

A new future for social security
Consultation on social security in Scotland
Response from the Low Incomes Tax Reform Group (LITRG)

1 About Us

- 1.1 The LITRG is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.
- 1.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help. We are particularly interested in the potential interactions between the tax and welfare systems.
- 1.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.
- 1.4 In recent years LITRG has engaged with the Scottish Government concerning the setting up of Revenue Scotland, including the development of the Revenue Scotland website, and has responded to consultations on the Revenue Scotland and Tax Powers Act 2014. We have been involved in discussions on issues relating to the Scottish Rate of Income Tax and have

given evidence to the Finance Committee of the Scottish Parliament on tax management issues relating to low income individuals. In August 2015 we submitted evidence to the Scottish Parliament Welfare Reform Committee inquiry on the future delivery of social security in Scotland.

1.5 Much of this consultation is specifically seeking views on how the new welfare powers can be used to improve or change certain parts of the existing benefits system as well as seeking comment on new benefits and potential top-ups of existing benefits. While we are unable to offer views on what the changes should be, we would like to highlight some broad principles that we think need to be addressed.

1.6 Our respondent information form is attached at the end of this response.

2 Section 1 – Principles

2.1 *A charter or legislation?*

2.1.1 We think that the priority should be ensuring that there is legislative backing for whatever approach is taken. We think that a combination of the two approaches suggested in the consultation document – a claimant charter (with statutory backing) and enshrining principles in legislation would be the best solution and we would strongly urge this approach.

2.1.2 We support the approach used in the Welfare Funds (Scotland) Act 2015 which placed in legislation the requirement for Local Authorities to take reasonable steps to ensure that those applying for assistance are treated with respect and that their dignity is preserved.

2.1.3 Such an approach could be used when primary social security legislation is developed to ensure that the principles are included so that they must be considered when any secondary legislation is produced and when any discretionary powers under the Act is exercised. It would then be possible for any secondary legislation to have a test attached as part of the drafting process to ensure that each of the principles have been considered. The primary act should make it a requirement that this is published.

2.1.4 However, while taking this method would ensure that legislation is developed and key decisions taken in line with the principles, it does not directly empower claimants (with the exception perhaps of the very few who could fund a judicial review) and the principles are very high level. We therefore strongly suggest that a social security claimant charter should be developed which would be more detailed and more easily accessible for claimants and understood.

2.1.5 We worked closely with Revenue Scotland when they developed their Charter of Standards and Values¹ and we think their Charter provides a very good model to follow.

¹ <https://www.revenue.scot/about-us/charter-standards-and-values>

- 2.1.6 The most important feature of the Revenue Scotland Charter is that it has statutory backing, which we think is crucial and has been approved by the Scottish Parliament. The statutory basis is important in making sure that the Charter is effective and enduring, since it provides clear authority for its existence and retention.
- 2.1.7 A Charter should be an overarching safeguard for the claimant, and should ensure fair treatment for all. The statutory basis is a key aspect of strengthening the Charter as a safeguard for the taxpayer, since it ensures that the Charter cannot simply be removed or side-lined if policy changes.
- 2.1.8 A Charter is fundamentally for claimants, who should be able to rely on the terms of a Charter. It is therefore crucial that the Charter is communicated and widely publicised. For example, Revenue Scotland have agreed to draw the Charter to the attention of all taxpayers as a matter of course in all correspondence and it will be included in staff guidance.
- 2.1.9 It is essential that any Charter is capable of being enforced. This means that the Charter itself should include the right of redress if the Charter principles are not upheld by the body responsible. In the Revenue Scotland Charter this was dealt with by the inclusion of references to Revenue Scotland's complaint procedure and the Scottish Public Services Ombudsman as well as an explicit statement that the Charter can be referred to in all tax dealings, including tribunal and court proceedings.
- 2.1.10 The benefit of a claimant charter is that it can flesh out more detail into the overriding principles. However, balanced against this is the need for it to be clear, concise and usable and it should set out what the claimant can expect of the governing body, what the governing body can expect of the claimant and how they will hold themselves accountable and can be held to account by others.
- 2.1.11 The duty of following the Charter should sit with the Social Security Agency, in this instance, who would be delivering the benefits in Scotland. It is important that if any operational delivery is passed on to third parties (whether private or public sector) that they should also adhere to the Charter.
- 2.1.12 Careful drafting of the Charter will be crucial and while we think that the Revenue Scotland Charter provides a good starting point, it will be important to consult widely on the detail. We would also suggest a Charter advisory group be formed to help establish the Charter and also monitor its ongoing effectiveness.

2.2 ***Outcomes and the user experience***

- 2.2.1 We agree with the recommendation of the Scottish Parliament's Welfare Reform Committee,¹ that all social security communications should be clear, accessible and written

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http://www.parliament.scot/S4_Welfare_Reform_Committee/General%20Documents/6th_Report_Future_Delivery_of_Social_Security_in_Scotland.pdf

in plain English. We also agree that individuals should have the option to choose the method of communication that they are most comfortable with.

- 2.2.2 There is currently a huge drive to develop digital services and encourage people to use them in both the tax and social security systems. Potential benefits of digital can be easily identified, however we remain seriously concerned that the needs of low income and other vulnerable taxpayers and benefit claimants may be overlooked.
- 2.2.3 Many people do not have access to the internet.¹ Others lack the skills needed to use digital means, perhaps due to disability or age. Some people are concerned about security and others about the potentially significant costs they may incur.
- 2.2.4 Security is a particular area of concern. The more digital services that are offered by Government, the more opportunities for ‘copycat’ website and private companies to entice vulnerable claimants to use their services (in the belief that they are official Government services). Other opportunities will exist to exploit vulnerable claimants. There is also a very real concern about how data is being held by Government and for what purposes it is used when collected.
- 2.2.5 While digital services may be welcomed by many benefit claimants, it is crucial that adequate alternatives are made available so that those who cannot interact digitally get an equally good service as those who can and also that no digital service is mandated. This should be a core principle when the new system in Scotland is set up.
- 2.2.6 We note in Section 3 (operational delivery) that further questions have been asked about digital applications and the provision of a secure email account. Claimants often contact us asking for an email address for HMRC and the Department for Work and Pensions (DWP) and we would encourage the use of email as a form of communication for claims providing that the infrastructure is in place to deal with claims quickly – providing that the process to get a secure account is not complex and difficult.
- 2.2.7 We are also supportive of the use of online accounts to check claims and the use of features such as instant messaging – allowing users to interact with staff. However, this should all be set against the point in paragraph 2.2.5 that other provision needs to be available for those who are not able to use digital services for whatever reason.
- 2.2.8 Another area of user experience that is important is the provision of information. We have noticed a recent trend with HMRC of removing contact phone numbers on letters and reducing the information on letters in order to drive people to their digital accounts. We are concerned about this shift and the potential increase in telephone contact that can result from such an approach. We urge the Scottish Government not to adopt a similar practice.

¹ See for example this recent report from Citizens Advice Scotland – a third of CAB clients are digitally excluded <http://www.cas.org.uk/publications/bridging-digital-divide>

2.3 ***Delivering social security in Scotland***

- 2.3.1 There are many organisations in a much better position than us to provide detailed comments on the proposals in relation to delivery.
- 2.3.2 We would like to highlight some general concerns around potential confusion for claimants about who to turn to for guidance, support and advice when benefit delivery is split between the UK Government and Scottish Government.
- 2.3.3 Any changes must be easy to understand; obligations on the claimant should be concise and clear. It needs to be clear which authority they need to deal with for a particular tax or benefit. Currently DWP deal with the benefits that are to be devolved while HMRC deal with income tax, tax credits and child benefit. There is often a lack of joined-up working and communication between the two departments and as benefits are devolved there is a risk of similar problems. This is especially the case in relation to interactions and we suggest thought is given to joined-up working and communication behind the scenes such that the claimant only has one point of contact. Furthermore, some taxpayers in Scotland will have heard of Revenue Scotland, which administers only the devolved taxes.¹
- 2.3.4 It is also important that claimants have certainty about their position. We often encounter people who want to understand how a life event or change will affect their position – it is important that people have access to information, guidance and tools that will provide this information. This is even more important if there are new or different entitlements in Scotland compared to the rest of the UK. A crucial part of this includes ensuring people are aware of their entitlements in the first place.
- 2.3.5 Thought needs to be given about how these vital claimant needs will be met and how questions around entitlement and the resolution of issues involving UK benefits and Scottish benefits will be dealt with. If such provision is not adequate the user experience is like to be extremely negative.

Delivery via third parties

- 2.3.6 Any operational delivery that is delegated to other organisations, whether private, public or voluntary sector, does not alter the fact that the Scottish Government/Scottish Social Security Agency is ultimately responsible for this delivery. However, we would urge careful consideration around the use of third parties, particularly private companies in view of the recent problems highlighted by HMRC's contract with Concentrix (who were contracted to carry out tax credit compliance investigations) which was on a payment results basis. They have very different drivers which may not be conducive to them providing delivery of social security that places the claimant at the heart.

¹ With effect from 1 April 2015 Revenue Scotland administers the devolved taxes, Land and Buildings Transaction Tax and Scottish Landfill Tax.

- 2.3.7 If third parties are used, there should be a process of performance review and these organisations must be held to the same safeguards, quality control and charter commitments as the Social Security Agency.

Equality issues

- 2.3.8 We welcome the high aspirations the Scottish Government have with regards to equality and we strongly support the Scottish Government in starting their planning early here– too often in our work, we see public bodies carrying out equality impact assessments at the very end of the process, which can not only lead to significant problems but also give the impression that the equality impact assessment is just a paper exercise.

- 2.3.9 We would like to particularly commend the Scottish Government on producing an easy to read version of the main consultation document as this will hopefully make it more comprehensible to the lay reader. Notwithstanding this version however, the consultation is very long and in places, complex and we wonder if it could have been split into more manageable chunks to encourage more meaningful comment from stakeholders.

- 2.3.10 In order for the Scottish Government to turn its partial EQIA into a full EQIA of good quality we make the following recommendations:

- The Scottish Government should not just rely on written responses to this consultation and should use different data collection techniques to inform the equality impact assessment for example, conduct surveys, hold focus groups and arrange face to face meetings with representatives with protected characteristics who are likely to be affected.
- In light of the devolved benefits being mainly centered around illness and disability, the Scottish Government should work with other authorities and draw on their knowledge and research, for example health and social services, as this will help ensure they access the optimum information.
- To the extent any initial findings point to real concerns regarding the proposals for some equality groups, the Scottish Government should be prepared to consult more widely in order to understand the impacts further, explore options, draw conclusions and make recommendations.

- 2.3.11 More generally, we would urge the Scottish Government to ensure:

- that while the focus of the equality impact assessment process is assessing and recording the likely equality impact, this is not the end of the story. The consideration of mitigating measures and alternative policies should also be at the heart of the process.
- that the process of undertaking an equality impact assessment, should not be looked on as an end in itself. Assessing and monitoring compliance with equality law should be on-going, and should be regularly revisited at various stages. If the monitoring

and analysis of results over a certain period show that there is a greater adverse impact than predicted (or, indeed, if opportunities arise which would allow for greater equality of opportunity to be promoted), the Scottish Government must ensure that their plans are revised to achieve better outcomes for the relevant equality groups.

- that the commitment to equality demonstrated at the top level, is reflected in how services are managed and delivered at the front line.
- that all their decision-making around the equality impact assessment is documented to make sure the Equality Act duties are met. In *R (Kaur and Shah) v London Borough of Ealing*¹ it was held that that ‘The process of assessments should be recorded ... records contribute to transparency. They serve to demonstrate that a genuine assessment has been carried out at a formative stage.’

2.3.12 We fully agree that there should be a requirement for public bodies to take account of socio-economic disadvantage in their decision-making. It often thought that those on low incomes have simple and straightforward financial affairs, but this is incorrect. As a general rule it is probably correct to say that the lower a person’s income:

- the more difficult it is to navigate their way around the intricacies of the tax and various rates and benefits, let alone the interactions between the two
- the more government departments one has to deal with, whether central government or local authority – all with different rules practices and cultures
- the less accessible those departments, or any form of independent advice is.

2.3.13 As we say in para 2.3, the current proposals will potentially introduce new complexities to those on low incomes in Scotland. Many devolved benefit claimants will also be claiming reserved benefits and/or be taxpayers. They will therefore be dealing with the DWP and HMRC already. They will also deal with their local council concerning Council Tax. All these benefits and taxes interact. Having to deal with many different agencies is likely to cause confusion and make life difficult for those concerned.

2.3.14 The best form of mitigation here will be cohesive, comprehensive and accurate official guidance as to the roles of the different agencies and interactions between them – both online and in paper form or the benefit of those without access to the internet. It should also be clear as to how and where people can access this information, given the array of Government websites involved. LITRG would be very willing to help develop public guidance materials and of course, share our expertise regarding those on low incomes further as required.

¹ [2008] EWHC 2026 (Admin)

- 2.3.15 We also suggest that processes be put in place so that there is a single port of call for queries, which can effectively deal with any interactions for the claimant/taxpayer behind the scenes, so that they are not put in the position of having to contact multiple governmental organisations.
- 2.3.16 It goes without saying that it will be necessary to consider what the effect would be on the low income person if any of the new systems set up to deliver the proposals, go wrong. The Scottish Government should do everything it can to ensure a smooth transition from existing UK benefits to the new Scottish arrangements and most importantly for those on low incomes – ensure that payments continue seamlessly.

3 Section 2 – The devolved benefits

3.1 *General comments on the devolved benefits*

- 3.1.1 The consultation document acknowledges the variety of questions and issues arise when consideration is given to each of the devolved benefits and potential changes.
- 3.1.2 In our evidence to the Scottish Parliament Welfare Committee inquiry, we suggested that a full ‘checklist’ of key issues be drawn up and agreed upon that can be used to assess each change, to ensure that all relevant interactions have been considered fully. We suggested that such a checklist should include some of the key issues identified in paragraph 4.1.7 of ‘Scotland in the United Kingdom: An enduring settlement’.¹ Given the complexity of the proposals in the consultation document, we still think such a checklist could play an important role in ensuring all key issues are considered for each change.
- 3.1.3 As noted above, we have a particular interest in the interactions between the tax and welfare systems. Often a change in one area can have unintended consequences in another. What might appear to be a positive change to help people may have limited impact once interactions with other benefits are considered.
- 3.1.4 For example, over the last few years the tax personal allowance has increased each year. For every £1000 increase, basic rate taxpayers benefit by saving £200 a year in tax. However, when focusing on the positive impact of this change, the knock on effects to the benefits system are often forgotten. For those individuals in receipt of benefits based on net income, for each £1 increase in net income they will lose some of their benefits. If they receive housing benefit and council tax support, that could be as much as 85 pence in the £1 leaving them only £30 better off once you look at their overall situation. This is significantly less than the £200 that the change initially promises.
- 3.1.5 We note that the Smith Agreement (Paragraph 55) states that ‘any new benefits or discretionary payments introduced by the Scottish Parliament must provide additional

¹ <https://www.gov.uk/government/publications/scotland-in-the-united-kingdom-an-enduring-settlement>

income for a recipient and not result in an automatic offsetting reduction in their entitlement to other benefits or post-tax earnings if in employment'. Paragraph 4.3.12 of 'Scotland in the UK: an enduring settlement' confirms that the UK Government agrees with the principle of not offsetting new benefits with reductions elsewhere. It goes on to state that the 'UK Government will therefore consider the introduction of new benefits or discretionary payments on an individual basis, to ensure the implications of any changes are assessed appropriately, and to enable the development of tailored legislation, where appropriate.'

- 3.1.6 We have noted previously our disappointment that nothing appeared in the Scotland Bill to ensure this part of the Smith Agreement is implemented and we can see no mention of this provision in the consultation document.
- 3.1.7 Although we welcome the commitment of the UK Government in this respect, we think that it is far too late to consider the impacts once a change has been agreed by the Scottish Parliament. Instead, such impacts should be identified in the very early stages of thinking of any new benefits or discretionary payments. It may be that the UK Government will need to amend existing benefits legislation in order to ensure this part of the Smith Agreement is met. We would encourage this to be part of the checklist suggested in paragraph 3.1.2.
- 3.1.8 We would also like to make a general point about passported benefits – these are generally 'benefits' that people are entitled to because of receipt of a particular social security benefit. It is important to note that such 'benefits' are not just benefits within the social security system but could be in the tax system, education system, from energy companies or in a wide range of other settings. It is important that the full range of passporting is considered before any changes are made.
- 3.1.9 The disability benefits mentioned in Section 2 of the consultation document are often used to give rise to other entitlements, for example specific VAT exemptions or disabled/vulnerable trust treatment for income tax, capital gains tax and inheritance tax purposes. There would need to be detailed discussions with the UK Government to ensure there are no unintended losses in relation to matters that remain reserved if the underlying benefits are altered in any way. As the current system of passporting is extremely complicated, we believe there is an opportunity to simplify the passporting system.

3.2 ***Tax status of benefits***

- 3.2.1 One important factor in the creation of any new benefit is whether that benefit will be taxable. Currently, Carer's Allowance is a taxable benefit whereas Disability Living Allowance, Personal Independence Payment, Attendance Allowance, Industrial Injuries Benefit and Severe Disablement Allowance are not taxable. Thought will need to be given as to whether any replacement benefits will be taxable or indeed whether Carer's Allowance (or any new replacement benefit) should continue to be taxable.
- 3.2.2 To the extent that state benefits are taxable in Scotland, we would recommend that there is awareness highlighted of their taxable status and also regarding how any tax is collected, for

example by stating it very clearly in the award letter with some worked examples. As stated in our response to the Department of Health's consultation on unpaid carers where we look in more detail at some of the problems created as a result of Carer's Allowance being taxable, but paid gross,¹ we also think recipients should be given a P60 type statement of the taxable amount at year end, giving them an accurate figure to enter into their tax returns, as required.

- 3.2.3 Page 52 of the consultation document sets out plans to increase the rate of Carer's Allowance from £62.10 a week to £73.10 per week. As noted above, Carer's Allowance is a taxable benefit and therefore some of this increase may be lost through additional tax paid. Those who are in receipt of tax credits could lose 41% of the increase due to a reduction in their tax credits and our understanding is that those on Universal Credit (UC) would have their UC reduced £ for £ (although they may receive the carer's element of UC). None of these interactions are mentioned in the consultation document, but they are important interactions that may reduce the impact of the measure.
- 3.2.4 One other short term priority that we would encourage is related to the earnings threshold for Carer's Allowance which is currently £110 a week. Until the increase in National Minimum Wage (NMW) in April 2016, carers could work 16 hours at the NMW and earn less than £110 a week. The 16 hour per week threshold is important as it may enable the carer to also qualify for Working Tax Credits. Due to the increase in the NMW from April 2016, an individual working the same number of hours would earn £115.20, thus forfeiting all of their carer's allowance. We recommend an automatic increase in the earnings threshold for Carer's Allowance when the NMW increases.

4 Section 3 – Operational policy

4.1 Safeguarding your information

- 4.1.1 We noted above our concerns about data and specifically the concerns of claimants about how data is collected, stored and used by Government. As online claim processes are developed, claimants are required to verify their identity online by entering personal information and they are often required to upload documents.
- 4.1.2 It is important that consent is obtained (both as to use and more particularly the manner in which it may be used) from claimants with regards to using and sharing their data and that this is made clear at the point of application.
- 4.1.3 There are many opportunities that exist for data sharing in the benefits system. In our experience most data sharing is done for the benefit of the Government in trying to reduce error and fraud. Unfortunately, there appears to be less effort in trying to use data sharing to enhance the user experience.

¹ <http://www.litrg.org.uk/sites/default/files/files/160729-LITRG-response-Unpaid-carers-FINAL.pdf>

- 4.1.4 Many of the taxpayers and claimants we deal with already believe that different Government departments share information when in fact information is often not shared between departments nor in some cases within the same department. This means that claimants sometimes need to call the same Government department twice to report a change of circumstances.
- 4.1.5 Whilst digital progress means there are more opportunities for data sharing it is important that clear principles are developed and strictly adhered to and that it must be limited to what is strictly necessary.
- 4.1.6 One such principle that should be incorporated is the requirement to ensure that any data is fit for purpose. HMRC have a real time earnings system (Real Time Information (RTI)) that collects pay information from employers and pension providers. This system has been used by DWP and HMRC benefits and credits for the purposes of checking and amending benefit claims however often the income measures are not aligned and the data sent for RTI purposes to HMRC is not necessarily exactly the same data that is needed to assess a benefit claim – yet that seems to be the working high level assumption by the DWP.

LITRG
28 October 2016