

Racial Equality and the Social Security (Scotland) Bill: Evidence Submission from the Coalition for Racial Equality and Rights

The Coalition for Racial Equality and Rights (CRER) is a Scottish strategic anti-racism organisation which works to eliminate racial discrimination and promote racial justice across Scotland. Our primary concern in relation to the Social Security (Scotland) Bill is its implications on racial equality and its potential effect on Black and minority ethnic (BME) individuals. As such, we are grateful for the opportunity to submit evidence to the Social Security Committee to provide an overview of some key points for consideration.

Racial Equality and Poverty

When considering social security in Scotland, it is important to note that BME groups are twice as likely to be in poverty as their white peers,¹ and yet have a lower-rate of benefit take-up, whether due to lack of awareness of entitlement, particular stigma, or other factors². BME groups are susceptible to and affected by poverty in particular ways in Scotland – it is not an equal playing field, and policies and initiatives to tackle poverty must recognise this.

The Scottish Government’s Race Equality Framework for Scotland 2016-2030³, contains a key goal that states that the government will: *“Ensure robust policy responses that support race equality in relation to income and poverty.”*

To meet this goal, the Scottish Government committed to:

- “Ensure that our response and approach to Social Justice considers measures to tackle poverty across all ethnicities...”
- “Work to fill the gaps in current knowledge on how and to what extent minority ethnic people are accessing the benefits they are entitled to...”
- “Implement the powers that are being devolved as a result of the Scotland Bill 2015-16 in a way that makes full use of those powers to tackle poverty across all ethnicities”
- “Make all possible efforts to assess, understand, and, where we can, mitigate the impact of any UK policies outwith our control which have a financial impact on minority ethnic people with low incomes...”

Given these commitments, CRER believes the Social Security (Scotland) Bill could do more to promote equality, eradicate poverty, and ensure BME groups are not further disadvantaged. In particular, we believe the Bill fails to adequately address the new powers the Scottish Government holds to top-up benefits and create new benefits, which, if enacted properly, could serve to lift BME groups out of poverty.

Equality Impact Assessment

Before we detail our specific concerns relating to the draft Bill, CRER would like to highlight issues pertaining to the Bill’s Equality Impact Assessment⁴. Overall, many of the points raised in the assessment (e.g. reduction of stigma and complexity in the system) pertain to all individuals, rather than just equality groups. While the anticipated changes and focus on rights is welcome, they do not detail the particular effect this Bill will have on specific equality groups. This should be challenged, and the assessment should be revised to detail the specific impact that is anticipated for each of the protected characteristics. There is a Scotland-wide issue with inadequate impact assessments from

¹ The Scottish Government (2017). [Poverty equality analysis](#).

² Joseph Rowntree Foundation (2011) [Poverty and ethnicity in Scotland: Review of the literature and datasets](#).

³ The Scottish Government (2016). [Race Equality Framework for Scotland](#).

⁴ The Scottish Government (2017). [Social Security \(Scotland\) Bill – Equality Impact Assessment](#).

public bodies, and we ask the Scottish Government to lead the way in providing a robust assessment for a piece of legislation that will affect more than a million Scots.

We note that the current assessment states that the devolution of benefits is an opportunity to promote fairness and equality. However, fairness and equality are not synonymous – an emphasis on fairness is not a commitment to equality (in Scotland, equality is inextricably tied to the Equality Act 2010 and the protected characteristics). As such, CRER believes equality should be embedded in the proposed system principles. Our proposal for this is further detailed in our response to Question 2.

The assessment also notes that there was strong consensus from consulted groups that the Scottish Government should, “work closely with people with direct experience of the present system, including those with protected characteristics.” We would go further and state that those with relevant protected characteristics should be especially consulted, given the disparate rates of poverty among some groups and particular challenges associated with the social security system for these groups. With this in mind, CRER has suggested amendments that require Ministers to consult with persons who share a relevant protected characteristic in the development and review of the charter. These are detailed in our response to Question 3.

Finally, we ask how this assessment – and the lack of data particular to equality groups – will influence the Scottish Government’s Equality Evidence Strategy⁵. The only policy which is effective is that which is based on evidence, so we would anticipate that the lack of equality specific data in this assessment would urge the Scottish Government to consider means to collect this data – especially in relation to the new system and devolved benefits going forward – to ensure discrimination is eliminated and equality is promoted, and that intersectional matters can be fully considered (e.g. for BME women, who face particular disadvantage due to their gender and race, but for whom specific data is sorely lacking).

Question 1 – Regulations

CRER is concerned by the Scottish Government’s intent to establish significant proportions of the social security system in regulations rather than primary legislation. We believe the Scottish Parliament should have greater involvement in and oversight of the development of the new agency and the benefits that will be delivered. This Bill will have a significant impact on the lives of people affected by poverty; parliamentary scrutiny is necessary to ensure that the approach taken is the right one. CRER therefore supports the call for a review of the regulations after three years, and a requirement for Ministers to bring forward additional primary legislation in areas that will initially be addressed by regulation.

Question 2 – Principles

While CRER welcomes the principles and the emphasis on human rights, we note the absence of an equality-focused principle. Human rights, dignity, and fairness cannot be achieved fully without equality. As poverty is more likely to affect certain equality groups (e.g. BME groups, women, disabled people), equality should be a principle that is embedded throughout the Bill, regulations, and the system itself. While all forthcoming pieces of legislation are subject to the provisions of the Equality Act 2010, we know that Equality Impact Assessments (including, in our opinion, the assessment for this Bill) are often inadequate and fail to ensure equality is truly embedded in legislation.

Given this, we call for the addition for an equality-focused principle such as, *“Equality of outcome for groups facing discrimination, inequality, and disadvantage is to be embedded in the Scottish social security system.”*

Furthermore, given the principles’ emphasis on rights, we are supportive of calls to amend Part 1 Section 1F to reflect the ‘rights’ rather than the ‘needs’ of the individual. We also believe the language of Part 1 Section 1D could

⁵ The Scottish Government (2017). [Scotland’s Equality Evidence Strategy 2017-2021](#).

be strengthened to state that Ministers have a 'duty to ensure' (not just a 'role in ensuring') that individuals receive their full social security entitlements, given the fact that BME groups are less likely to claim the benefits to which they are entitled.

CRER is also supportive of the additional principle proposed by the Poverty Alliance which states, "*Social security has a role to play in the eradication of poverty in Scotland,*" as this emphasises and clarifies the important role social security plays in lifting people out of poverty.

Finally, we would also like to see more detail on the face of the Bill regarding a requirement for the social security system to reflect these principles. We would be supportive of an obligation for secondary legislation to explicitly state how it adheres to the principles.

Question 3 – Charter (and Annual Report)

CRER welcomes the development of a charter and the commitment to consult those individuals in receipt of the listed benefits in the preparation of this charter. However, we feel the inclusion of equality groups most likely to face poverty – e.g. women, BME groups, and disabled people – would further benefit the charter and ensure that particular barriers and challenges that face these groups are brought into consideration. As such, we call for the amendment of Part 1 Section 3 to include: "*(h) persons who share a relevant protected characteristic under the Equality Act 2010.*"

Further to this aim, we also believe that the charter should undergo a robust Equality Impact Assessment prior to its publication.

We note the duty on Ministers to report annually on progress made against the commitments in the charter. Equality must be central to this reporting process and progress reports must detail the equality implications of the new system and any inequalities faced by groups with protected characteristics. We know from previous pieces of legislation that if equality is not embedded from the beginning, it is relegated to an afterthought or simply forgotten. (This further supports our call to place equality as one of the system principles.)

To help ensure equality reporting is robust, we ask that a similar amendment be made to Part 1 Section 5, which states that Ministers must consult such persons as they consider appropriate, including individuals who have received assistance through the Scottish social security system, to include "*persons who share a relevant protected characteristic under the Equality Act 2010.*"

CRER also believes further specification is needed in Part 1 Section 6 to detail what must be included in the annual report. In addition to being supportive of calls for the report to *contain information about how the principles set out in Part 1 Section 1 are being upheld*, we believe the report should also include *equality monitoring data, where it exists, for each stage of the social security process to ensure equality groups are not being discriminated against. Where this data is not held, there should be a commitment and a published plan to collect and publish this data in the future.*

As with the charter itself, the annual report should be publicly available. We support the Poverty Alliance in calls to amend Part 1 Section 4 to ensure the charter is readily available in all areas where people seek money advice or claim social security benefits, in addition to other means Ministers find appropriate. CRER also believes the timescale for reviewing the charter should be changed from five years to three years.

Question 4 - Proposed Rules

CRER is supportive of the concerns raised in relation to the proposed rules. We join other organisation in calls for:

- A commitment in primary legislation to ensure that there are several ways to apply for benefits and that Ministers will not be unreasonable in the evidence required.
- A time limit of ten business days imposed on Ministers for notifying individuals of their entitlement.
- The detailing of entitlement criteria in primary legislation rather than regulations, which will inhibit the ability of future governments to change or remove entitlements very quickly and lead to the erosion of access to benefits for those who need them.
- The revision of the 31 day timescale for seeking an appeal to 90 days, given the factors that could affect an individual's ability to appeal in time.
- Re-consideration of the obligation to provide information on request which ensures that individuals who cannot provide information within the timescales given due to factors outwith their control (e.g. difficulty sourcing information from a GP surgery) are not wrongly penalised for delays.
- Re-consideration of the punishments for offences which carry the potential for imprisonment, as individuals should not be imprisoned for failure to notify Ministers of a change in circumstances, as these reasons may be complex and deeply personal (e.g. the result of an abusive relationship). There must be differentiation between individuals who find themselves in exceptional circumstances resulting in a failure to notify for good-faith reasons, and those who knowingly commit large-scale fraud.

Question 7 - Top-Up and Creation of New Benefits

CRER supports the call of the Poverty Alliance to strengthen this section to address the adequacy of benefits. If benefits provided are not adequate, they will not lift people out of poverty, but, rather, will keep them living in poverty. Adequacy of benefits – and the ability to top-up benefits to ensure this is the case – is essential to the realisation of dignity. This is particularly important for BME groups who are twice as likely to be living in poverty as white Scottish groups.

Question 8 – Carers Allowance

CRER notes that, alongside evidence suggesting that BME groups under-claim benefits, there is a particular barrier to BME individuals accessing Carers Allowance. Self-identification as a carer can be problematic in some BME groups, as many individuals may see their caring role subsumed within their family role or duties. Significant efforts will be needed to ensure this group is able to access Carers Allowance at a rate proportionate to the population.

Additional Concerns

CRER notes several places in which the Bill could be strengthened:

- Firstly, as expressed previously, we are concerned that equality is not referenced in the principles. Given the disparate effects of poverty, there must be a particular commitment in the Bill to ensure that groups are not disadvantaged and that the new devolved powers improve the situation for all groups, particularly those who face the most inequality.
- The Bill should detail how new powers will be used, particularly in the creation of new benefits and the topping-up of reserved benefits. The lack of detail and initiative here is in contrast to the commitment given in the Race Equality Framework, in which the Scottish Government committed to using these new powers to tackle poverty for BME groups.
- There must be independent scrutiny of the delivery of the new system. BME individuals who have experienced discrimination at the hands of other Scottish Government and DWP agencies have asserted their belief that this scrutiny is essential to ensure they do not face additional inequality. Whether this scrutiny is conducted by a new bespoke statutory body or the Poverty and Inequality Commission, it is essential that this body be wholly independent of the government and that there is representation in this group from those with expertise in racial equality.

- There must be detail about a formal complaints procedure enshrined on the face of the Bill, especially as we know anecdotally that BME groups may feel some decisions were affected by racism and discrimination. There must be a means to address concerns in instances in which individuals have not been treated fairly.
- We are concerned that the Bill leaves open the potential for individuals to receive benefits “which may or may not take the form of money”. This is reminiscent of the distribution of payment cards to asylum seekers, which resulted in many significant problems including the inability to travel to appointments, difficulty buying appropriate and healthy food, and the feeling of shame and anxiety when using the card. We believe individuals must always be given a choice on this matter, as they are best placed to determine how to spend their money.
- We are also supportive of the call from the Scottish Independent Advocacy Alliance to include in the Bill a legal right to independent advocacy and advice for anyone accessing social security in Scotland.
- The Jobs Grant announced by the Scottish Government which intends to help unemployed young people aged 16-24 would be particularly useful to BME young people who, despite high qualifications, are disproportionately under- and unemployed. As such, we are disappointed to not see details of this on the face of the Bill. (However, consideration needs to be given to extending the age range to reflect that fact that BME young people are more likely than their white peers to attend further and higher education.)

Conclusion

CRER asks the Committee to keep these issues in mind during its inquiry into the Social Security (Scotland) Bill, as we believe an equalities approach will be needed to fully address the issues raised. Racial equality must be given appropriate consideration.

For further information on this issue, please contact:

Rebecca Marek, Policy and Parliamentary Officer, CRER
rebecca@crer.org.uk 0141 418 6530