

Social Security (Scotland) Bill 2017

Island Screening Assessment

Introduction

1. The importance of island-proofing was recognised in the “*Empowering Scotland’s Island Communities prospectus*”¹ published in June 2014. The principle of island-proofing is one of building a broad-based islands awareness into the decision making process of all parts of the public sector.

2. The Islands (Scotland) Bill² introduced to the Scottish Parliament on 12 June 2017, provides for a new duty on the Scottish Ministers and other relevant public bodies that they must have regard to island communities in exercising their functions, and for the Scottish Ministers this will also include the development of legislation. This duty is often referred to as ‘island-proofing’. The Scottish Government recognises the importance of island-proofing, and is committed to considering the impacts of the Social Security (Scotland) Bill on island communities. The Scottish Government is also committed to island-proofing once the Bill has been introduced and will continue to consult with those representing the interests of island communities and others with experience of the current system, in taking forward secondary legislation, as well as the development and delivery of the new Scottish social security system.

Background

3. The Social Security (Scotland) Bill is brought forward as a result of measures following the changes to the devolution settlement enacted in the Scotland Act 2016. These measures give the Scottish Parliament legislative competence over disability, industrial injuries and carer’s benefits; benefits for maternity, funeral and heating expenses; and Discretionary Housing Payments. They also provide the ability to top up benefits that remain reserved to the UK Parliament, and allow new benefits to be created in any area except old age pensions or where there is a connection to a matter reserved to the UK Parliament (such as child support maintenance or reserved aspects of employment support). As a result of the changes in the devolution settlement, eleven existing social security benefits will become a devolved responsibility.

4. The Bill transposes the eleven social security benefits onto a Scottish legislative platform, allowing the Scottish Ministers to shape a distinctly Scottish benefits system, with dignity and respect being core to its approach. These are: Disability Living Allowance, Personal Independence Payment, Attendance Allowance, Severe Disablement Allowance and Industrial Injuries Scheme; Carer’s Allowance; Sure Start Maternity Grants; Funeral Payments; Cold Weather Payments and Winter Fuel Payments; and Discretionary Housing Payments. It also gives powers to create new benefits for early years and to provide for top up of reserved benefits. It provides for a supplementary payment to persons receiving Carer’s

¹ <http://www.gov.scot/Resource/0045/00452796.pdf>

² <http://www.parliament.scot/parliamentarybusiness/Bills/105168.aspx>

Allowance, pending the transposition of that benefit onto a Scottish legislative platform.

5. The Bill also sets out an overarching legislative framework for the administration of social security in Scotland, making provision for operational functions such as managing overpayments, fraud, error and appeals.

Public Consultation

6. The Scottish Government's consultation on Social Security in Scotland³ ran from 29 July 2016 to 28 October 2016. The consultation set out the vision and key principles for social security in Scotland. The consultation was in three parts, covering:

- a principled approach;
- the devolved benefits; and
- operational policy.

7. A total of 521 written responses to the consultation were received, 280 from individuals and 241 from organisations. Respondents represented a wide range of individuals and organisations with knowledge and experience of, or an interest in social security matters, including from island communities and organisations representing island interests. The independent analysis of the responses, by Research Scotland⁴, along with the Scottish Government response⁵ were published on 22 February 2017.

8. In addition to the formal consultation, the Scottish Government held over 120 engagements carried out with partners across all 32 local authorities in Scotland between July and October 2016. These events provided stakeholders and those with experience of the current UK system, including those representing island communities, the opportunity to communicate their views and contribute to the development of the proposals contained in the Bill.

9. The main issues raised by island stakeholders were in relation to accessibility and choice. It was recognised that Skype and other forms of video conferencing can improve accessibility and avoid the need to travel distances which can be time consuming, expensive and difficult for people living in rural and island communities. Face to face assessments could be undertaken using digital technology to avoid the stress, physical impact, cost and time for the individual and the assessor to be in the same location. The respondents to the consultation cited a specific issue with assessments in Orkney where claimants experienced substantial problems with the local implementation of the UK Government's Personal Independence Payment.

10. However, respondents suggested that digital would not always be the best delivery model for everyone (particularly given the digital connectivity challenges in rural and island communities) and therefore other engagement and application

³ https://consult.scotland.gov.uk/social-security/social-security-in-scotland/user_uploads/consultation-on-social-security-in-scotland---full-version.pdf

⁴ <http://www.gov.scot/Resource/0051/00514351.pdf>

⁵ <http://www.gov.scot/Resource/0051/00514404.pdf>

channels would need to be available. There will always be some people who need face to face contact, due to digital exclusion, disability or difficulty in communicating. There will also be those who present in crisis, having been unable or unwilling to access the system previously.

11. Other issues raised by respondents included: the higher cost of living in rural and island areas, particularly the cooler climate and issues such as wind chill, that makes fuel poverty a significant concern; and, vouchers or assistance in kind can result in stigma and embarrassment when using them in rural and island areas, as they are only redeemable in limited outlets.

Approach to the Bill

12. The Social Security (Scotland) Bill sets out an over-arching legislative framework for the administration of social security in Scotland making provision for operational functions such as overpayments, fraud, error, re-determinations and appeals. The Bill defines the types of social security assistance which the Government will give (e.g. assistance for disabled people, carers, maternity and funeral expenses, heating costs and so forth). It goes on to give a brief description of each type of assistance, and confer powers on the Government to set out the detailed rules for eligibility and entitlement in secondary regulations. The Bill itself is therefore not expected to have a disproportionate effect on island communities.

13. A significant body of secondary legislation that provides detail on each type of assistance and the operation of the social security system will then be required once the Bill enters into law. Putting the detailed rules in secondary regulations is a deliberate choice and is key to the Scottish 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 Scottish 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 not allow for this, and would impair their responsiveness to circumstances.

14. During Stage 1 of the Bill's passage through the Parliamentary process, the Scottish Government intends to produce illustrative regulations to demonstrate exactly how it intends to use these new powers. The Scottish Government wants to ensure that the regulations are considered and agreed in an open and transparent way that allows stakeholders to provide evidence and feed in their views, including those representing island interests. As with every other aspect of the work to develop the new social security system, the Scottish Government will seek to involve expert organisations and people outside of government in the development of the secondary legislation, just as closely as they have been involved through the consultation exercise and in the development of the Bill.

15. Some examples of how this will be taken forward in practice, in areas that people living in the islands raised during the consultation and engagement events, are provided below:

Fuel Poverty

16. The approach taken in the Bill is to establish statutory procedures that set out how the Scottish Ministers may provide assistance to individuals to meet, or help towards, meeting the individuals heating costs during a period of cold weather (currently known as Cold Weather Payments) and during the winter months (currently known as Winter Fuel Payments) and that the detailed rules in relation to the specific benefit e.g. eligibility criteria, be established in secondary regulations.

17. Such an approach will allow the Scottish Ministers to be more responsive to any changes in economic and social conditions. It will also allow for full consideration to be given to the recommendations of the Fuel Poverty Strategic Working Group and Rural Fuel Poverty Task Force and how they can be factored in to eligibility and design criteria of Cold Weather Payments and Winter Fuel Payments in Scotland. In doing so, the Scottish Government will examine how best assistance can be provided in order to help contribute to reducing fuel poverty in Scotland more effectively. As part of that process, the Scottish Government will continue to consult with those representing the interests of island communities and others with experience of the current system.

Disability assistance

18. Similarly with disability assistance, the chosen approach in the Bill is to establish statutory procedures that set out how the Scottish Ministers may provide assistance to individuals who have a disability (physical or mental), and that the detailed rules in relation to the specific benefit e.g. eligibility criteria, be established in secondary regulations.

19. The Scottish Government's immediate priority is to ensure a safe and secure transition of the current disability benefits (Disability Living Allowance (DLA), Personal Independence Payments (PIP) and Attendance Allowance (AA)) so that those in receipt at the point of transition continue to receive it at the right time and in the right amount. For DLA and PIP, there will be two components to the awards - care and mobility - and different rates of awards depending on the severity of impact. Passporting arrangements for all three of the benefits will continue.

20. Such an approach will therefore allow the Scottish Ministers to develop options for improvements to the disability benefits in the future. For example, when assessing people's applications for DLA, PIP and AA, the Scottish Government intends to reduce face to face assessments and use channels of communication for assessments that will be guided by what suits the individual's need. In doing so, the Scottish Government will consider the needs of individuals living in island communities. The Scottish Government is also committed to introducing longer term or lifetime awards for people whose condition is unlikely to improve.

21. People with lived experience of DLA, PIP and AA are members of the new Experience Panels, and will share their experience of receiving benefits, thus helping to shape the new benefits in Scotland.

22. The Scottish Government has also established the independent Disability and Carer's Benefit Expert Advisory Group to provide recommendations and advice to the Scottish Ministers on the policy and practice options being developed on disability and carer benefits. The Group will specifically advise on key areas for reform, including, but not limited to: reform of assessment (from application to final decision and including data and evidence); award periods, automatic awards and lifetime awards; eligibility criteria; appeals; accessibility and take up of benefits. The Group will use evidence from a number of sources to provide recommendations and guidance to the Scottish Ministers on options for the existing benefits when powers over them are transferred to the Scottish Parliament, and options that would be developed and implemented after the safe and secure transfer of the benefits. The Group will consider the needs and interests of all Scotland's people, including those who live in island communities.

Charter

23. The Bill proposes a duty on Scottish Ministers to prepare and publish a charter, and to report on it regularly. The Scottish Government intends that this publicly accessible charter will set out the necessary next level of detail, in relation to its overarching social security principles; communicating in clear terms what people are entitled to expect from the Scottish system and framing the positive, supportive ethos of the new social security agency. There are seven principles which include: 'respect for the dignity of individuals is to be at the heart of the Scottish social security system' and 'social security is itself a human right and essential to the realisation of other human rights'. The requirements, which the Scottish Government proposes should be placed on the Scottish Ministers - to translate the principles into a charter, and to review and revise the charter periodically - are duties with clear, meaningful outcomes that will drive improvement and enhance public accountability.

24. Taking this approach will enable the principles to be embedded in a way that is open to monitoring, reporting and scrutiny and available in a format that can be easily understood. It will also support the Scottish Government's clear commitment that key information will be available in ways that are accessible to all. Similarly, there will be greater flexibility to review and update the charter without having to amend primary legislation, allowing it to be refined as the system develops, facilitating purposeful dialogue between the new service and the people who use it.

25. In line with the strong consensus in the consultation responses, the Scottish Government will work closely with people with direct experience of the present system, and organisations from a cross-section of society, encompassing the expertise of a wide range of people and organisations, to make sure it is fit for purpose. The Scottish Government is committed to island-proofing the charter and intends to engage with people and organisations that represent island interests, such as local authorities, to ensure it gets this right.

Experience Panels

26. The Scottish Government will continue to engage with stakeholders through a range of advisory groups and the establishment of 'Experience Panels'. The guiding principles for social security in Scotland made a commitment to put people with lived experience first, and that the new system would be designed with people who have direct, personal experience of using the current system. By participating in a panel, people can share their experience of the benefit system and help to build a social security system that works for the people of Scotland when they need it.

27. The Scottish Government led an extensive campaign to recruit volunteers from across all of Scotland. The campaign was undertaken in partnership with local authorities and key partner organisations to make sure that people living on the islands were aware of the opportunity and knew how to get involved. As part of the registration process, the Scottish Government asked all Experience Panel members about their contact preferences, and additional support needs to ensure that those living in rural and island communities have a choice in how they participate in Experience Panels, and that they are supported to take part. For example, whether that be support with travelling to a Panel, or by enabling people to participate through digital means.

28. The recruitment drive came to an end on the 12th May 2017, and over 2,300 people across Scotland have signed up, ready and willing to work with the Scottish Government as part of the Experience Panels. Although the majority of the volunteers live in the central belt, there is widespread representation across all local authority areas, including Orkney, Shetland and Comhairle nan Eilean Siar, Highland, Argyll and Bute, and North Ayrshire.

Social Security Agency

29. It is important to recognise that the Social Security (Scotland) Bill is just one aspect of a much larger programme to develop and deliver a new social security system in Scotland. The Minister for Social Security announced in the Scottish Parliament on 27 April 2017, that the preferred model for the delivery of social security is through an executive agency with an efficient centralised function, supplemented by face to face pre-claims advice and support co-located, where possible, with existing local services.

30. Although the specific locations for the agency and local support are yet to be determined, the Scottish Government is committed to ensuring that the agency and its services will be accessible to everyone across Scotland, including those living in the islands. When exploring options for the agency's local presence the Scottish Government will ensure that it complements and is joined up with existing services, and is located in places people already visit, where possible. This may include considering co-location with third sector and other organisations, depending on the area and people's needs.

31. The Scottish Government will work with COSLA and other stakeholders to explore possible co-location opportunities for the agency and to understand the

different needs of communities, including island communities, when delivering local services across Scotland.

32. The Scottish Government is keen to ensure that as much information as possible will be online, as well as allowing for the electronic submission of applications. However, the Scottish Government is aware that some remote and island communities may not have access to digital services nor is it everyone's preferred choice of communication. Some island councils have also highlighted the challenges that face those who have to travel a great distance to attend assessments. The Scottish Government is aware that people want tailored solutions to suit their different preferences and need, and will therefore work to ensure the availability of digital, telephone and face to face communication channels where possible. The Scottish Government will also ensure that help is available to people to explain how to complete applications and that there is also support for completing an application on behalf of someone else if that is needed.

Reporting

33. The Social Security (Scotland) Bill proposes a duty on the Scottish Ministers to publish an annual report on the performance of the Scottish social security system, which will include information on the impact of island-proofing. Further, the Islands (Scotland) Bill provides that the Scottish Ministers will report on the impact of island-proofing as part of the annual update setting out progress with the National Islands Plan.

34. The Scottish Ministers are also committed to engaging with, and reporting regular progress to, the Islands Strategic Group to ensure that those representing the interests of island communities and others with experience of the current system, are fairly represented in the development and delivery of the Scottish social security system. The Minister for Social Security most recently met with the Islands Strategic Group to provide an update on Bill progress on 30 March 2017.

**Scottish Government
June 2017**