



## **SAMH Stage 2 briefing for Social Security Committee Members: Social Security (Scotland) Bill Part 1**

### **1. Summary**

This briefing sets out our view on key amendments to part 1 of the Social Security Bill. The briefing focuses on **amendments 113 and 145** due to their direct impact on mental health and wellbeing. **Amendment 113** calls for an additional social security principle to be included in the Bill, recognising the role the system has in promoting improved health and mental wellbeing. **Amendment 145** requires the Scottish Ministers to take action to ensure that a representative sample of people in receipt of legacy disability benefits are consulted during preparation of the first charter. The amendment ensures the sample is representative by both physical and mental health. We ask members to support both amendments.

#### **➤ Please Support Amendments 113 and 145**

SAMH is a member of Disability Agenda Scotland (DAS) and the Scottish Campaign on Welfare Reform (SCoWR). We endorse their briefings on the bill.

### **2. Amendments**

#### **Health and Wellbeing Principle**

##### **Amendment 113**

**Pauline McNeil**

**113** In section 1, page 1, line 18, at end insert—

<( ) the Scottish social security system has a role in promoting improved health and mental wellbeing for all individuals accessing the system.>

#### **Impact**

- This amendment will help ensure that in devolved areas the new Scottish system will at the least do no harm and ideally improve health and wellbeing. The UK social security system is currently not working for people with mental health problems and other disabilities. SAMH service users have told us that their experience of ESA and PIP has been stigmatising and has negatively affected their health and wellbeing.<sup>1 2</sup> Indeed findings from Heriot Watt University have found that the Work Capability Assessment (WCA) for Employment Support

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<sup>1</sup>SAMH [Personal Independence Payment – What's the problem?](#) 2016

<sup>2</sup> SAMH [Fit For Purpose](#) 2015

Allowance (ESA) has a lasting negative impact on mental health and actively discriminates against people with mental health problems, including increasing suicide ideation.<sup>3</sup>

- This will create a need for the Scottish social security system to actively demonstrate it is improving the health and wellbeing of those engaged with it.
- The impact of social security on health and mental wellbeing will be reflected in the charter and reported on.

### **Rationale for amendment**

The social security system has a direct impact on the wellbeing of those who are engaged with the system, including those who apply for or receive support. A social security system that is functioning well should have a positive impact on the health and wellbeing of those supported through it. In terms of disability assistance this should include alleviating the additional costs of disability, facilitating routes into employment where appropriate and promoting recovery and independence.

Conversely it is clear that poorly designed social security systems can have a negative impact on wellbeing. For example the introduction and operation of Employment Support Allowance (ESA) through the Welfare Reform Act 2007, particularly its use of poorly designed face to face assessments, has adversely affected the wellbeing of claimants with mental health problems.<sup>4,5</sup> SAMH service users have told us that: medical assessments for PIP and ESA did not adequately assess the impact of mental health; assessments have a focus on physical functionality; claimants felt disbelieved and at times stigmatised by assessors; claimants' rights were not communicated adequately; and there has been a breakdown in trust with the UK system.<sup>6</sup> Collectively these issues, as well as the disproportionate threat of sanctions,<sup>7</sup> for those with mental health problems damage the mental wellbeing of those using the system. While only a portion of the UK social security system is being devolved, with ESA and JSA remaining at the UK level, a wellbeing principle would demonstrate real commitment to radically improving the experience of people using the social security system in devolved areas.

As the policy memorandum for the Bill states, by placing the principles in primary legislation the principles will “govern decisions” regarding the Scottish social security system.<sup>8</sup> The principles will inform the development and content of the Scottish Social Security Charter. Consequently the principles provide the overall framework for the operation of the social security system and will be embedded through the charter, allowing monitoring, reporting and scrutiny. For example, good practice should include ensuring that evidence gathering and assessment procedures for disability assistance (and other future Scottish benefits) are designed with consideration of their impact on health and wellbeing.

Part 6 of the Bill (Accountability) stipulates that Scottish Ministers must include in their annual report to the Scottish Parliament a description of what Ministers have done to meet expectations

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<sup>3</sup> Heriot Watt University [Mental health discrimination 'built into' Work Capability Assessment](#) 2017

<sup>4</sup> SAMH [Worried Sick](#) 2014

<sup>5</sup> GPs at the Deep End [GP experience of welfare reform in very deprived areas](#), October 2013

<sup>6</sup> SAMH [Personal Independence Payment – What's the problem?](#) 2016

<sup>7</sup> UK Government Freedom of Information request 2014-79 March 2014

<sup>8</sup> Scottish Parliament [Social Security \(Scotland\) Bill Policy Memorandum](#) 2017

set for them in the charter. Inclusion of this amendment would mean that the impact of the social security system on health and wellbeing would be reported on annually.

The UK is a signatory to the UN Convention on the Rights of Persons with Disabilities (CRPD) which places a legal duty on the state to enable persons with disabilities to live independently.<sup>9</sup> We believe an additional health and wellbeing principle will contribute towards this goal.

## **The Scottish Social Security Charter**

### **Amendment 145:**

**Jeremy Balfour**

**145** In section 3, page 2, line 9, at end insert—

<( ) The Scottish Ministers must ensure, as far as is reasonably practicable, that the persons consulted include, in particular, a representative proportion of persons such as are mentioned in paragraphs (a), (b) and (d) of subsection (3) who have—

- (a) a physical impairment,
- (b) a mental impairment.>

### **Impact**

- To ensure a representative sample of people in receipt of legacy disability benefits (DLA, PIP and Attendance Allowance) are consulted and inform the development of the charter.

### **Rationale for Amendment**

SAMH welcomes the list of prescribed groups, set out in Part 1 Section 3 of the Bill, to be consulted in preparation of the first charter. This amendment would ensure that Scottish Ministers take action to ensure that the sample of people in receipt of legacy benefits consulted is representative by both physical and mental health

SAMH believes this is particularly important in regards to mental health and disability assistance. The current proportion of people in receipt of PIP who have a mental or behavioural problem is 37.98%.<sup>10</sup> This is the largest group of PIP recipients by a considerable margin. For reference the next largest cohort of PIP recipients in Scotland is the 27.36% of PIP recipients with diseases of the Musculoskeletal system and Connective Tissue.<sup>11</sup>

The charter provides a unique opportunity to design a system which would meet the needs of the people who will use it and prevent the problems with the UK system from being replicated here in Scotland.

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<sup>9</sup> UN [Convention on the Rights of Persons with Disabilities](#)

<sup>10</sup> [Stat-Xplore](#) [accessed December 2017]

<sup>11</sup> [Stat-Xplore](#) [accessed December 2017]

It is essential that the views of people with mental health problems in receipt of PIP, DLA and AA are heard during the development of the social security charter and new Scottish benefits. This amendment will ensure that evidence and experience of the particular factors specific to mental health and benefits, such as the impact of fluctuating conditions, inform the development of the charter.

Research data published on behalf of the Scottish Government in November 2017 found that 39% of Experience Panel members have a mental health problem.<sup>12</sup> We warmly welcome that this is broadly proportionate to the quantity of people in receipt of PIP due to a mental health problem. This amendment would build on the good work of the Experience Panels to ensure, through primary legislation, that engagement with benefit recipients in regard to the first charter is representative by health condition.

### **3. Other issues**

#### **Scrutiny**

In our response to the Committee's call for evidence on the Bill, SAMH called for the creation of an advisory body, equivalent to the Scottish Security Advisory Committee.<sup>13</sup> This would provide the Scottish Government and parliament with independent expert scrutiny and advice on the social security system, including on secondary legislation. We welcome **amendments a37 and a53** on the creation and functioning of a Scottish Commission on Social Security.

#### **Recourse**

SAMH have been concerned about the Bill's lack of provision for individual recourse where someone feels their rights under the social security principles and charter have been infringed. We welcome the Scottish Government **amendment a55** introducing charter based complaints as a welcome initial improvement.

#### **Independent Advocacy**

SAMH has called for a right to independent advocacy to be included in the bill.<sup>14</sup> We welcome **amendment 9** from the Scottish Government. This amendment creates a right to independent advocacy for individuals with a mental health disorder engaging the Scottish social security system. While we welcome this amendment we believe a right to advocacy should be universal, and available to anyone requiring assistance.

### **4. Further information**

For further information, please contact Craig Smith, Public Affairs Officer, SAMH

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<sup>12</sup> Scottish Government [Social Security Experience Panels: About Your Benefits and You – Quantitative Research Findings](#) 2017

<sup>13</sup> SAMH [SAMH Response to Social Security Committee Consultation on Social Security Bill \(Scotland\)](#) 2017

<sup>14</sup> SAMH [SAMH Response to Social Security Committee Consultation on Social Security Bill \(Scotland\)](#) 2017