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**SCOTTISH HUMAN RIGHTS COMMISSION**

**SOCIAL SECURITY (SCOTLAND) BILL STAGE 2 BRIEFING**

**AMENDMENTS - THE RIGHT TO SOCIAL SECURITY**

**Summary of amendments**

1. **Amendments to the Social Security (Scotland) Bill (the Bill) relating to the right to social security are put forward by the Scottish Human Rights Commission (SHRC). The amendments are supported by a number of organisations.**[[1]](#footnote-1)
2. **The amendments require the Scottish Ministers and Scottish public authorities to have due regard to the right to social security when:**
   * **exercising functions under the Bill;**
   * **exercising ‘welfare benefits and employment support’ powers devolved under Part 3 of the Scotland Act 2016.**
3. **The amendments further require courts and tribunals to have due regard to the right to social security when:**
   * **interpreting provisions of the Bill;**
   * **interpreting the scope of other Acts of the Scottish Parliament made under Part 3 of the Scotland Act 2016; or**
   * **when asked to consider a question relating to the exercise of the ‘due regard’ duty of Scottish Ministers and Scottish public authorities.**
4. **The right to social security is to be interpreted consistently with the International Covenant on Economic, Social and Cultural Rights (ICESCR).**
5. **The amendments set out detail on how the right to social security should be interpreted by Scottish Ministers, Scottish public authorities, and courts and tribunals. The interpretation provisions set out that the General Comments of the Committee on Economic, Social and Cultural Rights (CESCR Committee) and concluding observations of the CESCR Committee in respect of the United Kingdom should be taken account of in interpreting the right. General Comments are the authoritative view of the Committee which oversees a particular human rights treaty as to the substance of the rights. Concluding observations are a UN Committee’s assessment of a State’s compliance with a particular treaty and recommendations for better observance.**
6. **Finally, the amendments require information about the duty to have due regard to be included in the Scottish Ministers’ annual report to the Scottish Parliament.**

**Why are the amendments necessary?**

1. **These amendments advance the Scottish Government’s objective to ensure Scotland’s social security system is world leading in taking a human rights based approach to social security.**
2. **The Scottish Government’s response to the Social Security Committee’s Stage 1 report acknowledges that Scottish Ministers have a duty to comply with human rights treaties such as ICESCR**[[2]](#footnote-2)**, yet the Bill does not currently place any duty on them to comply with the right to social security, as defined in international human rights law, or to have regard to it. The Scottish Government’s response also acknowledges that international human rights are substantive and real and reaffirms their commitment to giving effect to these rights.**
3. **It is important to be clear that the human right to social security is not principally protected by the ECHR. Full compliance with the ECHR will not, on its own, deliver protection of the right to social security. The right to social security is found in a number of international human rights instruments**[[3]](#footnote-3)**, most notably in Article 9 of ICESCR. The detail of the right to social security is provided in** [General Comment 19, 2007](http://www.refworld.org/docid/47b17b5b39c.html)**. General Comment 19 provides that social security must be available, adequate and accessible. Among other things, it addresses issues of coverage, eligibility, participation and information and physical access. The amendments, in obliging Scottish Ministers and public authorities (for example the new Scottish social security agency) to have due regard to the right to social security, would ensure that the content of the right features as a driver for good policy and decision making, building a system based on human rights. The amendments also introduce a vital means of holding the Scottish Ministers and Scottish social security agency to account for their decision making processes.**
4. **The amendments are clear that, in interpreting the right to social security, General Comments and concluding observations of the CESCR Committee must be taken into account. This gives meaning to the progressive policy intentions set out by the Scottish Government on the Bill’s introduction to Parliament. In the policy memorandum accompanying the Bill, the Scottish Government made explicit reference to the work of the CESCR Committee and General Comments. The Scottish Government went as far as to say:**

**“*If the Scottish Government’s policy objective – for its proposal to adopt and embed its social security principles in the Bill – can be summarised in a single sentence then it is this: “That no future Scottish Government is criticised by the UN, or an equivalent organisation, for failing to guarantee a right to social security, as laid out in General Comment 19 of the UN Committee on Economic, Social and Cultural Rights.”****[[4]](#footnote-4)*

1. **Real progress has been made in the Scottish Government’s Stage 2 amendments in relation to accountability mechanisms, for example through the introduction of a Scottish Commission on Social Security whose functions are tied directly to international human rights standards. The proposed ability to bring complaints for alleged breaches of the Charter is also positive. That said, the Bill stops short of directly linking the conduct of Scottish Ministers and Scottish public authorities to the content of the right to social security. This leaves a clear accountability gap. It is this gap that the amendments seek to address.**

**Further information**

1. For further information, please contact Eleanor Deeming, SHRC Legal Officer on [Eleanor.deeming@scottishhumanrights.com](mailto:Eleanor.deeming@scottishhumanrights.com)

1. Child Poverty Action Group Scotland; Disability Agenda Scotland; Human Rights Consortium Scotland; One Parent Families Scotland; Scottish Campaign on Welfare Reform (SCoWR); Scottish Independent Advocacy Alliance; Scottish Refugee Council; Scottish Trades Union Congress; Scottish Women’s Aid; Shelter Scotland; The Health and Social Care Alliance Scotland (the ALLIANCE); Together (Scottish Alliance for Children’s Rights). [↑](#footnote-ref-1)
2. At para. 47. [↑](#footnote-ref-2)
3. See Scottish Human Rights Commission response to the Scottish Government’s consultation on A New Future for Social Security, October 2016, at pgs. 9-13. [↑](#footnote-ref-3)
4. Social Security (Scotland) Bill, Policy Memorandum, at para. 49. [↑](#footnote-ref-4)