

## Social Security Administration and Tribunal Membership (Scotland) Bill –Stage 3

### SAMH Briefing

#### Introduction

Around since 1923, SAMH is Scotland's national mental health charity. Today, in over 60 communities we work with adults and young people providing mental health social care support, services in primary care, schools and further education, among others. These services together with our national programme work in See Me, respectme, suicide prevention and active living; inform our policy and campaign work to influence positive social change.

#### Summary

- SAMH supports the Bill and calls on MSPs to vote in favour of it at Stage 3
- SAMH welcomes the proposed appointee system introduced by the Bill. We believe changes to the Bill at stage 2, including third party certification of appointees, have strengthened these provisions.
- SAMH welcomes the policy commitment from the Cabinet Secretary Shirley-Anne Somerville at stage 2 to report annually on how often powers to withhold harmful information from claimants have been used in relation to applications for standard disability assistance and applications for disability assistance on the grounds of terminal illness.
- SAMH calls on the Scottish Government to work with relevant stakeholders to develop appropriate guidance on the use of powers of non-disclosure of health information
- SAMH calls on the Scottish Government to work with stakeholders to develop a robust monitoring and reporting system for non-disclosure of harmful health information

#### General Comments on the Bill

SAMH welcomes the opportunity to brief MSPs ahead of the Social Security Administration and Tribunal Membership (Scotland) Bill stage 3 debate and vote. SAMH agrees with the purpose and content of the Bill and are asking MSPs to vote in favour of it at stage 3.

We believe the bill provides a number of important additional features and safeguards to the Scottish Social Security System, in line with both the principles of the system and Social Security Charter. These include a robust appointee system, including for adults with capacity who wish to be represented by an appointee; new powers to suspend payments; and an extension of the duty on Scottish Ministers to inform claimants about possible eligibility under section 53 of the 2018 Act in regards to assistance arising from top-up payments.

Our briefing focuses on the appointee system and powers to withhold information deemed harmful to a claimant.

## **Claimant Appointees**

The Bill builds upon the appointee system introduced in the Social Security (Scotland) Act 2018. While the 2018 Act currently allows an appointee to be provided for an adult who lacks capacity, this Bill extends the right to adults with capacity. This is an important and welcome step and will allow an adult to have a third party act on their behalf when engaging with the Scottish social security system, where they desire it.

While welcome, in our evidence at stage 1 to the Social Security Committee we raised the need for the Bill to be amended to include additional safeguards to prevent exploitation or coercion of claimants through the appointee system.<sup>1</sup> We welcome the constructive engagement from the Scottish Government during stage 2 to strengthen the appointee provisions. Specifically as called for by SAMH, the Scottish Government introduced amendments at stage 2 to place guidance for the appointee system into statute, as well as amending the Bill to include a process of third part certification of appointees. This means that in cases where an adult has capacity a third party must ensure that the claimant understands the effect of appointing an appointee and has not been subject to undue influence in agreeing to the appointment. We believe these additional safeguards strongly improve the Bill.

## **Non-Disclosure of Health Information**

The Bill includes provisions allowing Scottish Ministers to withhold information from claimants where a registered medical practitioner or a registered nurse believes disclosure of the information would be likely to cause serious harm to the physical or mental health of the recipient.

SAMH understands and supports the premise (as outlined in the political memorandum of the Bill)<sup>2</sup> that this power would be used rarely and principally in cases where the claimant has a terminal illness and may not be aware of their prognosis or other medical details. We raised concerns at stage 1 and 2 that the power to withhold information could, if inappropriately used, be a significant infringement of the rights of individuals engaging with the Scottish Social Security system. As an additional safeguard we called for monitoring and reporting of the use of this power, including reporting on the number of cases where the power is used where the claimant does not have a terminal illness.

While we still believe monitoring and reporting powers should have been included on the face of the Bill, we do welcome a commitment from the Cabinet Secretary for Social Security and Older People Shirley-Anne Somerville when giving evidence to the Social Security Committee at stage 2 that the Scottish Government will:

“report annually on how often those provisions [non-disclosure] have been used in relation to applications for standard disability assistance and applications for disability

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<sup>1</sup> Social Security Committee [Social Security Administration and Tribunals Membership \(Scotland\) Bill Submission from SAMH](#)

<sup>2</sup> Scottish Government [Social Security Administration and Tribunals Membership \(Scotland\) Bill – Political Memorandum](#)

assistance on the grounds of terminal illness, provided that the numbers are not so low that reporting the information could lead to the identification of clients.”<sup>3</sup>

We believe this is a welcome step towards greater transparency of the power to withhold harmful health information and look forward to seeing how monitoring and reporting will work in practice.

- SAMH calls on the Scottish Government to work with relevant stakeholders to develop appropriate guidance on the use of non-disclosure powers
- SAMH calls on the Scottish Government to work with stakeholders to develop a robust monitoring and reporting system for non-disclosure of harmful health information

### **Conclusion**

SAMH welcomes this bill as a further positive step forward in the development and implementation of the Scottish Social Security System. We are calling on all MSPs to vote in favour of the bill at stage 3.

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<sup>3</sup> Scottish Parliament [Social Security Committee 10 September 2020 Official Report \[draft\]](#)