

Angela Constance MSP  
The Cabinet Secretary for Communities, Social Security and Equalities  
T3.21  
The Scottish Parliament  
Edinburgh  
EH99 1SP

28<sup>th</sup> October 2016

Dear Ms Constance,

### ***'A New Future for Social Security'***

Thank you for the opportunity to comment on the Consultation on Social Security in Scotland. My role as Children and Young People's Commissioner Scotland is to promote and safeguard the rights of children and young people in Scotland with particular reference to the United Nations Convention on the Rights of the Child (UNCRC).

I will not respond in detail to all of the questions, as some are more pertinent to the rights of children than others. There are two areas where I will give detailed comment and these relate to the use of top up benefits (particularly child benefit) and the proposal to introduce a young carer's allowance.

### **What is not in the consultation document**

#### **Top Up Payments (Child Benefit)**

Under Section 24 of the Scotland Act (2016), the Scottish Government has the power to top up reserved benefits. This important power is not alluded to in the consultation document, yet it has the potential to make an enormous difference to a great many households in Scotland. Along with the Child Poverty Action Group (CPAG), we have called for an additional £5 a week to top up child benefit. CPAG notes that this Parliament will be confronted with an imminent rise in child poverty, with a projected 50% increase by 2020, largely driven by UK tax and benefit policies. This one action could reduce child poverty in Scotland by 14%, lifting 30,000 children

out of poverty<sup>1</sup> and would make a significant contribution to meeting the proposed statutory income targets outlined in the recent consultation on the Child Poverty Bill. As CPAG note, child benefit has a high take up rate and provides near-universal support with the costs of raising children.

I would urge the Scottish Government to take this opportunity to use the social security measures now devolved to Scotland towards the aim of eradicating child poverty and promoting the health and wellbeing of children in Scotland.

This would clearly set the tone for a different and more progressive trajectory to that currently adopted in Westminster.

## **Part 1: A principled approach**

### **Fixing the principles in legislation**

#### **Which way do you think principles should be embedded in the legislation?**

There are benefits to both approaches, not least that a Claimant Charter might be more easily accessible and more easily communicated to the public. Involvement in shaping the Charter would also help to ensure buy-in and a sense of ownership, as well as providing a tool to help people understand their rights and what they are entitled to.

Social security is a human right and this should be reflected in the language adopted in any Charter or legislation, as well as any accompanying guidance. Social security was affirmed as a right in the Universal Declaration on Human Rights (1948) and in article 9 of the International Covenant on Economic Social and Cultural Rights (ICESCR), as well as its General Comment 19 (2007). The International Labour Conference (2001) also affirmed social security as a 'basic human right and a fundamental means for creating social cohesion'<sup>2</sup>.

General Comment 19 (ICESCR)<sup>3</sup> rightly notes that 'Social Security, through its redistributive character, plays an important role in poverty reduction and alleviation, preventing social exclusion and promoting social inclusion.' This General Comment provides detailed guidance to States around their obligations to respect, protect and fulfil the right to social security.

The right to social security also plays an important role in supporting the realisation of many other rights in the International Covenant on Economic, Social and Cultural Rights (ICESCR). General Comment 19 stipulates that other measures are necessary to complement the right to social security. These include child care and welfare; measures to combat poverty and social exclusion as well as supporting

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<sup>1</sup> Child Poverty Action Group <http://www.cpag.org.uk/sites/default/files/CPAG-Scotland-Programme-Scot-Gov-2016-21.pdf> taken from Keung, A. and Bradshaw, J. (2016) Analysis of the impact of increases to child benefit and child tax credits on child poverty rates in the UK and Scotland, March 2016 Blog [www.york.ac.uk/inst/spru/pubs/pdf/CB&CTCtopups.pdf](http://www.york.ac.uk/inst/spru/pubs/pdf/CB&CTCtopups.pdf)

<sup>2</sup> International Labour Conference, 89th session, report of the Committee on Social Security, resolutions and conclusions concerning social security

<sup>3</sup> General Comment 19, ICESCR [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGBR%2fCO%2f6&Lang=en\\_paragraph\\_3](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGBR%2fCO%2f6&Lang=en_paragraph_3)

social services<sup>4</sup>. The General Comment underlines that the adoption of measures to realise other rights in the Covenant will not in itself act as a substitute for the creation of social security schemes.

In our joint report to the UN Committee on the Rights of the Child on their examination of the UK's fifth periodic report<sup>5</sup>, the four UK Children's Commissioners drew attention to the imposition of austerity measures and changes to the welfare system and the subsequent failure to protect vulnerable groups of children and young people from child poverty. We noted that this prevented the realisation of their rights under the UNCRC, namely article 26 (the right to benefit from social security) and article 27 (the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development). In their Concluding Observations of July 2016, the UN Committee raised serious concerns at "*the effects that recent fiscal policies and allocation of resources have had in contributing to inequality in children's enjoyment of their rights, disproportionately affecting children in disadvantaged situations*"<sup>6</sup>, and recommended:

*"a comprehensive assessment of the cumulative impact of the full range of social security and tax credit reforms introduced between 2010 and 2016 on children, including children with disabilities and children belonging to ethnic minority groups and ....where necessary, revise the mentioned reforms in order to fully respect the right of the child to have his or her best interests taken as a primary consideration..."*

I raised similar concerns in my submission to the Committee on Economic, Social and Cultural Rights (CESCR). In their Concluding Observations (July 2016), the UN Committee drew attention to "*the disproportionate, adverse impact that austerity measures introduced in 2010 are having on the enjoyment of economic, social and cultural rights by disadvantaged and marginalized individuals and groups. The Committee is concerned that the State Party has not undertaken a comprehensive assessment of the cumulative impact of such measures on the realization of economic, social and cultural rights in a way that is recognized by civil society and national independent monitoring mechanisms' (art. 2 (1))*"<sup>7</sup>.

That Committee called for "*a comprehensive assessment of the cumulative impact of these measures on the enjoyment of economic, social and cultural rights by disadvantaged and marginalized individuals and groups, in particular women, children and persons with disabilities, that is recognized by all stakeholders.*"<sup>8</sup>

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<sup>4</sup> ibid paragraph 28

<sup>5</sup> UN Committee on the Rights of the Child, on their examination of the UK's fifth periodic report,

<sup>6</sup> Concluding observations on the fifth periodic report of the United Kingdom of Great Britain & N

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en) paragraph 12

<sup>7</sup> ibid paragraph 18

<sup>8</sup> Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGBR%2fCO%2f6&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGBR%2fCO%2f6&Lang=en)

In answer to Part 1, question 1, whilst my preference is for the principles to be written into legislation, providing a strong basis for enforceability, I do not see why a Charter could not supplement this and outline in more detail what this would mean in practice. The UN General Comments I refer to above could help to formulate such principles.

### **Should the Charter be drafted by?**

- **An advisory group**
- **A wider group of potential user and other groups or organisations**
- **Both**
- **Some other way- please specify**

Given the extent of the consultation, its complex nature and its relevance to so many different groups, my view is that expertise should be drawn from a range of groups, both service users (past and present), supporters and advocates as well as those with knowledge and expertise of social security systems. I also feel that it will be important to have representatives from the children's sector, particularly those working with families directly impacted – such as the Child Poverty Action Group (CPAG) and One Parent Families Scotland – as well as those with expertise in children's rights. This group should link closely with the proposed ministerial advisory group on Child Poverty.

### **Outcomes and the user experience**

As noted before, there is a need to emphasise that social security is a human right and that people should be informed of this right. The principles adopted should reflect those which are provided in General Comment 19 (CESCR). This highlights what should be regarded as the 'essential features' fundamental to the right to social security: availability; social risks and contingencies adequacy and accessibility. Everyone should be covered by the State's social security system, particularly the most disadvantaged and marginalised groups, and social security must be provided on a non-discriminatory basis. I would also stress the need for fairness and flexibility and the right to be treated with respect and dignity, and the need to receive accurate information in a timely manner – without undue delays.

### **Delivering Social Security in Scotland**

Consistency and uniformity will be key to an efficient and effective system, thus helping to avoid a postcode lottery. CPAG's Early Warning System has highlighted the difficulties resulting from the localised delivery of housing benefit. Furthermore, misinformation and administrative errors (as highlighted in CPAG's Early Warning System) can have enormous impact on those trying to access their rights<sup>9</sup>. The need for consistent training which is underpinned by a human rights approach is also essential.

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<sup>9</sup> <http://blog.scotland.shelter.org.uk/2015/09/29/universal-credit-has-landed/>

My view is that the Scottish Social Service Agency (SSSA) should have sole responsibility for carrying out the main functions of the new social security system. I would also be cautious towards any contracting out any of these services, given the evidence from previously outsourced welfare services such as PIP and ESA assessments and recent problems with HMRC's Tax Credit fraud detection contractor.

**Should the social security agency in Scotland be responsible for providing benefits in cash only, or offer a choice of goods and cash?**

My view is that payments should be delivered in cash, in line with the principles of dignity and respect. However, please also see my comments around the proposals for young carers.

**Equality and low income**

I would have liked to have seen a Child Rights Impact Assessment accompanying this consultation paper and would be happy to offer the services of my office as this progresses.

**Independent advice and scrutiny**

**Do you think that there is a need for an independent body to be set up to scrutinise Scottish social security arrangements?**

Yes, I agree with the need for an independent statutory body to scrutinise social security in Scotland. I support CPAG's call for a statutory Scottish Social Security Advisory Committee (SSAC) similar to the UK SSAC but reflective of the Scottish context.

**Part 2. The Devolved Benefits**

I have not responded to all the questions in this section and have focused on those which are of most relevance to the work of my office.

The combination of having the power to deliver benefits and the opportunity to top up reserved benefits (such as Child Benefit) allows the Scottish Parliament to consider different modes of delivery in Scotland and diverge from Westminster. This is both exciting and challenging, so it is important that we get this right from the start.

**Disability benefits**

Disabled people and their families have been disproportionately affected by the UK's welfare reforms. Scotland now has the opportunity to take a different approach. Key to this will be the adoption a human rights culture and a culture of entitlement and encouragement.

The current system is complex and inaccessible. Any changes must put people at the heart of the process and applications should not be complicated or inflexible. Those administering this benefit should take a collaborative and supportive approach with an enabling attitude.

## **Carer's Allowance**

### **How can we improve the support given to young people with significant caring responsibilities beyond what is currently available?**

In terms of providing support to young carers with significant caring responsibilities, there is a clear need of going beyond what is currently available. According to the Scottish Government, there are currently 44,000 carers under the age of 16 in Scotland and it is estimated that, in monetary terms, the care they provide is worth in excess of £300m<sup>10</sup>. I would welcome further detail on these proposals, particularly as there are several considerations to be considered.

Young carers constitute a wide age range, from pre-school to over 18s. Because of this, it is important to identify the right support appropriate to the young carer. What would be appropriate for one child would not be right for another. Young carers tell us that it is important for them to care, and they take this role very seriously. Clearly a young carer also has the right to a childhood and, as stated in article 31 of the UNCRC, to rest and leisure, to play and to recreational activities. A balance needs to be struck.

Children and young people have a right to have their views taken into account when decisions affecting them are made, but services must also act in the best interests of the child. This can be challenging. We have to recognise that children will continue to care and that that is fine. It is important to help them to feel good about what they are doing and to assure them that their role is valued by society.

At the same time (and whilst respecting their wishes) we must be extremely careful that young carers are not taking on an age inappropriate burden. Young carers often cover a range of support and assistance – providing emotional support, cooking, medication management, assistance at doctor's appointments and on occasion personal care – and we need to ensure that they are supported both emotionally and practically.

It is important to recognise that if the rights of people who require care are realised, by providing appropriate support in the form of social care and disability benefits, the risk of inappropriate pressure being placed on children will be significantly reduced. This could be, for example, through the provision of adequate household support for disabled parents.

Support to young carers should be provided in ways which ensure they are not always defined by their caring role— for example, through facilitated leisure time rather than just through attendance at young carers groups. Grants or vouchers could be made available that cover – for example – the pursuit of sports or hobbies.

If a monetary sum is paid to young carers, there needs to be a mechanism for ensuring that this money does in fact go to the young carer. It might not always be appropriate to pay this allowance to the parent— what could be the alternative? We need to ensure that this goes to the young person. We need to consider very carefully how financial support for young carers might be delivered.

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<sup>10</sup> <http://news.scotland.gov.uk/News/Putting-carers-first-2555.aspx>

## **Current criteria**

Currently young adult carers are not eligible for Carers Allowance if they are in full time education (defined as at least 21 hours per week). Young carers spend no more time in school, college or university than their friends. However, those without caring responsibilities can choose to take a part-time job. Those with caring responsibilities are effectively penalised because of their caring role. They cannot take a part time job because of their caring role, yet they do not qualify for an allowance because they are studying.

In terms of young adult carers (i.e. over 16), a change to the criteria should be addressed and is long overdue.

## **Winter fuel and cold weather payments**

I am extremely pleased by the Scottish Government's commitment to extend the winter fuel payments to families with a disabled child who are in receipt of the higher rate of DLA/ PIP higher rate. Consideration could also be given to those in receipt of the lower rate of DLA/ PIP.

I hope that the Scottish Government will in due course consider extending this to other vulnerable groups – for example lone parent families – as many within these groups considered to be in fuel poverty.

Fuel poverty affects four in every ten households. I am a signatory of the Existing Homes Alliance Scotland joint statement— 'No one living in Scotland in a hard-to-heat, draughty home by 2025'. If this statement is translated to reality, it will not only ensure all of Scotland's children grow up in a warm environment, it also addresses issues around safeguarding energy security and tackling climate change<sup>11</sup>.

## **Best Start Grant**

This would replace the Sure Start Maternity Grant and would be available to the first and subsequent children in low income families, paid at birth at nursery school age and at the start of primary school. Whilst I support the increase in payment compared to the Sure Start Maternity Grant, I hope that this increase will not mean a corresponding change to the financial eligibility criteria. Current levels should be protected and there should be scope for looking at extending the grant to other groups. For instance, there is a strong case for considering the situation of care experienced young people or those on kinship care orders to have access to this benefit from age 16 years, where appropriate. Further consideration could be given to other vulnerable groups in future.

I hope to make further representations in due course and once I have spoken to those working directly with families that will be affected.

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<sup>11</sup> <http://existinghomesalliancescotland.co.uk/declaration/>

## **12. Job Grant**

I would like to see more information on the proposal that a job grant will be available for young people aged 16-24 who are returning to work after a period of six months unemployment.

The payment is currently discretionary (£100 or £250 for those with children). This will be a cash payment and will be supplemented with free bus travel for three months. Consideration could be given to removing the discretionary element of this payment for the 16-24 age group.

## **Universal Credit Flexibilities**

I agree that automatic individual payments of Universal Credit should be introduced.

## **Part 3 Operational Policy**

Again, I suggest that General Comment 19 would be helpful in terms of identifying the key features required in an efficient social security system. My other comments relate to complaints, reviews and appeals. I support the complaints handling procedure being based on the SPSO's 'statement of complaint handling', in line with procedures used by other Scottish public bodies.

I will be pleased to be continue to be involved in these plans as they are considered and then rolled out across Scotland, focusing on the specific impact on children and young people.

Yours sincerely,



Tam Baillie  
Children and Young People's Commissioner Scotland