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## SPICe Briefing

# Welfare Reform (Further Provision) (Scotland) Bill

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The Welfare Reform (Further Provision) (Scotland) Bill was introduced by Nicola Sturgeon, Cabinet Secretary for Health, Wellbeing and Cities Strategy, on 22 March 2012. It is an enabling Bill which confers powers on Scottish Ministers to make provision via regulations, as considered appropriate, in consequence of changes to the new Universal Credit and Personal Independence Payment created under the Welfare Reform Act 2012.



The Scottish Parliament  
Pàrlamaid na h-Alba

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## EXECUTIVE SUMMARY

The Welfare Reform (Further Provision) (Scotland) Bill enables Scottish Ministers to introduce regulations in order that devolved legislation can take account of changes to the benefits system introduced by the Welfare Reform Act 2012. Regulations which amend primary legislation will be made under the affirmative procedure and those which amend existing regulations will be made under the negative procedure. The main focus of these regulations will be to maintain the legislative basis that underpins devolved matters linked to those benefits which are being abolished by the UK Act. This refers primarily but not exclusively to passported benefits.

The UK Act makes far reaching changes to the welfare benefits system in the UK including replacing a number of existing benefits with a new Universal Credit and replacing Disability Living Allowance with Personal Independence Payment – both for people of working age.

The UK Act also abolishes Council Tax Benefit and parts of the Social Fund. The Scottish Government is working with COSLA and other stakeholders to put in place successor arrangements for these schemes and has already consulted on what might replace those aspects of the Social Fund that are to be devolved. However, whilst all of this work is linked through the UK Act, these are separate matters and the Bill as introduced does not provide for regulations to introduce these successor schemes.

The Bill does not in itself make any changes to legislation and the accompanying documents do not set out any specific policy on how devolved legislation should be amended. This is all to be left to the regulations to be introduced later in the year. The Explanatory Notes (para 32) state that the Scottish Government cannot formulate its policy on passported benefits until it has more detail from the UK Government and it does not expect to have this detail until June. However, it is necessary to have provision in place in time for the introduction of new benefits from April 2013. The Scottish Government argues that this timetable requires them to bring forward an enabling Bill prior to the finalisation of policy on successor arrangements for passported benefits. It is therefore stated in the Policy Memorandum that:

“It is not possible to specify all of the uses to which the Scottish Ministers will put the powers in this Bill”. (para 8)

The UK Act originally contained provisions to allow the UK Parliament to make consequential amendments relating to devolved policy areas and legislative consent for this was sought from the Scottish Parliament. However, on 22<sup>nd</sup> December 2011 this was, in part, refused. Nicola Sturgeon MSP stated that refusing consent would give the Scottish Parliament greater opportunity for scrutiny:

“Let me be clear: we will take whatever steps are necessary, in the timescale required, to ensure that we protect access to passported benefits when universal credit is introduced.

Our doing that through primary legislation, and indeed with the establishment of a new parliamentary committee, will give the Parliament the opportunity to scrutinise more fully the implications of the changes and, within the obvious and severe financial constraints that we have, consider what mitigation measures are possible”.

# INTRODUCTION

The Welfare Reform (Further Provision) (Scotland) Bill (the Bill) was introduced by Nicola Sturgeon, Cabinet Secretary for Health, Wellbeing and Cities Strategy, on 22 March 2012. It is an enabling Bill which confers powers on Scottish Ministers to make provision via regulations, as considered appropriate, for changes in consequence of the new Universal Credit and Personal Independence Payment created under the Welfare Reform Act 2012 (UK Act).

The Bill broadly mirrors relevant sections in the UK Act which were removed as a consequence of full legislative consent for that Bill having been withheld by the Scottish Parliament in relation to the introduction of Universal Credit and Personal Independence Payments. The main aim is to maintain the legislative basis that underpins devolved, passported benefits in Scotland. These are benefits such as free school lunches and blue badge parking permits which people who are in receipt of certain state benefits, such as, income support or disability living allowance, are entitled to receive as a consequence of (or 'passport' from) their entitlement to the UK benefit.

This paper provides background information on the broad policy intention of the UK Government as regards the UK Act; the Scottish Parliament's consideration of the Legislative Consent Memorandum on the UK Bill, and subsequent refusal of certain elements by the Scottish Parliament; a discussion of passported benefits; the Bill's provisions; and, a brief discussion of the Social Fund and Council Tax Benefit.

## BACKGROUND TO THE WELFARE REFORM (FURTHER PROVISION) (SCOTLAND) BILL

### WELFARE REFORM ACT 2012

#### Policy intention

The UK Government set out its proposals to reform the benefits system in a consultation paper '[21st Century Welfare](#)' work (30 July 2010 – 1 October 2010), and '[Universal Credit: welfare that works](#)', which set out plans to introduce legislation to reform the welfare system by creating a new Universal Credit (11 November 2010). In addition, the UK Government consulted on '[Disability Living Allowance reform](#)' (6 December 2010 – 18 February 2011) to create a new benefit, the Personal Independence Payment, which aims to be simpler, more efficient and to provide support to disabled people who face the greatest challenges to leading independent lives.

The UK Government's stated aim in introducing Universal Credit (UC) was to "radically simplify the system to make work pay and combat worklessness and poverty". The UK Government has given the following reasons for change:

- Poor work incentives – the current system creates poor work incentives, meaning that many people who rely on benefits would have to work for many hours at the minimum wage before they were noticeably better off.
- Complex benefit system – the current system makes it difficult for people to know what benefits and tax credits they can get. Depending on the benefit or tax credit, claimants

may have to deal with the Department for Work and Pensions (DWP), their local authority (Housing Benefit) or HMRC for tax credits.

- Administrative cost of complexity – the complexity of the system generates inefficiency, for example, people often contact the wrong agency, and the complexity prevents people taking up benefits they are entitled to.
- Rising costs of welfare – dependency on welfare is described as a growing problem in Britain, in the last decade, spending on working-age benefits and tax credits rose from £63 billion in 1996/97 to £87 billion in 2009/10 (in real terms, 2010/11 prices) (DWP 2010a)

The UK Government's stated aim in replacing Disability Living Allowance (DLA) with Personal Independence Payments (PIP) is to "support disabled people who face the greatest challenges to remaining independent and leading full and active lives". The UK Government has given the following reasons for change:

- Increase in caseload and expenditure – In eight years, the numbers receiving DLA have increased by 30% (DWP 2010c, chapter 1, para 15). Splitting the figure by age shows that the increase for those under 16 is 32%, those of working age is 25%, and those of pension age is 46%, (as at May 2011 using figures from [DWP Tabulation tool](#)).
- Complex system – The current system is complicated by 11 possible different rates of benefit making it complex to administer. There is evidence that the claim form is difficult to understand and some recipients do not fully understand what the benefit is for, eg many recipients believe DLA to be an out-of-work benefit, leading to the assumption that the benefit will be lost if they return to work (DWP 2010c, chapter 1, para 16).
- No system of review – A claimant's entitlement to DLA is not reviewed on a regular basis to ensure they are getting the right level of benefit. Two thirds of DLA claimants have an indefinite award, which means their award may continue for life without being checked to see if it reflects their current needs. This is not in line with other benefits. (DWP 2010c, chapter 1, para 18).
- DLA can act as a barrier to work – Because of the misconception of DLA as an out-of-work benefit, recipients appear to have lower work expectations (DWP 2010c, chapter 1, para 19).

## **Passage of the UK Welfare Reform Bill**

The UK Government introduced the Welfare Reform Bill on 17 February 2011 and the Bill was passed in the House of Lords on 29 February 2012. The Bill achieved Royal Assent on 8 March 2012.

During the Lords' consideration, a number of the Government's provisions were amended. However, during the period of 'ping-pong', where a Bill goes back and forth between the two houses until both reach agreement, the House of Commons used financial privilege to reject various Lords' amendments (Clerk of the House of Commons and Clerk of Legislation 2012).

In summary, the UK Act:

- Provides for the introduction of a UC for working age adults to replace Income Support (IS), income-based Jobseeker's Allowance (IBJSA), income-related Employment and

Support Allowance (IESA), Housing Benefit, Child Tax Credit and Working Tax Credit. The intention is for full roll-out to commence in October 2013, following a 'pathfinder' system for new claimants due to start in April 2013. Implementation for existing claimants will then be phased in over a period of four years, from 2013-17.

- Provides for changes to the responsibilities of claimants of JSA, ESA and IS in the period leading up to the introduction of UC. In particular, provision is made for the introduction of a claimant commitment. The claimant commitment will be a record of the requirements claimants are expected to meet in order to receive benefit and the consequences should they fail to do so.
- Once the UC provisions have come into force, ESA and JSA will continue alongside UC as contributory benefits. As well as the changes to be made in the interim period, the Act also introduces longer-term reforms to align ESA and JSA more closely with the provisions for UC.
- Limits the period for which people in the Work Related Activity Group (WRAG) can receive contribution-based ESA to 365 days and prevents any new claims for ESA on the grounds of youth. The 'youth' provisions of contribution-based ESA allow certain young people to qualify without having to pay National Insurance contributions. Starts from 1<sup>st</sup> May 2012.
- Introduces the Personal Independence Payment to replace the Disability Living Allowance for adults of working age. The intention is that this will start from April 2013.
- Provides regulation making powers to cap the total amount of benefit that can be claimed. The intention is that this will start from 2013.
- Provides regulation making powers in relation to the determination of maximum housing benefit. The intention is regulations will be made to restrict housing benefit for people of working age under-occupying social rented properties and to change the way that local housing allowance rates are calculated. The intention is that this will start from 2013.
- Establishes a Social Mobility and Child Poverty Commission. Starting in 2012.
- Provides for a restriction in access to Income Support for lone parents; to be eligible lone parents will have to have a child under five years of age, compared to under seven years at present. This came into force on 20 March 2012, under the Welfare Reform Act 2012 (Commencement No.1) Order 2012, SI 863.
- Amends the forthcoming statutory child maintenance scheme.
- Abolishes Council Tax Benefit and parts of the Social Fund (community care grants and crisis loans for living expenses).

## Legislative Consent Memorandum (LCM)

An LCM<sup>1</sup> was originally lodged on 3 March 2011 followed by a supplementary LCM on 1 November 2011. At 3 March 2011, there were four areas where the UK Bill triggered the need for legislative consent:

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<sup>1</sup> See [UK Welfare Reform Bill LCM](#) page for links to the LCMs, Committee evidence and reports.

- Introduction of UC (specifically; clauses 33, 42 and 43);
- Data sharing between DWP and certain welfare service providers (e.g. local authorities) in Scotland (clause 123);
- Introduction of PIP (clauses 89 and 91); and
- Changes to Industrial Injuries Disablement Benefit (clause 64).

Changes to the UK Bill triggered the need for further consent relating to the Child Poverty Commission and further provisions on data sharing (1 November LCM).

## **Committee consideration of the LCM**

The Health and Sport Committee was the lead committee on the LCM. The Infrastructure and Capital Investment Committee (ICI), and the Local Government and Regeneration Committee (LGR) also took evidence. This focused on the overall impact of the UK Bill's provisions, including:

- changes to Housing Benefit and its particular impact on the social rented sector
- the impact on disabled people as a result of the move to UC and the replacement of DLA with PIP
- the impact on children and families as a result of the move to UC, and other aspects of the UK Bill
- the impact on local government
- the economic impact on Scotland
- ways to mitigate the impacts.

In evidence, a range of witnesses (including, Poverty Alliance, CPAG, CAS, Action for Children Scotland, ECAS in Scottish Parliament Health and Support Committee 2011a) expressed concerns that the UK Bill lacked detail, stating that most of the detail would be in regulations. Nicola Sturgeon, the Cabinet Secretary for Health, Wellbeing and Cities Strategy, said that without knowing the detail of the UK Bill it was difficult to assess the impact (Scottish Parliament Health and Sport Committee 2011b), and therefore the extent to which mitigation measures will be required.

To remedy this, two options were discussed in evidence. The first was that there should be a requirement on the face of the UK Bill to seek consent from Scottish Ministers when making regulations that apply in Scotland. However, no such requirement was put in the UK Bill (Scottish Government 2012). The second was to refuse consent to the LCM, in full or in part, which would require the Scottish Government to introduce primary legislation and provide an opportunity for the Scottish Parliament to scrutinise the detail contained in subsequent regulations.

Witnesses expressed varying views on refusing consent to the LCM. Some felt that consent should be refused (Inclusion Scotland, Capability Scotland, the Scottish Disability Equality Forum, and SCVO in Scottish Parliament Health and Sport Committee 2011c); others felt that the UK Government should be pressed for additional information and amendments to the UK



Bill, prior to consideration of the motion (CPAG, Children 1<sup>st</sup>, CAS and SAMH in Scottish Parliament Health and Sport Committee 2011c). In addition, there was concern that refusing consent could delay UC and the associated passported benefits to the people of Scotland, and therefore jeopardise the ability of Scotland to prepare for those measures coming into effect (CAS and Children 1<sup>st</sup> in Scottish Parliament Health and Sport Committee 2011c).

## Timing issues

Neil Couling, an official from the DWP, told the Health and Sport Committee that the LCM was the UK Government's "...attempt to help this Parliament and the Scottish Government to discharge the consequential aspects of the UK Government's reforms to welfare" (Scottish Parliament Health and Sport Committee 2011d). Mr Couling explained that either the LCM needed to be passed or the Scottish Government would need to introduce legislation, "Otherwise, it will not be able to run some of its devolved responsibilities after the Welfare Reform Bill is enacted" (Scottish Parliament Health and Sport Committee 2011d).

The Cabinet Secretary, Nicola Sturgeon MSP, agreed that Scottish legislation would be required if the LCM consent was refused. She stated:

"The biggest practical consequence would be the need for primary rather than secondary legislation. The Government would have an obligation to ensure that we could handle the additional complications of that—that we had the additional time that was required for primary legislation—and that it could happen". (Scottish Parliament Health and Sport Committee 2011b).

When pressed as to whether there was sufficient time for the Scottish Government to introduce primary legislation, the Cabinet Secretary responded:

**Nicola Sturgeon:** If we were dealing with primary legislation, the timescales for that are longer than they are for secondary legislation, as all committee members know. We would need to factor that into our planning and still ensure that we aligned with the UK Government timescale.

**The Convener:** But there should be no impediment with the timescales that have been presented to us.

**Nicola Sturgeon:** We would need to work to ensure that that is the case. Obviously, the key thing with the universal credit is that the effect of the consequential amendments is to a large extent about ensuring access to passported benefits. As health secretary, I would not want people not to be able to get access to passported benefits, and I am pretty sure that members of the committee would not want that, either. (Scottish Parliament Health and Sport Committee 2011b)

## Refused consent

The Scottish Government's Legislative Consent Motion on the UK Welfare Reform Bill did not give consent in relation to the provisions in the Bill giving Scottish Ministers the power to make consequential provisions, by regulations, in relation to the introduction of UC and PIPs. This was supported by the Scottish Parliament on [22 December 2011](#).

The motion which was agreed, lodged by Ms Sturgeon ([S4M-01638.3](#)) and amended by Jackie Baillie, urged the Scottish Parliament to:



- support legislative consent in respect of data sharing, industrial injuries disablement benefit and the social mobility and child poverty commission
- decline legislative consent in relation to the provisions in the Bill giving Scottish Ministers powers to make consequential provisions in relation to UC and PIPs and instead to make these provisions by way of an Act of the Scottish Parliament
- agree to the creation of a Welfare Committee with a remit to consider how the implementation of the Welfare Reform Bill affects people in Scotland, in particular the impact on passported benefits, and the principles and operation of devolved benefits
- continue to make the case to the UK Government to reconsider the Welfare Reform Bill and more broadly its welfare reform agenda.

During the debate on the motion, the Cabinet Secretary made it clear that access to passported benefits would be protected, in the timescale required.

“...we will take whatever steps are necessary, in the timescale required, to ensure that we protect access to passported benefits when universal credit is introduced.

Our doing that through primary legislation, and indeed with the establishment of a new parliamentary committee, will give the Parliament the opportunity to scrutinise more fully the implications of the changes and, within the obvious and severe financial constraints that we have, consider what mitigation measures are possible” (Scottish Parliament 2011).

This is the first time that legislative consent to a UK Bill has been refused since the establishment of the Scottish Parliament.

### *Welfare Reform Committee*

The Scottish Parliament agreed to the establishment of the [Welfare Reform Committee](#) on 25 January 2011, under motion [S4M-01813](#). The Committee had its first meeting on 23 February 2012 and will meet for the remainder of this parliamentary session. The remit of the Committee is:

“...to keep under review the passage of the UK Welfare Reform Bill and monitor its implementation as it affects welfare provision in Scotland and to consider relevant Scottish legislation and other consequential arrangements”.

The Welfare Reform Committee is the lead committee on the Bill.

## **PASSPORTED BENEFITS**

Currently, individuals who are in receipt of means-tested out of work benefits or tax credits may be entitled to a number of ‘passported benefits’. A wide range of passported benefits are available and they are administered by a variety of organisations. For England and Wales, this includes various departments of the UK Government; in Scotland this includes the Scottish Government, as well as local authorities, other bodies within and outside of government, and commercial organisations. Passported benefits can be broken down into three groups:

- Benefits in kind, such as free school lunches

- Cash benefits, such as support for travel costs to health appointments
- Discounts on charges or fees, such as leisure discounts.

The Scottish Government has provided information on 10 different passported benefits which are provided in Scotland in the Financial Memorandum to the Bill. The annexe to this briefing provides a summary of which UK benefits provide a 'passport' to which devolved schemes and notes the main legislation relevant to each one.

Eligibility for 'passported benefits' can be set in legislation (such as free school lunches entitlement set out in the Education (Scotland) Act 1980), or can be a matter of policy (such as school clothing grants, or discounts for leisure facilities). Eligibility for some passported benefits has been established through devolved legislation and therefore the Scottish Government has responsibility for defining the entitlement criteria to these. These have been developed by different policy departments over a period of time. There is some variation between the devolved administrations and UK Government in terms of the policy on entitlement, a prime example being universal free prescriptions in Scotland and Wales. In England a person may be entitled to free prescriptions if they are claiming, for example, Income Support, income-based JSA, income-related ESA, or certain levels of CTC or WTC.

The UK Act effectively abolished all of the 'passporting from' benefits (eg income-based JSA, income-related ESA) and replaced them with UC. In the past, UK benefit changes have largely been on a like for like basis and so any changes in eligibility have been made by updating regulations. However, as UC will apply to claimants in and out of work, receipt of this benefit will not 'stand as reliable proof of sufficiently low income for the purposes of establishing entitlement to passported benefits' (Scottish Government 2011d, para 35). There is also a need to address the passported benefits attached to DLA as it will be replaced with PIPs.

The Scottish Government will need to establish a new criteria for passporting entitlement to these schemes, although this will be dependent on the UK Government establishing in more detail how the new UC and PIP will operate in practice. In addition to legislation, the Scottish Government may want to consult with the third sector, local authorities, banks, utility companies etc regarding their specific custom and practice arrangements.

## **SOCIAL SECURITY ADVISORY COMMITTEE**

The independent Social Security Advisory Committee (SSAC) is the main UK advisory body on social security matters. It was asked by the UK Government to consider the impact of UC on eligibility to passported benefits. Scottish Ministers asked for the review to include Scotland in its terms of reference, but the scope excluded consideration of Housing Benefit and Disability Living Allowance (Scottish Government 2011d, para 38). The SSAC has now reported to the DWP which aims to publish the findings by the end of April 2012 (SSAC 2012).

The review by SSAC sought the views of individuals, organisations and other bodies with experience of passported benefits. The main focus was on benefits in kind, but views on cash benefits and discounts were also welcomed. The objective of the review was to provide advice on how such benefits should be considered once UC is introduced. In particular, the review sought to:

- Collect and review the evidence on benefits (and note information gaps), including:
  - Which benefits are particularly valued by recipients and the reasons for that valuation

- The extent to which such benefits appear to influence employment decisions
- Possible customer behaviour if entitlement to benefits is withdrawn
- Assess the level of complexity surrounding these benefits and consider whether such complexity is a barrier to understanding and take-up
- Examine current variations in provision, noting where possible the implications for all agents that administer benefits throughout GB and the responsibilities of devolved administrations
- Consider how a coherent approach might be developed
- Consider whether there are simpler alternative options that might mitigate any disincentives to work
- Identify ways in which such benefits might be developed in future, ensuring the replacement system is coherent, simple and removes disincentives to work.

## Responses to the Social Security Advisory Committee

Although the SSAC report is not yet available, some of the responses are publicly available online. Two of the responses which have a Scottish focus come from SCoWR (Scottish Campaign on Welfare Reform 2011), and from the Director of Public Health at NHS Greater Glasgow and Clyde (NHS GCC 2011). Some of the broad issues raised are likely to be relevant to the devolved passported benefits in Scotland.

Overall, SCoWR argue that any UC entitlement should give access to all passported benefits. They say, “we hope that this is the approach that the Scottish Government will choose to take to passported benefits under universal credit, given that responsibility for them is devolved”.

On the value of passported benefits, SCoWR said that it depends upon a family’s or individual’s circumstances and,

“...could reduce their income dramatically if lost. For example, hospital transport costs can vary hugely and may be less important to those living in urban areas, but represent the only way that families from rural areas can manage to visit a child receiving specialist treatment far from home. Legal aid is not a regular cost, but is hugely important in terms of citizens’ access of justice”.

On the impact on incentives to work and stay in work, NHS GGC said that the loss of passported benefits when parents move into work can act as a disincentive if they form a significant part of the family’s income and that

“Better off in work calculations sometimes don’t include passported benefits and this can lead to work being unsuitable particularly for poor families. Once parents move in to work, even if they are better off in cash terms they then have to buy essential items such as school meals, school uniforms or other goods and services. This means that parents need to be able to move in to reasonably well paid work to offset this loss”.

SCoWR and NHS GGC indicated that passported benefits positively affect quality of life for low income families through health improvements, enabling participation in education and social activities, providing vital support in times of crisis, and ‘reduce stigma by ensuring people have access to the basic requirements to participate in society’ (NHS GGC 2011).

In terms of the key issues to consider in the design of passported benefits under UC, SCoWR said

“The most important issues in designing the new system are preserving – if not enhancing – current levels of entitlement and maximising take up of passported benefits. The best way to achieve this is a combination of a simple structure without complicated rules, and timely accessible information to claimants of universal credit about other entitlements”.

## **THE BILL**

This short Bill enables Scottish Ministers to introduce regulations in order that devolved legislation can take account of changes to the benefits system introduced by the Welfare Reform Act 2012. In particular, it makes provision for regulations regarding the introduction of UC and PIPs and relates to the Scottish Parliament refusing consent on the LCM, as discussed above.

Section 1, on UC (Part 1 of the UK Act), and Section 2, on PIPs (Part 4 of the UK Act), confer powers on Scottish Ministers to make regulations as considered appropriate in consequence of relevant sections of the UK Act and any associated regulations. Regulations which amend primary legislation will be made under the affirmative procedure and those which amend existing regulations will be made under the negative procedure. The main focus of these regulations will be to maintain the legislative basis that underpins devolved, passported benefits in Scotland. These include benefits in kind such as free school lunches and blue badge parking permits, or cash benefits, such as the education maintenance allowance or travel costs to hospitals. Scottish Ministers may make regulations to make changes to devolved legislation to refer consequentially to some aspect of the new UC, or to fill a gap left by the abolition of the ‘passporting from’ benefit, for example by creating new eligibility criteria for certain passported benefits. A similar process is being carried out in England and Wales.

Section 3 of the Bill contains general provisions which apply to any regulations made under Section 1 and 2. Subsection (2) provides that regulations may be made which are either directly or indirectly related to the UK Act. The Explanatory Notes offer an example:

“...if the powers enabled by this Bill are used to establish an income threshold for entitlement to certain passported benefits then, in future, the Scottish Ministers may wish to vary that income threshold. Such variation may not be linked directly or indirectly to the UK Act but to something else, such as a rise in the rate of inflation” (para 20).

Section 4 defines the term UK Act, ie Welfare Reform Act 2012, sections 5 and 6 refer to commencement and the short title of the Bill.

## **TIMING AND CONSULTATION**

The Scottish Government is required to work to a timetable which requires changes to Scottish legislation, including all regulations made under this Bill, to be commenced by April 2013 when the DWP intends to introduce the ‘pathfinder system’ to test UC. The Scottish Government is seeking to avoid a situation where provision of some passported benefits is put at risk if the legislation is not in place in time.

The Scottish Government says that its policy on how to replace eligibility for passported benefits will not be completed in the first half of this year. The Financial Memorandum states that this is because the practical details of how UC will operate remain to be set in subordinate legislation by the Secretary of State. As such, the UK Government will not be in a position to “convey the

essential detail of their new benefits to it [the Scottish Government] before June of this year” (Financial Memorandum para 32).

These timing issues have meant that the normal consultation process for legislation has not been possible. However, the policy memorandum describes the Bill as having been introduced “on the invitation of the Health and Sport Committee” (Policy Memorandum para 14) in consequence of the Parliament’s refusal of legislative consent to the relevant aspects of the UK Act. The Scottish Government has established a [Welfare Reform Scrutiny Group](#) with which it will consult during the legislative process of the Bill (Policy Memorandum para 15).

## **FINANCIAL MEMORANDUM**

Because of the timing issues described above and lack of available detail, it is not possible for the Scottish Government to set out the full detail of the financial impact of future plans to modify entitlement to passported benefits. The Scottish Government intends to provide further detail when subordinate legislation is introduced later this year; however, it has provided some indication of cost based on current provision.

The budget for the main passported benefits, in their current form, is forecast to be around £546m in 2011-12. Apart from one-off transitional administrative costs, the Scottish Government is not expected to incur increases in expenditure as a direct result of this Bill. When changes to the eligibility criteria for these benefits are made, there may be direct budget implications for the Scottish Government and wider bodies and knock-on social and economic impacts. However, it is not possible to quantify these impacts until more detailed proposals are put forward in the regulations later this year.

## **OTHER DEVOLVED RESPONSIBILITIES**

Two related areas where the Scottish Government may also have to make regulations in the future concern Council Tax Benefits and parts of the Social Fund (community care grants and crisis loans for living expenses), which were abolished by the UK Act. This work is linked through the UK Act, however these are separate matters and the Bill as introduced does not provide for regulations to introduce these successor arrangements.

## **SOCIAL FUND**

Community care grants and crisis loans for living expenses are two discretionary elements of the Social Fund which was originally established in 1986 and is intended to provide support to those on low incomes who had needs that could not be otherwise accommodated (Scottish Government 2011a).

In 2009-10 there were 82,370 applications for community care grants in Scotland, of which 41,450 awards were made. Gross expenditure was £20.2m (DWP 2011a). In 2009-10, 238,000 applications for crisis loans for living expenses were received in Scotland and 180,470 awards were made. Gross spend in Scotland was around £10m (DWP 2011b).

Following an initial recommendation from the Calman Commission to devolve the discretionary elements of the Social Fund, the UK Government’s White Paper ‘Universal Credit: welfare that works’, set out plans for reform of the Social Fund. The UK Government proposed that the discretionary payments should be abolished and replaced by a new locally-based provision.

Section 70 of the UK Act makes provision for the abolition of the discretionary elements of the Social Fund.

In August 2011, the Scottish Government issued a [consultation paper](#) proposing that successor arrangements should combine the current systems of grants and loans into one grant fund.

The consultation paper also sought views on: whether there should be centralised or local delivery of the successor arrangements; whether the eligibility criteria should be modified; whether goods rather than cash should be provided; and, whether other support such as budgeting support should be provided and how appeals should be organised.

Fifty responses were received to the consultation which generally welcomed the devolution of the community care grants and crisis loans for living expenses as an opportunity for the Scottish Government to remedy the deficiencies and complexities of the existing system and to secure better integration with other aspects of welfare and public policy in Scotland (Scottish Government 2011c).

Respondents gave a qualified endorsement to the proposal for a single grant fund. Overall, where a preference was expressed, it was for local delivery and this view was particularly expressed by local authorities. Preference for central delivery came almost entirely from third sector organisations.

The Scottish Government is currently discussing future arrangements with key stakeholders - COSLA in particular.

The intention is that new arrangements will be operational in Scotland by April 2013.

## **COUNCIL TAX BENEFIT**

Section 33 of the UK Act abolishes the existing Council Tax Benefit, which assists the workless, retired, low paid or vulnerable to meet their Council Tax liabilities, from April 2013. Council Tax Benefit will be removed altogether from the Social Security system, and it will then fall to the Scottish Government to develop and implement successor arrangements. These successor arrangements will operate with 10% less funding, and Scotland will get a fixed addition to its budget which the UK Government assert will correspond to Council Tax Benefit currently paid in Scotland minus 10%. The Cabinet Secretary confirmed that Council Tax Benefit is worth £380m at the present time. Therefore, a 10% reduction amounts to £38m (Scottish Parliament 2011b col 679-680).

At December 2011 there were 558,090 recipients of Council Tax Benefit in Scotland (DWP 2012).

The Scottish Government is working with COSLA and local government on the development of successor arrangements which will operate in Scotland from April 2013 onwards.

## ANNEXE: SUMMARY OF PASSPORTED BENEFITS

The table below shows how different welfare benefits (column) create eligibility for various schemes which are governed by devolved legislation (row).

**Table 1: Passports from benefits to be replaced by Universal Credit**

Receipt of this benefit: → Gives entitlement to this benefit ↓	Income Support	Income-based JSA	Income-based ESA	Child Tax Credit	Working Tax Credit
<b>Education Maintenance Allowance</b>	yes	no	yes	no	no
<b>Student loan cancelled</b> if permanently unfit for work	if get disability premium	no	yes	no	no
<b>Legal aid – advice and assistance</b>	yes	yes	yes	no	no
<b>Individual Learning Accounts</b>	yes	yes	yes	if getting maximum amount	no
<b>Free glasses</b>	yes	yes	yes	if income < £15,276	if getting one of disabled elements or also getting CTC and income < £15,276
<b>Free dental treatment</b>	yes	Yes	yes	if income < £15,276	if getting one of disabled elements and income < £15,276
<b>Free travel to NHS treatment</b>	yes	yes	yes	if income < £15,276	if getting one of disabled elements and income < £15,276
<b>Free school lunches</b>	yes	yes	yes	if income < £15k and not entitled to WTC	if income < c.£6,000
<b>Court fees exemption</b>	yes	yes	yes	if also getting WTC	if getting one of disabled elements or also getting CTC and income <£16,642

Benefits are only mentioned in the above table if they are both an eligibility criteria for passported benefits and are being replaced by Universal Credit. It does not include the Energy Assistance Scheme as this will close to new applicants in April 2013.

## PASSPORTS FROM DLA

Replacing DLA with PIP will require new eligibility criteria to be created for the Blue Badge scheme and National Concessionary Travel Scheme. DLA is available at different rates, and the eligibility criteria for the two passported schemes is illustrated in the table below:

**Table 2: Passports from DLA**

	Mobility		Care		
	<i>low</i>	<i>high</i>	<i>low</i>	<i>middle</i>	<i>high</i>
<b>Blue Badge</b>	no	<b>yes</b>	no	no	no
<b>Travel</b>	no	<b>yes</b>	no	<b>yes</b>	<b>yes</b>



## RELEVANT DEVOLVED LEGISLATION

The following lists the main regulations or Scottish Acts which provide the eligibility criteria for the above mentioned schemes.

- [Education Maintenance Allowance \(Scotland\) 2007 SSI 2007/156](#) (as amended)
- [Repayment of Student Loans \(Scotland\) Regulations 2000](#) SI 2000/110 (as amended)
- [The Advice and Assistance \(Scotland\) Regulations 1996](#) (SI 1996/2447) (as amended) (legal aid)
- [The Individual Learning Account \(Scotland\) Regulations SSI 2011/107](#)
- [National Health Service \(Optical Charges and Payments\) \(Scotland\) Regulations 1998](#) no. 642. (as amended)
- [National Health Service \(Travelling Expenses and Remission of Charges\)\(Scotland\) No.2 Regulations 2003 No. 460.](#) (as amended)
- [Education \(Scotland\) Act 1980](#) s.53 (as amended) and [SSI 2009/178](#) (free school lunches)
- [Sheriff Court Fees Order 1997](#) (as amended) SI 1997/687
- [Court of Session Fees Order 1997](#) (as amended) SI 1997/688
- [Disabled Persons \(Badges for Motor Vehicles\) \(Scotland\) Regulations 2000](#) (as amended)
- [National Bus Travel Concession Scheme for Older and Disabled Persons \(Eligible Persons and Eligible Services\) \(Scotland\) Order](#) SSI 2006/117 as amended.

We do not have information on the number of beneficiaries for all these schemes, but the chart and table below give an indication of scale for seven of them. However, it should be noted that for many schemes there are eligibility criteria in addition to the receipt of specified welfare benefits.

**Table 3: Estimate of number of beneficiaries from example schemes**

scheme	beneficiaries	notes
Glasses*	322,116	Passported claims processed 2010/11
Blue Badge	135,000	Criteria wider than passported benefits
Free school lunches	118,963	Prior to expansion to P1-3 pupils, but includes eligibility via immigration legislation
ILA	110,000	Total ILA accounts opened 2010/11
EMA	34,780	Eligibility also includes low income
court fees	33,000	Criteria wider than passported benefits
Legal Aid	9,727	Grants with no contributions – i.e from passport benefits only

Source: Scottish Government table personal communication for all except: Free school lunches statistics and EMA statistics. \*A person might get more than one voucher.

## SOURCES

Clerk of the House of Commons and Clerk of Legislation. (2012) *Financial Privilege*. Available at: <http://www.parliament.uk/documents/commons-information-office/financial-privilege.pdf> [Accessed 21 March 2012]

DWP. (2010a) *21<sup>st</sup> Century Welfare*. London: HMSO. Available at: <http://www.dwp.gov.uk/docs/21st-century-welfare.pdf> [Accessed 21 March 2012]

DWP. (2010b) *Universal Credit: welfare that works*. London: HMSO. Available at: <http://www.dwp.gov.uk/docs/universal-credit-full-document.pdf> [Accessed 21 March 2012]

DWP. (2010c) *Disability Living Allowance reform*. London: HMSO. Available at: <http://www.dwp.gov.uk/docs/dla-reform-consultation.pdf> [Accessed 21 March 2012]

DWP. (2011a) *Social Fund spend by local authority*. Spreadsheet. Available at: <http://www.dwp.gov.uk/docs/social-fund-spend-by-local-authority.xls> [Accessed 22 March 2012]

DWP. (2011b) *Local Support to Replace Community Care Grants and Crisis Loans for Living Expenses in England: Government Response to the Call for Evidence*. Available at: <http://www.dwp.gov.uk/docs/social-fund-localisation-response.pdf> [Accessed 22 March 2012]

DWP. (2012) *Household and Council Tax Benefit Statistics Caseload*. Online statistics. Available at: [http://statistics.dwp.gov.uk/asd/asd1/hb\\_ctb/hbctb\\_release\\_mar12.xls](http://statistics.dwp.gov.uk/asd/asd1/hb_ctb/hbctb_release_mar12.xls) [Accessed 22 March 2012]

*DWP Tabulation tool*. Available at: <http://83.244.183.180/100pc/tabtool.html> [Accessed 21 March 2012]

Director of Public Health at NHS Greater Glasgow and Clyde. (2011). *Passported Benefits*. Available at: <http://library.nhsgg.org.uk/mediaAssets/Healthier%20Wealthier%20Children/NHSGGC%20FINAL%20Consultation%20Response%20to%20SSAC%20July%202011.pdf> [Accessed 22 March 2012]

Scottish Campaign on Welfare Reform. (2011) *Response to SSAC consultation on passported benefits in universal credit*. Available at: <http://www.cpag.org.uk/scotland/SCoWR%20response%20to%20passport%20benefits%20consultation%20July%202011.doc> [Accessed 22 March 2012]

Scottish Government. (2011a) *The Social Fund. A review of selected literature*. Available at: <http://www.scotland.gov.uk/Resource/Doc/352757/0118675.pdf> [Accessed 21 March 2012]

Scottish Government. (2011b) *Devolution of Community Care Grants and Crisis Loans: Consultation on Successor Arrangements*. Available at: <http://www.scotland.gov.uk/Publications/2011/07/29104056/0> [Accessed 22 March 2012]

Scottish Government. (2011c) *Devolution of Community Care Grants and Crisis Loans: Analysis of consultation responses - Research Findings*. Available at: <http://www.scotland.gov.uk/Publications/2012/02/8295> [Accessed 22 March 2012]

Scottish Government. (2011d) *Legislative Consent Memorandum: Welfare Reform Bill*. Available at:

Scottish Government. (2012) *Personal communication*. 17 February 2012. [Unpublished]

Scottish Parliament. (2011) *Official Report 22 December 2011*. Col 4946. Edinburgh: Scottish Parliament. Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=6647&mode=pdf>

[Accessed 21 March 2012]

Scottish Parliament Health and Sport Committee. (2011a) *Official Report 12<sup>th</sup> meeting 2011, Session 4, 15 November 2011*. Edinburgh: Scottish Parliament. Available at

<http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=6732&mode=pdf>

[Accessed 21 March 2012]

Scottish Parliament Health and Sport Committee. (2011b) *Official Report 15<sup>th</sup> meeting 2011, Session 4, 22 November 2011*. Col 670, 671 and 678. Edinburgh: Scottish Parliament. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=6707&mode=pdf>

[Accessed 21 March 2012]

Scottish Parliament Health and Sport Committee. (2011c) *4<sup>th</sup> Report 2011 (Session 4): Report on the Legislative Consent Memorandum on the Welfare Reform Bill (UK Parliament Legislation) – LCM (S4) 5.1*. Edinburgh: Scottish Parliament. Available at:

[http://www.scottish.parliament.uk/S4\\_HealthandSportCommittee/Reports/heR11-04.pdf](http://www.scottish.parliament.uk/S4_HealthandSportCommittee/Reports/heR11-04.pdf)

[Accessed 21 March 2012]

Scottish Parliament Health and Sport Committee. (2011d) *Official Report 14<sup>th</sup> meeting 2011, Session 4, 22 November 2011*. Col 645 and 648. Edinburgh: Scottish Parliament. Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=6766&mode=pdf>

[Accessed 21 March 2012]

Social Security Advisory Council. (2012) *Personal communication*. 14 February 2012.

[Unpublished]

*Welfare Reform (Further Provision) (Scotland) Bill [as introduced] Session 4 (2012)*. SP Bill 11. Edinburgh: Scottish Parliament. Available at:

[http://www.scottish.parliament.uk/S4\\_Bills/Welfare%20Reform%20Bill/b11s4-introd.pdf](http://www.scottish.parliament.uk/S4_Bills/Welfare%20Reform%20Bill/b11s4-introd.pdf)

[Accessed 26 March 2012]

*Welfare Reform (Further Provision) (Scotland) Bill: Explanatory Notes (and other accompanying documents) Session 4 (2012)*. SP Bill 11-EN. Edinburgh: Scottish Parliament. Available at:

[http://www.scottish.parliament.uk/S4\\_Bills/Welfare%20Reform%20Bill/b11s4-introd-en.pdf](http://www.scottish.parliament.uk/S4_Bills/Welfare%20Reform%20Bill/b11s4-introd-en.pdf)

[Accessed 26 March 2012]

*Welfare Reform (Further Provision) (Scotland) Bill: Policy Memorandum: Session 4 (2012)*. SP Bill 11-PM. Edinburgh: Scottish Parliament. Available at:

[http://www.scottish.parliament.uk/S4\\_Bills/Welfare%20Reform%20Bill/b11s4-introd-pm.pdf](http://www.scottish.parliament.uk/S4_Bills/Welfare%20Reform%20Bill/b11s4-introd-pm.pdf)

[Accessed 26 March 2012]

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