



Scottish Commission on Social Security Draft scrutiny framework

SCoSS published a draft scrutiny framework in its first report on draft regulations, namely the Carer's Assistance (Young Carer Grants) (Scotland) Regulations 2019. The framework informs how SCoSS undertakes its scrutiny of draft regulations.

The text below explains the background. It is followed by the draft scrutiny framework.

Background

SCoSS intends to be open and accessible about how we go about our work. We have therefore developed a draft scrutiny framework that integrates both the principles and human rights, which we will use as a tool for scrutinising draft regulations as they develop. In so doing, we may also collect information relevant to reporting on the Social Security Charter. The draft framework covers the whole end-to-end process, from policy intention, development, design and delivery, right through to continuous improvement, monitoring and evaluating impact. It does not mean that our scrutiny of regulations will always cover everything. It might depend on exactly what the regulations cover. Or we might want to focus on one or two key points. It also does not mean that our scrutiny reports will always follow the sequence of main headings in the framework. The framework means that everyone will know the kinds of questions we have asked and the kinds of evidence that we intend to consider. It also allows us to be held to account against the framework for how we carry out our scrutiny and the conclusions that we reach. The Commission will consider how it can best seek wider feedback on the development and improvement of the framework on an ongoing basis. We will also consider how this and all our work can be communicated accessibly and inclusively.

DRAFT SCRUTINY FRAMEWORK

Please note: References are illustrative and are not intended to be

comprehensive. They do not currently refer to specific commitments in the Social Security Charter, although these may be relevant and considered. For the purposes of this exercise we have drawn on the 'PANEL' approach to human rights' assessment (Participation, Accountability, Non-Discrimination, Empowerment and Legality. See: <http://www.scottishhumanrights.com/rights-in-practice/human-rights-based-approach/>).

Overview

- 1) Are the regulations consistent with the Act, legally and in terms of the policy intention behind the Act?
- 2) Are the regulations clear overall?
- 3) Are there particular human rights instruments that are likely to be relevant?
- 4) What impact assessments have been done, e.g. on equality, poverty, human rights? What do they tell us?

References:

- Principles: (b) social security is itself a human right and essential to the realisation of other human rights
- Human rights: Legal (PANEL)

Policy intention

Clarity

- 5) Has Scottish Government presented clear evidence about the issue the policy seeks to address?
- 6) Is the policy objective of the regulations clear?
- 7) Is the policy objective clearly consistent with the principles and with human rights?
- 8) Are there apparent inconsistencies or anomalies in the way the regulations are drafted that do not reflect the policy objective, principles or human rights?

Scope

- 9) Could the regulations reasonably have gone further in advancing

the policy objective, principles and human rights?

References

- Human rights to progressive realisation

Policy development

10) Who has the Scottish Government involved and how accessibly?

- The target client group
- Seldom-heard and intersectional people from the target
- group Other people directly affected
- Representative stakeholder organisations

11) Has Scottish Government clearly set out what the client group and others have told them about their needs, barriers and ideas for solutions? To what extent do the regulations address the key needs, barriers and ideas for solutions identified?

12) To what extent do stakeholders support the policy objectives and draft regulations? Is there clear evidence of shared concerns? Has Scottish Government addressed them? If not, is there a good case for not addressing them?

13) Are there any major areas of disagreement between stakeholders? What does SCoSS think about these areas and why?

References

- Principles: (f) the Scottish social security system is to be designed with the people of Scotland on the basis of evidence
- Human rights to **P**articipation, **E**mpowerment
- (**PANEL**) Other: Equality Impact Assessment

Policy design

Context

14) Have possible implications for other policy areas other than social security been explored? This might include whether an increase in social security payment could be offset by a reduction in another form of support or just plug a gap in another form of support.

15) Are there issues around the interface with reserved benefits?

16) Are the regulations likely to increase or reduce the overall complexity of the (devolved and reserved) social security system? Is there scope to simplify? Is increased complexity justifiable?

17) Are there any wider legal considerations? For example, is it consistent with EU co-ordination rules, immigration rules, etc?

18) Do the policy objectives and draft regulations improve upon overall (devolved and reserved) existing provision?

References

Principles: (g) opportunities are to be sought to continuously improve the Scottish social security system in ways which (i) put the needs of those who require assistance first, and (ii) advance equality and non-discrimination; (h) the Scottish social security system is to be efficient and deliver value for money.

Payment levels

19) How did Scottish Government establish the level of payment? What evidence or other factors did it draw upon?

20) Is the level of payment adequate for the purpose and role (in view of other types of support) intended for the benefit?

21) Has any contribution towards reducing poverty appear been explored?

References

- Principles: (a) social security is an investment in the people of Scotland; (b) social security is itself a human right and essential to the realisation of other human rights; (e) the Scottish social security system is to contribute to reducing poverty in Scotland
- Human rights to adequate income, standard of living.

Eligibility

22) Do the eligibility criteria deliver on the policy objective, principles and human rights?

23) Are the eligibility criteria fair? Do the eligibility criteria create winners and losers? Is this unforeseen? Is it justified?

24) Are there any identifiable ambiguities or risks of unforeseen consequences, for example in relation to fraud or take-up?

References

- Principles: (c) the delivery of social security is a public service; (d) respect for the dignity of individuals is to be at the heart of the Scottish social security system; (h) the Scottish social security system is to be efficient and deliver value for money; (g) opportunities are to be sought to continuously improve the Scottish social security system in ways which (i) put the needs of those who require assistance first, and (ii) advance equality and non-discrimination
- Other: Equality Impact Assessment

Assessment process

25) Does the assessment process put the needs of those who require assistance first?

26) How easy or difficult will it be to demonstrate eligibility?

27) Will it create direct or indirect disincentives? These might include unnecessary hurdles, fear of loss of income, intrusion into privacy, focusing on what people can't do rather than what they could do with the right support. Is this necessary? How could it be mitigated?

References

- Principles: (a) social security is an investment in the people of Scotland; (c) the delivery of social security is a public service; (d) respect for the dignity of individuals is to be at the heart of the Scottish social security system; (h) the Scottish social security system is to be efficient and deliver value for money; (g) opportunities are to be sought to continuously improve the Scottish social security system in ways which (i) put the needs of those who require assistance first, and (ii) advance equality and non-discrimination.
- Human rights to availability; Empowerment (PANEL)

Policy delivery

28) Do the regulations lend themselves to simple, efficient and cost-effective administrative processes?

29) How will all eligible people, including seldom heard people, be informed about their entitlement?

30) How will administrative procedures reasonably accommodate different access requirements and preferences?

References:

- Principles: (c) the delivery of social security is a public service; (c) the delivery of social security is a public service; (d) respect for the dignity of individuals is to be at

the heart of the Scottish social security system; (h) the Scottish social security system is to be efficient and deliver value for money.

- Human right to accessibility (all covered, particularly those most belonging to most disadvantaged or marginal groups); availability.
- Other: Duty to promote take-up; inclusive communications.

Policy impact and improvement

Monitoring

31) What is in place to measure, monitor and enable adjustments? In particular, how will it measure:

- Whether the needs of those who require assistance are put
- first Whether it advances equality and non-discrimination
- The impact it has had on the lives of people claiming it. What has it enabled them to do that they could not do before?

32) Are there other particular issues that could usefully be monitored?

33) Who will be involved in monitoring and evaluation? Whose voices will be heard, particularly those of the service users?

Sustainability

34) How could the policy objectives, and/or the regulations that deliver them, be improved in future to advance the principles or human rights?

Transparency and accountability

35) Are there measures in place for reporting, publicly, transparently and inclusively, and for holding to account?

References

- Principles: (a) social security is an investment in the people of Scotland; (b) social security is itself a human right and essential to the realisation of other human rights; (c) the delivery of social security is a public service; (d) respect for the dignity of individuals is to be at the heart of the Scottish social security system; (e) the Scottish social security system is to contribute to reducing poverty in Scotland; (f) the Scottish social security system is to be designed with the people of Scotland on the basis of evidence (g) opportunities are to be sought to continuously improve the Scottish social security system in ways which (i) put the needs of those who require assistance first, and (ii) advance equality and non-discrimination; (b) social security is itself a human right and essential to the realisation of other human rights. Human rights to 'progressive realisation'; availability to future generations; **Accountability** ('PANEL')
Other: Equality Impact Assessment

Concluding questions

36) To what extent do the policy objectives and regulations overall appear consistent with the social security principles and the advancement of a human rights?

37) Have equality and diversity considerations (including intersectionality) been embedded throughout each stage?

38) From a first reading of draft regulations, are there unresolved issues that SCoSS wishes to explore further, consult on, invite Scottish Government officials or lawyers to provide information about/explain, get independent legal or expert advice on, or investigate/commission research on?

References

- Principles: (g) opportunities are to be sought to continuously improve the Scottish social security system in ways which (i) put the needs of those who require assistance first, and (ii) advance equality and non-discrimination; Human rights: **Non-Discrimination and Equality** ('PANEL') Other: Equality Impact Assessment