



Rebuilding social security in Scotland

Towards a Scottish social security system

**A submission to *A New Future for Social Security*
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Published October 2016

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Foreword

The payment of support to citizens needing help with low income or additional costs arising from disability or childcaring responsibility is a powerful reflection of the fact that we all have the right to dignified, independent lives, and the material security of those needing help is both the responsibility and in the interests of everyone in our country.

However, this idea has been undermined by the actions of recent UK governments, which have repeatedly cut benefits, in some cases beyond what is needed to meet basic human needs – witness the seemingly inexorable rise of referrals to food banks and increases in poverty.

And so the devolution of some powers over social security could not have come a moment too soon. The new powers offer us an opportunity to reclaim and refound social security in Scotland, to establish a new system based on the principles of respect, social justice, solidarity and equality.

The Scottish Green Party's preferred approach to social security is the payment of a Universal Basic Income (UBI), a long-standing idea that is now gaining interest from governments around the world. Our vision of the UBI would pay all citizens a basic, unconditional income, with additional payments for those with increased living costs, such as disabled people. The new Scotland Act does not devolve income- replacement benefits, and so



it will not yet be possible to introduce UBI. However, some aspects of UBI – such as the automatic payment of benefits without the need for an application – can be shown to work using powers being devolved.

These powers offer a huge opportunity to chart a different course to that which has been chartered for us by Westminster hitherto. However, to do this, they must be used boldly and imaginatively.

The ideas and proposals suggested in the following pages are one contribution to what I hope will be a wide-ranging, inclusive and open-minded debate about the kind of society we want and how we can use the social security system to build it. Scottish Greens look forward to taking part in this debate in the coming years.

A handwritten signature in black ink that reads "Alison Johnstone". The signature is written in a cursive, flowing style.

Alison Johnstone MSP
Scottish Green Party social security spokesperson

Introduction

Two decades of welfare reform has warped our social security system, in some cases fostering insecurity and actively undermining people's welfare.

This is in direct opposition to the principles on which the system was founded: that all citizens are likely at some point in their lives to need help during periods of unemployment, low pay, old-age, illness, disability, and when raising a family, and that collectively-financed benefits should provide a secure, stable source of income when they do.

Many of the millions of Scots who receive some form of benefit feel that the benefits system is premised on the assumption that they are not claiming legitimately and is deliberately setting-up people to fail. Claiming for benefits has become an increasingly complicated and stressful process, and

in some cases can have a negative impact on applicants' physical and mental health.

With the devolution of a range of welfare benefits and powers – providing the ability to top-up existing and create new benefits – we can reject this approach. In place of policy based on cynicism and fear, we can reclaim social security in Scotland for fairness, solidarity and social justice.

These powers can be used to establish a new system founded on respect for the individual beneficiary and their rights, designed from the ground-up in partnership with its users and based on their experiences. It can provide not an ever-diminishing bare minimum, but a range of benefits and services that enables everyone to achieve their potential and play a full and meaningful role in society.

Principles and foundations

What should the founding principles and aims of Scottish social security system be and how should they be established?

Statement of vision and principles

The proposed vision for social security and the five key principles that accompany it are broadly welcome, but there is room for improvement.

The recognition that social security is an investment in people, and of the importance of respect and dignity for individuals are quite rightly suggested as core principles. The other three principles focus on the operation of the system, for example the need for continuous improvement and evidence-based policy. Whilst none of these are objectionable in themselves, they do result in a rather skewed set of principles that prioritise process over the aims of the system. It is questionable that they should account for the majority of the founding principles.

Some of the proposed principles lack meaning in the absence of a broader statement of the purpose of social security. For example, prioritising the efficiency and value for money of social security is meaningless unless viewed in light of the purpose for which funds are expended.

As a result, some fundamental aspects of social security do not feature. The reduction of poverty, inequality and social injustice are at the heart of why we provide social security, yet these do not feature in the statement of principles in some way. Some reference to these must be part of the system's vision and principles.

A charter of social security rights

These principles should be entrenched, though we do not agree that the options for this proposed by the consultation – a claimant's charter and writing the principles into legislation – are mutually exclusive. In particular, it implicitly and wrongly suggests that a charter could not have a statutory underpinning.

The rights outlined in any social security charter should be sufficiently meaningful and specific that an individual who feels their rights have not been upheld should be able to demonstrate this in order to seek recompense. For example, if a right to timely treatment were to be included, this should include a maximum benefit assessment period and an outline of what happens when this is exceeded.

The upholding of these rights should not merely be seen as ambition of the social security system. A charter of rights should be underpinned by operational policy that seeks to actively ensure they are met.

Dignity and respect

Refounding Scottish social security on respect for users of the system and the importance of safeguarding their dignity is a strong theme of the consultation and the Government's approach thus far, and this is very welcome. It is rightly one of the draft core principles and also features in the statement of suggested outcomes. Lacking in the consultation, however, is an explicit recognition that a dignity and respect agenda must be planned and delivered. It will not simply develop

out of the Scottish Government's good intentions, however genuinely held they are.

The hostility of the current system to so many of its users is a deliberate result of actions by successive UK governments to discourage benefit claiming. Equally, a Scottish system that treats applicants and recipients with respect must be explicitly designed to do this at every level and in every interaction between them and the system. The Scottish Government should develop and implement a dignity and respect strategy to achieve this.

The consultation rightly asks about what language the new system should use. This will be an important underpinning of a more respectful and positive approach to social security. Unfortunately, 'claimant' and a range of associated terms are now loaded and negative, as a result of years of denigration of social security recipients by UK governments. As part of signalling a break with previous approaches, Ministers should consult on a new terminology for referring to social security payments and the people who receive them.

Delivery and Governance

How should social security be delivered and scrutinised?

Delivering social security

We agree that the new social security system should be a national one, with a national organisation delivering a single Scottish social security budget and administering a national set of eligibility criteria. It is important that all Scots, wherever they are in the country, are treated equally when they apply for help.

However, the agency's work should be embedded in local communities. At the very least, agency staff could be co-located with local services. Such services may also deliver front-line social security services on behalf of the national agency.

Given the impact that benefit changes can have on the services that local government delivers, there must be some formal link between Local Authorities and the national social security agency, at the levels of both strategy and delivery. The agency's executive board could have a representative from Local Authorities and consideration should be given to co-ordinating structures at local level along the lines of Health and Social Care Partnerships.

The Scottish Government should be aware that some people applying for or receiving social security payments may have to deal with four organisations: the DWP for reserved benefits; HMRC for tax credits; the new national social security agency for devolved benefits; and their Local Authority for the Scottish Welfare Fund (SWF). If the assessment of claims for SWF and Scottish national benefits continue to be separate, there should be a single

point of application. This is likely to be more difficult to achieve in the case of reserved and devolved benefits and tax credits, but the Scottish and UK governments should nonetheless explore it.

Staffing

Perhaps surprisingly, the consultation does not ask about the staffing of the new system. This should be based on a recognition that assessing need for social security is a specialist professional activity, and accordingly the Scottish Government will need to develop a strategy to recruit and train staff with sufficient knowledge to deliver Scottish benefits. Continuing the UK model of generalist staff making assessments according to rigid rules that cannot take into account individual circumstances would not be consistent with the person-centred approach that the Scottish Government aspires to.

Private sector contractors have been used to assess applications and ongoing eligibility for UK benefits. In the case of Atos Origin and the delivery of the Work Capability Assessment, and also Concentrix in relation to Tax Credits, the quality of decision-making has been very poor, resulting in significant hardship for people who had claims wrongly stopped. Assessment of Scottish benefits should be returned to the public and/or not-for-profit sectors.

Independent scrutiny

All aspects of the new system should be scrutinised by an independent body established in law. It should at least replicate the functions of the UK's

Social Security Advisory Committee (SSAC), with Scottish Ministers being obliged to refer all relevant primary and secondary legislation for comment. However, the Scottish Government should also consider creating for such a body a role in the setting of benefit rates, with Scottish Ministers required to consider recommendations from the advisory committee before making a final decision. This would provide some protection from benefits being frozen or cut for political or budgetary reasons, as has been the case with UK benefits in recent years.

The membership of the committee should be established by law, and should include representatives of relevant stakeholders such as Local Authorities, disabled people and organisations which provide social security advice. At least one member should have the duty to directly represent the views of social security applicants and recipients. The committee should have an independent secretariat.

Co-production

The ambition to co-produce a new social security system is laudable, and the consultation document rightly recognises the value of building the experience of social security applicants and recipients into the design and operation of the system. The user panels suggested by the consultation may well be a way of achieving this, but they should be ongoing, and not used merely to advise on the establishment of the new system and thereafter dissolved, as implied by the consultation document. Ministers should be required by law to consider the views expressed by user panels.

The Scottish Government should ensure that all applicants and recipients are able to express their views on how well the system works, and not just

those who are members of User Panels. Funding and support for an independent representative organisation may be a way of achieving this.

Co-production goes far beyond consultation, and implies a system that is directly shaped by the applicants and recipients of social security payments. This would be a radical new model of social security. Whilst this would be welcome, if this is not what is intended, then the Scottish Government should not commit to co-production.

Digital delivery

Whilst digital services may be appropriate for an increasing proportion of applicants as more people become computer-literate, the Scottish Government should examine the experience of Universal Credit's 'digital-by-default' approach when considering the role of digital services in the new Scottish system.

There are two main issues to consider here: firstly, applicants are less likely than the average citizen to have access to their own computer and internet connection, and so digital-by-default approaches may create barriers to accessing benefits¹.

Secondly, the Government should think through how an online-only approach is compatible with the ambition to create a person-centered system. Understanding an applicant's situation and needs, which may be multiple and complex, is likely to be better achieved through telephone and/or face-to-face discussions.

Open data

The transparency of the system and the commitment to co-production should be underpinned by a pledge to publish all non-personal data along open data principles. The UK government has

¹ Hodkinson, Turner & Essen (2016)

been highly secretive in the way it has run some aspects of the UK system, with some non-exempt information not being provided in response to Freedom of Information requests.

Providing Scottish benefits

How should benefits be accessed?

Facilitating access to benefits

The devolution of several UK social security payments and the empowering of the Scottish Parliament to create new ones should be taken as an opportunity to step-back and consider how we think about the process of applying for support. Making an application for an individual benefit is only one way a benefit might be accessed. Universal Basic Income, for example, would be paid automatically to all citizens, and a similar approach could be taken for some Scottish benefits. In the current system, Winter Fuel Payments are paid automatically to most recipients and do not require an application.

At the very least, the onus should not be on the potential recipient to apply for each individual Scottish benefit. When someone applies to the social security agency for a benefit, they should be considered for all Scottish social security payments and services. Such an approach would be consistent with the consultation document's draft aim to pay benefits to as many eligible people as possible.

The Scottish Government should develop strategies to raise awareness of benefit entitlements for the main groups that will be entitled to Scottish benefits. The Healthier, Wealthier Children (HWC) programme, which has been effective in raising awareness and increasing the number of successful claims for reserved benefits, and which the Scottish Government has committed to roll-out nationally as a result of a call to do so from Scottish Greens, could be adapted for other groups. HWC could also be used to

raise awareness of devolved benefits such as the proposed Best Start Maternity Grant.

Passported benefits

The 'passporting' system links the eligibility for benefits together, so that, for example, people claiming support for low income can also get access to a range of other benefits and grants. Whilst this is welcome in that it makes accessing some types of support easier, it has some disadvantages when used exclusively to determine eligibility. If someone chooses not to claim a benefit, they may not qualify for a whole range of other types of support.

Further, some benefits being devolved are currently passported from reserved benefits. This could result in changes to UK benefits reducing eligibility for Scottish benefits. Whilst passporting should continue, eligibility for Scottish benefits should not rely exclusively on the passporting system.

The Scottish Government should also review all passporting rules for the benefits being devolved, and examine whether there are opportunities for expanding automatic eligibility. For example, recipients of Disability Living Allowance (DLA) and Personal Independence Payment (PIP) can get passported access to the Motability and Blue Badge schemes, but this is not the case for Attendance Allowance, which has a very similar purpose to DLA and PIP.

Regarding passporting between reserved and devolved benefits, the Scottish Government should avoid this where possible. In the case of providing support for people on low incomes,

the Scottish government should use proxies for low income that are not dependent on UK benefits and Tax Credits.

Medical assessments

Many of the benefits being devolved, such as DLA and PIP, currently require a medical assessment. These have become increasingly frequent, even those for long-term and incurable conditions. They can be a considerable cause of stress for claimants, and in some cases result in a worsening of their health condition or disability. We believe that changes to the assessment regime for these benefits has been driven by the need to make savings, and this has come at the price of genuine need not being met.

We support a return to long-term awards for conditions that are unlikely to improve. In all other cases, assessments should where possible be made on the basis of written evidence and/or telephone interviews, with face-to-face interviews, which can be stressful for claimants and which are sometimes conducted at distances far from the applicant's home, only being used as a last resort, or should the applicant request one.

Before devolution of disability benefits commences, a full review of disability benefit assessments should be conducted. In particular, an independent review should address how to reintroduce some flexibility into the multi-faceted and sometimes

fluctuating nature of the health conditions and disabilities that applicants experience.

Applicants should never be out-of-pocket for applying for benefits. Travel expenses to attend assessments and charges for medical evidence should be fully reimbursed.

Flexibilities

The consultation document asks at several points about giving recipients choices in the way they receive benefit. This is welcome. Priority should be to activate powers over Universal Credit to give recipients the option of having their benefit paid more frequently than the current default monthly payments; their housing element paid direct to landlords, whether they rent in the social or private sector; and split payments made, rather than a single household payment made to one person. Paying only to one person can compromise women's financial independence and enable financial abuse².

The consultation also asks whether in-kind support may be offered in lieu of payments. Whilst the primary focus of the social security system should always be providing support for income, there may well be a role for providing in-kind support, especially if the purchasing power of government means that the in-kind support is of a greater value than the benefit forgone.

How should benefits be calculated?

Benefit uprating

Whilst the Scottish Government's points-based assessment system, which does not take into account the commitment to maintaining the value of disability benefits by uprating with

inflation is very welcome, it is unclear why such a pledge has been only for disability benefits, and not all benefits being devolved. The Scottish Government should strongly consider a general uprating system which

² Women's Aid (2015)

encompasses all Scottish benefits, including those which are currently not updated with inflation.

From the 2011/12 financial year onwards, most benefits have been updated using the Consumer Prices Index of inflation (CPI), replacing updating by the Retail Prices Index (RPI)³. This was a deliberate move intended to cause the real terms value of benefits to fall over time, as RPI

usually gives a higher rate of inflation than CPI.

Another issue with updating using general measures of inflation is that it assumes the consumption patterns of benefit recipients are the same as the average consumer, which may not always be the case⁴. For both of these reasons, the Scottish Government should review how benefits should be updated, and in particular revisit the decision to switch to CPI.

How should top-up and new benefit powers be used?

The consultation neglects the new powers to create new benefits and top-up reserved benefits. Whilst it does mention the Scottish Government's pledge to consider the Scottish Green Party's proposal to create a new Young Carer Benefit, top-up powers are not asked about.

The Scottish Government could, for example, achieve progress towards

meeting proposed Child Poverty targets by topping-up Child Benefit. More radically, it could create a minimum income guarantee for any Scot receiving benefits by using the power to top-up reserved benefits to a minimum level.

How these powers could be used should be consulted on as soon as possible.

³ House of Commons Library (2011)

⁴ Reform (2015)

Administrative justice

How can we ensure that decisions are made fairly and applicants have access to a robust appeals procedure?

Ensuring evidence-based decisionmaking

The consultation document asks about how standards of decisionmaking should be scrutinised. This is a very important aspect of how the new system will work. Decisions such as changing disability benefit assessments which have resulted in hugely negative outcomes have often been made on minimal evidence and in the face of widespread contrary advice from experts.

If the Scottish Government is serious about establishing an evidence-based social security system, then it must make legislative provision for Ministers to have a strong evidence-base for decisions, and for this to be independently scrutinised. Provision for the independent scrutiny of the way Scottish Ministers and the social security agency reach decisions should certainly be made, and this may be within the remit of the Scottish version of SSAC, or a separate body.

In terms of benefit assessment, the burden of proof for adverse benefit decisions should be higher and grounds narrower. Currently, DWP can and does sanction and refuse support for the most trivial of reasons and with minimal evidence, resulting in an increased number of appeals and a back-logged appeals system.

Assessment rules should be written in plain English and made easily accessible.

Independent complaints handling

We welcome the proposed Complaints Handling Service (CHS), but encourage

the Scottish Government to consider more thoroughly how this would sit within the social security agency. Whilst operating the CHS within the agency may be necessary for the purposes of complaints staff having access to the information needed, there should be minimal opportunity for Ministers to influence the complaints process. In addition, there should be regular outside audits of complaints.

The Mandatory Reconsideration procedure for internal reviews should be scrapped when benefits are devolved. Recipients have always had the right to request an internal review, and so Mandatory Reconsideration has clearly been an unnecessary extra stage in the process of challenging a decision, designed to discourage claimants from appealing⁵. The fact that there is no time limit for a decision to be made is not appropriate. Whilst applicants and claimants should be able to request a review of Scottish benefits decisions, this should not be mandatory in order to take their appeal to tribunal.

Access to independent advice and advocacy

Welfare rights advice services play an important role in delivering social security justice, but they have been overwhelmed by recent UK welfare reforms. The Scottish Government should establish the principle that government decisions have a direct impact on the work of welfare rights organisations and accordingly provide them with appropriate public funding. They provide what is a de facto public service, but are not sufficiently

⁵ Citizens Advice Bureau (2014)

supported through public funds to do that.

The charter of social security rights should provide a right to independent advice and advocacy.

Managing overpayments

Whilst acceptable as a general principle, the Scottish Government's plan to claw back benefit overpayments in the case of an error made by the recipient is more problematic than the consultation document admits. Firstly, it is not made clear how a mistake is to be defined. In the case of benefits paid for reasons of low income, estimating household

income can be difficult, especially for those working highly variable hours. For this reason, incorrectly estimating income should not necessarily be defined as an error justifying recovery of resulting overpayments.

It is also disappointing that the consultation document does not envisage situations in which repayment of incorrectly-paid benefits may be waived. For recipients on low incomes, especially those with children, the negative impact of seeking to recover incorrect payments is unlikely to be justified by what may be very small financial return to the public purse.

References & acknowledgements

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Acknowledgements

Dr Dan Heap contributed to this consultation response.

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