decision after an internal review, there could be a system of appeal. The Scottish Government proposes that could be decided by a tribunal. However, there is recognition that this must be transparent and accessible with suitable access to independent representation. The control over the management and administration of the existing tribunal process is also being devolved to the Scottish Government.

For whatever system(s) is decided, the Scottish Government is keen to ensure that it is underpinned by the following principles.

- Right first time – a strong focus is placed on initial decision making to minimise erroneous decisions
- Access to independent scrutiny – when a service user has concerns which are not resolved after an internal review, then they should be able to appeal
- Learning from experience – lessons are learned from experience to ensure continuous improvement
- Transparency – service users fully understand and are kept informed at each stage of the process
- Certainty of timescale – service users can predict with a degree of certainty the likely timescale for resolution

- Accessibility – the needs of the service user are central and the administrative burden placed on them is minimised
- Minimising the burden on the user - the process of challenging and appealing decisions does not place an excessive administrative burden on applicants

### **Timescales**

The consultation notes that it is important that there should not be undue delay in resolving appeals and that means ensuring that the body hearing appeals have sufficient capacity to deal with the volume of appeals. Alongside this, they ask what people think are reasonable timescales to hear an appeal and what processes should be in place to ensure that individuals fully understand and are kept informed at each stage. Finally, the Scottish Government asks how the current appeals process could be improved.

### **Residency and cross border Issues**

The Scottish Government will need to set out who is entitled to the benefits it will deliver. This includes setting out eligibility criteria about residency. This includes residency status for those who have come to the UK, how residency status within Scotland is defined and how we define that someone receives Scottish benefits rather than reserved UK benefits. The Scottish Government also has to consider cross border issues. For example, in the case of carers who live elsewhere in the UK but travel regularly e.g. every weekend, to provide care to someone living in Scotland.

### **Residency**

For residency, the Scottish Government proposes to a “habitual residence” test. For example, the DWP considers issues such as length of residence, future intentions, employment etc. The Scottish Government is considering whether the DWP habitual residency test the right one and also whether other issues should be considered such as family situation and the reasons they have moved to Scotland. For example, we may wish them to consider reasons such as, in the case of carers, to provide care to someone who needs support.

### **Cross border issues**

The Scottish Government wants to ensure that no-one falls through the cracks or is able to make a double claim and to ensure that for the benefits that are devolved that the right administering body in Scotland, England, Northern Ireland or Wales pays an individual. Deciding which body pays the benefit will be the one with which the person has the strongest link at the time of their claim.

Cross-border issues will be easier to manage where the qualifying criteria is identical. However, it will become more complex in instances where the rate paid by one nation is higher or qualifying criteria is different.

There will be challenges when someone moves from another area of the UK to Scotland and vice versa during a claim or when they are receiving payments.

All of this will involve ensuring that there is coordination and good communication between bodies to ensure that decisions on whether or not a person will qualify for a Scottish benefit are fair and transparent.

There will be some specific cross border issues to consider for carers. For example, Carers Allowance is dependent on someone receiving a qualifying benefit so there will need to be an approach in place where the disabled person and carer live on different sides of the border.

### **Managing overpayments and debt**

Sometimes mistakes are made within the social security system and individuals are paid more than the amount of benefit to which they are entitled. The Scottish Government is clear that where the overpayment of a devolved benefit is not the result of an error by the individual, the claim should not be recovered. However, where an error has been made, for example, the individual has not provided the right



information; the consultation seeks views on how this could be recovered. They also seek views on how the existing system for recovering overpayments could be improved and what role financial advice could have in supporting individuals who are being asked to repay overpayments.

## **Fraud**

The Scottish Government sets out its belief that social security is an investment in the people in Scotland and that they will take a zero tolerance approach to fraud in order to protect that investment – an ensure that the people who need support are able to receive it. The Scottish Government already have a counter-fraud strategy for all other areas where they make payments and are considering whether this approach could be used in social security. This approach to countering fraud has five objectives which are awareness, prevention, teamwork, investigation and enforcement. They propose to either adopt or adapt this existing Scottish Government counter-fraud strategy for use in social security. This means that they will:

- Commit to clear ethical standards
- Communicate our attitude to fraud
- Support all of our staff in their responsibilities in preventing and detecting fraud
- Provide managers with specialist support
- Maintain comprehensive procedures for preventing and detecting fraud
- Put in place robust processes for reporting suspicions of fraud
- Respond to fraud effectively through a comprehensive fraud response plan
- Use data and technology efficiently to combat fraud
- Sharing knowledge of vulnerabilities and lessons learned

Respondents are asked whether this approach should be adopted in relation to social security fraud and how the new social security system could be designed to reduce the potential for fraud at the application stage.

## **Investigations**

The consultation goes on to discuss investigations and interviewing people under caution, so that they are not legally bound to provide evidence that could incriminate themselves (as in other areas of the law). However, whilst they recognise that investigations enable information to be gathered, they note that a formal interview is stressful and want to make sure that the practice respects an individual's rights and that they are treated with dignity and respect. They seek ideas on what improvements could be made to conducting such interviews.

## **Penalties**

The standard of proof required to provide that an individual has committed fraud is the criminal standard. This approach aims to ensure that no-one is penalised unjustly. However, where someone has knowledge and intent to commit fraud, they may be found guilty of certain offences. These are:

- Making a statement which they know to be false
- Producing information which the person knows to be false
- Failing to notify of a change of circumstances, where the person is aware that this change affects their benefit entitlement
- Failing to notify of a change in a person's circumstances, where the person is aware that this change affects another person's benefit entitlement

The penalty for committing benefit fraud will be fine of not more than £5,000, imprisonment not exceeding 3 months or both. Proceeds of benefit fraud may be made subject to a confiscation order in Scotland under the 2002 Proceeds of Crime Act.

The consultation asks if the Scottish Government should retain the same list of offences and whether it should retain the same level of penalties for benefit fraud.

### **Safeguarding information and information sharing**

The overriding priority will be to ensure a smooth transition between the existing UK benefits to the new Scottish arrangements, so that people continue to receive the benefits to which they are entitled. This means sharing information, where there is a legal basis, between the DWP, Scottish Government, other public bodies and the new social security agency. The consultation notes that in the early years the Scottish Government will be reliant on some of the DWP's existing information but would like, in the long term, for the social security system to be aligned with other devolved services to provide a holistic approach that best supports outcomes for individuals. This will mean building systems that are fit for purpose, with a transparent approach, that are fully compliant with the Data Protection Act and the Information Commissioners code of practice on data sharing.

The consultation notes that every individual has the right to privacy and that personal information should be protected. They propose to take a 'Privacy by Design' approach to information handling to promote privacy, security, and compliance with Data Protection Act 1998 (DPA) - from the initial stages of setting up the agency and registering with the Information Commissioner's Office, through to service delivery. They want to take advantage of advances in technology, to store and share personal information safely and securely, in order to better support claimant applications by putting the user experience first.

They note that they will securely source the minimum amount of personal information they need from other public sector organisations where there is a legal basis to do so and the appropriate Data Sharing Agreements are in place, to support and assess applications, instead of collecting and storing large amounts of information in a 'data warehouse'.

Finally they note that they will be open and transparent in our approach to information sharing. In particular they seek individual views on whether or not they support:

- strictly controlled sharing of information between public sector bodies and the agency, where legislation allowed, to make the application process easier for claimants? For example, this information could be used to prepopulate application forms or to support applications, reducing the burden on applicants.
- strictly controlled sharing of information between a Scottish social security agency and other public sector organisations (for example local authorities) to support service improvements and deliver value for money?

### **Uprating**

In current arrangements uprating – that is increasing benefits annually – does not apply to all benefits. For example, cold weather payments and winter fuel allowances are only uprated at irregular intervals.

At present, the UK Government uprates benefits by measuring the rate of inflation using the Consumer Price Index, which tracks the changing cost of a fixed 'basket' of goods and services over time. In practice, this means that the amount paid out for each of these benefits is increased in April based on the Consumer Price Index in the previous September, if there has been an increase in prices. However, if the Consumer Price Index falls, the uprating mechanism does not operate to increase the value of benefits. This happened in April 2016 – the Consumer Price Index fell by 0.1% over the 12 months to September 2015, no indexed-linked increase was applied in April for the year 2016-17.

The Scottish Government has committed to maintain spending on disability benefits, uprating them in line with inflation, and ensuring they are not means-tested when they are devolved. As long as inflation increases, the current legal arrangements will allow the Scottish Government to set amounts for the indexed linked benefits, provided the amounts it sets are higher than the amounts currently paid out. The

Scottish Government could also set the amounts for DLA, PIP and the non-indexed payments through regulations.

A general, Scottish uprating policy for devolved benefits and payments which is linked to the rate of inflation could simplify the system overall and make it easier to understand. However, it could be that other policy requirements are more important – for example, the ability to respond to changes which impact on people claiming devolved benefits flexibly and quickly or to target support.

The consultation asks what individuals think of this approach and also asks what individuals views are on the best way to ensure that devolved benefits keep pace with the cost of living and whether there are any particular benefits where uprated based on inflation would not be effective.

### **More information**

Full consultation: <https://consult.scotland.gov.uk/social-security/social-security-in-scotland>

Additional briefings on Carers Benefits and Disability Benefits:

<http://www.carersuk.org/scotland/policy/policy-library>

### **Contacts:**

We are happy to provide further information on any of the above. If you have any questions or would like more details, please contact one of the following individuals.

- Fiona Collie, Carers Scotland [fiona.collie@carerscotland.org](mailto:fiona.collie@carerscotland.org)
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