

Scottish National Action Plan for Human Rights, Health and Social Care Action Group
Response: A New Future for Social Security - Consultation on Social Security in Scotland
October 2016



The Health and Social Care Action Group of the Scottish National Action Plan for Human Rights welcomes the opportunity to respond to the Scottish Government consultation on 'A New Future for Social Security - Consultation on Social Security in Scotland'¹.

The Scottish National Action Plan for Human Rights (SNAP) was launched in December 2013 after extensive research found that in Scotland there are unacceptable and often wide gaps between national policy and people's daily experiences of their rights. SNAP aims to help develop strong rights-based policy and strategy, as well as support the implementation of Human Rights Based Approaches in practice.

Human Rights

Human rights are a set of non-political, binding, international standards. They are rights inherent to all human beings, without discrimination based on nationality, race, gender, religion, disability or any other status. A number of other principles underpin human rights, including participation, accountability and transparency.

In Scotland, human rights are protected by the Human Rights Act 1998² and given effect through the Scotland Act 1998³. This empowers Scottish Ministers to observe and implement the UK's international human rights obligations and places a duty on Scottish Ministers, Parliament and public bodies to comply with the European Convention on Human Rights.

The United Kingdom is also party to international treaties like the International Covenant on Economic, Social and Cultural Rights⁴ and the UN Convention on the Rights of Persons with Disabilities⁵. This places an obligation on Governments to take pro-active, positive steps to facilitate the enjoyment of rights⁶.

¹ <https://consult.scotland.gov.uk/social-security/social-security-in-scotland>

² <http://www.legislation.gov.uk/ukpga/1998/42/contents>

³ <http://www.legislation.gov.uk/ukpga/1998/46/contents>

⁴ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

⁵ <http://www.un.org/disabilities/convention/conventionfull.shtml>

⁶ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>

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We welcome the First Minister's recent commitment to "do even more, even better on incorporating human rights in Scotland"⁷ and we welcome the First Minister's announcement that the Scottish Government commits to working with civic Scotland to develop social and economic rights for all⁸. We suggest that the new social security arrangements for Scotland are one such opportunity to progress the realisation of international human rights in Scotland.

The Right to Health and right to social security

Recognising both the right to the highest attainable standard of health (the right to health) and right to social security supports the Scottish Government's aspirations for a healthier and fairer Scotland. Both the right to health and the right to social security are economic and social rights. We believe the social security powers being devolved to Scotland provides a substantial opportunity to progress this agenda.

The right to health is not concerned with health care alone, but also with access to the social needed for health and wellbeing (health and social care, good quality housing, good and fair work, food, income, and so on). It is also interrelated with rights such as an adequate standard of living, independent living, social security, employment, education and housing⁹.

There are specialised human rights instruments and guidance that provide detailed standards and commentary regarding the State's obligations to respect, protect and fulfil the right to Social Security, such as the Council of Europe's Code of Social Security, Art. 12 of the European Social Charter, Art. 34 of the EU Charter of Fundamental Rights and General Comment 19 of the UN Committee on Economic, Social and Cultural Rights.

Fixing the principles in legislation for social security in Scotland

The consultation paper sets out principles and intended outcomes for Scottish social security. We very much welcome the stated principles that the social security system aims to provide dignity and respect through openness, fairness and impartiality for all. We suggest the paper could be strengthened with a plan for how the realisation of the implementation of these would be monitored in practice, including scrutiny, support and validation.

We welcome the close alignment of these principles with the human rights based 'PANEL'¹⁰ principles, such as increased sense of control and empowerment. We recommend that the final principles and outcomes could explicitly incorporate all

⁷ <http://news.scotland.gov.uk/Speeches-Briefings/SNAP-Human-Rights-Innovation-Forum-2040.aspx>

⁸ <http://news.scotland.gov.uk/Speeches-Briefings/Priorities-speech-Taking-Scotland-Forward-24f8.aspx>

⁹ <http://www.ohchr.org/EN/Issues/ESCR/Pages/Health.aspx>

¹⁰ <http://www.scottishhumanrights.com/careaboutrights/whatisahumanrightsbasedapproach>

'PANEL' principles as they offer an increasingly recognised approach to putting rights based approaches into practice. Below are our suggestions of what these principles could mean if applied in practice to the design of the social security payment system:

- **Participation** – recipients of the social security payments system have a voice in both the design and delivery of the system; a recognised outcome of social security payments is that they support people to participate in society and lead an ordinary life.
- **Accountability** – Scottish Government sets out clear expectations of what is expected and by whom in terms of the outcomes for social security set out in the paper; organisations are held accountable for these outcomes.
- **Non-discrimination** – no one is excluded from accessing social security payments who is entitled to them; the system for social security is designed and delivered in a way that actively reduces the potential negative impacts of stigma on social security recipients.
- **Empowerment** – people have full access to the information and systems they need to access their social security payments; there is an open and full engagement campaign that utilises diverse communication approaches and ensures that citizens know their rights.
- **Legality** – all decisions answer to human rights legal standards.

The consultation paper asks whether fixing the social security principles in legislation or in a charter is preferred. Legislation is recommended as this is more likely to make the principles enforceable, unlike if they were set out in a charter alone. However in addition to legislation, we suggest the Scottish Government publishes a document communicating rights and responsibilities, so that citizens know their rights, and are empowered to exercise them when interacting with the social security system. Another rationale for not simply enacting legislation alone is that this may result in the human rights principles only adding narrative, and not stipulating detail as to how and who should operationalise these principles.

Outcomes for social security in Scotland

We welcome the outcome published under the heading of 'alongside the health and social care system', that states "social security has a part to play in enabling wellbeing, and in particular, to enable people to live healthier lives in their communities". We suggest it could be strengthened even further with a more explicit reference to a rights-based approach, for example: crucial to protecting wellbeing and avoiding a widening of inequalities.

Social security has a part to play in enabling wellbeing, and in particular, to enable people to fulfil their right to the highest attainable standard of physical and mental health and play a full part in society.

We support other long-term outcomes in the consultation paper, which appear to promote many of the 'PANEL' principles outlined above. For example, we particularly value the outcome that benefits and recipients are viewed positively by all Scottish citizens, as this should result in benefit recipients encountering reduced discrimination and stigma.

One outcome states, "benefits are paid at the right time and at the right amount to make a positive difference to recipients". This is welcome, but we would also like to see a clear articulation on the criteria that will be used to determine "the right amount" of benefit needed to result in a positive difference for benefit recipients. As part of further consultation, the Scottish Government could consider setting out proposed amounts, thresholds and entitlement criteria for all benefits transitioning to Scotland.

In the consultation paper, details are included for some benefits such as 'Best Start', but not for others, for example disability benefits. To promote economic, social and cultural rights, the right to participation, and to accessible information, we urge the Scottish Government to communicate in accessible ways, changes between all existing benefits and proposed new arrangements.

Accessible information must be freely available online and through third sector organisations, providers of health and social care services, local authorities, the Scottish Government and other bodies with connection to disabled people, people with long term conditions and unpaid carers. Greater access to accessible information could have the impact of empowering greater numbers of people to participate in consultation on the impact of the newly proposed arrangements and the impact on their current entitlements. Information being accessible in a range of formats given the potential range of additional support needs experienced by many recipients of social security. This should extend to interpreting and sensory support services being available both on line and in service settings.

We welcome the announcement that as part of on-going consultation the Scottish Government intend to include 'experience groups'. We urge the Scottish Government to enable free, accessible and meaningful engagement with affected citizens, beyond the period of this consultation, and that engagement opportunities exist regarding forthcoming regulations guidance and practice once the system is operational.

Social security assessments

The consultation paper discusses potentially using sources such as medical information to inform the process of determining eligibility for social security. It does not describe what this is likely to involve.

In designing a new approach to determining eligibility for the Scottish social security system, we recommend the Scottish Government creates an eligibility process that embodies a human rights based approach (e.g. a PANEL approach) and draws on learning from the lived experience of assessments¹¹ for other benefits, including evidence gathered on assessments for Personal Independence Payments (PIP) and Employment Support Allowance (ESA) through the Welfare Advocacy Support Project¹².

We strongly recommend that decisions are taken only by medical professionals with specific knowledge related to the applicant's impairment or condition, and also that these professionals are skilled and knowledgeable about impairments and disabilities that are largely social nature, for example, impairments related to Aspergers Syndrome.

Access to social security

The consultation paper includes an outcome that the Scottish social security system is 'accessible, user-friendly and simple to access', and discusses the potential for providing various forms of support with applications. We welcome this outcome as many people need support to empower them to access the existing social security system, in particular with regard to applications.

Routine enquiry about finance in NHS primary and secondary care settings has proven effective for income maximisation.¹³ We suggest there is much to learn from this approach, for example in co-locating of social security services and primary care and the further evaluation and subsequent roll out of practice based link workers or embedded workers. We would encourage the new social security system to support recipients by providing both online and face-to-face access, as well as opportunities for opportunity for home visit and paper based application.

Sources of independent advocacy and the right to access this support is essential for tribunals in particular, and availability of this support, should be promoted. With respect to appeals and tribunals we would encourage that decisions include consideration of the claimant's views alongside that of medical professionals.

Disability benefits

¹¹ <http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/76336.aspx>

¹² <http://www.alliance-scotland.org.uk/what-we-do/our-work/policy/welfare-advocacy-support-project/>

¹³ <http://www.maternal-and-early-years.org.uk/topic/background/child-poverty>

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The consultation includes questions about existing disability benefits and proposes some potential changes. One proposal is 'automatic entitlement' to disability benefits for people with certain impairments or circumstances. This may be beneficial in reducing administration and expediting access to benefits for disabled people whose condition is not likely to change, for example those with autism; or for people whose condition is expected to deteriorate, such as those who live with degenerative long term conditions such as Motor Neurone Disease (MND). While there may be advantages to automatic entitlement, we suggest the Scottish Government bases eligibility on a human rights based approach with entitlement linked to the impact that the disability has on the individual's ability to enjoy their rights. That said, following determination of eligibility, for disabled people whose conditions are unlikely to alter, we recommend that repeated eligibility assessments are unnecessary, add to administrative costs and may conflict with the stated aim of social security treating individuals with dignity and respect.

The consultation paper describes current entitlement rules which state that payment of disability benefit ceases after a certain length of time for older people in hospital or care homes. We urge the Scottish Government to review the impact these entitlement rules have on older people in hospital or care. We suggest that any review considers the implications that these rules have for promoting equality, participation and on empowering older people to access their right to health and social protection, and whether removing disability benefit payments may contribute to older people experiencing delayed discharge from hospital services.

Carer's Allowance

The consultation paper sets out the current entitlement rules for people receiving Carer's Allowance. We welcome the statement included in the consultation paper that "being a carer should not be a barrier to education and training, employment or personal development". Again, we strongly recommend an explicit human rights based approach to designing a benefit that promotes the human rights of carers, for example by removing the current restriction on their earnings and enabling them to realise their right to attend full-time education.

Contact

We are happy to discuss any aspect of this response.

Scottish National Action Plan for Human Rights, Action Group on Health and Social Care c/o:
Cath Denholm, Director of Strategy, NHS Health Scotland

Lucy Mulvagh, Director of Policy and Communications, Health and Social Care Alliance Scotland (the ALLIANCE)

<http://www.healthandsocialcare-snap.com/>

About SNAP

The Scottish National Action Plan for Human Rights (SNAP)¹⁴ is a roadmap towards a Scotland where everyone can live with human dignity and where international human rights are realised in everyday life. It was launched in December 2013 after extensive research found that, in Scotland, there are unacceptable and often wide gaps between national policy and people's daily experiences of their rights¹⁵.

SNAP promotes use of the human rights-based 'PANEL' principles: Participation; Accountability; Non-discrimination; Empowerment; and Legality. Its role is to help promote, support and develop strong rights-based policy and strategy and the implementation of rights in practice.

Action Groups have been established to support the ambitions set out in SNAP, including Better Culture; Better World; Standard of Living; Justice and Safety; and the Health and Social Care Action Group.

About the Health and Social Care Action Group

The SNAP Health and Social Care Action Group (HSCAG)¹⁶ brings together members representing Scottish citizens, the NHS, Local Authorities, Academia, the Third Sector and the Scottish Human Rights Commission. The members form a unique co-production partnership that works across sectors and builds on the strengths and networks each one brings. Our role is to help identify areas in health and social care that can be strengthened by human rights and a human rights-based approach.

¹⁴ <http://www.scottishhumanrights.com/actionplan>

¹⁵ <http://www.scottishhumanrights.com/actionplan/evidence>

¹⁶ <http://www.healthandsocialcare-snap.com/>