Passage of the

Welfare Reform (Further Provision) (Scotland) Bill 2012

SPPB 179
Passage of the

Welfare Reform (Further Provision) (Scotland)
Bill 2012

SP Bill 11 (Session 4), subsequently 2012 asp 10

SPPB 179
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Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected. An exception is the groupings of amendments for Stage 2 and Stage 3 (a list of amendments in debating order was included in the original documents to assist members during actual proceedings but is omitted here as the text of amendments is already contained in the relevant marshalled list).

Where documents in the volume include web-links to external sources or to documents not incorporated in this volume, these links have been checked and are correct at the time of publishing this volume. The Scottish Parliament is not responsible for the content of external Internet sites. The links in this volume will not be monitored after publication, and no guarantee can be given that all links will continue to be effective.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:
Introduction, followed by publication of the Bill and its accompanying documents;
Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
Stage 2: the Bill returns to a committee for detailed consideration of amendments;
Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available for sale from Stationery Office bookshops or free of charge on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Chamber Office. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process described above.

Annexe C to the Welfare Reform Committee’s Stage 1 Report was not published as part of the Report, but was available on the web only. The material contained in that Annexe (the oral evidence taken, and written evidence and supplementary evidence received by the Committee, along with correspondence) is reproduced in full in this volume after the Stage 1 Report.

Correspondence between the Committee and the Cabinet Secretary for Health, Wellbeing and Cities Strategy on arrangements for consideration of the Bill that was not included in the Stage 1 Report is included in this volume after that Report. A Bill briefing paper from the Scottish Government that was not published in the Report is also included in this volume.

At Stage 1, the Subordinate Legislation Committee considered the delegated powers in the Bill and reported to the Welfare Reform Committee. That report, including
correspondence between the Committee and the Scottish Government, is included in the Welfare Reform Committee’s Stage 1 Report at Annexe A. The Official Report of the evidence taken by the Subordinate Legislation Committee at its meeting on 17 April 2012 was not, however, included in that Report. The relevant extracts from the Official Report and from the Committee’s minutes are, therefore, included in this volume after the Stage 1 Report.

At Stage 1, the Finance Committee considered the Financial Memorandum to the Bill and wrote to the Welfare Reform Committee with its conclusions. That letter, including the written evidence received by the Finance Committee, is also included in the Welfare Reform Committee’s Stage 1 Report at Annexe A. The Official Report of the evidence taken by the Finance Committee at its meeting on 18 April 2012 was not, however, included in that Report. The relevant extracts from the Official Report and from the Committee’s minutes are, therefore, included in this volume after the Stage 1 Report.

After Stage 1, at its meeting on 12 June 2012, the Subordinate Legislation Committee considered and noted the Scottish Government’s response to its report on the Bill at Stage 1. The response and the relevant extracts from the Official Report and from the Committee’s minutes are included in this volume.

At Stage 2 no amendments were agreed to. There was, therefore, no ‘As Amended at Stage 2’ version of the Bill produced.
Welfare Reform (Further Provision) (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to enable the Scottish Ministers to make provision by regulations in consequence of the Welfare Reform Act 2012 (in respect of matters other than reserved matters).

Powers

1 Universal credit: further provision

(1) The Scottish Ministers may by regulations make such provision as they consider appropriate in consequence of any provision of—

(a) Part 1 (universal credit) of the UK Act,
(b) regulations made by the Secretary of State under that Part,
(c) an order made under section 41(5)(a) of that Act.

(2) Regulations under this section may modify any enactment (whenever passed or made).

(3) Regulations under this section—

(a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act,
(b) otherwise, are subject to the negative procedure.

2 Personal independence payment: further provision

(1) The Scottish Ministers may by regulations make such provision as they consider appropriate in consequence of any provision of—

(a) Part 4 (personal independence payment) of the UK Act,
(b) regulations made by the Secretary of State under that Part.

(2) Regulations under this section may modify any enactment (whenever passed or made).

(3) Regulations under this section—

(a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act,
(b) otherwise, are subject to the negative procedure.
3 **Regulations under this Act: ancillary provision**

(1) This section applies to any regulations under section 1 or 2.

(2) The regulations may—

(a) make provision in direct or indirect consequence of a relevant portion of the UK Act or of a relevant instrument made under it,

(b) contain provision not by itself in consequence of a relevant portion of that Act or of such an instrument, if the provision concerns any matter arising in direct or indirect consequence of the relevant portion (including previously so arising).

(3) The regulations may—

(a) make different provision for different cases or purposes,

(b) include supplemental, incidental, consequential, transitional, transitory or saving provision.

**General**

4 **References to the UK Act**

In this Act, “the UK Act” means the Welfare Reform Act 2012.

5 **Commencement**

This Act comes into force on the day after Royal Assent.

6 **Short title**

The short title of this Act is the Welfare Reform (Further Provision) (Scotland) Act 2012.
Welfare Reform (Further Provision) (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to enable the Scottish Ministers to make provision by regulations in consequence of the Welfare Reform Act 2012 (in respect of matters other than reserved matters).

Introduced by: Nicola Sturgeon
On: 22 March 2012
Bill type: Executive Bill
These documents relate to the Welfare Reform (Further Provision) (Scotland) Bill (SP Bill 11) as introduced in the Scottish Parliament on 22 March 2012

WELFARE REFORM (FURTHER PROVISION) (SCOTLAND) BILL

EXPLANATORY NOTES
(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Welfare Reform (Further Provision) (Scotland) Bill introduced in the Scottish Parliament on 22 March 2012:

   • Explanatory Notes;
   • a Financial Memorandum;
   • a Scottish Government Statement on legislative competence; and
   • the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 11–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

4. The Welfare Reform (Further Provision) (Scotland) Bill will make the provisions required by the Scottish Parliament’s partial refusal of legislative consent for the UK Welfare Reform Act 2012 (“the UK Act”). It is an enabling Bill which gives powers to the Scottish Ministers to make provision in consequence of the UK Act for devolved purposes.

5. The Bill largely mirrors relevant clauses of the Bill for the UK Act which were removed during that Bill’s Third Reading in the House of Lords. Their removal was the consequence of full legislative consent for that Bill having been withheld by the Scottish Parliament. Unlike the relevant clauses of the Bill for the UK Act, however, the provisions in the Bill do not explicitly refer to the enabling powers being exercisable only to make provision which would be within the legislative competence of the Scottish Parliament if contained in an Act of the Parliament. This would have been a necessary express qualification in the UK Act, because the UK legislation could otherwise have conferred a wider power on the Scottish Ministers to enable them to make provision for any purpose whether devolved or reserved. The Scottish Government considers that a similar express qualification in the Bill is unnecessary because in its view all of the powers conferred in the Bill are implicitly limited to being exercisable within the limits of devolved competence in the following way. The legislative objective of the Bill is to enable the Scottish Ministers to make provision by regulations only for devolved purposes. To the extent that the text of the Bill’s provisions, which bear a relationship to provision made by or under Parts 1 and 4 of the UK Act relating to the reserved matter of social security provision, could be read as being outwith competence, the Scottish Government considers that the operation of section 101 of the Scotland Act 1998 would ensure that the provisions could be read as narrowly as required for them to be within competence and for them to have effect accordingly. The Scottish Government furthermore considers that the Scottish Ministers will be constrained in exercising these enabling powers within the limits of their devolved competence set out in section 54 of the Scotland Act 1998.

OVERVIEW OF THE BILL

6. Section 1 of the Bill provides powers to make provision in consequence of the introduction in 2013 of universal credit and the abolition of some existing social security benefits by the UK Act.
7. Section 2 of the Bill provides powers to make provision in consequence of the introduction in 2013 of personal independence payments and the accompanying abolition of disability living allowance by the UK Act.

8. Section 3 of the Bill contains general ancillary powers which apply to any regulations made under sections 1 and 2 of the Bill.

Section 1: Universal credit: further provision

9. This section sets out a power for the Scottish Ministers to make such provision (for devolved purposes) as they consider appropriate in consequence of the provisions in Part 1 of the UK Act which creates universal credit and abolishes certain existing social security benefits, referred to further in paragraph 12. Under this section, as read with section 3(3)(b), the Scottish Ministers are empowered to make supplemental, incidental, consequential, transitional, transitory or saving provision. This enabling power is exercisable only for devolved purposes and so could be used, for example, to make consequential or supplemental provision in the devolved area of passported benefits where that provision is considered appropriate in light of the abolition of existing social security benefits by the UK Act.

10. “Universal credit” refers to the new, integrated benefit and tax credit which will be rolled out across the UK from April 2013-2017. UK Government policy in respect of universal credit has been set out in the white paper (“Universal Credit: Welfare That Works”) in November 2010 and in subsequent briefing notes. Universal credit will be comprised of a basic award onto which ‘add-ons’ in respect of particular needs such as housing and help with child care costs will be added where appropriate. It will act as a top up benefit for those in work and will be paid to households monthly into a bank account. The intention is that recipients of universal credit will be able to manage their claims online so far as possible and that the amount payable will change automatically to accommodate a change in a household’s circumstances. A “pathfinder” system is due to be introduced in April 2013 with implementation proper due to proceed from October 2013 for new claimants with a four year phase-in period for existing welfare claimants ending in 2017.

11. The power set out in section 1 of the Bill is needed because the existing benefits, which will be abolished, have links to devolved areas, the main one being that they are used as an eligibility hook for a variety of devolved, Scottish “passported benefits”. These include benefits in kind such as free school lunches and cash benefits such as the education maintenance allowance. When the existing benefits are abolished, so too will the current, associated eligibility hooks. The Scottish Ministers may use the power provided by this section to make changes for a devolved purpose such as to refer consequentially to some aspect of the new universal credit or to supplement the gap left by the abolition of the hook benefit, for example by creating new eligibility criteria for certain passported benefits conferred in devolved areas such as health or access to justice. Existing social security benefits also impact on other devolved areas such as pre-action requirements where a landlord’s grounds for possession include rent arrears and cancellation of adoption allowances. The Scottish Ministers could also make free-standing

These documents relate to the Welfare Reform (Further Provision) (Scotland) Bill (SP Bill 11) as introduced in the Scottish Parliament on 22 March 2012

provision using this power provided it were for a devolved purpose and was required in consequence of provision made by or under Part 1 of the UK Act.

12. The existing social security benefits which will be abolished by section 33 of the UK Act and replaced by universal credit are:

- Income support under section 124 of the Social Security Contributions and Benefits Act 1992 ("the 1992 Act"),
- Housing benefit under section 130 of the 1992 Act,
- Jobseeker’s allowance under the Jobseekers Act 1995 (where income-based),
- Employment and support allowance under Part 1 of the Welfare Reform Act 2007 (where income-related),
- Child tax credit under the Tax Credits Act 2002, and
- Working tax credit under the Tax Credits Act 2002.

13. Subsection (2) provides that regulations under this section may modify primary and secondary legislation (including not only Acts of the Scottish Parliament but also pre-devolution enactments and subordinate legislation which relate to devolved matters) for a devolved purpose and subject to the other restrictions on competence in the Scotland Act 1998.

14. Subsection (3) provides that regulations under this section are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act, and otherwise are subject to the negative procedure.

Section 2: Personal independence payment: further provision

15. This section sets out a power for the Scottish Ministers to make such provision (for devolved purposes) as they consider appropriate in consequence of Part 4 of the UK Act. Part 4 of that Act creates the personal independence payment and abolishes disability living allowance. Under this section, as read with section 3(3)(b), the Scottish Ministers are empowered to make supplemental, incidental, consequential, transitional, transitory or saving provision. This enabling power is exercisable only for devolved purposes. It could be used, for example, to make supplemental or consequential provision in the devolved area of legal aid where the governing legislation refers to the mobility component of disability living allowance, where consequential or supplemental provision is considered appropriate in light of the abolition of disability living allowance by the UK Act.

16. Further provision in relation to Part 4 is needed because, as with universal credit, the introduction of personal independence payment and the abolition of the disability living allowance have consequences for devolved matters and their associated legislation. The power in this section could be used to make changes for devolved purposes to refer to the personal independence payment instead of the disability living allowance so as, for example, to create new eligibility criteria for certain passported benefits such as ‘blue badge’ parking permits. The Scottish Ministers could also make free-standing provision using this power provided it were for a devolved purpose and in consequence of provision made by or under Part 4 of the UK Act.
17. Subsection (2) provides that regulations under this section may modify primary and secondary legislation (including not only Acts of the Scottish Parliament but also pre-devolution enactments and subordinate legislation) for a devolved purpose and subject to the other restrictions on competence in the Scotland Act 1998.

18. Subsection (3) provides that regulations under this section are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act, and otherwise are subject to the negative procedure.

Section 3: Regulations under this Act: ancillary provision

19. This section contains general provisions which apply to any regulations made under sections 1 and 2.

20. Subsection (2) provides that the regulations may make provision which is either in direct or indirect consequence of the UK Act. Provision can also be made which is not itself in consequence of the UK Act but concerns a matter which is, or previously was, in consequence of the UK Act. This will allow the Scottish Ministers to make provision required for reasons which are not in direct or indirect consequence of the UK Act. For 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 in direct or indirect consequence of the UK Act but in consequence of something else, such as a rise in the rate of inflation. It would, however, be linked to a matter which was in consequence of the UK Act.

21. Subsection (3) provides for the regulations to make different provision for different cases or purposes and to include supplemental, incidental, consequential, transitional, transitory or saving provision.

Section 4: References to the UK Act

22. This section defines the term “the UK Act” which is used throughout the Bill.

Section 5: Commencement

23. This Bill will commence the day after it receives Royal Assent.

Section 6: Short title

24. This section gives the short title of the Bill.
FINANCIAL MEMORANDUM

INTRODUCTION

25. This document relates to the Welfare Reform (Further Provision) (Scotland) Bill introduced in the Scottish Parliament on 22 March 2012. It has been prepared by the Scottish Government, to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

BACKGROUND

26. The Welfare Reform (Further Provision) (Scotland) Bill is an enabling Bill comprising six sections. It confers on the Scottish Ministers power to make such provision for devolved purposes as they consider appropriate in consequence of changes to the welfare system made by or under Parts 1 and 4 of the UK Welfare Reform Act 2012 (“the UK Act”).

27. The Bill largely mirrors relevant clauses of the Bill for the UK Act which were removed during that Bill’s Third Reading in the House of Lords. Their removal was the consequence of full legislative consent for that Bill having been withheld by the Scottish Parliament. Unlike the relevant clauses of the Bill for the UK Act, however, the provisions in the Bill do not explicitly refer to the enabling powers being exercisable only to make provision which would be within the legislative competence of the Scottish Parliament if contained in an Act of the Parliament. This would have been a necessary express qualification in the UK Act, because the UK legislation could otherwise have conferred a wider power on the Scottish Ministers to enable them to make provision for any purpose whether devolved or reserved. The Scottish Government considers that a similar express qualification in the Bill is unnecessary because in its view all of the powers conferred in the Bill are implicitly limited to being exercisable within the limits of devolved competence in the following way. The legislative objective of the Bill is to enable the Scottish Ministers to make provision by regulations only for devolved purposes. To the extent that the text of the Bill’s provisions, which bear a relationship to provision made by or under Parts 1 and 4 of the UK Act relating to the reserved matter of social security provision, could be read as being outwith competence, the Scottish Government considers that the operation of section 101 of the Scotland Act 1998 would ensure that the provisions could be read as narrowly as required for them to be within competence and for them to have effect accordingly. The Scottish Government furthermore considers that the Scottish Ministers will be constrained in exercising these enabling powers within the limits of their devolved competence set out in section 54 of the Scotland Act 1998.

28. Once enacted, the Scottish Ministers will use the powers provided in this Bill to make such supplemental, incidental, consequential, transitional, transitory or saving provision in relation to provisions in Part 1 (universal credit) and Part 4 (personal independence payment) of the UK Act for devolved purposes as they consider appropriate. Provision will be required in respect of primary and secondary legislation (including not only Acts of the Scottish Parliament but also pre-devolution enactments and subordinate legislation) in order to give effect to this devolved purpose.
29. Changes will be made to primary and secondary legislation which, at present, link eligibility for devolved, ‘passported benefits’ to benefits which the UK Act will abolish. Although passported benefits are provided across the UK, the Scottish Government has responsibility in Scotland where these benefits fall within devolved competence. The Scottish Government will use the powers enabled by this Bill to make changes to legislation for devolved purposes to reflect the abolition of UK benefits such as jobseeker’s allowance, employment and support allowance, housing benefit and the disability living allowance, in order to maintain the legislative basis that underpins entitlement to passported benefits. A similar process will also be carried out in England and Wales.

30. Passported benefits can be loosely divided into continuing benefits such as free school lunches or free NHS dental care, which customers can expect to receive for a number of years, and one-off benefits such as legal aid. Passported benefits can be cash benefits, such as the education maintenance allowance, or benefits in kind such as optical vouchers or free NHS dental care. When the existing UK benefits are abolished, so too will the current, associated eligibility hooks. Universal credit (the new, UK integrated benefit and tax credit) will be used to top up income for those in work as well as out of work, which means that receipt of universal credit will not, in and of itself, be sufficiently reliable proof of low income for the purposes of establishing any entitlement to passported benefits. From the information currently available, universal credit does not currently contain obvious points of reference on which to link eligibility for passported benefits.

31. These changes brought forward by the UK Government mean that the Scottish Government now has to re-formulate its policy on devolved entitlement to passported benefits before amending Scottish legislation which falls within its devolved competence. This Bill forms the first part of that process. The Scottish Government is required to work to a timetable which requires changes to Scottish legislation to be commenced ahead of the introduction of the Department for Work and Pensions ‘pathfinder system’ which is due to be rolled-out in April 2013.

32. The devolved policy re-formulation work, which will look at future entitlement to passported benefits and consider what changes will be required, will not be completed in the first half of this year. The reason for this is that many of the practical details as to how the UK Government’s welfare reforms will operate (e.g. conditions for entitlement to universal credit and personal independence payment) remain to be set out in subordinate legislation by the Secretary of State for Work and Pensions. The Scottish Government does not expect the UK Government to be in a position to convey the essential detail of its new benefits to it before June of this year.

33. It is not possible to set out the detail of the likely financial impact of future plans to modify entitlement to passported benefits until the operational detail of the UK Government’s welfare reforms is available. This memorandum therefore sets out the costs of all passported benefits where a legislative link to eligibility has been identified and costs are incurred. The figures set out below are based on the current provision and the existing, associated costs. It is expected that the provision of passported benefits will be retained at the current level and that costs will be met from within existing budgets. Indicative budgets for some passported benefits have already been set as part of the 2011 Spending Review process and these are detailed in the relevant section below. Any attempt to provide an assessment of the financial impact of the
changes in advance of the operational detail of the UK reforms being available would be speculative.

34. The Scottish Government will provide details of how passported benefits will be modified when the necessary subordinate legislation is brought forward later this year, including a full assessment of the financial impact of these changes, alongside the draft subordinate legislation.

35. The Scottish Government believes that this approach carries less risk than the alternative, which would be to wait to bring forward legislation when the design of all the successor arrangements has been completed and the full details of the operation of the new UK benefit system are known. Any delay, at this stage, would have significant implications for the timetabling of subordinate legislation. As a result, the Scottish Government could not provide any guarantee that the devolved statutory basis which underpins some passported benefits would be revised in time to be in place post April 2013.

36. In introducing the Bill, the Scottish Government is seeking to avoid a situation where provision of some passported benefits is put at risk if the necessary devolved legislation is not commenced in time.

**COSTS ON THE SCOTTISH GOVERNMENT**

37. There will be an administrative cost on the Scottish Government to re-formulate its policy on entitlement to passported benefits during 2012-13 and then to make the necessary changes to subordinate legislation, forms and administrative systems for introduction from April 2013. Within the core Scottish Government, the associated staffing cost is estimated at £300,000, and will be met through the reallocation of existing resources. Over and above this, there will be some one-off costs to the Scottish Government and for those wider Scottish Government bodies affected by this legislation, associated with revising application forms and systems to align with the new arrangements. Until policy on passported benefits is reformulated, it is not possible to estimate what the cost of the associated system changes will be. Where changes to the existing provision are proposed in subordinate legislation, an assessment of the financial impact will be provided.

38. Other than these one-off, transitional administrative costs, the Scottish Government is not expected to incur increases in direct costs as a result of this Bill. The passported benefits which the Scottish Government and health boards currently provide and for which they incur costs are:

- Free NHS dental treatment,
- Optical vouchers,
- Travel costs to NHS Scotland premises,
- Individual learning accounts,
- Educational maintenance allowances,
- Concessionary travel,
- Legal aid,
These documents relate to the Welfare Reform (Further Provision) (Scotland) Bill (SP Bill 11) as introduced in the Scottish Parliament on 22 March 2012

- Court exemption fees.

39. A summary of the current and projected scale of each of these benefits, together with a list of assumptions on which projection are based, is set out at Table 1 below.

**Free NHS dental treatment, optical vouchers and travel costs to NHS Scotland premises**

40. Health boards are responsible for making arrangements for the provision of free NHS dental treatment, the provision of optical vouchers and for travel costs to NHS Scotland premises. These benefits are available to those in receipt of any of the following benefits or tax credits:

- Income support,
- Income-based jobseeker’s allowance,
- Income-related employment and support allowance,
- Working tax credit with a disability or severe disability element (with an income of less than £15,276 taxable gross income per year),
- Child tax credit (with an income of less than £15,276 taxable gross income per year),
- Child tax credit with working tax credit (with an income of less than £15,276 taxable gross income per year),
- Pension credit guarantee.

41. It is not known how many people in receipt of the qualifying benefits or tax credits currently receive free NHS dental treatment, as provision is measured by the number of individual treatment claim forms submitted (and one person may require multiple treatments).

42. Any variation in entitlement to free NHS dental treatment could impact on the estimated current total cost to health boards which, in 2010-11 was approximately £34,100,000 for those in receipt of passported benefits (including pension credit guarantee credit) or entitled to help under the NHS Low Income Scheme. Any increases in the cost of NHS dental treatment are the result of increased patient take up and treatment needs as well as increases in dentists’ fees, which are recommended by the independent Doctors and Dentists Review Body (DDRB). Assuming no further increase in dental provision and using the Consumer Price Index (CPI) measure of inflation as a proxy for any increases in fees this would result in costs increasing to approximately £38,000,000 by 2014-15.

43. Optical vouchers are available towards the cost of glasses or contact lenses in Scotland to those who qualify. There were 322,116 optical voucher claims processed in 2010-11 in respect of those in receipt of a passported benefit (this includes those in receipt of pension credit guarantee credit but excludes those in receipt of income-related employment and support allowance). An additional 4,193 optical voucher claims were processed in respect of those in receipt of a passported benefit for the repair or replacement of glasses. A voucher valued at between £36.20 and £200.10 (depending on the person’s optical prescription) is provided in respect of each claim. An individual may receive more than one voucher in a year if it is considered clinically necessary. Any variation in entitlement to optical vouchers could impact on
the estimated current total cost to health boards of this provision which, in 2010-11 was approximately £15,000,000.

44. Voucher values in Scotland are uprated in line with increases agreed by the Department of Health. Their values have not increased since 2009 but are set to increase by 2.5% in 2012-13. The choice of indicator used by the Department of Health to guide upratings has in the past varied between the forecast Gross Domestic Product (GDP) deflator, and the all-items Retail Price Index (RPI) now replaced by the Consumer Price Index (CPI). If going forward the CPI measure of inflation is used this would result in a cost of approximately £16,000,000 by 2014-15, assuming patient demand remains constant.

45. Qualifying people, who are in need of health treatment, are entitled to have the cost of their travelling expenses incurred for the purposes of obtaining NHS services paid for them by their local health board. Data on the cost of providing travel to NHS Scotland premises is not collected centrally.

*Individual learning accounts*

46. Individual learning accounts (ILA) are available to applicants in Scotland who are 16 or over, have an income of £22,000 a year or less or who are in receipt of one of the following reserved benefits:

- Income-based and contribution-based jobseeker’s allowance,
- Income support,
- Carer’s allowance,
- Incapacity benefit,
- Maximum rate of child tax credit,
- State pension credit,
- Income-based and contribution-based employment and support allowance.

47. Over 110,000 independent learning accounts were opened in 2010-11 with an average spend per person of approximately £140. In 2010-11, total ILA expenditure was £11,345,000, of which £9,211,000 was learner spend. Separately, work is under way to review the eligibility criteria for ILAs.

*Education maintenance allowance*

48. Education maintenance allowances are a continuing cash benefit in the form of means tested payments of £30 per week which are available to young people aged 16-19 who remain in education. Education maintenance allowances in respect of school pupils are payable by local authorities, but funded by the Scottish Government. Pupils attending further education colleges receive education maintenance allowances via the Scottish Funding Council. Entitlement to the education maintenance allowance is based on the age of the student, household income, residential status and validity/level of academic course. A relevant award notice of entitlement to UK reserved benefits is used as proof of income. There are two thresholds for household income: £20,351 for households with one dependent child and £22,403 for households with more than
These documents relate to the Welfare Reform (Further Provision) (Scotland) Bill (SP Bill 11) as introduced in the Scottish Parliament on 22 March 2012

one dependent child. These thresholds have remained constant since they were introduced from the start of academic year 2009-10. There are no plans to amend them at this time.

49. There were 34,780 young people in Scotland who received an education maintenance allowance in 2010-11. The average claim, based on budget and uptake for 2010-11 was £800 per student with the maximum claim, based on a young person participating in an activity agreement for the whole 52 weeks of the year being £1,560. The total cost of education maintenance allowances for 2010-11 was £33,300,000. The budget for education maintenance allowance has been agreed at £31,200,000 for 2012-13 and is expected to remain at approximately this level for the remainder of the spending review period, including 2014-15.

Concessionary travel

50. Transport Scotland offers free bus travel for older people, and for disabled people who are in receipt of the higher rate of the mobility component of disability living allowance or the higher or middle rate of the care component of disability living allowance.

51. As of 28 January 2012 there were just over 1.23 million National Entitlement Cardholders in circulation giving access to free bus travel throughout Scotland. Of these 84% are eligible through the age criteria (60 and over) with the remaining 16% eligible through a number of passported benefits.

52. Expenditure for the National Concessionary Travel Scheme in 2010-11 was £174,200,000; the average benefit for an individual eligible to use the scheme was in the region of £215. Expenditure for the National Concessionary Travel Scheme is capped each year and requires to be detailed in the legislation3. While the cap has only been agreed up to 2012-13 the budget is expected to remain flat over the forthcoming years. As a result it is expected that the cap in 2014-15 will be approximately £187,000,000.

Legal aid

53. The Scottish Legal Aid Board (“the Board) is a non-departmental public body funded by the Scottish Government and by contributions and expenses payable by persons in receipt of legal assistance. The Board is responsible for managing legal aid in Scotland. Applicants for legal assistance can qualify with no contribution payable if they are in receipt of certain benefits. Applicants who are not in receipt of these benefits must complete an application form and show evidence of income and expenditure. The Board will then decide if the person qualifies for legal assistance and whether or not they will have to pay a contribution. The reserved benefits which ‘passport’ a person onto legal assistance include:

- Income support,
- Income-based jobseeker’s allowance,
- Income-related employment and support allowance.

54. The budget for legal aid is demand-led and is not a fixed amount. The Scottish Government gives the Board the necessary funds to meet the cost of cases. This means that the cost of providing legal aid as a passported benefit will vary from year to year. In 2010-11, there were 271,974 grants for legal aid (both civil and criminal), of which some 52 per cent were made on a passported basis.

55. Total expenditure on the legal aid fund in 2010-2011 was £161,400,000. The Scottish Government’s paper, “A Sustainable Future for Legal Aid”⁴, published on 5 October 2011, noted that the Scottish Legal Aid Board was at that point forecasting that, based on savings measures already taken, expenditure would fall to £145,300,000 by 2014-15. However, the Scottish Government budget for legal aid in 2014-15 will be reduced to £132,100,000. A Sustainable Future for Legal Aid’ sets out the Government’s proposals for meeting this financial challenge.

Court exemption fees

56. The Scottish Court Service (SCS) is an independent body funded by the Scottish Government which is responsible for providing the staff, buildings and technology to support Scotland’s courts. The SCS grants exemptions to fees usually payable for various applications at court to persons in receipt of certain UK benefits. The qualifying reserved benefits are:

- Income support,
- Income-based jobseekers allowance,
- Income-related employment and support allowance,
- Child tax credit, working tax credits – up to gross annual income of £16,642.

57. In 2010-11, the total value of the exemptions amounted to £2,300,000, from 33,500 applications. Around £70,000 of the fees forgone related to means-tested benefits. Court fees were last increased in 2008, after remaining static since around 2002, and are subject to periodic revision. Scottish Government officials are currently in the process of taking forward proposals received from the SCS to increase court fees which will cover a two-year period (from 1 November 2012). This process will be subject to a public consultation which is yet to be published. If the forthcoming Fee Order was to increase court fees by inflation (CPI) over the next period, the total value of exemptions related to means tested benefits may increase to around £75,000 in 2014-15. This, however, would be dependant on other factors such as the number of applications received and the type of applications received.

COSTS ON LOCAL AUTHORITIES

58. As with the Scottish Government, there will be an administrative cost on local authorities to re-align delivery of passported benefits to the new entitlement criteria. The passported benefit which local authorities currently provide on a statutory basis and for which they incur costs relates to free school lunches.

59. School lunches are currently provided free of charge to children and young people who are in school education and whose parents (including persons who have parental responsibilities in relation to or who have care of a child or young person such as a guardian or kinship carer) are in receipt of any of the following reserved UK benefits:

- Income support,
- Income-based jobseeker’s allowance,
- Any income-related element of employment and support allowance,
- Child tax credit (but not working tax credit) with an income less than £15,860,
- Both maximum child tax credit and maximum working tax credit with an income under £6,420,

60. From the age of 16, young people in school education who receive any of these benefits can also claim free school lunches in their own right.

61. The range of prices charged for school lunches by local authorities is between £1.15 and £2.30 per lunch. The potential benefit in kind for the parents is therefore between £218.50 and £437.00 per child per annum. In 2010, 118,963 pupils in Scotland were registered to receive free school lunches. This represented 17.8% of the total pupil population. In 2010-11, the total local authority net expenditure on school lunches was reported as £92,137,000. This represents expenditure on all school lunches, not just those that were provided free of charge, minus income from lunches that were paid for. The price charged for school lunches is unlikely to cover the full cost of providing them so this figure is likely to be an overestimate of the costs of providing free school lunches alone, as it will include some expenditure associated with paid for lunches. The figure cannot, however, be disaggregated further. Assuming criteria for providing school lunches and the demand were unchanged, and the cost of a lunch increased by inflation (CPI), net expenditure on school lunches would be approximately £103,000,000 in 2014-15.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

62. As with local authorities, there will be an administrative cost on other bodies to re-align delivery of passported benefits to the new entitlement criteria. The passported benefit which is currently provided by another body, and for which it incurs costs, is the energy assistance package.

Energy assistance package

63. The Energy Saving Trust in Scotland is part of a UK-wide non-profit organisation providing impartial information and advice. The Trust manages the delivery of the energy assistance package on behalf of the Scottish Government. The energy assistance package is a four-stage package aimed at helping to reduce fuel bills and improve the energy efficiency of homes in Scotland. Stages 3 and 4 of the package are passported benefits in kind as applicants are entitled to receive this support on the basis of their entitlement to other benefits.
64. Applicants for stage 3 of the package are entitled to receive free or subsidised insulation from an energy supplier on the basis of their existing entitlement to specific benefits. These reserved benefits are:

- Pension credit,
- Child tax credit or working tax credit (where income is less than the qualifying threshold),
- Employment and support allowance (both income related and contribution based),
- Attendance allowance,
- Disability living allowance,
- Income support, income based jobseeker’s allowance,
- Housing benefit,
- Council tax benefit.

65. Applicants for stage 4 of the package could be entitled to grants for up to £6,500 worth of improvement work if they fulfil certain criteria. The amount of grant will depend on a number of factors including the energy efficiency of the home at outset and the type of measure installed. Entitlement to one of the qualifying benefits for the stage 3 package is one of the criteria.

66. In 2010-11 expenditure on the energy assistance package was £44,600,000. This covered all stages and it is not possible to identify claims at stages 3 and 4 issued as passported benefits in kind. The current energy assistance package will close to new applicants from 2013. Scottish Ministers have set aside a budget of £65,000,000 in 2013-14 and £66,250,000 in 2014-15 for successor arrangements which will cover fuel poverty and energy efficiency programmes, the criteria for which have not yet been set.

Other passported benefits

67. There are further devolved passported benefits, such as reduced entry to cinemas, sports facilities and other attractions. They are not, however, provided on a statutory basis and are therefore unrelated to this Bill.

68. Table 1 below summarises information on costs provided in this memorandum:
These documents relate to the Welfare Reform (Further Provision) (Scotland) Bill (SP Bill 11) as introduced in the Scottish Parliament on 22 March 2012

Table 1 Passported Benefit Outturn and Forecasts

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Free NHS dental treatment(^1)</td>
<td>40</td>
<td>34,100</td>
<td>36,000</td>
<td>37,000</td>
<td>37,000</td>
<td>38,000</td>
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<tr>
<td>Optical vouchers(^2)</td>
<td>43</td>
<td>15,000</td>
<td>15,000</td>
<td>15,000</td>
<td>16,000</td>
<td>16,000</td>
</tr>
<tr>
<td>Travel costs to NHS Scotland premises</td>
<td>45</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Individual learning accounts(^3)</td>
<td>46</td>
<td>9,211</td>
<td>8,000</td>
<td>6,000</td>
<td>6,000</td>
<td>6,000</td>
</tr>
<tr>
<td>Education maintenance allowance(^4)</td>
<td>48</td>
<td>33,300</td>
<td>31,600</td>
<td>31,200</td>
<td>31,200</td>
<td>31,200</td>
</tr>
<tr>
<td>Concessionary travel(^5)</td>
<td>50</td>
<td>174,200</td>
<td>180,000</td>
<td>187,000</td>
<td>187,000</td>
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<td>Legal aid(^6)</td>
<td>53</td>
<td>161,400</td>
<td>142,300</td>
<td>144,100</td>
<td>138,100</td>
<td>132,100</td>
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<td>Court exemption fees(^7)</td>
<td>56</td>
<td>70</td>
<td>70</td>
<td>72</td>
<td>73</td>
<td>75</td>
</tr>
<tr>
<td>Free school lunches(^8)</td>
<td>59</td>
<td>92,137</td>
<td>96,000</td>
<td>99,000</td>
<td>101,000</td>
<td>103,000</td>
</tr>
<tr>
<td>Energy assistance package(^9)</td>
<td>63</td>
<td>44,600</td>
<td>37,750</td>
<td>65,100</td>
<td>65,000</td>
<td>66,250</td>
</tr>
</tbody>
</table>

Notes:
-  denotes data not available
- Any increases in the cost of NHS dental treatment would be as a result of increased patient take up and increase in dentists’ fees, which are recommended by the independent Doctors and Dentists Review Body (DDRB). Forecasts assume no further increase in dental provision and using the Consumer Price Index (CPI) measure of inflation as a proxy for any increases in fees.
- Voucher values in Scotland are uprated in line with increases agreed by the Department of Health and their values have not increased since 2009 but are set to increase by 2.5% in 2012/13. However, in previous years the voucher has increased by either GDP or RPI (now replaced with CPI). For the purposes of the forecasts it is assumed voucher values will be uprated by CPI. The Scottish Ministers are still to decide on whether or not to follow Department of Health uprating for 2012-13.
- 2010-11 data refers to learner spend only, 2011-12 and 2012-13 are budget data which is then assumed to roll forward on cash basis.
- The budget for education maintenance allowance has been agreed up to 2012-13 via the spending review and is expected to remain at approximately this level for the remainder of the spending review period.
- Expenditure for the National Concessionary Travel Scheme is capped each year and requires to be detailed in the legislation following agreement with industry. While the cap has only been agreed up to 2012/13 the budget is expected to remain flat over the forthcoming years.
- Court Exemption fees are not set to increase in 2011-12. Court Fees are subject to periodic revision and Scottish Government Officials are currently in the process of taking forward proposals received from the Scottish Court Service to increase Court Fees which will cover a two year period (from 1 November 2012). It has been assumed the Court Fees will increase by the CPI measure of inflation in line with the Office of Budget Responsibility Projections published at the time of the UK Governments Autumn 2011 Statement.
- Forecasts are based on the assumption that demand for school lunches does not change and that the cost of a lunch increases increase by the CPI measure of inflation in line with the Office of Budget Responsibility Projections published at the time of the UK Governments Autumn 2011 Statement.
- This benefit closes to new applicants from April 2013. Budget data shown for 2011/12 and forecast spend from 2012-13 are as detailed in the spending review and for 2013-14 onward relate to a successor scheme which will cover fuel poverty and energy efficiency programmes, the criteria for which have not yet been set.
SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

69. On 22 March 2012, the Cabinet Secretary for Health, Wellbeing and Cities Strategy (Nicola Sturgeon MSP) made the following statement:

“In my view, the provisions of the Welfare Reform (Further Provision) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

70. On 22 March 2012, the Presiding Officer (Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Welfare Reform (Further Provision) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
INTRODUCTION

1. This document relates to the Welfare Reform (Further Provision) (Scotland) Bill introduced in the Scottish Parliament on 22 March 2012. It has been prepared by the Scottish Government to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 11–EN.

POLICY OBJECTIVES OF THE BILL

2. The Welfare Reform (Further Provision) (Scotland) Bill is an enabling Bill comprising six sections. It confers on the Scottish Ministers power to make such provision as they consider appropriate in consequence of changes to the welfare system made by or under Parts 1 and 4 of the UK Welfare Reform Act 2012 (“the UK Act”).

3. The Bill broadly mirrors the relevant clauses of the Bill for the UK Act which were removed during Third Reading of that Bill in the House of Lords, as a consequence of full legislative consent for that Bill having been withheld by the Scottish Parliament. The policy objectives of this Bill reflect the purpose intended for those deleted clauses. Unlike the relevant clauses of the UK Bill, however, the provisions in the Bill do not explicitly refer to the enabling powers being exercisable only to make provision which would be within the legislative competence of the Scottish Parliament if contained in an Act of the Parliament. This was a necessary express qualification in the UK Act, because the UK Parliament could otherwise have conferred a wider power on the Scottish Ministers to enable them to make provision for any purpose whether devolved or reserved. The Scottish Government considers that a similar express qualification in the UK Act, because the UK Parliament could otherwise have conferred a wider power on the Scottish Ministers to enable them to make provision for any purpose whether devolved or reserved. The Scottish Government considers that a similar express qualification in the Bill is unnecessary to limit the scope of the powers because in its view all of the powers conferred in the Bill are implicitly limited to being exercisable within the limits of devolved competence in the following way. The legislative objective of the Bill is to enable the Scottish Ministers to make provision by regulations only for devolved purposes. To the extent that the text of the Bill’s provisions, which bear a relationship to provision made by or under Parts 1 and 4 of the UK Act relating to the reserved matter of social security provision, could be read as being outwith competence, the Scottish Government considers that the operation of section 101 of the Scotland Act 1998 would ensure that the provisions could be read as narrowly as required for them to be within competence and for them to have effect accordingly. The Scottish Government furthermore considers that the Scottish Ministers will be constrained in exercising these enabling powers within the limits of their devolved competence set out in section 54 of the Scotland Act 1998.
4. Once enacted, the Scottish Ministers will use the powers provided in this Bill to make such supplemental, incidental, consequential, transitional, transitory or saving provision in consequence of provisions in Part 1 (universal credit) and Part 4 (personal independence payment) of the UK Act for devolved purposes as they consider appropriate. Provision will be required in respect of Scottish primary and secondary legislation which relate to devolved matters (including not only Acts of the Scottish Parliament but also pre-devolution enactments and subordinate legislation). The Scottish Ministers could also make free-standing provision for devolved purposes if required in consequence of provisions made by or under Parts 1 and 4 of the UK Act. In this way, the Scottish Ministers will maintain the legislative basis that underpins devolved matters linked to those social security benefits which are being abolished. This refers primarily but not exclusively to passported benefits, access to which will be preserved. A similar process is being carried out in England and Wales. Other devolved matters linked to social security benefits being abolished include matters such as the basis upon which adoption allowances cease to be payable and pre-action requirements where a landlord’s grounds for possession include rent arrears.

5. The existing social security benefits which will be abolished and replaced by universal credit are:
   - Income support under section 124 of the Social Security Contributions and Benefits Act 1992,
   - Jobseeker’s allowance under the Jobseekers Act 1995 (where income-based),
   - Employment and support allowance under Part 1 of the Welfare Reform Act 2007 (where income-related),
   - Child tax credit under the Tax Credits Act 2002,
   - Working tax credit under the Tax Credits Act 2002, and

6. Disability living allowance under sections 71 to 76 of the Social Security Contributions and Benefits Act 1992 is also being abolished and will be replaced by personal independence payment.

7. The policy re-formulation work, which will look at future entitlement to passported benefits and consider what changes will be required, will not be completed in the first half of this year. The reason for this is that many of the practical details as to how the UK Government’s welfare reforms will operate (e.g. conditions for entitlement to universal credit) remain to be set out in subordinate legislation by the Secretary of State. The Scottish Government does not expect the UK Government to be in a position to convey the essential detail of universal credit to it before June of this year. The Cabinet Secretary for Health, Wellbeing and Cities Strategy has met the Secretary of State to discuss, amongst other things, when the Scottish Government can expect to receive further information.

8. For these reasons, it is not possible to specify all of the devolved uses to which the Scottish Ministers will put the powers in this Bill. However, the Scottish Government believes that this approach carries less risk than the alternative, which would be to wait to bring forward
legislation when the full details of the operation of the new UK benefit system are known. It is unlikely that this would be practical, given the lead time required to put successor systems and processes in place.

9. In introducing this Bill, the Scottish Government is seeking to avoid a situation where provision in devolved areas, for example of some passported benefits, is put at risk if the necessary legislation is not commenced in time or the operational systems and processes are not in place. The Scottish Government undertakes that, where changes to the existing provision in devolved areas are to be proposed in subordinate legislation, it will, at that stage, have regard to the Scottish Parliament’s need to scrutinise and consider the detail of these changes.

ALTERNATIVE APPROACHES

10. The requirement to bring legislation forward does not originate with Scottish Government policy, rather it is being driven by the UK Government’s welfare reforms and the Scottish Parliament’s decision, on 22 December 2011, that “the necessary provision [in relation to the UK Bill] should be made instead by an Act of the Scottish Parliament”. No alternative approach has been considered to the Bill as any other course of action would not be consistent with the expressed will of the Scottish Parliament. Primary legislation is required because the scope of existing delegated powers is insufficient to cover all devolved areas in which provision will be required.

11. Furthermore, as these changes are driven by the UK Government’s reforms of the UK welfare system (with the resulting requirement that the Scottish Government will need to make changes to devolved arrangements), an alternative approach would depend on a change or an adjustment to the UK reforms. Such an approach would fall outwith legislative and devolved competence as changes to the UK welfare system are reserved. For these reasons, no such alternative approach has been considered.

CONSULTATION

12. The decision to withhold full legislative consent (the first such refusal since the Parliament re-convened in 1999) was arrived at following debates in the chamber of the Scottish Parliament (on 5 October and 22 December 2011) and scrutiny of the issues by three committees of the Parliament; the Health and Sport Committee, the Infrastructure and Capital Investment Committee and the Local Government and Regeneration Committee. All three committees took evidence from a range of sources, including external stakeholders, the Scottish and UK Governments.

13. In its report (4th Report, 2011 (Session 4): Report on the Legislative Consent Memorandum1), the Health and Sport Committee noted that, “[t]he Committee [had] received written submissions from several organisations urging the Committee, and by extension the Scottish Parliament, to withhold legislative consent” and concluded (paragraph 216) that:

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This document relates to the Welfare Reform (Further Provision) (Scotland) Bill as introduced in the Scottish Parliament on 22 March 2012

An alternative to giving consent in relation to Universal Credit and Personal Independence Payments would be for the Scottish Government to introduce a Bill to the Scottish Parliament. The Committee considers that this approach may be preferable as it would allow the Scottish Parliament time to consider more fully the implications of the forthcoming welfare reforms and the appropriate Scottish policy response to them . . . The Committee therefore invites the Scottish Government to consider whether this is a practical alternative to allowing the UK Parliament to legislate on behalf of Scotland in these areas and to report its view to the Parliament.

14. This Bill has been prepared therefore on the invitation of the Health and Sport Committee (and by extension the Parliament) as an alternative to allowing the UK Parliament to confer the necessary powers on Scottish Ministers.

15. The Scottish Government consulted extensively with stakeholders before giving evidence as part of the legislative consent process. The Scottish Government, in partnership with CoSLA has convened an external reference group, the Welfare Reform Scrutiny Group. Membership of this group consists of:
   - The Scottish Council of Voluntary Organisations
   - Citizen’s Advice Scotland
   - Scottish Campaign on Welfare Reform
   - Rights Advice Scotland
   - Emeritus Professor Adrian Sinfield (University of Edinburgh)
   - Equality and Human Rights Commission
   - One Parent Families Scotland
   - Child Poverty Action Group
   - Independent Living in Scotland
   - Carers Scotland.

16. This group continues to meet and the Scottish Government will continue to seek the group’s opinion on relevant matters throughout the legislative process for this Bill.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

17. The provisions of the Bill are not discriminatory on the basis of gender, race, age, disability, religion or sexual orientation. The Bill is an enabling Bill which gives powers to the Scottish Ministers to make changes in law for devolved purposes which are required in consequence of Parts 1 and 4 of the UK Act. As such, the Scottish Government will publish Equalities Impact Assessments as appropriate when it brings forward such subordinate legislation under the Bill later in the year.
18. In undertaking those Equalities Impact Assessments, the Scottish Government will take
cognisance of the targeted nature of individual passported benefits and the particular purpose of
each passported benefit. For example, some passported benefits recognise a disability, meet costs
associated with a particular set of circumstances, or provide support to ensure equal access to
devolved goods and services.

19. The future devolved application and assessment process going forward will take account
of the particular needs of the intended client group and, therefore, could feature in any Equality
Impact Assessment.

Human rights

20. The provisions in the Bill are not prejudicial to human rights and the Scottish
Government believes that the Bill is compatible with the European Convention on Human
Rights.

Island communities

21. The provisions of the Bill have no specific effect on island communities.

Local government

22. The Scottish Ministers will use the powers conferred by this Bill to make changes to the
subordinate legislation that underpins entitlement to devolved passported benefits and local
authorities have existing responsibilities to deliver some of these benefits, e.g. free school
lunches. The development of devolved policy and subordinate legislation to support these
arrangements going forward will consider the extent to which local authorities continue to
deliver some of these devolved benefits on behalf of Scottish Ministers in the future. We will
outline the implications for local authorities as part of the work going forward.

Sustainable development

23. The Bill has no negative impact on sustainable development. If appropriate, the Scottish
Government will carry out Strategic Environmental Assessments and publish the results when it
brings forward subordinate legislation under the Bill later in the year.
WELFARE REFORM (FURTHER PROVISION) (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament’s Standing Orders, in relation to the Welfare Reform (Further Provision) (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

OUTLINE OF BILL PROVISIONS

2. The Welfare Reform (Further Provision) (Scotland) Bill is an enabling Bill comprising six sections. It confers on the Scottish Ministers power to make such provision for devolved purposes as they consider appropriate in consequence of changes to the welfare system made by or under Parts 1 and 4 of the UK Welfare Reform Act 2012 ("the UK Act").

3. The Bill broadly mirrors the relevant clauses of the Bill for the UK Act which were removed during the Bill’s Third Reading in the House of Lords as a consequence of full legislative consent for that Bill having been withheld by the Scottish Parliament. Unlike the relevant clauses of the Bill for the UK Act, however, the provisions in the Bill do not explicitly refer to the enabling powers being exercisable only to make provision which would be within the legislative competence of the Scottish Parliament if contained in an Act of the Parliament. This would have been a necessary express qualification in the UK Act, because the UK legislation could have conferred a wider power on the Scottish Ministers to enable them to make provision for any purpose whether devolved or reserved. The Scottish Government considers that a similar express qualification in the Bill is unnecessary to limit the scope of the powers because in its view all of the powers conferred in the Bill are implicitly limited to being exercisable within the limits of devolved competence in the following way. The legislative objective of the Bill is to enable the Scottish Ministers to make provision by regulations only for devolved purposes. To the extent that the text of the Bill’s provisions, which bear a relationship to provision made by or under Parts 1 and 4 of the UK Act relating to the reserved matter of social security provision, could be read as being outwith competence, the Scottish Government considers that the operation of section 101 of the Scotland Act 1998 would ensure that the provisions could be read as narrowly as required for them to be within competence and for them to have effect accordingly.
GENERAL COMMENTARY ON POWERS IN THE BILL

4. The provisions delegating powers to the Scottish Ministers are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of parliamentary procedure has been considered appropriate. In most instances, the Scottish Government acknowledges that it is not able to specify precisely the uses to which the Scottish Ministers will put the powers in this Bill. Many of the practical details as to how the UK Government’s welfare reforms will operate (e.g. conditions for entitlement to universal credit) remain to be set out in subordinate legislation by the Secretary of State. The Scottish Government does not expect the UK Government to be in a position to convey the essential detail of universal credit to it before June of this year. As a result, its work on passported benefits will not be completed until later in the year.

5. Despite the fact that it is not possible to specify all of the devolved uses to which the Scottish Ministers will put the powers in this Bill, the Scottish Government believes that this approach carries less risk than the alternative, which would be to wait to bring forward legislation when the design of these successor arrangements has been completed and the full details of the operation of the new UK benefit system are known. It is unlikely that this would be practical, given the lead time required to put successor systems and processes in place.

6. In introducing this Bill, the Scottish Government is seeking to avoid a situation where provision of some passported benefits is put at risk if the necessary legislation is not commenced in time or the operational systems and processes are not in place. The Scottish Government undertakes that, where changes to the existing provision are to be proposed in subordinate legislation, it will, at that stage, have regard to the Scottish Parliament’s need to scrutinise and consider the detail of these changes.

DETAILED COMMENTARY ON POWERS IN THE BILL

Universal Credit

Section 1 – Power to make such provision as the Scottish Ministers consider appropriate in consequence of any provision of Part 1 (universal credit) of the UK Act, regulations made by the Secretary of State under that Part or an order made under section 41(5)(a) of that Act

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure if regulations made under this section add to, replace or omit any part of the text of an Act, otherwise negative procedure

Provisions

7. Section 1 sets out a power for the Scottish Ministers to make changes to primary and subordinate legislation, or freestanding provision, for devolved purposes. Under this section, as read with section 3(3)(b), the Scottish Ministers are empowered to make such supplemental, incidental, consequential, transitional, transitory or saving provision as they consider appropriate
This document relates to the Welfare Reform (Further Provision) (Scotland) Bill (SP Bill 11) as introduced in the Scottish Parliament on 22 March 2012

in consequence of the introduction in 2013 of universal credit and the abolition of some existing social security benefits by the UK Act. This enabling power is exercisable only for devolved purposes.

Reasons for taking powers

8. Section 1 is necessary because the introduction of universal credit and the abolition of existing benefits have consequences for matters devolved to the Scottish Parliament and their associated legislation. One of the main ways in which existing benefits impact on devolved areas is that they are used as an eligibility hook for a variety of Scottish “passported benefits”. These include benefits in kind such as free school lunches and cash benefits such as the education maintenance allowance. When the existing benefits are abolished, so too will the current, associated eligibility hooks. Existing benefits also impact on other devolved areas such as pre-action requirements where a landlord’s grounds for possession include rent arrears (discussed further below at paragraph 13).

9. The primary purpose for taking these powers is to make such changes as the Scottish Ministers consider appropriate in order to maintain the legislative basis for devolved matters, including passported benefits, currently linked to those social security benefits which are being abolished and replaced by universal credit.

10. The power may be used, for example, to amend the legislation making provision for free school lunches. Section 53(3AA) of the Education (Scotland) Act 1980 (“the 1980 Act”) provides that where an education authority provides school lunches, it must do so free of charge to a pupil to whom section 53(3) of the 1980 Act applies. Section 53(3) of the 1980 Act sets out the eligibility criteria for receipt of free school lunches based on a pupil who is in receipt of, or whose parents are in receipt of, certain benefits, allowances and tax credits. That section currently refers to income support, income-based jobseeker’s allowance and employment and support allowance, all of which will be abolished by section 33 of the UK Act.

11. Furthermore, the Education (School Lunches) (Scotland) Regulations (SSI 2009/178), made under the powers set out at section 53(3)(a)(iv) and (b)(iii) of the 1980 Act, provide that parents of pupils or pupils who are in receipt of an award of child tax credit which meets specified criteria are entitled to free school lunches. Child tax credit and working tax credit are also being abolished by section 33 of the UK Act.

12. Depending on the ultimate policy intention, the power in section 1 of the Bill may be used to make changes to section 53(3) of the 1980 Act to refer consequentially to some aspect of the new universal credit or to supplement this section by creating a new eligibility criteria and to revoke the Education (School Lunches) (Scotland) Regulations 2009.

13. An example of how this power may be used in respect of a devolved matter other than a passported benefit is that it may be used to modify section 14A of the Housing (Scotland) Act 2001. That section provides for pre-action requirements where the landlord’s grounds for possession include rent arrears. Section 14A(3) requires the landlord to make reasonable efforts to provide the tenant with advice and assistance on the tenant’s eligibility to receive (a) housing benefit and (b) other types of financial assistance (for example, other benefits or grants).
14. Depending on the ultimate policy, this power may be used consequentially to remove the reference in section 14A(3)(a) to “housing benefit” which is also being abolished by section 33 of the UK Act. The power could also be used to replace that reference with a reference to the housing component of universal credit.

Choice of procedure

15. Regulations made under this provision will be subject to the affirmative procedure where they add to, replace or omit any part of the text of an Act. This level of procedure is appropriate to allow the Scottish Parliament to give a high level of scrutiny to the detail of any changes to primary legislation.

16. Otherwise the regulations will be subject to the negative procedure. This procedure is appropriate given the anticipated nature of these regulations. It is considered that the negative procedure provides an appropriate balance between expedition and practicality on the one hand and the need for scrutiny of a provision of this nature.

Personal Independence Payment

Section 2 – Power to make such provision as the Scottish Ministers consider appropriate in consequence of any provision of Part 4 (personal independence payment) of the UK Act or regulations made by the Secretary of State under that Part

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>the Scottish Ministers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>regulations made by Scottish statutory instrument</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>affirmative procedure if regulations made under this section add to, replace or omit any part of the text of an Act, otherwise negative procedure</td>
</tr>
</tbody>
</table>

Provisions

17. Section 2 sets out a power for the Scottish Ministers to make provision in consequence of the introduction in 2013 of personal independence payments, a new UK-wide, disabled persons benefit and the accompanying abolition of the existing disability living allowance. Under this section, as read with section 3(3)(b), the Scottish Ministers are empowered to make such supplemental, incidental, consequential, transitional, transitory or saving provision as they consider appropriate. Changes will be required to both primary and subordinate legislation for devolved purposes. The power also includes power to make freestanding provision. This enabling power is only exercisable for devolved purposes.

Reasons for taking powers

18. As with the introduction of universal credit, these powers are needed to ensure that the necessary changes may be made for devolved purposes to account for the introduction of the personal independence payment. One of the main ways in which existing benefits impact on devolved areas is that they are used as an eligibility hook for a variety of Scottish “passported benefits”, such as blue badge parking. When the existing benefits are abolished, so too will the current, associated eligibility hooks and regulations made under these powers will need to preserve or renew eligibility to certain services.
This document relates to the Welfare Reform (Further Provision) (Scotland) Bill (SP Bill 11) as introduced in the Scottish Parliament on 22 March 2012

19. An example where the powers may be used relates to eligibility for the “blue badge” for disabled persons’ parking. The Disabled Persons (Badges for Motor Vehicles) (Scotland) Regulations 2000 refer to the disability living allowance as one of the eligibility criteria for receiving a “blue badge”. The power could be used either to simply consequentially refer to eligibility to the new personal independence payment or some form of supplemental provision may be necessary to create a new eligibility criteria. The exact details of such changes cannot, however, be finalised at this stage due to the lack of clarity about the personal independence payment.

Choice of procedure

20. Regulations made under this provision will be subject to the affirmative procedure where they add to, replace or omit any part of the text of an Act. This procedure is appropriate to allow the high level of scrutiny for the Scottish Parliament to consider the detail of any changes to primary legislation.

21. Otherwise, the regulations will be subject to the negative procedure. This procedure is appropriate given the nature and detail of these regulations. It is considered that the negative procedure provides an appropriate balance between expedition and practicality on the one hand and the need for scrutiny of a provision of this nature.

GENERAL SUBORDINATE LEGISLATION PROVISION

22. Section 3 contains general subordinate legislation provisions which apply to any regulations made under section 1 or 2. Subsection (2)(a) allows for provisions to be in direct or indirect consequence of a relevant portion of the UK Act or instrument made under it.

23. Subsection (2)(b) allows for provision to be made in regulations which is not itself in direct or indirect consequence of a relevant portion of the UK Act or instrument made under it, where the provision concerns a matter which is or was in consequence of a relevant portion of the UK Act or instrument made under it. The flexibility provided by this subsection is needed because there is a high likelihood that future changes to devolved legislation amended (or created) using the powers enabled by this Bill may be required for reasons which are not in direct or indirect consequence of the UK Act. For example, if the power contained in section 1 of this Bill were 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 in direct or indirect consequence of the UK Act but in consequence of something else, such as a rise in the rate of inflation. This part of the ancillary power is intended to facilitate such variation and avoids the need for the Scottish Ministers to bring further primary legislation in these circumstances where the passported benefit is governed by primary legislation or where the existing enabling power for regulations setting out the passported benefit is not wide enough to accommodate this. It does this by enabling the Scottish Ministers to make provision to amend such an income threshold that is a step removed from the UK Act but still links to the original regulations made under section 1 which themselves are a direct or indirect consequence of that Act.

24. Subsection (3)(a) provides that the regulations may make different provision for different cases or purposes. Subsection (3)(b) provides for the regulations to include supplemental,
This document relates to the Welfare Reform (Further Provision) (Scotland) Bill (SP Bill 11) as introduced in the Scottish Parliament on 22 March 2012

incidental, consequential, transitional, transitory or saving provisions. The UK Government has confirmed that it plans to implement the new welfare system on a phased basis over a period of time. The precise details of implementation are not yet known but, given that implementation will be phased, it is considered necessary that the Scottish Ministers have the power to make transitional, transitory and savings provisions for devolved legislation.
Welfare Reform Committee

1st Report, 2012 (Session 4)

Stage 1 Report on the Welfare Reform (Further Provision) (Scotland) Bill

Published by the Scottish Parliament on 16 May 2012
Welfare Reform Committee
1st Report, 2012 (Session 4)

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Welfare Reform Committee

Remit and membership

**Remit:**
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.

**Membership:**
Margaret Burgess
Annabelle Ewing
Jamie Hepburn (Deputy Convener)
Alex Johnstone
Michael McMahon (Convener)
Drew Smith
Kevin Stewart

**Committee Clerking Team:**

**Clerk to the Committee**
Simon Watkins

**Senior Assistant Clerk**
Roz Wheeler

**Assistant Clerk**
James Drummond
Stage 1 Report on the Welfare Reform (Further Provision) (Scotland) Bill

The Committee reports to the Parliament as follows—

EXECUTIVE SUMMARY

The General Principles of the Bill

1. The Committee supports the general principles of the Welfare Reform (Further Provision) (Scotland) Bill (paragraphs 8 to 9).

2. The decision having been taken by the Scottish Parliament to reject elements of the Legislative Consent Memorandum on the UK Welfare Reform Bill, the Welfare Reform (Further Provision) (Scotland) Bill is necessary to allow the Scottish Government to take powers to implement its responsibilities under welfare reform. This is the first time that the Scottish Parliament has rejected elements of a legislative consent memorandum (paragraph 10).

3. This is universally supported by stakeholders. The motivation of stakeholders for this view is firstly the necessity for a Bill, but also the opportunity that this path creates for the Scottish Government to mitigate some aspects of the UK welfare reform legislation (paragraphs 11 to 12).

4. The Committee has grave concerns about aspects of the UK Welfare Reform Act 2012\(^1\). This includes the impact that its implementation will have on some of the poorest and most vulnerable in Scottish society. This view was shared by those giving evidence to the Committee (paragraph 13).

5. The Committee calls on the Scottish Government to use the powers offered by this Bill to mitigate, in so far as is possible within the powers of the Scotland Act 1998\(^2\), and within its fixed budget, the negative impacts of the UK Welfare Reform Act 2012\(^3\) (paragraph 14).

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\(^1\) Alex Johnstone MSP dissented from this sentence

\(^2\) This includes the use of Section 30 orders as detailed in paragraphs 100 to 105.

\(^3\) Alex Johnstone MSP dissented from this paragraph
Universal Credit

6. The Committee supports the powers in regard to Universal Credit (UC) that the Scottish Government is proposing to take on under the Welfare Reform (Further Provision) (Scotland) Bill (paragraphs 15 to 21).

7. The Committee has concerns about, amongst other things, the impact in Scotland of changes proposed to housing benefit, which will be subsumed in the new Universal Credit in the UK legislation. It anticipates significant problems for local authorities and housing associations both in transition and through reduced income and increased costs of borrowing. The Committee plans to look at this further as part of its on-going scrutiny of welfare reforms (paragraphs 22 to 30).

8. The Committee believes that there is a responsibility on the DWP to provide full and proper advice services to help claimants make the adjustments. However, it would also be appropriate for the Scottish Government to examine whether it requires to support bodies whom claimants are likely to turn to for independent advice and assistance. The Committee notes that Citizens Advice Scotland has said that in England and Wales additional resources have been given to advice agencies, although it is less than clear in England whether the money has been passed on from local authorities to advice agencies \(^4\) (paragraphs 31 to 34).

Personal Independence Payments

9. The Committee supports the powers in regard to Personal Independence Payments (PIPs) that the Scottish Government is proposing to take on under the Welfare Reform (Further Provision) (Scotland) Bill (paragraphs 35 to 42).

10. The Committee believes that it would be useful for the Scottish Government to continue its analytical work on welfare reform, to also look at the wider economic and social impacts of welfare reform, as the Welsh Government has been doing\(^5\) (paragraphs 43 to 49).

11. The Committee believes that it is necessary to undertake extensive modelling to understand the impacts of welfare reform in Scotland and the policy responses to it, for example in establishing criteria for passported benefits. The Committee considers that it is primarily the responsibility of the DWP to undertake this work and to provide the Scottish Government with full access to this information. The Committee supports the work that the Scottish Government is undertaking and urges it to make the results public (paragraph 50).

Regulations

12. Stakeholders appreciate the necessary time constraints that the Scottish Government faces in developing regulations stemming from the Bill and want to

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\(^4\) Matt Lancashire, Citizen’s Advice Scotland, Official Report, Welfare Reform Committee, 13 March (col 24)

\(^5\) ‘Analysing the impact of the UK Government’s welfare reforms in Wales – stage 1 analysis’ Welsh Government February 2012.

\(^6\) Supplementary submission from the Cabinet Secretary for Health, Wellbeing and Cities Strategy dated 14 May 2012
ensure that there is no delay in the process of enacting the legislation as a whole, including the regulations. Understandably, within these time constraints, stakeholders want the fullest involvement in the development of regulations and the opportunity for comment (paragraphs 51 to 53).

13. The Committee notes the views of the Subordinate Legislation Committee, to the effect that the powers contained within the Bill are appropriate given the current level of uncertainty and notes\(^7\) the proposal that they be time-limited (paragraphs 54 to 58).

14. The Committee recommends that, given the important policy to be included in them, instruments produced under the provisions of this Bill be consulted on with stakeholders in such a way that stakeholders have an opportunity to actively engage with the process of finalising these instruments, including proposing amendments based on their expertise (paragraphs 59 to 61).

15. The Committee very much welcomes the commitment from the Cabinet Secretary to consult, especially given the timescales available for the passage of this subordinate legislation. There is no doubt that involving those with such considerable expertise from the wider policy community can only be a positive step. As the Cabinet Secretary stated ‘the involvement of stakeholders lies at the very heart of the bill process’\(^8\) (paragraphs 62 to 63).

16. The Committee encourages the Scottish Government to be as active as possible in its consultation on passported benefits, including interactive events, to gather ideas for the new passported benefit structure, and to use the time in advance of the laying of the equivalent UK regulations (likely to be the Autumn) to ensure valuable perspectives are gathered on the approach to these benefits (paragraph 64).

17. The Welfare Reform Committee notes the Subordinate Legislation Committee conclusion on this issue (paragraphs 65 to 67)—

‘In conclusion, the Committee agrees that regulations which amend primary legislation should be subject to the affirmative procedure as the Bill currently provides. The Committee recommends that regulations which do not amend primary legislation should be capable of being made under either affirmative or negative procedure. The Committee’s expectation would be that affirmative procedure would be adopted where the subject matter of those regulations is considered to be significant.’\(^9\).

18. The Committee very much welcomes the Cabinet Secretary’s commitment to ‘fully consider all the Subordinate Legislation Committee’s recommendations,

\(^7\) Jackie Baillie MSP and Michael McMahon MSP support the recommendation from the Subordinate Legislation Committee, as whilst the powers in the Bill are wide-ranging they believe these powers are appropriate when balanced by the proposal that they be time limited.

\(^8\) Cabinet Secretary for Health, Wellbeing and Cities Strategy, Official Report, Welfare Reform Committee, 1 May (col 191)

\(^9\) Subordinate Legislation Committee 2nd Report, 2012 (Session 4): Welfare Reform (Further Provision) (Scotland) Bill, paragraph 45
including that one.’ In doing so, the Committee invites the Cabinet Secretary to reflect on the evidence heard by this Committee from stakeholders throughout Stage 1\(^\text{10}\) (paragraphs 68 and 69).

19. The Committee notes the request from the Finance Committee that the subordinate legislation should be accompanied by information on the likely financial implications of each instrument to allow that Committee to scrutinise this information (paragraphs 70 and 71).

**Passported benefits**

20. The Committee believes that the main aim of the Scottish Government in implementing the new welfare system should be, in so far as is possible, to maintain eligibility to passported benefits as they are at present (paragraphs 72 to 76).

21. The Scottish Government can ensure that continuity in eligibility for passported benefits is achieved for the transitional phase by making those who were eligible under the old system eligible under new interim arrangements (paragraphs 77 to 84).

22. In the longer-term a new system will be required, defining eligibility for new claimants. Stakeholders would not appear to have a common or articulated view on how eligibility should be defined. The Committee will return to this issue, following enactment of the Bill, when it examines the content of the regulations which will set the rules for eligibility (paragraphs 84 to 87).

**Financial issues**

23. It is not possible, given the lack of information available, for the Committee to make much comment on the overall financial implications of the Welfare Reform (Further Provision) (Scotland) Bill (paragraphs 88 to 93).

**Welfare reform implementation issues**

24. This Committee would appreciate regular updates from the Scottish Government on this and other initiatives which are being negatively impacted upon by welfare reform (paragraphs 94 to 107).

**Conclusion**

25. The Committee brings the collective concerns from stakeholders highlighted in this report, to the attention of the Scottish Government to inform its future work to mitigate the negative impacts of welfare reforms under the terms of the Bill as

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\(^{10}\) Jackie Baillie MSP and Michael McMahon MSP have reflected on the view of stakeholders in evidence at Stage 1 which indicated a clear desire for consultation and scrutiny, and agrees with the majority of stakeholders that the content of the regulations is substantial. Accordingly, they are of the view that the Committee should recommend the use of the affirmative procedure to ensure the appropriate level of scrutiny.
far as is practicable, within the powers of the Scotland Act 1998\textsuperscript{11}, and within its fixed budget\textsuperscript{12} (paragraphs 108 to 117).

26. The Committee looks forward to engaging further with stakeholders in its future work, and ensuring they can continue to make their voice heard to the DWP (paragraph 118).

\textsuperscript{11} This includes the use of Section 30 orders as detailed in paragraphs 100 to 105.
\textsuperscript{12} Alex Johnstone MSP dissented from this paragraph.
1. INTRODUCTION

1. The Welfare Reform (Further Provision) (Scotland) Bill (‘the Bill’) was introduced on 22 March 2012. The newly established Welfare Reform Committee was referred the Bill by the Parliamentary Bureau for Stage 1 scrutiny. Stage 1 usually involves analysis of the general principles of a bill and an assessment of the alternative approaches to those policies proposed in a bill. Bills are generally introduced by the Scottish Government and are based on Scottish Government policy. In Stage 1 recommendations a Committee normally focuses on how the Government could strengthen the proposals in a bill, or whether the bill should not be taken forward at all because of the policy upon which a bill is based. This includes an assessment of whether the financial implications of the bill are such to deem implementing it financially worthwhile, when the budget for the bill could be used for other purposes. A committee report on all of this is then considered by the Parliament and informs the Parliament’s decision on whether or not to vote in favour of the general principles of the bill.

2. Should the Parliament agree to the general principles, a bill then moves to the amendment stages, with Stage 2 taking place in committee and Stage 3 being the consideration of proposed amendments by Parliament as a whole. Committees, and the stakeholders making representations to them, seek the maximum period of time possible for scrutiny of bills to ensure the resulting legislation is as detailed and thought through as possible.

3. The Welfare Reform Committee’s scrutiny of this Bill, and therefore the contents of this report, is distinct from the norm in a number of ways—

- This Committee already has a very clear indication from Parliament that it approves of this Bill, as the Parliament has already agreed a legislative consent motion that requires it.

- This Bill is not based on Scottish Government policy, rather it is being introduced by the Scottish Government to enact (and to seek to mitigate, as far as is possible, the impacts of) the UK Government’s Welfare Reform Act 2012.

- Stakeholders are unanimous that this Bill should be passed swiftly, so that the secondary legislation stemming from it can be in place well before the start of the new welfare system in April 2013, ensuring that individuals and families continue to receive what can be lifeline benefits.

- The Bill has very little detail in it, as it is a short enabling bill and therefore there are few policy intentions on the face of the Bill to be scrutinised,

- A large amount of the evidence received by the Committee has related to the UK Government’s actions thus far on welfare reform, as opposed to the contents of this Scottish Government bill.

- There is virtually no information on the financial implications of the Bill beyond the current costs of passported benefits and the knowledge that
the UK Government is reducing the DWP budget spent in Scotland by £2.5 billion.

- The vast majority of the evidence has related to concerns on the negative impacts of the UK Government reforms, whereas for most bills submissions tend to be a mixture of those in favour and those against the proposals.

4. The report is divided into three elements—

- Comment on the contents of the Bill, including its potential financial implications and the status of the subordinate legislation stemming from it;

- Issues that the Scottish Government should take into account when developing the subordinate legislation stemming from this Bill; and

- Issues highlighted to the Committee on the impact of UK Government reforms that the Committee intends to pursue once the Bill is passed.

5. The Committee wants to thank all of those who made submissions on this Bill and all those who gave evidence to the Committee. The policy community for welfare reform, be it service providers or advocacy organisations, have impressed the Committee throughout this process. They are facing changes that will cause a huge surge in workloads as vulnerable individuals turn to support mechanisms as a result of welfare reforms. Helpfully they have not only painted a very clear picture to the Committee of their concerns, based in part on research that they have funded themselves, but they have made clear how determined they are to support those in need as it is ‘the right thing to do’\(^\text{13}\). In this it is clear that they are prepared to collaborate with each other and think of new approaches to their work wherever beneficial. The Committee commends the work of organisations appearing before it. The importance of the input of stakeholders in informing this report is reflected by the prominence given to their evidence throughout. For ease of reference all quotes are highlighted in text boxes.

6. Annexe A of this report contains the report of the Subordinate Legislation Committee and the correspondence from the Finance Committee on the Bill. Annexe B contains the minutes of the Welfare Reform Committee, which includes details of all those giving evidence to the Committee at Stage 1. Annexe C, available in full online, includes all written submissions and the substantially verbatim record of meetings in the Official Report.

7. The Committee also wishes to thank all those who wrote in to share personal experiences and anxieties in relation to reforms. The letters received have shared often very personal information relating to health conditions, personal circumstances and levels of financial support. This correspondence has been extremely moving but also a very articulate reflection of the complexities of families and individuals’ situations and the complex interactions between benefits payments.

\(^{13}\) Dr Stephen Carty, Black Triangle Campaign, Official Report, Welfare Reform Committee, 1 May 2012 (col 189)
2. THE GENERAL PRINCIPLES OF THE BILL

8. The Committee supports the general principles of the Welfare Reform (Further Provision) (Scotland) Bill.

9. On 22 December 2011 the Scottish Parliament agreed the following motion—

‘That the Parliament supports the principle of a welfare system that is simpler, makes work pay and lifts people out of poverty but regrets that this principle, insofar as it is reflected by the introduction of universal credit and personal independence payments, is being undermined by the UK Government’s deep and damaging cuts to benefits and services that will impact on some of the most vulnerable people in Scotland; on the matter of legislative consent, agrees that the relevant provisions of the Welfare Reform Bill, introduced in the House of Commons on 16 February 2011, in respect of data sharing, Industrial Injuries Disablement Benefit and the Social Mobility and Child Poverty Commission, so far as these matters fall within the legislative competence of the Parliament, or alter the executive competence of the Scottish Ministers, should be considered by the UK Parliament; further agrees that the provisions in the Bill that give the Scottish Ministers the power to make consequential, supplementary, incidental or transitional provisions, by regulations, in relation to the introduction of universal credit and personal independence payments, so far as these matters fall within the legislative competence of the Parliament, or alter the executive competence of the Scottish Ministers, should not be considered by the UK Parliament but that the necessary provision should be made instead by an Act of the Scottish Parliament; also agrees that an ad-hoc welfare committee should be convened and that this committee should continue to meet for the duration of the current parliamentary session; while agreeing the above position, urges the UK Government to reconsider the Welfare Reform Bill and, more broadly, its welfare reform agenda, which the Parliament considers will adversely affect vulnerable people across Scotland’.14

10. The decision having been taken by the Scottish Parliament to reject elements of the Legislative Consent Memorandum on the UK Welfare Reform Bill, the Welfare Reform (Further Provision) (Scotland) Bill is necessary to allow the Scottish Government to take powers to implement its responsibilities under welfare reform. This is the first time that the Scottish Parliament has rejected elements of a legislative consent memorandum.

11. This is universally supported by stakeholders. The motivation of stakeholders for this view is firstly the necessity for a Bill, but also the opportunity that this path creates for the Scottish Government to mitigate some aspects of the UK welfare reform legislation.

12. Some of the supportive remarks of stakeholders are captured below—

Citizens Advice Scotland (CAS) – We all agree that the bill is absolutely necessary and we would all like it to get through the process quickly - by the summer, if possible. We are more interested to see the subordinate legislation and regulations, because they are where all the information and detail will be. 15

Poverty Alliance - We are in favour of the Bill in general because having voted to reject parts of the Legislative Consent Motion it is clear that the Scottish Parliament must now bring forward legislation which is required to introduce various legislative changes to areas of devolved competency, which will inevitably flow from the implementation of the UK Welfare Reform Act in 201316.

Inclusion Scotland - We believe this bill is necessary but insufficient alone to address the devolved aspects of the Welfare Reform Act 2012. We eagerly await the details that will be necessary in the secondary legislation and regulations to this bill, including clear guidance for Local Authorities and Public Bodies and for those people impacted17.

The Scottish Women’s Convention - SWC is in favour of the Welfare Reform (Further Provision) (Scotland) Bill. The Scottish Parliament is to be commended for its recognition of the impact of UK Coalition Government Welfare Reform and how this will affect the people of Scotland. Creating primary legislation to mitigate the changes put in place by Westminster is a positive step18.

Unison - …in relation to the Welfare Reform (Further Provision) (Scotland) Bill, UNISON Scotland is generally in favour of this bill and its attempts to mitigate some of the changes proposed within the UK Act – not least the impact on passported benefits in Scotland19.

Carers Scotland - Carers Scotland welcomes this opportunity to respond to the Bill at Stage 1. In the first instance we recognise the necessity of the Bill and the need to provide Ministers with the relevant powers before comprehensive information is available on Universal Credit and Personal Independence Payment. We believe this is necessary to ensure that families, particularly those with disabled people and carers are not further disadvantaged through losing out on other “passported” benefits by delays beyond the control of the Scottish Parliament.20

Scottish Federation of Housing Associations (SFHA) - At the time of the Legislative Consent Motion debate in December 2012, SFHA lobbied MSPs to withhold consent given that there had been insufficient opportunity for scrutiny of the implications of this legislation for Scotland and for Scottish public and social policy. We were therefore pleased to see the Scottish Parliament take the unprecedented step of withholding consent on parts of the Welfare Reform Act, as it sent a strong message about the need for the work of the Scottish Parliament

15 Jeanette Campbell, CAS, Official report, Welfare Reform Committee, 17 April 2012 (col 93)
16 Poverty Alliance written submission
17 Inclusion Scotland written submission
18 Scottish Women’s Convention written submission
19 Unison written submission
20 Carers Scotland written submission
and the Scottish Government to be properly taken into consideration by the UK Government in the framing of their new welfare policy. SFHA therefore welcomes the Welfare Reform (Further Provision) (Scotland) Bill.  

13. The Welfare Reform Committee has grave concerns about aspects of the UK Welfare Reform Act 2012. This includes the impact that its implementation will have on some of the poorest and most vulnerable in Scottish society. This view was shared by those giving evidence to the Committee—

**Long Term Conditions Alliance Scotland** People who are disabled and/or living with long term conditions are already far more likely than others to be living in poverty, experiencing debt and be unemployed or in low paid, less secure employment. There is a wealth of evidence demonstrating the higher cost of living associated with being disabled.

The welfare reforms are resulting in a significant drop in income for many people who are disabled/living with long term conditions, accompanied by greater compulsion to enter work. This is compounded by the current context in which cost of living generally is rising, the labour market is becoming more competitive and much of the support and services upon which people rely are being cut (or eligibility criteria and charges raised).

**Barnardo’s Scotland** – Barnardo’s Scotland believes that there is a real danger that the UK welfare changes could impose an unmanageable burden on the poorest and most vulnerable children and their families. Whilst we are supportive of many of the principles that sit behind the UK Government’s welfare reform agenda - in particular proposals to improve work incentives through the introduction of Universal Credit - we believe that some of the planned changes could have huge unintended consequences that will mount even greater pressure on vulnerable families who are already struggling to make ends meet.

**Shelter Scotland** - At Shelter Scotland we work primarily with families to prevent homelessness having a long term impact on their children’s life chances. We know how important benefits in kind such as free school meals and cash entitlements such as educational maintenance allowances are to parents and children rebuilding their lives. Any interruption to these critical programmes would have a deeply debilitating impact on the household budgets of the most vulnerable households in Scotland and longer term could lead to a financial burden for local authorities greater than the existing cost of these schemes.

**One Parent Families Scotland** - Lone mothers will be hardest hit by the government’s programme of benefit cuts and tax rises, according to an analysis conducted by the Institute for Fiscal Studies. It estimates they will lose an average

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21 Scottish Federation of Housing Associations written submission
22 Alex Johnstone MSP dissented from this sentence
23 Long Term Conditions Alliance Scotland written submission
24 Barnardo’s Scotland written submission
25 Shelter Scotland written submission
8.5% of their income after tax by 2015. This compared with 6.5% for couples with children and 2.5% for couples without children. As a result of the changes being introduced between January 2011 and April 2014 non-working lone parents lose more than 12% of their income on average – equivalent to £2,000 per year. Such a steep drop for lone parents is of very real concern; in order to find work they will have to confront the dual challenges of finding a flexible job in a highly uncertain labour market and meeting the costs of childcare.\textsuperscript{26}

**Enable Scotland** - We are concerned that the range of changes being introduced will be extremely difficult for disabled people to sustain. At present, disabled people across Scotland face a “perfect storm” of increased charges for social care services, reductions to social care services, tightening eligibility criteria and fewer employment opportunities. This is alongside on-going reforms to the benefits system, such as the roll out of Employment Support Allowance.

Broadly, ENABLE Scotland agrees that certain aspects of the welfare benefits system may need reform. However, we reject the assertion that Disability Living Allowance is no longer fit for purpose and in particular, we do not accept that there are huge incidences of fraud within the benefits system as portrayed in the mass media.\textsuperscript{27}

14. **The Committee calls on the Scottish Government to use the powers offered by this Bill to mitigate, in so far as is possible within the powers of the Scotland Act 1998\textsuperscript{28}, and within its fixed budget, the negative impacts of the UK Welfare Reform Act\textsuperscript{29}.**

3. **UNIVERSAL CREDIT**

**Provisions of the Bill**

15. Universal Credit is a new benefit which will be introduced from April 2013 and will be payable to those out of work and those in work, but on low incomes. It will abolish council tax benefit and also replace a range of other existing benefits—

- Income Support
- Jobseeker’s Allowance (income based)
- Employment and Support Allowance (income related)
- Child Tax Credit
- Working Tax Credit
- Housing benefit\textsuperscript{30}

\textsuperscript{26} One Parent Families Scotland written submission
\textsuperscript{27} Enable Scotland written submission
\textsuperscript{28} This includes the use of Section 30 orders as detailed in paragraphs 100 to 105.
\textsuperscript{29} Alex Johnstone MSP dissented from this paragraph.
\textsuperscript{30} Scottish Government Policy Memorandum
16. Under the Bill the Scottish Government will take powers to create regulations that relate to Universal Credit. In practice this will be to create the eligibility criteria for passported benefits that were previously triggered by eligibility for the benefits now subsumed into Universal Credit.

17. Broadly speaking, at present, passported benefits are received as a result of benefits such as those outlined above, or as a result of receiving allowances based on disability, impairment or other health related matter. The appendix reproduces information provided by the Scottish Government which provides a breakdown of some of the existing devolved passported benefits and the income support or other payments an individual needs to receive in order to be eligible for each passported benefit.

18. SCoWR also provided details of other passported benefits. The Committee notes that there are two categories of passported benefits, mandatory passported benefits and those allocated by local authorities at their discretion. The Scottish Government submission details the mandatory passported benefits.

19. The Committee supports the powers in regard to Universal Credit (UC) that the Scottish Government is proposing to take on under the Welfare Reform (Further Provision) (Scotland) Bill.

20. This view is supported by stakeholders, and their reasoning is the same as that for the general principles of the Bill, it creates the potential for the Scottish Government to mitigate some of the impacts of the UK welfare reform legislation, including in relation to criteria for passporting benefits.

21. One Parent Families Scotland (OPFS) for example explained in evidence that this was an opportunity for the Scottish Government to take a distinct, more inclusive, approach to passporting benefits associated with the Universal Credit—

One Parent Families Scotland (OPFS) - …[this is ] an opportunity for the Scottish Government to improve the protection offered by passported benefits such as free school meals, school clothing grants and the energy assistance package. Such support can and does play an important part in helping meet Scottish child poverty objectives.

Other issues

22. A selection of concerns relating to this policy change, and the areas where stakeholders are encouraging the Scottish Government to act, are reflected below.

23. SAMH raised concerns in relation to under occupancy charges, or the ’bedroom tax’, which can reduce the benefits of those with what is deemed to be excess space in their homes. This is in part aimed at encouraging individuals or families to move to smaller accommodation, assuming that appropriate housing stock is available.

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31 SCoWR written submission
32 One Parent Families Scotland written submission
Scottish Association for Mental Health (SAMH) - …Changes to housing benefit, especially in terms of sanctions for ‘overhousing’, could also have serious implications for people experiencing mental ill-health, who may be forced to move or spend more money that they do not have supplementing their housing benefit. Furthermore, the changes do not necessarily take into account the lack of available single bedroom housing stock in parts of Scotland, especially in rural areas.33

24. Another concern associated with Universal Credit (and also for Personal Independence Payments (‘PIP’)) is the complexity of the system that people need to engage with in order to apply and receive benefits.

SAMH - SAMH has concerns about various aspects of Universal Credit and the way it may impact upon people experiencing mental ill-health. In particular, we have raised concerns in relation to sanctions, as Universal Credit will bring increased conditionality. This raises the prospect that people with mental health problems may face sanctions when their condition has meant that they are unable to understand or comply with the various demands placed on them.34

25. These concerns include the requirement for individuals to apply online, with the UK Government requiring 80% of applications to be completed online35.

ECAS - Having only online application will not work for my clients. If they had a computer, they could not use it, for numerous reasons. Despite advances in technology, a lot of people are still, unfortunately, unwilling or unable to tackle simple e-mails and logging on, let alone filling in a form online. I have concerns about that. I have heard too often the answer that people can go to their local library. That assumes that a person can get to the library, that it is accessible for them to get into and that, once they are plonked in front of a computer, they can use it. I am afraid that that is often not the case on all three of those points. There must be another system. We do not have connectivity at a decent speed throughout Scotland anyway.36

26. In addition a number of organisations have raised issue with the proposal to pay individuals directly into a bank account. It is estimated that hundreds of thousands of those on benefits do not currently have a transactional bank account and therefore there will be a big transition to enabling these individuals to receive these payments37. There is clearly a huge new role for banks and credit unions, which they are understandably keen to discuss with the DWP38.

33 Scottish Association for Mental Health written submission
34 Scottish Association for Mental Health written submission
36 David Griffiths, ECAS, Dr Stephen Carty, Black Triangle Campaign, Official Report, Welfare Reform Committee, 24 April (col 153)
27. A further concern in relation to this is the strong likelihood that benefits paid into these bank accounts will not then be used for their intended purpose such as paying landlords where an individual or family has other bills to pay or needs to pay for basics like food and heating. Receiving payments monthly instead of weekly presents further challenges as the gap between receiving benefits and last month’s money running out could be notable. Finally, as stressed by the credit unions, the system will involve being paid a month in arrears meaning it is very likely there will be a ‘cash emergency’ for the first four weeks of the new system being implemented, increasing the likelihood of individuals needing to make use of loan sharks or other high interest options.

28. All of this starkly increases the likelihood of rent arrears and evictions and creates issues about security of income for social landlords. The Scottish Federation of Housing Associations reported that the cost of borrowing for housing associations is already increasing as a result of fears about security of income.

29. The concerns of the social housing sector are well summed up by the Scottish Federation of Housing Associations–

Scottish Federation of Housing Associations (SFHA) - we are seriously concerned about the impact that the introduction of Universal Credit will have upon the way that tenant households manage their finances and live their lives, as well as the serious business and financial challenges it will present to landlords...

…In light of these concerns therefore, SFHA is supportive of any measures (be they via subordinate legislation or other regulations) which the Scottish Government can adopt in order to mitigate the outcomes of the Welfare Reform Act upon Scotland.

30. The Committee has concerns about, amongst other things, the impact in Scotland of changes proposed to housing benefit, which will be subsumed in the new Universal Credit in the UK legislation. It anticipates significant problems for local authorities and housing associations both in transition and through reduced income and increased costs of borrowing. The Committee plans to look at this further as part of its on-going scrutiny of welfare reforms.

31. The Committee is also aware that there is likely to be a significantly increased need for advice from agencies during the transition to the new welfare system. This includes advising people of changes to eligibility criteria, supporting them during appeals and assisting them in applications online.

32. This wave of welfare reform brings with it huge changes in the benefits system and the way people receive benefits. It is likely to result in a very big increase in the demand for support from advice agencies. As Citizens Advice Scotland reported—

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39 Dr David Bell, BMA Scotland, Official Report. Welfare Reform Committee. 1 May 2012 (col 175)
40 Dr David Bell, BMA Scotland, Official Report. Welfare Reform Committee. 1 May 2012 (col 175)
41 Dermot O’Neil, Scottish League of Credit Unions, Official Report, Welfare Reform Committee, 1 May 2012 (col 171)
42 Scottish Federation of Housing Associations written submission
Citizens Advice Scotland - with every change to the benefits system, the number of people seeking advice increases. For example, since the introduction of the employment and support allowance, there has been a 33 per cent increase in the number of people seeking advice about it in the past year and last year there was a spike when people who were already on incapacity benefit - not new claimants - migrated to the new benefit.  

33. The Committee believes that there is a responsibility on the DWP to provide full and proper advice services to help claimants make the adjustments. However, it would also be appropriate for the Scottish Government to examine whether it requires to support bodies that claimants are likely to turn to for independent advice and assistance. The Committee notes that Citizens Advice Scotland has said that in England and Wales additional resources have been given to advice agencies, although it is less than clear in England whether the money has been passed on from local authorities to advice agencies.  

34. This report seeks to separate out issues that can reasonably be addressed in subordinate legislation introduced by the Scottish Government and implications of UK Government policies which need to be pursued directly with the UK Government. The housing, online application, direct payment and modelling issues outlined above all fall into the latter category. However, it is useful to consider them alongside concerns on Universal Credit passported benefits, to provide detail of the context within which the Scottish Government is seeking to mitigate impacts. The Committee has every intention of pursuing these issues in its wider work following passage of this Bill. 

4. PERSONAL INDEPENDENCE PAYMENTS 

Provisions of the Bill 

35. Personal Independence Payments (PIPs) are a new benefit for those with disabilities, which will replace Disability Living Allowance (DLA). Those currently on DLA, who will be eligible for PIP, will require to undergo an assessment to qualify. Overall funding will be reduced by 20% on introduction of PIP. The Bill would allow the Scottish Government to define the means by which individuals receive passported benefits which are currently linked to DLA. 

36. The Committee supports the powers in regard to PIPs that the Scottish Government is proposing to take on under the Welfare Reform (Further Provision) (Scotland) Bill. 

37. This view is supported by stakeholders, and their reasoning is the same as that for Universal Credit, it creates the potential for the Scottish Government to
mitigate some of the impacts of the UK welfare reform legislation, including in relation to criteria for passporting benefits.\textsuperscript{46}

**Other issues**

38. It is worth stressing that there are serious concerns amongst stakeholders about the move from DLA to PIPs, in part drawn from their experience of the move from Incapacity Benefit to Employment and Support Allowance.

39. The number of people receiving PIP is anticipated to be markedly lower than the number currently receiving DLA. In part this is due to a change in criteria for the receipt of payments. The PIP assessment is not yet in place, however the draft assessment was viewed by witnesses as having ‘a striking resemblance’\textsuperscript{47} to the work capability assessment which has received much criticism.

\begin{tabular}{|p{0.98\textwidth}|}
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**BMA Scotland** - The work capability assessment that will use computer algorithms is inadequate, particularly in respect of mental health problems, for which it does not really cater. We are also concerned that the one year cap on benefits is too short for many physical and mental problems. \\
We know from experience that claimants, particularly those who have prolonged issues and comprehension difficulties, are often distressed when they are called in…and we think that the system is insensitive to the feelings of individuals. \\
The frequency of successful appeals seems to us to demonstrate the mechanism’s shortcomings. There would not be a 60-plus per cent success rate with appeals if the system worked properly in the first place.\textsuperscript{48} \\
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40. There is an appeals system for ESA and there will likewise be an appeals system for those who wish to contest not being deemed eligible for PIP at all or to contest the level of their awarded benefits. The Black Triangle Campaign told the Committee that 330,000 people are currently within the appeals process for other benefits\textsuperscript{49}, and as stated above a high proportion of appeals are successful, pointing at flaws in the initial assessment.

41. As Inclusion Scotland made clear in evidence, the loss of overarching benefits can remove your right to passported benefits, meaning ineligibility for PIP can then impact on other sometimes lifeline benefits\textsuperscript{50}. One Parent Families Scotland described the situation of one of their clients, which clearly demonstrated the complex relationship between different benefits, and how removing one can have a snowball effect on often vulnerable families.

\textsuperscript{46} Poverty Alliance written submission, Citizens Advice Scotland written submission
\textsuperscript{47} Dr Stephen Carty, Black Triangle Campaign, Official Report, Welfare Reform Committee, 1 May 2012 (cols 170-1)
\textsuperscript{48} Dr David Bell, BMA Scotland, Official Report, Welfare Reform Committee, 1 May 2012 (col 167)
\textsuperscript{49} Dr Stephen Carty, Black Triangle Campaign, Official Report. Welfare Reform Committee. 1 May 2012 (col 185)
\textsuperscript{50} Bill Scott, Inclusion Scotland, Official Report, Welfare Reform Committee. 13 March 2012 (col 26)
One Parent Families Scotland - I will share an example with you. Lucy is a single parent with a 16-year-old son who has cerebral palsy. He has been in receipt of the highest rate of the care component and the higher rate of the mobility component since he was a small boy. Lucy received carer’s allowance and income support as Mark’s full-time carer. He has been reassessed for DLA and it was found that he is no longer entitled to either the care or the mobility components, despite the fact that his condition remains unchanged. Lucy has lost her carer’s allowance and income support and she has to go on to JSA, so she will have to be actively seeking employment. The type of care that she needs for her son is not available, and she has had a drastic drop in her income, which means that she is struggling financially.51

42. Given the underlying concern about the more limited application of the PIP compared to DLA, a number of stakeholder groups have argued to the Scottish Government and this Committee, that the criteria for passporting benefits should not link directly to the receipt of PIP, but rather some other criteria should be found that better assesses, or identifies, need for these benefits52. However there is no magic bullet in relation to this situation, especially given limited budgets in the current financial climate. A few options for passporting benefits were explored with witnesses on 24 April, including the flaws of each option. The Committee will return to examine the issue of criteria in its on-going scrutiny of welfare reforms.

ECAS - I do not think that retaining existing eligibility is the best system. I said that because people come and go with these benefits. Some people will no longer be entitled to them and, as Ken Reid said, given that the number of people whose sight deteriorates increases daily in Scotland, new people will become entitled to them. The list that is used on day 1 will be out of date on day 2.

We are saying that somebody has to draw a line and decide that people on one side of the line get the benefit, whereas people on the other side do not...

[in establishing new criteria or retaining existing criteria] you will have to create another assessment to decide whether people meet your criteria in addition to the UK Government deciding whether people meet its criteria. One way of approaching that is for the Scottish Government to continue to use the DLA assessment—you would implement the current DLA assessment yourself. However, that will involve the cost, pain, stress and time of another assessment. I do not have a better answer—I wish that I did.53

43. The Committee has heard that the modelling of impacts of the introduction of PIP by the DWP will be vital in enabling the Scottish Government to identify those most in need. Organisations such as Inclusion Scotland have undertaken valuable modelling for a particular client base highlighting particular age groups that may be most affected.

51 Satwat Rehman, One Parent Families Scotland, Official Report, Welfare Reform Committee, 17 April 2012 (col 120)
52 SAMH written submission and Michael Mcclements, Official Report, Welfare Reform Committee, 17 April 2012 (col 100)
44. Inclusion Scotland has for example identified disabled people between 45 and 65 as those likely to be most affected. The lower rate of care payments to disabled people will be removed under PIP and 2/3 of people on this rate are over 45. In addition, it estimates, 55% of those affected by the ‘bedroom tax’ will be disabled people over 45.\(^{54}\)

45. The Committee appreciates the efforts of organisations such as Inclusion Scotland. Modelling by small organisations with limited funding is of course localised to their client base. Given the complex interdependence between benefits and also the various requirements of different individuals in a family (such as in the OPFS example above) there is a clear requirement for central comprehensive modelling including for families with complex circumstances.

46. The burden for this modelling work should lie with the DWP, as the department proposing reforms. In the absence of such work, the Scottish Government has undertaken some initial modelling and is undertaking further analysis, as far as is possible in the absence of certain pieces of information from the DWP\(^{55}\).

47. The Committee wishes to highlight that it wrote to Lord Freud, the UK Government Minister with responsibility, on this matter on 13 April 2012 and received the reply on 14 May. The Committee considers that the response received lacks substance, including the lack of any details of an assessment of cumulative impacts.\(^{56}\)

48. In addition to DWP modelling the Committee considers that some scoping work specific to Scotland is required and doubtless local authorities will have a role to play in this going forward. Indeed the Committee is encouraged to learn from CoSLA that a number of local authorities have initiated modelling to ascertain how local services require to change and also that most local authorities have established welfare reform working groups to consider the local implications of changes.\(^{57}\)

49. The Committee believes that it would be useful for the Scottish Government to continue its analytical work on welfare reform, to also look at the wider economic and social impacts of welfare reform, as the Welsh Government has been doing.\(^{58,59}\) For example, work assessing the impact on social care would be of interest to the Committee, having heard in evidence that services such as mental health services and requirements for aids and adaptations will increase.\(^{60}\) The Black Triangle Campaign also confirmed that there would ‘undoubtedly’ be an impact for those being discharged from hospital

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\(^{54}\) Inclusion Scotland supplementary written submission


\(^{56}\) Letter from Lord Freud, Minister for Welfare Reform, dated 14 May 2012.

\(^{57}\) Michael Mccllements, CoSLA.

\(^{58}\) ‘Analysing the impact of the UK Government’s welfare reforms in Wales – Stage 1 analysis’ Welsh Government February 2012.

\(^{59}\) Supplementary written submission from the Scottish Government dated 14 May 2012

\(^{60}\) NHS Lanarkshire written submission
who would, at present, receive a ‘passported’ social care package, no longer being eligible for the core benefit.  

50. The Committee believes that it is necessary to undertake extensive modelling to understand the impacts of welfare reform in Scotland and the policy responses to it, for example in establishing criteria for passported benefits. The Committee considers that it is primarily the responsibility of the DWP to undertake this work and to provide the Scottish Government with full access to this information. The Committee supports the work that the Scottish Government is undertaking and urges it to make the results public.

5. REGULATIONS

Powers contained in the Bill

51. The format of the regulations that will be brought forward under provisions of the Bill emerged as an issue during the Committee’s evidence taking. As stated above, stakeholders are unanimous that this Bill should be passed swiftly, so that the secondary legislation stemming from it can be in place well before the start of the new welfare system in April 2013. This is to ensure that individuals and families continue to receive what can be lifeline benefits.

52. As stated in the Committee’s first letter to Lord Freud—

“…the timetable that the Scottish Government must abide by, is of course not of the Scottish Government’s making, but rather is driven by the UK Government’s reforms.”

53. Stakeholders appreciate the necessary time constraints that the Scottish Government faces in developing regulations stemming from the Bill and want to ensure that there is no delay in the process of enacting the legislation as a whole, including the regulations. Understandably, within these time constraints, stakeholders want the fullest involvement in the development of regulations and the opportunity for comment.

Scottish Federation of Housing Associations - Whilst we are broadly in support of the general principles underlying this Bill, we would be keen to establish the basis upon which future changes to regulations would be made. We feel it is imperative that the Scottish Parliament ensures that any changes to regulations that Scottish Ministers make or wish to make should be subject to affirmative procedure and the full scrutiny of the Scottish Parliament. We are therefore slightly concerned by the proposals under Section 1 of the Scottish Bill which suggest under Section 1 (3)(a) that some changes – if they do not add to, replace or omit any part of the text of an Act – would be subject to negative procedure. However, our concerns here are borne mainly by the desire to see as open, transparent and accountable a process as possible, so it may well be that forthcoming clarification

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61 Dr Stephen Carty, Black Triangle Campaign, Official Report, Welfare Reform Committee, 1 May 2012 (col 185)
62 Letter to Lord Freud from Deputy Convener, 13 April 2012
in the form of guidance from the Scottish Government would allay these concerns.\(^{63}\)

**CoSLA** - CoSLA understands that the Scottish Government is dependent on further information from the UK Government on how Universal Credit and Personal Independence Payments (PIP) will operate in practice, before it is able to finalise the regulations governing passported benefits. However we would be concerned if sufficient time is not allowed to adjust operational arrangements and to be able to communicate changes. CoSLA will however seek to work with the Scottish Government as necessary to ensure the necessary arrangements are put in place timeously.\(^{64}\)

**Citizens Advice Scotland** - The whole process will have to be very carefully managed and co-ordinated and we hope stakeholders will engage in this fully and in a timeous manner.\(^{65}\)

**Poverty Alliance** - We also note that the Bill intends that regulations which will amend subordinate legislation under Part 1 and Part 2, 3 (b) are subject to the negative procedure. We are mindful of the fact that the Parliament has only partial information at this stage about the structure of UC and PIP. However, given that much of the important detail about the new criteria for passported benefits will be in such amendments, we would want to know what plans the Committee has to ensure that such regulations receive adequate scrutiny.\(^{66}\)

**Children 1st** - Given the extent, scope and importance of these regulations, it is essential that they receive proper and extensive parliamentary scrutiny. CHILDREN 1ST therefore recommends that a super-affirmatory procedure is used when these regulations are first introduced. This would allow for drafts to be considered by the secondary legislation and welfare reform committees before the final regulations are laid for approval, allowing for detailed consideration and potential changes to be made. CHILDREN 1ST recommends that the bill is amended accordingly.\(^{67}\)

54. The Committee notes the timetable for the consideration of the Scottish legislation is not entirely within the Scottish Government’s control, as it relies upon information being released by the DWP on the parent UK legislation and policy.

**Range of powers**
55. The Subordinate Legislation Committee also gave consideration to this and a number of other issues regarding the regulations. That Committee reported three major concerns—

- the proposed powers go further than those originally proposed in the UK Act;

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\(^{63}\) Scottish Federation of Housing Associations written submission
\(^{64}\) CoSLA written submission
\(^{65}\) Citizens Advice Scotland written submission
\(^{66}\) Poverty Alliance written submission
\(^{67}\) Children 1st written submission
the powers are not directly linked to the provision of (devolved) passported benefits; and

the use of a negative instrument procedure for regulations that are likely to have a significant impact may not be appropriate.

Subordinate Legislation Committee - First, the powers in the Bill go further than those which were originally proposed in the bill for the UK Act and which were not consented to by the Parliament. The Bill does not seek solely to deal with the immediate consequences of the UK Act for devolved matters. The Bill also seeks to use the general powers to allow for the “future-proofing” of changes made in consequence of the UK Act...

Second, much of the discussion on the exercise of the powers conducted to date has focused on the primary policy objective of ensuring continued access to devolved benefits which currently accrue to those who receive welfare benefits (the devolved benefits are commonly described as “passported benefits”). However, the bill does not restrict the exercise of the powers to delivery of this objective. The powers conferred allow any provision to be made within devolved competence as Ministers consider appropriate provided there is a link back to the consequences of the UK Act or a link to matters which themselves arose in consequence of that Act. The powers are therefore extensive in their potential effect, which goes beyond the task of embedding the changes to the UK welfare system properly within the current sphere of passported benefits.

In light of this, and the concerns clearly expressed by stakeholders, it therefore does not appear to the Committee to be appropriate to make a distinction as to the scrutiny to be applied solely on the basis of whether the regulations amend primary legislation or not.68

56. On the first two concerns the Subordinate Legislation Committee ultimately accepted that it was necessary to draw the powers widely in order to cope with the current level of uncertainty—

Subordinate Legislation Committee - The Committee accepts that in the current circumstances it is not possible to draw the powers to be conferred more narrowly without the risk of possibly impeding the primary objective of ensuring the continued availability of passported benefits with effect from 1 April 2013 and making other necessary consequential changes. Therefore, so far as the powers are necessary to enable the UK Act to be fully embedded with devolved matters, the Committee is content with the scope of the powers.69

57. However, the Committee did suggest that these powers be time limited—

Subordinate Legislation Committee - The Committee therefore considers that serious consideration should be given to whether the delegated powers should

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68 Subordinate Legislation Committee 22nd Report, 2012 (Session 4): Welfare Reform (Further Provision) (Scotland) Bill

69 Subordinate Legislation Committee 22nd Report, 2012 (Session 4): Welfare Reform (Further Provision) (Scotland) Bill
continue to be available indefinitely. The Committee is not in a position to identify a specific period after which the powers should no longer be available. The Committee would expect that a reasonable period should be allowed to ensure full implementation and that some further adjustments may be required beyond 2013 to ensure the system operates effectively and as intended. The Committee therefore recommends that the justification for the continued availability of general powers should be reviewed by the Parliament after the implementation period is complete and that provision to this effect should be included in the Bill.70

58. The Welfare Reform Committee notes the views of the Subordinate Legislation Committee, to the effect that the powers contained within the Bill are appropriate given the current level of uncertainty and notes71 the proposal that they be time-limited.

Form of regulations: consultation

59. The Subordinate Legislation Committee did however maintain its concerns regarding the need for draft regulations to be published and the use of negative instruments for the regulations under this Bill. It concluded—

Subordinate Legislation Committee - The Committee considers that in these particular circumstances the pragmatic and collaborative approach already adopted by the Scottish Government, stakeholders and the Welfare Reform Committee is likely to deliver a better solution than a formal requirement for consultation or additional procedure. The Committee encourages all parties to continue to work together in this manner.72

60. The main priority of stakeholders in evidence to the Committee was to ensure their involvement in the development of these instruments before they are laid before Parliament. This reflects the significance of the impact of the regulations on passported benefits.

61. The Committee recommends that, given the important policy to be included in them, instruments produced under the provisions of this Bill be consulted on with stakeholders in such a way that stakeholders have an opportunity to actively engage with the process of finalising these instruments, including proposing amendments based on their expertise.

62. In evidence to the Committee on 1 May Nicola Sturgeon MSP, Cabinet Secretary for Health, Wellbeing and Cities Strategy (‘the Cabinet Secretary’) made the following commitment—

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70 Subordinate Legislation Committee 22nd Report, 2012 (Session 4): Welfare Reform (Further Provision) (Scotland) Bill
71 Jackie Baillie MSP and Michael McMahon MSP support the recommendation from the Subordinate Legislation Committee, as whilst the powers in the Bill are wide-ranging they believe these powers are appropriate when balanced by the proposal that they be time limited.
72 Subordinate Legislation Committee 22nd Report, 2012 (Session 4): Welfare Reform (Further Provision) (Scotland) Bill
Cabinet Secretary for Health, Wellbeing and Cities Strategy - It might also help the committee to know that we intend to consult publicly on passported benefits later in the year, probably over the summer and into the autumn.73

63. The Committee very much welcomes this commitment, especially given the timescales available for the passage of this subordinate legislation. There is no doubt that involving those with such considerable expertise from the wider policy community can only be a positive step. As the Cabinet Secretary stated ‘the involvement of stakeholders lies at the very heart of the bill process’74.

64. The Committee encourages the Scottish Government to be as active as possible in its consultation on passported benefits, including interactive events, to gather ideas for the new passported benefit structure, and to use the time in advance of the laying of the equivalent UK regulations (likely to be the Autumn) to ensure valuable perspectives are gathered on the approach to these benefits.

Scrutiny of regulations: negative/affirmative

65. Of those giving oral and written evidence to the Committee, when asked for a preference as to whether the regulations should be under the affirmative procedure or the negative procedure, the majority of those who responded intimated support for the affirmative procedure. The reason highlighted by stakeholders was the importance of maximising scrutiny of these instruments75.

66. It is worth noting that the basic difference between negative and affirmative procedures is that negative instruments come into force unless the Parliament takes action to annul an instrument, whereas an affirmative instrument must be actively approved by the Parliament. Negative instruments can therefore come into force during parliamentary recesses and affirmatives cannot (unless approved prior). This is the only difference in the timing of the passage of instruments. No amendments can be made to the instruments regardless of whether the negative or the affirmative procedure is followed.

67. The Welfare Reform Committee notes the Subordinate Legislation Committee conclusion on this issue—

‘In conclusion, the Committee agrees that regulations which amend primary legislation should be subject to the affirmative procedure as the Bill currently provides. The Committee recommends that regulations which do not amend primary legislation should be capable of being made under either affirmative or negative procedure. The Committee’s expectation would be that affirmative procedure would be adopted where

73 Cabinet Secretary for Health, Wellbeing and Cities Strategy, Official Report, Welfare Reform Committee, 1 May 2012 (col 192)
74 Cabinet Secretary for Health, Wellbeing and Cities Strategy, Official Report, Welfare Reform Committee, 1 May 2012 (col 191)
75 For example Children 1st written submission, Poverty Alliance Scotland written submission, SFHA written submission, David Griffiths ECAS, Carolyn Roberts, SAMH, Gordon Macrae, Shelter Scotland, Official Report, Welfare Reform Committee, 24 April 2012 (col. 155 and 156)
the subject matter of those regulations is considered to be significant.76.

68. The Committee also notes the Cabinet Secretary’s comments on the form of subordinate legislation—

Cabinet Secretary for Health, Wellbeing and Cities Strategy - I also want to say something about what will happen when we bring our subordinate legislation to Parliament, particularly with regard to the parliamentary procedure that will apply. Like me, the committee will have seen the Subordinate Legislation Committee’s report, which says that it should be possible to make regulations that do not amend primary legislation under either the affirmative or the negative procedure. I intend to fully consider all the Subordinate Legislation Committee’s recommendations, including that one, and to discuss the matter further with it. I am also happy to keep the committee informed of those discussions.

Nevertheless, I should say something about my current thinking because we need to be clear about what will happen and when it will happen. For that reason, I think that it makes sense for the bill to set out the parliamentary procedure that will apply to the instruments that we introduce. The advantage of such an approach is that it provides clarity ahead of a process for which the timetable will necessarily be tight. Doing anything else will risk delay and, as we and a number of stakeholders have made clear, the overriding interest is to ensure that there is no risk to the provision of these important passported benefits.

I know that concerns have been expressed on the scrutiny that will be carried out on these changes. All I can say is, first, that we have undertaken to have regard to the Scottish Parliament’s need to scrutinise and consider the detail of the changes. Indeed, we make that commitment in the policy memorandum and I have also made clear our intention to consult publicly.

Secondly, we have looked at the original procedure for making the subordinate legislation that we will have to review and perhaps change. That research is not yet complete, but I have been advised that only two of the 120 or so pieces of legislation that we have identified as perhaps to be reviewed were subject to the affirmative procedure when originally introduced.77

69. The Committee very much welcomes the Cabinet Secretary’s commitment to ‘fully consider all the Subordinate Legislation Committee’s recommendations, including that one.’ In doing so, the Committee invites

76 Subordinate Legislation Committee 2nd Report, 2012 (Session 4): Welfare Reform (Further Provision) (Scotland) Bill, paragraph 45
77 Cabinet Secretary for Health, Wellbeing and Cities Strategy, Official Report, Welfare Reform Committee, 1 May 2012 (col 192)
the Cabinet Secretary to reflect on the evidence heard by this Committee from stakeholders throughout Stage 1.

Regulations: financial information

70. The Finance Committee did not produce a report on the Bill due to the lack of information provided in the Financial Memorandum on the financial implications of the Bill. This is understandable given the early stage of policy development of the secondary legislation, from which all costs of the Bill will stem. The Finance Committee wrote to this Committee requesting that the issue of financial implications of the secondary legislation be raised with the Scottish Government.

71. The Committee notes the request from the Finance Committee that the subordinate legislation should be accompanied with information on the likely financial implications of each instrument to allow that Committee to scrutinise this information.

Regulations following the passage of the Bill: Passported benefits

72. The main intention that the Scottish Government has in introducing this legislation is to establish the link to ‘passported benefits’ under the new welfare system. Passported benefits are additional benefits that are received because an individual is already receiving a ‘core’ benefit. There is a huge range of these passed benefits, including free schools meals, concessionary travel, blue badge permits, free NHS dental treatment, optical vouchers, educational maintenance allowances, legal aid and individual learning accounts. They are an important and valued means of support for those receiving benefits.

73. Indeed for some claimants, passported benefits are crucial –

| BMA Scotland | - The effect on families of the removal of, or reduction in, benefits - even temporarily - can be catastrophic, and the knock-on effects on passported benefits can exaggerate that effect.

| Capability Scotland | - …I simply want to highlight the value of passported benefits and that, in many cases, they are more valuable than the original benefit. For example, the eligibility criteria that the Department for Work and Pensions has released for the PIP indicate that someone who can walk up to only 50m without the use of a wheelchair might lose their entitlement to the higher-rate PIP. If the PIP is substituted for DLA as the passporting benefit, such a person might well lose their blue badge. That could mean that somebody with cerebral palsy who can just about walk 50m without a wheelchair would lose their blue badge. What if the nearest car park was more than 100m walk from their office? It could be

78 Jackie Baillie MSP and Michael McMahon MSP have reflected on the view of stakeholders in evidence at Stage 1 which indicated a clear desire for consultation and scrutiny, and agrees with the majority of stakeholders that the content of the regulations is substantial. Accordingly, they are of the view that the Committee should recommend the use of the affirmative procedure to ensure the appropriate level of scrutiny.

79 Dr David Bell, BMA Scotland, Official Report, Welfare Reform Committee, 1 May 2012 (col. 167)
devastating if they could not get to work. There is a need to sit down and look at what the knock-on effects of losing such benefits would be for people\textsuperscript{80}.

\textbf{Citizens Advice Scotland} - For the people who currently access passported benefits, they are a necessary and a vital means of support. They are often an important part of a household’s overall income or budgeting and removal would cause hardship. Access to passported benefits such as school meals and those associated with health and education are relied on by hundreds of thousands of individuals and families. Equally passported benefits for areas such as legal aid and court exemption fees are important to ensure people have access to justice.

The new eligibility criteria which will be set up by the Scottish Government is important to ensure that those who were in previous receipt of passported benefits remain eligible under the criteria established within the new Universal Credit benefit and PIP benefits. The most important aspects of the new eligibility system will be to ensure that it is simple, clear and easy to access.

74. The knock-on effects of the removal of benefits, and the limited support available when individuals are in a crisis situation was also covered in evidence.

\textbf{ECAS} – Many people will be in crisis. Planning how to deal with that will be required, as will finance for it. I mentioned in previous evidence - it is still true - that increasing numbers of people who would normally have been supported through community care grants are applying for grants from the third sector. That increase is not sustainable. At the moment, the gap is being filled, but I do not see how that can continue - especially if 50 per cent of community care grant applicants are turned down.\textsuperscript{81}

75. The Committee believes that the main aim of the Scottish Government in implementing the new welfare system should be, in so far as is possible, to maintain eligibility to passported benefits as they are at present.

76. There is considerable support for this approach from stakeholders---

\textbf{Citizens Advice Scotland} - We want all citizens who currently access passported benefits to remain franchised in the new system. Passported benefits play an important role in meeting education, health and anti-poverty objectives and targets. In considering how passported benefits fit with the new Universal Credit we hope that such considerations and outcomes will be taken into account. CAS also wants to ensure that the replacement eligibility criteria do not impact on work incentives or impoverish people who want to move into work from welfare.

Therefore, as this new criteria is developed, we would argue that a big picture view be taken. CAS suggests that establishing eligibility be done in conjunction with other policy areas – or at least have a role in recommendations for other policy

\textsuperscript{80} Hanna Mcculloch, Capability Scotland, Official Report, Welfare Reform Committee, 24 April 2012 (col.140)
\textsuperscript{81} David Griffiths, ECAS, Official Report, Welfare Reform Committee, 24 April 2012 (col.137)
areas. For example, if local authorities were to roll out free school meals for P1-3 as a minimum, then what is currently a passported benefit for those children with parents who meet the current criteria, would be an entitlement for all (also reducing the perceived stigma of such benefits). Equally providing accessible and affordable childcare in early years and wraparound care in school years, would help lone parents and parents on low incomes in the workplace – including entering the workforce. We can see already how this would work: as Scotland now has free prescriptions, there will be no need to establish the criteria for eligibility for prescriptions, therefore also no need to see if anyone would be disenfranchised through new eligibility rules under the new Universal Credit.\(^\text{82}\)

**Scottish Campaign on Welfare Reform (SCoWR)** - With passporting benefits - as opposed to saying that benefits that were previously passported on DLA will now be passported on the PIP - there is an opportunity to mitigate the effect on the people who will be left out of the PIP by ensuring that households that are in need of passported benefits are not disqualified from them as a direct result of the changes to disability living allowance.\(^\text{83}\)

**Scottish Federation of Housing Associations** – …we recognise that the Welfare Reform Committee has already indicated that their primary focus for action must be on passported benefits – since they are the area of welfare policy where the Parliament feels it can most readily make a positive difference. We support the Committee wholeheartedly in taking steps to ensure that households in Scotland who currently receive essential passported benefits (many of whom will be households living in social rented properties as Council or Housing Association tenants) do not lose access to them as a result of the switchover to Universal Credit. Our concern for the financial wellbeing of the households in our sector is well-recorded and well recognised, and Housing Associations and Co-operatives will continue to support financial inclusion, anti-poverty and tenancy sustainment activities, but much of that work is dependent on continued access to existing government assistance. There will need to be a considerable rethink of qualifying eligibility criteria for devolved passported benefits as a result of the Welfare Reform Act and the introduction of Universal Credit – as being in receipt of Housing Benefit, Income Support or Job Seekers’ Allowance will no longer be viable qualifying criteria.\(^\text{84}\)

**Inclusion Scotland** – We reiterate that there needs to be some far reaching changes to the way people qualify for the devolved passported benefits as to have a disabling condition or impairment alone may no longer be sufficient for a large number of people who have (or would have) previously been entitled to DLA.\(^\text{85}\)

77. The Committee has also received evidence reflecting the complexity of the current system of passported benefits. Indeed Scottish Government officials have had to spend a long time mapping passported benefits provided in Scotland. In addition, the way in which some passported benefits are allocated, and can be utilised, can vary from local authority to local authority. The Cabinet Secretary

\(^\text{82}\) CAS written submission  
\(^\text{83}\) SCoWR written submission  
\(^\text{84}\) SFHA written submission  
\(^\text{85}\) Inclusion Scotland written submission
noted in evidence that the passported benefit system in Scotland was somewhat ad-hoc and that there may be differences in application between authorities.

78. The provisions in the Bill to replace existing passported benefits can therefore be seen as an opportunity to consolidate the current system and ensure consistency in provision of benefits as far as is possible. The Cabinet Secretary spoke positively of discussions on this with CoSLA and the Committee supports this collaborative approach to the development of regulations. The Committee has written to all local authorities requesting information on its approach to passporting benefits and will ensure that any best practice gleaned from their responses will be shared with CoSLA and the Government to aid this process.

79. The Committee is clear that if the same approach to passporting benefits is adopted as at present, namely linking it to the core benefit, then there is a risk that large numbers of people currently receiving passported benefits may no longer receive them. The situation is particularly acute with PIPs, where (if the experience of the transfer from Incapacity Benefit to Employment and Support allowance is repeated) large numbers of people who qualify for Disability Living Allowance may not qualify for PIPs. They would then also fail to qualify for passported benefits.

80. Inclusion Scotland’s evidence explained that the loss of disabled status under PIP leads to the loss of passported benefits that can be crucial in maintaining independence. It anticipates that between 60,000 to 74,000 disabled people in Scotland will lose some or all of the mobility component of their benefits under PIP. Loss of the higher rate of DLA leads to the loss of an automatic entitlement to benefits such as ‘blue badge’ disabled parking. A member of public, Craig Tucker, highlights in his submission the importance of mobility benefits.

Craig Tucker - I am concerned with the Government's plans to replace DLA with a new benefit, PIP. Having done the practice 2nd draft assessment questionnaire, I may not qualify for the standard rate of the care component of PIP. This would be bad news for me, as having it enables me to get help for things in the house. I also fear that I wouldn't qualify for the enhanced rate of PIP, only standard rate. If this were to happen, then I risk losing my Motability car. This would be devastating for me. I could then lose my job as I would have no form of transport to get to work. I also worry I would lose the other passported benefits i.e. Blue Badge, Free bus pass, Free Road tax. I would also lose my independence.

I think the Scottish Government need to be aware of the implications of the UK Government's plans to change DLA. Thousands of disabled people are going to lose some or all of their benefits. Without essential support, disabled people risk being housebound, losing their independence, and their quality of life.

81. There are three cohorts of people to consider when assessing the various alternative approaches to passporting benefits. The first is those currently in

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86 Cabinet Secretary for Health, Wellbeing and Cities Strategy, Scottish Government, Official Report, Welfare Reform Committee, 1 May 2012 (col.197)
87 Bill Scott, Inclusion Scotland, Official Report, Welfare Reform Committee. 13 March 2012 (col.26)
88 Inclusion Scotland supplementary written submission
89 Craig Tucker written submission
receipt of benefit who will most likely continue to receive over-arching benefits, the second are those who previously received an over-arching benefit but will not be eligible, or assessed as requiring the benefit, under the new system, and the third cohort are those who do not require benefits at present but will require to enter the benefits system in the future.

82. As detailed above, the Committee explored alternative approaches to passporting benefits with witnesses. Of course when it comes to the benefits system there are no easy answers. RNIB highlighted in evidence, in relation to PIP, that interim arrangements whereby the Scottish Government could continue to provide benefits to those currently eligible would be out of date almost immediately. Individuals become eligible for benefits every day, and others move away from needing benefits to support them. These changes would not be captured by static interim arrangements.

83. Another suggestion - keeping the assessment for passported benefits the same as at present for Disability Living Allowance - would, ECAS pointed out, require individuals to be assessed under a Scottish system to receive passported benefits and then also under the UK system for personal independence payments. The Committee is aware that beyond the bureaucracy that this suggestion would create, the anxiety that this would cause to those being assessed on a regular basis could in itself have a detrimental impact on the health of claimants.90

84. The Scottish Government can ensure that continuity in eligibility for passported benefits is achieved for the transitional phase by making those who were eligible under the old system eligible under new interim arrangements. In the longer-term a new system will be required, defining eligibility for new claimants. Stakeholders would not appear to have a common or articulated view on how eligibility should be defined.91 The Committee will return to this issue, following enactment of the Bill, when it examines the content of the regulations which will set the rules for eligibility.

85. The Cabinet Secretary suggested in evidence that there was definitely merit in removing the link between PIP and Universal Credit and the receipt of passported benefits—

Cabinet Secretary - When I talked earlier about the consultation on passported benefits, I deliberately said two things: it is an opportunity to look at the range of passported benefits and to look at the hook for eligibility to see how we can mitigate for people who will lose eligibility for passported benefits because they are losing their headline benefit- in other words, people for whom we have already budgeted to provide passported benefits. I deliberately addressed that point; I hope that that gives the committee some indication of my thinking and direction of travel.92

90 Tanith Muller, Parkinson's UK, Official Report, Welfare Reform Committee, 24 April 2012 (col. 140)
91 Although evidence received from Disability Agenda Scotland seems to indicate that this thinking is being developed.
86. The Committee very much welcomes these comments by the Cabinet Secretary and, on this basis, awaits the public consultation on passported benefits with interest.

87. The Committee looks forward to engaging with the Cabinet Secretary throughout this process and assessing the overall policy intent whenever new information becomes available.93

6. FINANCIAL ISSUES

88. As noted above, the Finance Committee examined the Financial Memorandum accompanying the Bill. It took evidence on 18 April from Scottish Government Officials and requested written input from a number of bodies. Given the level of uncertainty concerning the arrangements for the new welfare system, the Financial Memorandum covers existing costs for passported benefits but says very little about future costs. This was reflected in the evidence session on 18 April, which the Convener concluded by saying—

Finance Committee Convener - That appears to have exhausted our questions, given the fairly limited information that we have on which to base our questions and the limited answers that the witnesses can give.94

89. One of the other difficulties that the Finance Committee faced was that there was a lack of consistency in the assessment of impact from the bodies that submitted written evidence. Of the 15 responses, 7 were from local authorities, and 3 from NHS boards.

90. The submission from Clackmannanshire Council reflected the range of cost impacts that the bill could have on local authorities—

- Increased demand for advocacy, welfare and money advice due to the above changes and moves to replace DLA with PIP. As the implications of the welfare cuts take effect, Local Government will face increased pressure to provide these services which are already under severe pressure. I cannot estimate in my current role the potential increase in total costs.

- Increase in other collection costs due to those on welfare having less disposable income so the costs to collect other debt streams are likely to increase and the collection rates for these streams are likely to decrease.

- For Scottish Government and Local Government there is the prospect of decreases in Non Domestic Rates income as local businesses fail due to the spending power of those on Welfare diminishes.

93 Jackie Baillie MSP and Michael McMahon MSP wished to add to this paragraph the following wording ‘The Committee believes, however, that it would be helpful to the process of the development of the Scottish welfare reform legislation as a whole, if the Cabinet Secretary for Health, Wellbeing and Cities Strategy were to make a policy statement in relation to the regulations, setting out the overall policy intentions of the Scottish Government.’

94 Kenneth Gibson MSP, Finance Committee Convener, Official Report, Finance Committee, 18 April 2012 (col.978)
91. Whereas the submission from NHS Greater Glasgow and Clyde reflected the uncertainty that currently prevails prior to the full design of the new welfare system becoming apparent:

NHS Greater Glasgow and Clyde - Both the move to universal credit and the final agreed eligibility criteria for passported benefits could have significant implications for uptake, either upwards or downwards. We note the lack of information currently available on eligibility criteria for passported benefits and the triggers within universal credit; this is essential to make a full assessment of costs, and we welcome the stated intention to provide a full assessment of the financial impact once this further detail is known.  

92. It is not possible therefore for the Committee to make much comment on the overall financial implications of the Welfare Reform (Further Provision) (Scotland) Bill. Given the limited information available, the Committee also does not have any specific conclusions on the Policy Memorandum.

93. The Committee does note however, that the Scottish Government has held back around £20 million of Resource DEL consequentials available in 2012-13 in view of risks presented by the current economic and financial climate including, in particular, those presented by UK welfare reform and the unpredictability surrounding the eurozone. Although as the full extent of the implications of the UK Welfare Reform Bill is still unknown it cannot confirm, at this stage, how much of the available consequentials will be allocated in response to the impact of the bill.

7. WELFARE REFORM: IMPLEMENTATION ISSUES

Role of the Committee

94. During the course of its consideration of the Bill the Committee has received considerable evidence on the on-going implementation of welfare reform generally, including implementation of previous legislation. This has included some unrelentingly depressing evidence on the likely impact of reforms.

95. The Committee has many roles. It is a forum in which these concerns can be expressed, but it also has a role in seeking out ways in which it can aid the process of mitigating some of the impacts of reforms. The Committee sees this very much as a common effort. The Committee needs to be kept informed of what

95 Clackmannanshire Council written submission to Finance Committee (Annexe A)
96 NHS Greater Glasgow and Clyde written submission to Finance Committee (Annexe A)
97 Written Answer SW4-05984, John Swinney MSP, Cabinet Secretary for Finance and Sustainable Growth, 8 March 2012.
is happening on the ground by organisations and individuals with practical experience of the impact of reforms. It also needs to work with the Scottish Government wherever possible, for example commissioning research or case studies which will also provide valuable information on the impacts of reforms on specific areas and groups.

Information from the Department of Work and Pensions

96. The Committee considers that the Department of Work and Pensions has an over-arching role to play in the provision of information as the UK Government Department responsible for developing the policies behind the Welfare Reform Act 2012. Stakeholders, the Scottish Government and the Scottish Parliament can only fulfil their roles if the DWP provides the detail on how its reforms are to be implemented.

97. Current examples of a lack of important information include—

- information on entitlement criteria, the income taper, and capital disregards for Universal Credits, without which the Scottish Government is not in a position to draw up criteria for passported benefits98;

- modelling of the cumulative impacts of benefits to identify which groups would be hardest hit by the combined effect of changes to support payments, raised by Inclusion Scotland;99

- whether accommodations would be made for those with special needs who would not otherwise be in a position to apply using a computer, raised by ECAS;100

- ‘significant policy issues’ to be addressed by the DWP before banks and credit unions could seek to develop and provide products suitable for those who do not currently have transactional bank accounts, raised by Scottish Financial Enterprise101;

- whether any assessment of the opportunity cost to the NHS of medical professionals providing information for work capability assessments appeals will be undertaken, raised by the BMA Scotland102; and

- what helpline and other advice services will be provided by the DWP in advance of the changes to the benefit system, raised by Citizens Advice Scotland and Parkinson’s UK103.

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98 Beverly Francis, Scottish Government official, Official Report, Welfare Reform Committee, 29 March 2012 (col. 77)
100 David Griffiths, ECAS, Official Report, Welfare Reform Committee, 24 April (col 153)
102 Dr David Bell, BMA Scotland, Official Report, Welfare Reform Committee, 1 May 2012 (col. 189)
103 Parkinson’s UK written submission, CAS written submission
98. The Committee sees itself as having a role in seeking information from the DWP to aid it in scrutinising welfare reforms, as well as sending clear messages to the UK Government to ensure it is properly informed concerning the impacts in Scotland.

The Committee wishes to highlight that it wrote to Lord Freud, the UK Government Minister with responsibility, on this matter on 13 April 2012, and again on 26 April 2012 and received replies to both letters on 14 May. The Committee wishes to challenge the assertion in Lord Freud’s letter of 14 May to the Deputy Convener that the required information to establish criteria has been provided to the Scottish Government and is disappointed to note that much of the detail requested by the Committee will not be made available until mid-June.

99. Another key role for the Committee is to monitor the implementation of Scottish Government regulations, and also of policies being introduced by the Scottish Government, separate to those in the Bill, that are intended to mitigate negative impacts of reforms. Two such policies that the Scottish Government is progressing relate to Council Tax Benefit and a Social Fund.

**Council Tax benefit**

100. The Scottish Government has announced a joint-funded proposal to maintain discounts to council tax at current council tax benefit levels by providing £23m, bolstered by £17m from local authorities. The expectation is that this will continue to operate substantially as at present for a year based on this funding.

101. The announcement comes at a time when both Scottish Government and local authority funding is limited. The Committee will keep itself informed of funding pressures over the coming years as a result of welfare reforms, and as a result of any policies put in place in Scotland to seek to ease the impact of reforms.

102. The Committee notes that the Cabinet Secretary is intending to undertake activity on council tax discounts using existing legislation - the Local Government Finance Act 1992. The Committee would welcome updates on the progress of this initiative, including what is intended beyond the first year arrangement with CoSLA.

**Social Fund**

103. In its early consideration of the Bill the Committee harboured some concerns about the absence from it of powers in relation to the discretionary elements of the Social Fund, which have been devolved.

104. The Committee also received written evidence from Professor Paul Spicker, Grampian Chair of Public Policy at the Robert Gordon University. In his evidence Professor Spicker contends that there are legal competence issues for the

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105 Cabinet Secretary for Health, Wellbeing and Cities Strategy, Scottish Government, Official Report, Welfare Reform Committee, 1 May 2012 (col. 201)
Scottish Government in undertaking some aspects of welfare reform, including the discretionary elements of the social fund that have been devolved:

**Professor Paul Spicker** - There needs in particular to be a residual power to promote welfare and to give financial assistance to any person – the same power currently possessed by English local authorities. As things stand, the promotion of welfare, and payments of financial assistance to individuals by way of benefits, are ultra vires.\(^{106}\)

105. In her evidence to the Committee on 1 May, the Cabinet Secretary explained that the Scottish Government will put in place interim arrangements using the general power of wellbeing that local authorities possess, along with a section 30 order to facilitate that\(^{107}\). In the longer term the proposal is to introduce a social fund bill in 2013-4, coming into force in 2015. The Committee welcomes the clarification from the Cabinet Secretary on interim arrangements for council tax discounts and the social fund and looks forward to assessing these arrangements and contributing to their development in due course.

**Impact on Scottish Government policies**

106. In addition to Scottish Government policies directly intended to mitigate welfare reforms, witnesses have alerted the Committee to a number of existing Scottish Government policies and initiatives that welfare reform will impact upon and potentially undermine to an extent. An example is the Scottish Government homelessness policy. The Infrastructure and Capital Investment Committee reported on the Scottish Government homelessness target\(^{108}\) set against the likely impacts of the then UK Welfare Reform Bill. It found that—

**ICI Committee** - …during this evidence-taking of the likely negative impact of the Bill’s provisions on the ability of local authorities to meet the 2012 target. This view has been repeated in evidence-taking on the 2012 commitment and supported in a number of written submissions. CoSLA considers that “Welfare Reform alone could lead to up to an additional 3000 homeless presentations in Scotland.”\(^{109}\)\(^{110}\)

107. This Committee would appreciate regular updates from the Scottish Government on this and other initiatives which are being negatively impacted upon by welfare reform.

**Other issues**

108. As detailed above, in its consideration of the Bill the Committee has unearthed a number of related issues that raise serious concerns. It is hard to know where to begin in prioritising areas to focus on in the future. The Committee

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\(^{106}\) Professor Paul Spicker written submission

\(^{107}\) Cabinet Secretary for Health, Wellbeing and Cities Strategy, Scottish Government, Official Report, Welfare Reform Committee, 1 May 2012 (col. 200)

\(^{108}\) Scottish Government Homelessness target – that all unintentionally homeless households have a right to settled accommodation by the end of 2012

\(^{109}\) Infrastructure and Capital Investment Committee, 2\(^{nd}\) Report 2012 (Session 4) Homelessness in Scotland: the 2012 commitment

\(^{110}\) A Johnstone dissented from this recommendation in the ICI Committee’s report
Welfare Reform Committee, 1st Report, 2012 (Session 4)

has every intention of pursuing these issues further in the Autumn once the bill has completed its passage.

109. One of the Committee’s key concerns and therefore priorities going forward, is the significant impacts on services such as the NHS, banks and credit unions, training providers and advice and support services, and the knock-on effect of these pressures on vulnerable individuals.

110. BMA Scotland and the Black Triangle Campaign also raised concerns that the reduction in funding for community care grants would result in bed-blocking as individuals would not have the support to return home or be cared for outwith hospital. This in turn would impact on the delivery of frontline services to those who would require a hospital bed as part of their recovery\(^{111}\).

111. In addition, became clear from the oral evidence from Scottish League of Credit Unions and Scottish Financial Enterprise (on behalf of the banks) that the method of paying Universal Credit (monthly, in arrears) will create a big demand for low cost bank accounts for those receiving benefits amongst the 1.5 million people in the UK who do not have an account, as well as the need for budgeting help. The financial institutions in particular are looking for further information from the DWP before they are able to develop products and services that will address these needs (see paragraphs 26 to 27 above).

112. Another key issue is undoubtedly housing, regardless of which vulnerable group an individual is in, the underlying concern for those already struggling to make ends meet is the possibility of losing not just their independence but their home. The SFHA has highlighted that their prime concern is the under occupancy charge commonly known as the ‘bedroom tax’. Their concern is that the policy does not take into account the net impact of the shortage of supply of one-bedroomed properties in Scotland. There is also a shortage of alternative private rented accommodation, particularly in rural and remote areas including parts of Inverness-shire. The SFHA has described the policy as ‘fanciful’, highlighting that it will also increase housing benefit spend because private sector rents are higher\(^{112}\) (see paragraphs 23 to 30 above).

113. Thirdly, the Committee is very concerned about the nature of the assessments for benefits and the appeals system. The Committee considers that there is a real possibility that individuals will decide not to apply for much needed benefits as a result of issues with these assessments. Parkinson’s UK, amongst others, has highlighted practical difficulties with the delivery of work capability assessments, an assessment that may be the basis for the PIP assessment\(^{113}\). BMA Scotland, whose representative described welfare reforms as ‘inhumane’ in evidence highlighted the stress and anxiety that such assessments can cause\(^{114}\). The frequency of such assessments and the requirement to be re-assessed to appeal will only exacerbate such stress. A recent report on 100

\(^{111}\) Dr Stephen Carty, Black Triangle Campaign, Official Report, Welfare Reform Committee, 1 May 2012 (col. 184-185)

\(^{112}\) David Ogilvie, SFHA, Official Report, Welfare Reform Committee, 13 March 2012 (col. 28)

\(^{113}\) Parkinson’s UK written submission

\(^{114}\) Dr David Bell, BMA Scotland, Official Report, Welfare Reform Committee, 1 May 2012 (col. 170-171)
general practices serving the most socio-economically deprived populations in Scotland entitled ‘GPs at the Deep End’ stated on existing Work Capability Assessments, that PIP assessments will most likely resemble ‘Practices described an “endless cycle of appeals” during which time the patients’ benefits are reduced. One GP calls this “completely unnecessary [and] completely avoidable”’, another felt that the WCA were ill-matched to the clinical reality'.

114. The Black Triangle Campaign also suggested that the company hired to deliver assessments, ATOS Healthcare, are a cause for concern.

Black Triangle Campaign – [ATOS] seem to be actively obstructing people from appealing and getting the benefits to which they are entitled, by not including information on what they should apply for instead and by using criteria for rejecting applications that are not in the legal criteria...People who lack support are trying to navigate the system without any help from the agencies that are rejecting claims, and we expect that to get worse.

115. During its final evidence session on this Bill, the Committee was interested to hear that ATOS has achieved preferred bidder status by the DWP for PIP assessments following delivery of existing work capability assessments.

116. This is not an exhaustive list, rather a sample of the key concerns that the Committee will be undertaking work on in the coming years.

Conclusion

117. The Committee brings the collective concerns from stakeholders highlighted in this report, to the attention of the Scottish Government to inform its future work to mitigate the negative impacts of welfare reforms under the terms of the Bill as far as is practicable, within the powers of the Scotland Act 1998, and within its fixed budget.

118. The Committee looks forward to engaging further with stakeholders in its future work, and ensuring they can continue to make their voice heard to the DWP.

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115 GPs at the Deep End: GPs experience of the impact of austerity on patients and general practices in very deprived areas, David Blane and Graham Watt March 2012
http://www.gla.ac.uk/media/media_232766_en.pdf

116 Dr Stephen Carty, the Black Triangle Campaign, Official Report, Welfare Reform Committee, 1 May 2012 (col. 170-171)

117 This includes the use of Section 30 orders as detailed in paragraphs 100 to 105.

118 Alex Johnstone MSP dissented from this paragraph.
APPENDIX

SUBMISSION FROM THE SCOTTISH GOVERNMENT – PASSPORTED BENEFITS

The following information was provided by the Scottish Government following the Committee’s request for a breakdown of existing devolved passported benefits including their associated criteria.

**Scope and scale of passported benefits**

<table>
<thead>
<tr>
<th>Area</th>
<th>Relevant criteria</th>
<th>Client group</th>
<th>Number of people affected</th>
</tr>
</thead>
</table>
| Education related benefits| Pupils attending school whose parents are in receipt of any of the following reserved UK benefits:  
  - Income support
  - Income-based jobseeker's allowance
  - Any income related element of employment and support allowance
  - Child tax credit (but not working tax credit) with an income less than £15,860
  - Both maximum child tax credit and maximum working tax credit with an income under £6,420
  - Support under Part VI of the Immigration and Asylum Act 1999

  Young people aged between 16-18 years who receive any of these benefits can also claim free school lunches in their own right. | Children and young people in full time school education | In 2010 118,963 pupils were registered to receive free school lunches. This represented 17.8% of the total pupil population. |
<p>| Free school lunches       |                                                                                      |                                                                              |                                                                                           |
| Individual Learning Accounts | All Scottish residents with an income of £22,000 or less or who are in receipt of any one of the following reserved benefits: | Low paid/low skilled individuals | Over 110,000 ILA accounts were opened in 2010-11.                                        |</p>
<table>
<thead>
<tr>
<th>Area</th>
<th>Relevant criteria</th>
<th>Client group</th>
<th>Number of people affected</th>
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<tr>
<td></td>
<td>• Jobseeker’s allowance (income and contribution based)</td>
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<td>• Income support</td>
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<td>• Carer’s allowance</td>
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<td>• Incapacity benefit</td>
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<td></td>
<td>• Maximum rate of child tax credit</td>
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<td>• State pension credit</td>
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<td></td>
<td>• Employment and support allowance (income and contribution based)</td>
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<tr>
<td>Welfare Reform Committee</td>
<td>Education Maintenance Allowance</td>
<td>Low income young people (16-19) in non-advanced post-compulsory education</td>
<td>2010-11 in which 34,780 young people received an EMA.</td>
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<td></td>
<td>Student age, household income (generally based on tax credit award notice)</td>
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<td></td>
<td>residential status and validity/level of course.</td>
<td></td>
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<tr>
<td></td>
<td>There are two threshold limits, £20,351 for households with one dependant child and £22,403 for households with more than one dependant child.</td>
<td></td>
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</tr>
<tr>
<td>Student loans</td>
<td>A student loan can be written off/cancelled if a borrower receives a disability related benefit and is considered permanently unfit for work.</td>
<td>Student loan borrowers</td>
<td>For academic year 2011-12 under 50 borrowers were affected.</td>
</tr>
<tr>
<td>Higher Education</td>
<td></td>
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<tr>
<td>Legal Aid</td>
<td>Applicants qualify financially for legal aid with no contribution if they receive one of the following benefits: Income support. Income-related employment and support allowance. Income-based jobseeker’s allowance.</td>
<td>Low income in need of justice</td>
<td>In 2010-11, there were 271,974 grants for legal aid (both civil and criminal), of which some 52 per cent were made on a passported basis.</td>
</tr>
<tr>
<td>Court exemption fees</td>
<td>Exemptions from court fees are available to those in receipt of:</td>
<td>Low income individuals seeking court</td>
<td>A total of 33,500 applications were exempt during 2010-11.</td>
</tr>
<tr>
<td>Area</td>
<td>Relevant criteria</td>
<td>Client group</td>
<td>Number of people affected</td>
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<tr>
<td>Area</td>
<td><strong>Income support</strong>&lt;br&gt;<strong>Income related employment support allowance</strong>&lt;br&gt;<strong>Income based jobseeker’s allowance</strong>&lt;br&gt;<strong>Working tax credit and child tax credit (up to gross annual income of £16,642)</strong></td>
<td>action</td>
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<tr>
<td>Blue badge parking</td>
<td>Persons receiving higher rate mobility payment of disability living allowance.</td>
<td></td>
<td>135,000 badges were issued in 2010-11 to those on higher rate mobility component of DLA out of a total of 270,000.</td>
</tr>
<tr>
<td>Eligibility criteria for the National Concessionary Travel Scheme for Older and Disabled People. (NCT)</td>
<td>Higher rate of the mobility component of disability living allowance or the higher or middle rate of the care component of disability living allowance.</td>
<td>Older and disabled people</td>
<td>Around 16% of those who currently use the scheme are eligible because they are in receipt of a passported benefit.</td>
</tr>
<tr>
<td>Free NHS dental treatment</td>
<td>Group 1: Everyone receiving&lt;br&gt;<strong>Income support</strong>&lt;br&gt;<strong>Income based jobseeker’s allowance</strong>&lt;br&gt;<strong>Income related employment support allowance</strong>&lt;br&gt;<strong>Pensions credit guarantee</strong>&lt;br&gt;Group 2: people receiving the following tax credits are eligible if their income is below a threshold amount - currently £15,276 gross taxable per year.&lt;br&gt;<strong>Working tax credit with a disability or severe disability element</strong>&lt;br&gt;<strong>Child tax credit with</strong></td>
<td>Those meeting the criteria for an income based benefit, and who need NHS dental treatment.</td>
<td>Unknown – count number of treatment claim forms submitted not number of individuals.</td>
</tr>
<tr>
<td>Area</td>
<td>Relevant criteria</td>
<td>Client group</td>
<td>Number of people affected</td>
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<tr>
<td>Optical voucher</td>
<td>Group 1: Everyone receiving&lt;br&gt;• Income support&lt;br&gt;• Income based jobseeker's allowance&lt;br&gt;• Income related employment support allowance&lt;br&gt;• Pensions credit guarantee&lt;br&gt;Group 2: people receiving the following tax credits are eligible if their income is below a threshold amount - currently £15,276 gross taxable per year.&lt;br&gt;• Working tax credit with a disability or severe disability element&lt;br&gt;• Child tax credit with working tax credit&lt;br&gt;• Child tax credit</td>
<td>Those meeting the criteria for an income based benefit in need of need of glasses or contact lenses.</td>
<td>Year ending March 2011, there were 322,116 passported claims processed for the provision of glasses/contact lenses.</td>
</tr>
<tr>
<td>Travel costs to NHS premises</td>
<td>Group 1: Everyone receiving&lt;br&gt;• Income support&lt;br&gt;• Income based jobseeker's allowance&lt;br&gt;• Income related employment support allowance&lt;br&gt;• Pensions credit guarantee&lt;br&gt;Group 2: people receiving the following tax credits are eligible if their income is below a threshold amount - currently £15,276 gross taxable per year.&lt;br&gt;• Working tax credit with a disability or severe disability element</td>
<td>Low income in need of need health treatment, including a routine check up.</td>
<td>Data not collected centrally.</td>
</tr>
<tr>
<td>Area</td>
<td>Relevant criteria</td>
<td>Client group</td>
<td>Number of people affected</td>
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<td></td>
<td>disability element</td>
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<td>• Child tax credit with working tax credit</td>
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<td></td>
<td>• Child tax credit</td>
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<tr>
<td>Energy Assistance Package</td>
<td>Applicants for stage 3 of the package are entitled to receive free or subsidised insulation from an energy supplier on the basis of their existing entitlement to specific benefits. These reserved benefits are:</td>
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<td></td>
<td>• Pension credit</td>
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<td></td>
<td>• Child tax credit or working tax credit (where income is less than the qualifying threshold)</td>
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<td></td>
<td>• Employment and support allowance (both income related and contribution based)</td>
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<td></td>
<td>• Attendance allowance</td>
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<td></td>
<td>• Disability living allowance</td>
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<td></td>
<td>• Income support, income based jobseeker’s allowance</td>
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<td></td>
<td>• Housing benefit</td>
<td></td>
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<td></td>
<td>• Council tax benefit</td>
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<tr>
<td></td>
<td>Fuel poor</td>
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<tr>
<td></td>
<td>Not possible to identify claims at stages 3 and 4 that were passported as benefits in kind.</td>
<td></td>
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</table>
ANNEXE A: REPORTS FROM THE FINANCE AND SUBORDINATE LEGISLATION COMMITTEES

Finance Committee
Convener: Kenneth Gibson MSP

Michael McMahon MSP
Convener
Welfare Reform Committee

Room T3.60
The Scottish Parliament
EDINBURGH
EH99 1SP

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(RNID Typetalk calls welcome)
(Central) Textphone: (0131) 348 5600
finance.committee@scottish.parliament.uk

18 April 2012

Dear Michael

WELFARE REFORM (FURTHER PROVISION) (SCOTLAND) BILL

At its meeting on 28 March 2012 the Finance Committee agreed its approach to its scrutiny of the Financial Memorandum (FM) accompanying the Welfare Reform (Further Provision) (Scotland) Bill.

The Committee agreed to adopt a two stage approach to its scrutiny of the financial implications of the devolved aspects of welfare reform. It agreed that the first stage would focus on the FM accompanying the Bill and that the second stage would focus on the forthcoming subordinate legislation.

As part of its scrutiny of the FM, the Committee sought written evidence from stakeholders and took oral evidence from the Bill team.

In order to report its views in time for your committee’s evidence session with the Cabinet Secretary for Health, Wellbeing and Cities Strategy, the Committee has not produced a formal report. Rather it agreed to write to the lead committee referring to the official report of its evidence session with the Bill team, appending the written submissions received and highlighting any specific issues that it considered appropriate.

Paragraph 34 of the FM indicates that the Scottish Government will provide details of how the system of passported benefits will be modified when the necessary subordinate legislation is brought forward later this year, including an assessment of the financial impact of these changes.

It would helpful to our future scrutiny if the lead committee could seek clarification from the Cabinet Secretary on the timing, nature and level of detail of the financial information that will be provided by the Scottish Government alongside its subordinate legislation and the format in which it will be provided.
The written submissions are attached. The Official Report (link below) of the evidence session with the Bill team that took place at the Committee’s meeting today will be published on its website on 23 April.


I hope this information is helpful to your scrutiny.

Kenneth Gibson MSP
Convener
The Committee received written submissions from—

- Angus Council
- CHILDREN 1ST
- Citizens Advice Scotland
- Clackmannanshire Council
- COSLA
- Glasgow City Council
- Highland Council
- NHS Greater Glasgow and Clyde
- NHS Lanarkshire
- NHS Lothian
- North Ayrshire Council
- North Lanarkshire Council
- Scottish Courts Services
- Scottish Legal Aid Board
- South Lanarkshire Council
Finance Committee

Welfare Reform (Further Provision) (Scotland) Bill

Submission from Angus Council

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

Response:

Free School Meals

As the entitlement criteria to Free School Meals will have to be realigned to take into account the abolition of the existing passporting benefits there will be financial implications for this council as follows:

- Software may have to change to accommodate the changed entitlement criteria
- At the moment the Free School Meals application and assessment process is integrated with the Housing and Council Tax benefit assessment process. Any divergence between the new entitlement criteria for free school meals and the information gathered for HB (until it is fully replaced by Universal Credit) and the new Council Tax Support scheme will put this integrated approach at risk resulting in increased administration costs, poorer customer service etc.

School Clothing Grants

Although these grants are not administered or funded by the Scottish Government the award of a grant is linked to entitlement to benefits which will be abolished from 1 April 2013 and the same issues will apply as are outlined for free school meals above.

Blue Badges and Concessionary Travel (National Entitlement Card)

The award of a blue badge and an NEC is linked to entitlement to benefits, depending on the category of application. Although national schemes, these are administered locally and, therefore, any changes will have an impact on the operation, and potentially resources, in local authorities. We understand that Transport Scotland is currently in talks with DWP regarding the impact of benefit changes on these two schemes.

Rent Arrears

As there is a pre-eviction protocol both locally and nationally we will deal with from within existing resources. We will only pursue eviction action as a
very last resort. I do foresee quite a rise in the need for detailed welfare and employment advice.

Do you consider that the estimated costs set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?

Response:

An assumption is made in the Financial Memorandum that additional costs resulting from the re-alignment of entitlement and service delivery will be met from existing budgets and no estimate of these costs is provided.

If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

Response:

The bulk of additional administrative costs could be met from existing resources. However, there is no budget allocated to meeting the costs of any significant changes required to software and the existing streamlined application process.

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Response:

Not applicable

Wider Issues
Do you believe that the Financial Memorandum reasonably captures the costs associated with the Bill? If not, which other costs might be incurred and by whom?

Response:

There will be additional costs associated with re-engineering business processes and documentation and publicising the changes to the public in relation to a number of council services (e.g. leisure concessionary scheme)
Welfare Reform Committee, 1st Report, 2012 (Session 4) — Annexe A

Finance Committee

Welfare Reform (Further Provision) (Scotland) Bill

Submission from CHILDREN 1ST

This is the written evidence on the Welfare Reform Bill submitted by CHILDREN 1ST to the Welfare Reform Committee.

Welfare Reform – Call for Evidence Response Form

Views on the Bill as a whole

1. Are you generally in favour of the Bill and its provisions?

CHILDREN 1ST welcomes the Welfare Reform (Further Provision) (Scotland) Bill and acknowledges the need to pass and enact the bill as quickly as possible. This will allow the introduction of the secondary legislation which is required to ensure provision is in place for the implementation of measures from the UK Welfare Reform Act from 2013.

Moreover, we welcome the Scottish Government’s commitment to work closely with the committee and indeed, other stakeholders in relation to the bill process and in particular, sharing information and analysis of the impact of the changes. Given that most of the 5000 vulnerable children, young people and families we work with every year will be directly affected by many changes, CHILDREN 1ST is keen to support the Scottish Government and the Scottish Parliament through information sharing and collaborative working.

We would draw the committee’s attention once more to our discovery that take-up of council tax benefit (and indeed, housing benefit) is low, particularly among two parent families. Using the Department of Work and Pensions’ own data and analysis, we have estimated that Scots on low incomes may be missing out on up to £340 million annually. Increasing take-up in the next twelve months would provide much needed additional income (or at least offset household costs) for many families who are struggling financially. It would have the additional benefit of ameliorating the 10% cut in council tax benefit monies which forms part of the devolution of this benefit. CHILDREN 1ST would urge the Scottish Government, the committee and indeed, all MSPs to do all they can to increase take-up of council tax and housing benefit in the coming year.

General Principles Underlying the Bill

The Bill proposes that the Scottish Government be given powers to introduce regulations under the UK Welfare Reform Act and amend other Scottish legislation that relates to it. This would allow the Scottish Government to make the link between the devolved welfare matters for which it has responsibility and the reserved welfare matters which have been amended by the UK Welfare Reform Act. The Bill is necessary because in December 2011 the Scottish Parliament
voted to take responsibility for these aspects rather than agreeing that the Westminster Parliament do so.

2. What are your views on this principle?

The Bill does not include provisions to devolve responsibility for replacement of council tax benefit and administration of elements of the Social Fund (Community Care Grants and Crisis Loans). Yet, the briefing session held by the committee teased out that such primary and/or secondary legislation will be required. While we acknowledge the need to act urgently in relation to passported benefits, we would encourage the Scottish Government to include provision for these two devolved areas of welfare in this bill. To create a separate legislative process for this seems to be an unnecessary duplication of Parliamentary resources. CHILDREN 1ST would welcome amendments to this bill in this regard.

Universal Credit

Section 1 of the Bill contains provisions relating to the introduction of Universal Credit. It gives the Scottish Government powers to introduce regulations and amend existing legislation in relation to the introduction of Universal Credit in April 2013.

3. What are your views on the proposed powers in relation to Universal Credit?

4. Do you have any other comments on the introduction of Universal Credit?

Personal Independence Payments

Section 2 of the Bill contains provisions relating to the introduction of Personal Independence Payments. It gives the Scottish Government powers to introduce regulations and amend existing legislations in relation to the introduction of Personal Independence Payments in April 2013.

5. What are your views on the proposed powers in relation to Personal Independence Payments?

6. Do you have any other comments on the introduction of Personal Independence Payments?

Subordinate Legislation

Subordinate Legislation is legislation below the level of Parliamentary Bills – often regulations. Section 4 of the Bill contains provisions relating to subordinate legislation. It gives the Scottish Government powers to make regulations that relate to the UK Welfare Reform Act directly or indirectly. Sections 1-3 of the Bill also include new subordinate legislation powers for the Scottish Government. Under these sections it may make regulations which amend Acts as well as old regulations.
7. What are your views on the proposed subordinate legislation powers in the Bill?

Given the extent, scope and importance of these regulations, it is essential that they receive proper and extensive parliamentary scrutiny. CHILDREN 1ST therefore recommends that a super-affirmatory procedure is used when these regulations are first introduced. This would allow for drafts to be considered by the secondary legislation and welfare reform committees before the final regulations are laid for approval, allowing for detailed consideration and potential changes to be made. CHILDREN 1ST recommends that the bill is amended accordingly.

8. Do you have any other comments on regulations that would follow this Bill on 'passported' benefits and eligibility for them?

A number of MSPs in the bill briefing session held on 29 March 2012 asked about eligibility criteria and the use of income thresholds. CHILDREN 1ST was concerned to note the Scottish Government’s focus on income being the primary factor in the provision of passported benefits, which suggests a shift from the current universal nature of some passported benefits and also does not acknowledge the very particular needs of some groups, especially families with dependent children, which current criteria fail to acknowledge.

This bill and regulatory process should be driven by two objectives. The first is to make transitional provision on passported benefits so that no one currently receiving one loses out in April 2013. CHILDREN 1ST recognises the urgency required here and supports wholeheartedly the Scottish Government’s intentions in this regard.

The second should be to use the opportunity welfare reform presents to fundamentally review our approach to passported benefits - what they are, what their purpose is, to whom they are available, how people qualify for them, how they are accessed and also administered. CHILDREN 1ST has a particular interest in ensuring that all vulnerable families with dependent children are receiving additional supports that help to address poverty but also acknowledge their – like kinship care families – particular needs.

We are concerned to note from the report on the briefing session that the Scottish Government seems minded to limit eligibility criteria to future passported benefits to an income threshold alone and also that there is some indication that people in work on low incomes might be excluded from eligibility. CHILDREN 1ST considers that we need a much wider debate and review involving all stakeholders with an interest in these issues before reaching conclusions on such details. We would hope that the committee will seek assurance from the Scottish Government that this wider review and debate will be conducted with a view to future proofing passported benefits to better meet the needs of vulnerable children and young people, and their families, in Scotland.

Financial Memorandum

The Financial Memorandum accompanying the Bill outlines the costs associated with this Bill and summarises them in a table at the end. However, as the Scottish Government states in the Memorandum ‘the timetable being pursued by the UK
Government presents limits to the Scottish Parliament’s ability to assess the financial implications of legislation it considers.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

The financial memorandum that accompanies the Bill states “it is expected that the provision of passported benefits will be retained at the current level and that costs will be met from within existing budgets”\(^\text{119}\). As the bill manager indicated, it is impossible to gauge currently the full financial impact of changes occasioned by the shift to universal credit. Yet, the very fact that some people currently entitled to passported benefits under existing benefits and criteria will no longer receive universal credit and therefore, fall out of eligibility for some passported benefits, suggests that current expenditure will be affected.

Moreover, while finance is obviously a key driver in the current climate, CHILDREN 1ST is concerned that existing budgetary provision informs the approach to be taken to future provision of passported benefits, rather than designing the system to best meet need. The Scottish Government’s commitment to share modelling – hopefully this will include passported benefits implemented by local authorities and health boards, as well as nationally – will assist the consideration of financial issues greatly

Effects on Equal Opportunities, Human Rights, Island Communities and Sustainable Development

The Policy Memorandum accompanying the Bill (para 21-25) outlines the assessments made by the Scottish Government on the potential impact of the Bill on equal opportunities, human rights, island communities and sustainable development. It notes that Equalities Impact Assessments will be published when it introduces subordinate legislation later in the year.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?
Finance Committee

Welfare Reform (Further Provision) (Scotland) Bill

Submission from Citizens Advice Scotland

Citizens Advice Scotland has supplied the Committee with a copy of its submission to the Welfare Reform Committee on the Bill. As detailed in question 9, it does not feel it can comment on the Financial Memorandum accompanying the Bill at this time.

1. Are you generally in favour of the Bill and its provisions?
2. What are your views on this principle?
3. What are your views on the proposed powers in relation to Universal Credit?
4. What are your views on the proposed powers in relation to Personal Independence Payments?
5. What are your views on the proposed subordinate legislation powers in the Bill?
6. Do you have any other comments on regulations that would follow this Bill on ‘passported’ benefits and eligibility for them?

As the Scottish Parliament rejected aspects of the UK Welfare Reform Bill Legislative Consent Motion, this bill is absolutely necessary to ensure that the citizens of Scotland still have access to passported benefits on 1 April 2013 when a raft of current benefits are effectively abolished and replaced by the new Universal Credit which is for people both in and out of work. CAS also believes there has been a lack of detail about many aspects within the UK Welfare Reform Act with much still being left to regulation or secondary legislation. This is unhelpful in policy and legislative planning. We also believe that there is much work still being done to assess what the impact will be of the UK Welfare Reform Act on Scotland’s people and services, including passported benefits.

Therefore CAS agrees that it is right that the Scottish Government now make the necessary provisions as it applies to areas of devolved competence both in terms of primarily legislation and subordinate legislation. CAS agrees the Scottish Government needs the powers to be able to amend legislation and introduce regulations as Universal Credit is introduced and DLA is abolished and replaced by PIP. We are content that the bill will also provide for regulations that directly or indirectly relate to the UK Welfare Reform Act to be changed in the future, as shown in the example from the Scottish Government in relation to varying income thresholds. CAS also welcomes the additional scrutiny that the Scottish Parliament will now have over aspects of the UK Act through the publication of primary and subordinate legislation and regulations tabled by the Scottish Government.

CAS expressed concern over the possible rejection of the LCM on the grounds that we wanted to ensure that the people of Scotland would not be in any way adversely affected by a rejection that could lead to a delay for people accessing passported benefits. CAS already believes that there are very tight timescales for the changes being introduced through the UK Welfare Reform Act, indeed the delay in the Bill becoming an Act, has added to those concerns. The Scottish Government said it was confident that legislation could be enacted in time but we would like to take this
opportunity to remind MSPs that we are now less than a year away from the introduction of Universal Credit and PIP. Therefore there is only a short time to get legislation and processes into place to ensure the smooth transition and delivery of passported benefits by Scottish Government, local authorities, and various other stakeholders. Whilst we absolutely support and recognise that necessary time must be taken to scrutinise this bill fully and adequately, the timescales involved must be borne in mind.

CAS also hopes and assumes that regulations to follow from the Scottish Government along with policy on passported benefits will be scrutinised by the Welfare Reform Committee. Much work will need to be done by the Scottish Government, local authorities, and various other stakeholders in establishing the new eligibility criteria and CAS welcome the opportunity to be part of that process.

For the people who currently access passported benefits, they are a necessary and a vital means of support. They are often an important part of a household’s overall income or budgeting and removal would cause hardship. Access to passported benefits such as school meals and those associated with health and education are relied on by hundreds of thousands of individuals and families. Equally passported benefits for areas such as legal aid and court exemption fees are important to ensure people have access to justice.

The new eligibility criteria which will be set up by the Scottish Government is important to ensure that those who were in previous receipt of passported benefits remain eligible under the criteria established within the new Universal Credit benefit and PIP benefits (more below). The most important aspects of the new eligibility system will be to ensure that it is simple, clear and easy to access. The whole process will have to be very carefully managed and co-ordinated and we hope stakeholders will engage in this fully and in a timeous manner. Equally local authorities will also have a role in establishing local eligibility criteria for any passported benefits they have under their discretion such as school uniform grants or access to local facilities such as leisure centres.

We want all citizens who currently access passported benefits to remain franchised in the new system. Passported benefits play an important role in meeting education, health and anti-poverty objectives and targets. In considering how passported benefits fit with the new Universal Credit we hope that such considerations and outcomes will be taken into account. CAS also wants to ensure that the replacement eligibility criteria do not impact on work incentives or impoverish people who want to move into work from welfare.

Therefore, as this new criteria is developed, we would argue that a big picture view be taken. CAS suggests that establishing eligibility be done in conjunction with other policy areas – or at least have a role in recommendations for other policy areas. For example, if local authorities were to roll out free school meals for P1-3 as a minimum, then what is currently a passported benefit for those children with parents who meet the current criteria, would be an entitlement for all (also reducing the perceived stigma of such benefits). Equally providing accessible and affordable childcare in early years and wraparound care in school years, would help lone parents and parents on low incomes in the workplace – including
entering the workforce. We can see already how this would work: as Scotland now has free prescriptions, there will be no need to establish the criteria for eligibility for prescriptions, therefore also no need to see if anyone would be disenfranchised through new eligibility rules under the new Universal Credit.

We are concerned that stricter sanctions and conditionality which could lead people to losing out on aspects of the Universal Credit may also have a major knock on effect on accessing passported benefits and believe this will have to be examined carefully during the drawing up of the new eligibility criteria. Equally during the 2013-17 migration process, we are concerned that any delays or appeals could also lead to delays or missing out on vital passported benefits. As well as being of detriment to adults, CAS would not want to see situations where children were missing out on passported benefits due to parental migration problems or sanctions imposed at the very time they were needed the most.

CAS would also like to point Committee Members to the newly published Report by the Social Security Advisory Committee ‘Universal Credit: the impact on passported benefits’ which shows the importance of passported benefits. This review found that:

- All passported benefits fulfil important needs, are highly valued by those who receive them, and make a significant contribution to:
  - Children’s health and wellbeing and their educational and emotional development
  - The health, wellbeing and quality of life for adults and families who are out of work or living on a low income
  - Reducing child poverty, health inequalities and social exclusion benefits-in-kind are generally regarded as particularly beneficial in helping low-income families and there was little support from review respondents for cashing these up within UC

- There is no rigorous research evidence to show that the provision of passported benefits acts as a work disincentive: when people take decisions about moving into work or increasing working hours, they take a range of factors into account

- The loss of out-of-work passported benefits when people take a job can create an unhelpful cliff-edge and reduce the apparent gains to work

- As the number of passported benefits has increased, so too has the complexity in the system and greater simplicity and better coordination of passported benefits is essential: this should reduce administration costs, render passporting more effective and efficient, improve awareness, understanding and take-up, and ensure better targeting

- Options for the future should not undermine the policy objectives of individual passported benefits, nor undermine the overarching principle that people should be better off in work than they are on benefits

- It is unlikely that one approach will suit all passported benefits in future, and more radical options will need further consideration and may require additional expenditure

- The constraint of cost-neutrality creates tensions which will need to be balanced.
4. Do you have any other comments on the introduction of Universal Credit?

CAS agrees with the principle of simplifying the benefits system into one Universal Credit and to improve work incentives by allowing individuals to keep more of their income as they move into work. However during the passage of the Welfare Reform Bill we expressed our concern over many of the accompanying changes we believe will be to the detriment of the people, services and economy of Scotland. These include the taper rate for Universal Credit and minimum and maximum disregards; cuts in benefit payments which will mean many people receive lower entitlement payments; increased sanctions and conditionality; monthly payments to one member of the household only (including housing benefit which has previously been paid direct to landlords); and entitlement to passported benefits, especially those that are devolved to Scottish or local governments. We would be happy to provide more information on any or all of these issues.

6. Do you have any other comments on the introduction of Personal Independence Payments?

The Scottish Government must introduce new PIP eligibility criteria in relation to accessing the two passported schemes Blue Badge Scheme (BB) and National Concessionary Travel Scheme (NCT) benefits that are currently accessed through DLA Mobility and Care components. Whilst we would argue that again no-one should lose out on these schemes if they received them previously, this could be problematic due the numbers expected to lose DLA and therefore their entitlement to these schemes.

The first thing to note about the change of DLA to PIP is that the UK Government has already determined that they will cut the budget for disability benefits by 20%. The change from DLA to PIP will disenfranchise one in three working age DLA clients in Scotland from their current DLA entitlement. This remains our biggest concern over the move from DLA to PIP. Inclusion Scotland estimate 75,000 people of the 225,000 to be assessed and migrated from DLA to PIP will no longer be entitled to their previous benefit. They will therefore of course, not be eligible for BB or NCT. Therefore as well as losing out on vital DLA, disabled people will also be unable to access these schemes, limiting further access to independent travel.

There are two specific concerns we have over the introduction of PIP. The first is the assessment process. We have seen major problems with the Work Capability Assessment (WCA) as people have applied for Employment and Support Allowance which is the replacement for Incapacity Benefit. In 2010/11 Scottish bureaux saw a 33% increase in the number of new ESA issues which were both time consuming and stressful for both bureaux and clients. In the case of ESA tribunals where a CAB provided representation, 69% found in favour of the claimant. This shows there are inherent flaws in the WCA, an issue we have pressed UK Governments on since 2008 and can provide further information on if required.

CAS is concerned that the assessment process for PIP may also have inherent flaws and lead to a large amount of appeals as we have seen with ESA. This could lead to other problems, for example whilst someone goes through an appeal process will
they be able to access BB or NCT? When PIP is decided for an individual, the length of time that person is entitled to it for will also be set. Depending on your circumstances the award could be a short award of up to two years or a longer award lasting up to five or ten years. Therefore people will have to face the stress of continual reassessment for PIP and the worry of losing it and associated benefits.

Our other area of concern is that is has been suggested that the use of mobility aids and adaptations may be taken into account in the assessment. So for example, an electric wheelchair-user may be assessed as not having restricted mobility and therefore not eligible for the mobility component of PIP.

DLA is already within the top ten most common problems clients present to Scottish bureaux. In 2010/11, DLA (Care) was the third most common problem with 20,222 issues (an increase of 3% on the previous year) and DLA (Mobility) was the seventh most common with 18,216 issues dealt with by bureaux (an increase of 2% on the previous year). We expect to see an increase in demand for advice during the migration of DLA to PIP.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

As stated in the Scottish Government Financial Memorandum, ‘it is not possible to set out the detail of the likely financial impact of future plans to modify entitlement to passported benefits until the operational detail of the UK Government’s welfare reform is available’ and that they will instead provide this when subordinate legislation is tabled later in the year. As such CAS feels we cannot make a comment on the financial implications of this bill. However, to reiterate what was stated earlier, time is of the essence and we agree with the Scottish Government’s approach in bringing forward this legislation now rather than waiting to legislate after further successor arrangements and details are brought forward by the UK Government.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

We have no comment to make on this question.
Finance Committee

Welfare Reform (Further Provision) (Scotland) Bill

Submission from Clackmannanshire Council

Costs

1. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

The costs detailed in the financial memorandum does not appear to reflect the considerable work and associated costs that will be borne by Local Government in implementing the content of the Welfare Reform Act. The costs concentrate solely on the operation of free School Meals but misses other key issues that will face Local Government in all other areas affected by the Welfare Reform Act.

The major areas of increased expenditure expected within Clackmannanshire Council include following areas:

Replacement Scheme for Council Tax Benefit

This is being abolished as of 31/03/2013. The costs for Local Government will be considerable as currently the provision is done on a dual basis with Housing Benefit and partially funded by an administration grant from the Department of Work & Pensions. The total administration Grant in Scotland is Circa £4.5 million per annum. In Clackmannanshire Council the grant is £ 432,000 per annum. As universal credit is introduced this grant will no longer be paid and the costs transferred to Local Government as Housing Benefit will be integrated into Universal Credit. These costs will start to be borne from October 2013 when Universal Credit starts to replace Housing Benefit for new customers. In addition to this is the need to develop a scheme to replace Council Tax Benefit and this also comes with a cost in terms of IT systems etc.

Localisation of Social Fund (Community Care Grants and Crisis Loans)

It is proposed to transfer the functions carried out by the Department of Work and Pensions to Local Government. This will come with associated administrative overheads such as Staff, Estates, IT, etc. Until the new scheme is actually determined, it would be very difficult to accurately quantify the associated costs.

Introduction of Universal Credit

This will have the effect of removing Housing Benefit (see (a) above) from Local Authorities and will have various impacts in terms of costs. The most notable cost will be in the collection of rental income. At present within Clackmannanshire Council, 60% of Council Tenants receive Housing Benefit to meet their rental liability. The Housing Benefit is assessed by Local Authorities and credited direct to the tenants rent account. A feature of Universal Credit is that the tenants will receive their Housing Costs direct and then have to pay their rent. The costs
associated with this change mean that Council's will now have to collect rent from all their tenants and this will mean increases in Staff Costs, Transaction Costs, Accommodation Costs etc. For Clackmannanshire Council this would be a best estimate based on the current cost of collection of around £300,000 (excluding central recharges), if this is based on collecting 40% then it is fair to assume to collect 100% would see these costs rising to £750,000. If this was replicated nationally the estimated cost of collection would be around £3 million rising to £7.5 million. In addition a hidden cost would be that of homelessness. With increased pressure on Household budgets an unidentifiable number of persons will find themselves homeless and Local Government will have statutory duty to find accommodation for these persons. Each homeless application is estimated to cost in the region of £15,000 to process etc.

2. Do you consider that the estimated costs set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?

Please see above.

3. If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

No. The additional costs should be met by from DWP or central government

4. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

No

Wider Issues
Do you believe that the Financial Memorandum reasonably captures the costs associated with the Bill? If not, which other costs might be incurred and by whom?

No, the additional costs that are not captured include:

- Increased demand for advocacy, welfare and money advice due to the above changes and moves to replace DLA with PIP. As the implications of the Welfare cuts take effect, Local Government will face increased pressure to provide these services which are already under severe pressure. I cannot estimate in my current role the potential increase in total costs.

- Increase in other collection costs due to those on Welfare having less disposable income so the costs to collect other debt streams are likely to increase and the collection rates for these streams are likely to decrease.

- For Scottish Government and Local Government there is the prospect of decreases in Non Domestic Rates income as local businesses fail due to the spending power of those on Welfare diminishes.
• Increase in administration of changing concessionary Schemes.

• Increases in payroll costs as a result on introduction of PAYE online system to report to HMRC payroll details in real time.
Introduction
COSLA welcomes the opportunity to respond to the Scottish Parliament Finance Committee’s call for evidence in relation to the Welfare Reform (Further Provision) (Scotland) Bill - Financial Memorandum.

COSLA accepts that, since the Scottish Parliament only agreed to a partial Legislative Consent Motion in relation to the UK Welfare Reform Act, it is necessary for the above enabling Bill to confer powers to Scottish Ministers to make changes to devolved matters, primarily passported benefits affected by that Act.

This Bill does not cover new arrangements for example for the administration of Council Tax support, following abolition of Council Tax Benefit and devolved elements of the Social Fund, both of which require to be in place by April 2013. Therefore, whilst we look forward to a future discussion with the Parliament about these critically important areas, in our response we are not making any further comment on these.

The Committee should also take note that it is too early for COSLA to offer anything other than broad comments on the financial implications of the elements contained in the Bill, as the level of detail needed to quantify the impacts is not yet available. Nonetheless the Committee should appreciate that where the response below refers to additional costs these will need to be addressed and, as the detail begins to unfold, COSLA will seek to work in partnership with the Scottish Government to quantify and seek ways to mitigate any financial impacts on Local Government.

Taking account of the caveats provided above, COSLA has set out the following responses to the Finance Committee Questionnaire which was attached with the request for evidence.

Costs
The Financial Memorandum covers the costs of existing statutory passported benefits in Scotland. We do not anticipate the costs of this existing provision changing as a result of the Bill, however any subsequent change to eligibility arising from regulations would have financial implications for Councils and these would need to be understood and quantified.

The Financial Memorandum also refers to possible increases in administration costs for Councils if more complex assessment schemes need to be put in place to maintain existing entitlements, without the same ability to use benefit entitlement as a proxy for income levels.
In response COSLA would wish to draw the Committee’s attention to the fact that the costs are very much dependent on whether information on the breakdown of claims for Universal Credit is available and is shared with Councils by the Department of Work and Pensions. Until the position becomes clear as to whether this breakdown will be available it is too early to quantify meaningfully the level of these costs.

Even if a breakdown of benefit information is readily available to Councils there will be costs associated with maintaining the schemes and these could include publicity, devising new assessment forms and procedures, changes to IT systems and electronic claim forms and increased assistance to claimants, but these examples are not exhaustive. We do not consider that Local Government can accommodate these additional administrative costs and therefore further discussion would be required with Scottish Government about how these costs can be addressed. Without the breakdown of Universal Credit, Councils will have to devise much more complex assessment procedures and these could have significant costs attached.

Therefore, whilst COSLA is working closely with the DWP on the implementation of Universal Credit and the issue of having a breakdown of costs is well understood, we would welcome the support of Parliament in pursuing this issue.

Additionally since most claimants will only gradually move on to new benefits between 2013 and 2017, parallel systems of entitlement will need to operate during the transition period and this is likely to further increase the administrative burdens on Councils.

Wider Issues
COSLA understands that the Scottish Government is dependent on further information from the UK Government on how Universal Credit and Personal Independence Payments (PIP) will operate in practice, before it is able to finalise the regulations governing passported benefits. However we would be concerned if sufficient time is not allowed to adjust operational arrangements and to be able to communicate changes. COSLA will however seek to work with the Scottish Government as necessary to ensure the necessary arrangements are put in place timeously.

Councils also provide non statutory passported benefits, for example, school clothing grants which are linked to free school meals, admission to leisure centres and other concessionary entitlements. It is anticipated that additional administration costs may be incurred to continue this provision as a consequence of the move to Universal Credit and PIP but these are not quantifiable at this stage until the detail of the new schemes are available.
Finance Committee

Welfare Reform (Further Provision) (Scotland) Bill

Submission from Glasgow City Council

Costs

1. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

As the Financial Memorandum notes, there is limited detail available on the changes arising from the UK Act and the potential impact on passported benefits to enable a full estimate of the implications for local authorities. However, the Financial Memorandum correctly highlights at paragraph 58-61 the potential administrative costs to local authorities of changes to passported benefits criteria as they relate to free school lunches.

2. Do you consider that the estimated costs set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?

As above. There will inevitably be changes required to systems and processes currently in operation within local authorities once the legislation comes into force. A full financial impact assessment will therefore need to be conducted once the details of the Bill are finalised.

3. If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

As outlined above, it is not possible to ascertain how the costs of implementation will be funded at this time.

4. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

The Financial Memorandum correctly emphasises the tight timescales involved in the UK Act, and the current lack of detail in a number of areas. It is therefore hoped that stakeholders will be given further opportunities to comment on the Bill as details emerge over the coming 12 months.

Wider Issues

5. Do you believe that the Financial Memorandum reasonably captures the costs associated with the Bill? If not, which other costs might be incurred and by whom?

We are pleased to see the importance of passported benefits recognised within the Bill. It would be beneficial to include aspects of data sharing that will be
required between Local Authorities and DWP to effectively administer passported benefits. Without data sharing protocols in place local authorities will incur additional administration costs through the gathering of information that will already be available to DWP.

Whilst it is still unclear the role that local authorities will play in the delivery of Universal Credit, it is difficult to estimate additional costs that will be incurred going forward. However, it is clear that local authorities will have responsibility for the administration and delivery of the local council tax benefit scheme, where a reduction in funding will impact on council budgets going forward. The current council tax benefit scheme is supported by DWP subsidy payments, which will no longer be applicable with the implementation of the local council tax benefit scheme.

Should the changes to benefits and tax credits result in reductions in payments to individuals, then there will likely be adverse pressures on wider local authority budgets as individuals and households in receipt of benefits react to lower income streams, including the services they purchase from local authorities.

The provision of Education Maintenance Allowances (another passported benefit) is also an important element of education provision within local authority area, and receipt of benefits is used as an eligibility test. This is correctly referred to in paragraph 48.

There are also other non-statutory local provisions that are currently “hooked” onto free school meal statutory provisions (such as footwear and clothing grants).
Welfare Reform Committee, 1st Report, 2012 (Session 4) — Annexe A

Finance Committee
Welfare Reform (Further Provision) (Scotland) Bill

Submission from Highland Council

Costs
1. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

Yes (but should there be mention of School Clothing Grants?)

1. Do you consider that the estimated costs set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?

Yes

6. If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

Yes

7. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Yes, with one caveat. – if the criteria for making awards are unclear at this stage there must be a degree of risk around the total value of payments once UC comes into being.

Wider Issues
8. Do you believe that the Financial Memorandum reasonably captures the costs associated with the Bill? If not, which other costs might be incurred and by whom?

Yes
Costs

1. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

The current assessment of impact for NHS Boards in relation to free NHS dental care, optical vouchers and travel to hospital assumes that costs will rise in line with inflation and agreed upratings only, and that there will be no change to the level of uptake.

Both the move to universal credit and the final agreed eligibility criteria for passported benefits could have significant implications for uptake, either upwards or downwards. We note the lack of information currently available on eligibility criteria for passported benefits and the triggers within universal credit; this is essential to make a full assessment of costs, and we welcome the stated intention to provide a full assessment of the financial impact once this further detail is known. No assessment has been made of potential changes to uptake associated with known or expected changes, for example demographic changes, which could be modelled now.

It would be helpful to explicitly note the risk of additional costs to NHS Boards and other bodies if changes lead to significant increases in uptake.

2. Do you consider that the estimated costs set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?

See comments above.

3. If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

If any additional financial costs are incurred as a result of the Bill, this would cause severe difficulty to the NHS Board in the context of the current financial climate.

4. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

The Financial Memorandum reflects the uncertainty in relation to eligibility for passported benefits and commits to providing further financial assessment as this
information becomes available. The potential scale of this uncertainty is not assessed. Some additional areas of uncertainty are also not addressed, including:

- The potential impact of demographic change.

- The potential change in uptake of Universal Credit or other triggers for accessing passported benefits. For example, the impact of the recession and rising unemployment which may result in an increase in benefit claims.

Wider Issues

5. Do you believe that the Financial Memorandum reasonably captures the costs associated with the Bill? If not, which other costs might be incurred and by whom?

The financial memorandum does not cover:

- Costs potentially incurred by individuals and families through the loss of passported benefits or increased complexity in accessing these benefits.

- Potential impact on public services such as NHS Boards associated with a rise in demand for services. The changes to welfare benefits have a number of risks associated including potential reduction in income for disabled people, reduction in income for individuals and families already living in poverty, and potential changes to benefits available for those in work which could affect decision and ability to move into work. We note the well documented relationship between poverty and ill health, and the risks of increasing demand on mental health and other NHS services associated with unemployment. These are indirect implications of the Bill but could lead to real additional demand on the public sector in future.
Finance Committee  
Welfare Reform (Further Provision) (Scotland) Bill  
Submission from NHS Lanarkshire

Costs

1. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

   - In the Financial Memorandum it is acknowledged that the true impact of the UK Welfare Reform Act 2012 will not be fully understood until the operational detail of the reforms is available. It is therefore difficult to ascertain what the full financial implications of the Welfare Reform (Further Provision) (Scotland) Bill for NHS Lanarkshire will be.

2. Do you consider that the estimated costs set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?

   - Without having detailed information regarding the calculation of the costings it is difficult to comment the estimates that have been made.

3. If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

   - In the current financial climate NHS Lanarkshire would not be in a position to incur additional financial costs. If additional costs are incurred, it would seem reasonable to expect that these costs are met by the Scottish Government.

4. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

   - It is extremely difficult to comment on this due to the lack of information on the operational detail of the UK Welfare Reform Act 2012 and its impact upon individuals.

Wider Issues

5. Do you believe that the Financial Memorandum reasonably captures the costs associated with the Bill? If not, which other costs might be incurred and by whom?

   - There are concerns that the implementation of the UK Welfare Reform Act 2012 will place additional pressures upon NHS staff, such as those working in the field of mental health, and general practitioners. This could place additional financial burdens upon NHS Lanarkshire.
Finance Committee

Welfare Reform (Further Provision) (Scotland) Bill

Submission from NHS Lothian

Costs

1. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

   - Do you consider that the estimated costs set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate? YES
   - If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met? - YES
   - Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise? - YES

Wider Issues

2. Do you believe that the Financial Memorandum reasonably captures the costs associated with the Bill? If not, which other costs might be incurred and by whom?

This legislation was introduced on 23 March 2012 and was triggered by the Scottish Parliament’s need to consider the implications of the UK Welfare Reform Act on access to “passported” benefits such as optical vouchers, free dental care and travel assistance to meet the healthcare needs of the population of Scotland.

The Scottish Government has provided national estimates of the costs of such passported benefits looking forward from 2013-14, the first full year of implementing the new UK universal credit regime. Details of how the changes will impact rights to access such benefits have still to be worked through and announced by UK government. Therefore the impact on the Scottish Budget can only be determined assuming stable demand and CPI inflation adjustments- as has been presented in the Financial Memorandum.

No estimates were presented for the cost of patient travel that is re-imbursed by NHS Boards out of their core allocations. Preliminary figures suggest that, for 2011-12, Lothian NHS Board spent £210,000 on patient travel re-imbursement. The costs to the NHS and the economy of not reimbursing travel for necessary healthcare has not been presented but include non-attendance, delay of elective care and failure of the organisation to comply with equalities duties Article 2, 56 etc.

Since we have, as yet, no idea what changes to rules on eligibility either the UK or Scottish Government will introduce, it would be impractical to suggest how this
baseline figure of cost would change beyond 2013-14. However on the basis that the Lothian figures are reflective of NRAC level of demand it would not be unreasonable to suggest that NHS Scotland would re-imburse approximately £1.5m-£2m per annum on patient travel cost.

The changes, once implemented may necessitate a re-design of the standard claim forms and evidence of eligibility documentation that cashiers typically require when re-imbursing claims. Some training of staff in the nature of the legislative changes and use of the revised forms would be required within financial services. However the costs of this should be limited to under £5,000 and be largely non-recurrent. Staff will also require training in sensitive practice so that the Board is not exposed to charges of failing to comply with its duties under the Equalities and Human Rights Act.

I have also not tried to assess the indirect knock-on effect of such changes on local authority delivery of services; as other passported benefits also affected are school meals, housing benefit, disability living allowance, and concessionary travel. However with services to vulnerable groups being the subject of the integration agenda, there will inevitably be efforts to increase cross-subsidisation of services out of the NHS budget through budgetary integration. Any threat to the universal, publicly owned, free at point of service NHS (of expected integrated budgets with conditionality at the centre of much of the social care) seriously reduces the equity-enhancing elements of our system. We may well introduce inequality in access, availability and utilisation if contingent on receipt of particular benefits or social position. The other benefits mentioned listed, if withdrawn or reduced, may well reduce recipients capability to live a healthy life. We know this leads to future increased health care and other public costs.

Welfare income thresholds also determine households' access to facilities such as legal aid which also plays a role in giving patients the ability to access expert professional advice in cases of non-clinical and medical negligence. Again, only when the nature of the new thresholds is known can any attempt be made to discern the impact of this on the viability and number of future claims against NHS Boards.
Finance Committee

Welfare Reform (Further Provision) (Scotland) Bill

Submission from North Ayrshire Council

Costs

1. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

The Bill has financial consequences for the Council in the following three areas:

- Free school lunches
- Education Maintenance Allowance
- Blue badge applications

Free School Lunches

The Council has a statutory responsibility to administer free school lunches, which is a passported benefit for those children with parents in receipt of a particular UK reserved benefit or tax credit. The Council charge £1.90 for a free school lunch and this therefore falls within the price range detailed in the Financial Memorandum. The Council has no issue with the projected total local authority net expenditure figure of £103m for 2014-15 contained in paragraph 61 provided the new eligibility criterion doesn’t increase demand. As there is limited information available regarding the eligibility criteria under Universal Credit, it is difficult to estimate what the full financial implications for the Council will be. The Financial Memorandum does not reflect the administration costs associated with changing application forms or the potential software costs that may be incurred when the eligibility rules change under Universal Credit. The Council is not in a position to estimate the cost of these changes until more information about the qualifying criteria is known.

Education Maintenance Allowance

Paragraphs 48 and 49 of the Financial Memorandum provide an overview of the income thresholds and the agreed Scottish Government expenditure of £31.2m for 2012-13 and the Council acknowledges this. The Council currently receives a fixed administration fee of £25,000 per annum plus £15 for each Education Maintenance Allowance that is paid. In 2011-12 the Council received 811 applications from which 667 (82.2%) were granted an Education Maintenance Allowance. A customer has to apply for an Education Maintenance Allowance and the Financial Memorandum does not reflect the administration costs associated with changing application forms to request the required proof of income when the eligibility rules change under Universal Credit or the potential software costs that may be incurred. The Council is not in a position to estimate the cost of these changes until more information about the qualifying criteria is known.
Blue badge applications – The Council currently administers the blue badge scheme from its existing budget. If new passporting rules are introduced for individuals in receipt of the Personal Independence Payment then this may have a financial implication for the Council in terms of the administration of the paper applications received, an electronic claim form and the web based software system that is used to record customer details. The Council currently charge each customer £20 to cover the administration costs of a blue badge. A blue badge is currently valid for 3 years from the date of issue and there is a risk that some blue badges will still be valid when the Personal Independence Payment is introduced from 1 April 2013. If customers have to be reassessed under a new scheme then this will increase the Council’s administration costs. The customer may also incur an extra administration fee of £20 or part thereof for a replacement badge. However if a current blue badge were to remain valid for the full three years and only change to the new scheme on renewal then this would benefit the customer and also minimise any increase in administration costs of the Council.

2. Do you consider that the estimated costs set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?

The passported benefit figures contained in the Financial Memorandum are based on current provision and therefore may change once the full operational detail of the UK Government’s welfare reform is known. The Council is therefore unable to confirm that the estimated costs and associated timescale are reasonable and accurate.

3. If relevant, are you content that your organisation can meet the financial costs associated with the Bill, which your organisation will incur? If not, how do you think these costs should be met?

The Council is not in a financial position to meet the cost of any administrative and software system changes that may be required. These costs should be met by the Scottish Government or alternatively the Department for Work and Pensions.

4. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

The Financial Memorandum only reflects the current budget provision for those areas that affect the Council. The Personal Independence Payment and Universal Credit are expected to be implemented around April 2013 and October 2013 respectively. The estimate and timescale of the costs associated with passporting benefit may therefore be subject to change.

Wider Issues

5. Do you believe that the Financial Memorandum reasonably captures the costs associated with the Bill? If not, which other costs might be incurred and by whom?
Software suppliers may incur costs for changes to existing systems that record and maintain the likes of free school lunches, education maintenance allowance, blue badge applications and concessionary travel.
Finance Committee

Welfare Reform (Further Provision) (Scotland) Bill

Submission from North Lanarkshire Council

In preparing the responses I am aware that the purpose of the bill is primarily to give powers to the Scottish Ministers to make provision in consequence of the UK Act for devolved purposes. As such the financial memorandum addresses the effect on these matters in respect to the ‘passported benefits’ concerned. A further, and potentially, more significant impact of the Welfare Reform agenda is the cumulative effect upon families and communities of the welfare changes. This may also potentially impact upon Local Authorities and RSL’s through difficulties in collection of rents, increased evictions, and greater demand for advice/assistance in dealing with the financial problems, homelessness, advice, etc.

Costs

1. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

A. At this stage the Financial Memorandum has not included any indication of the cost to LA’s of preparing and administering changes in the provision of free school lunches as the specifics of welfare reform/Universal Credit is not detailed enough to allow a determination of the system changes needed.

   There will certainly be one-off costs associated with the change and redesign of processes and software to prepare for the management of free school meals and UC and there may be additional ongoing costs depending on the detailed operation of UC and how it will interact with the award of free school meals. These are costs that the Government should provide the necessary additional financial support to LA’s for.

   In addition the LA may find that there is an increase in the eligibility for free school meals once the detail of UC is introduced and any increase in costs should be met by the Government.

2. Do you consider that the estimated costs set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?

A. The costs presented in the Financial Memorandum reflect the actual award values of the various ‘passported benefits’ with uplifts for inflation till 2014/15 as appropriate. As the detail of UC is not yet known the proposed Bill does not include any estimate/projections of the costs and is providing the basis for enabling legislation.
Clearly once the details of UC are known then the impact on the costs for the ‘passported benefits’ should be reviewed and provision made for Government funding of LA’s where consequential increases will arise.

3. If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

A. The effect of UC upon the eligibility of individual/families may increase the totality of payments made under the respective ‘passported benefits’ and this consequential cost of introducing UC should be met by the Government in addition to funding the costs associated with implementing administrative costs referred to in (1) above.

4. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

A. As indicated in the paper no attempt has been made to estimate the impact other than for an inflationary rise where appropriate, once the detail operation of UC is known and its effect on ‘passported benefits’ can be projected the award values should then be reviewed and any additional costs for LA should be funded by Government.

Wider Issues

5. Do you believe that the Financial Memorandum reasonably captures the costs associated with the Bill? If not, which other costs might be incurred and by whom?

A. As indicated above the Financial Memorandum does not include any costs/estimates pending the notice of the detail underpinning the introduction and operation of UC.

It is very likely that LA’s will experience increased demand for advice services and representational services from the public during the transition to UC and the effect on ‘passported benefits’. The Government should recompense Local Authorities for any such additional costs incurred in implementing these changes.
Finance Committee

Welfare Reform (Further Provision) (Scotland) Bill

Submission from Scottish Courts Service

Costs
1. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

The Bill is not considered to have an impact on the level of exemptions currently provided and we are happy with the information that has been provided.

2. Do you consider that the estimated costs set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?

Not applicable – see above.

3. If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

Not applicable – see above.

4. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Not applicable – see above.

Wider Issues
5. Do you believe that the Financial Memorandum reasonably captures the costs associated with the Bill? If not, which other costs might be incurred and by whom?

We have a very minor interest in this change so cannot comment on the overall wider issues.
Finance Committee

Welfare Reform (Further Provision) (Scotland) Bill

Submission from the Scottish Legal Aid Board

Costs

1. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

The Scottish Legal Aid Board (the Board) was set up in 1987 to manage legal aid in Scotland. Legal aid allows people who would not be able to afford it to obtain help for their legal problems. The Board is an independent non-departmental public body responsible to the Scottish Government. The Board’s main functions are to manage the Legal Aid Fund and advise Scottish Ministers on the current operation and development of legal aid provisions.

The Board welcomes the opportunity to respond to the Financial Memorandum drafted for the Welfare Reform (Further Provision) (Scotland) Bill. The Board welcomes this enabling Bill, which will give powers to Scottish Ministers to make provisions in consequence of the UK Welfare Reform Act 2012 for devolved purposes.

At present, about 52% of all legal aid applications are made on a passported basis, that is to say, by people who are in receipt of income support, income-based job seekers allowance or income-related employment and support allowance. Total expenditure on the Legal Aid Fund was £161.4 million in 2010/2011, so approximately £84 million of this expenditure is on applicants who were in receipt of these passported benefits. In addition, the Board also has significant resources and procedures set up for assessing and verifying applications for legal aid from applicants in receipt of these benefits. As such, we welcome the commitment that the Scottish Government will establish new criteria for the passporting entitlement of various benefits, including legal aid, although this will be dependant on the UK Government establishing in more detail how the new Universal Credit and Personal Independence Payments will operate in practice.

Paragraph 53 of the Financial Memorandum does contain a number of minor procedural inaccuracies in relation to the legal aid applications process. Firstly, applicants for civil legal aid are automatically passported if they are in receipt of a passported benefit, but applicants in receipt of these benefits who apply for civil advice and assistance or the various different types of criminal legal assistance will only qualify if their level of disposable capital is below certain thresholds. Secondly, all applicants for all types of legal aid have to complete an online application form, but in civil legal aid, there is a more detailed financial application form to be completed by applicants who are not in receipt of passported benefits.

Due to the nature of this enabling Bill, the Board cannot be precise about the financial implications associated with it at this stage. We will be in a better position...
to do this once it is clear how the Scottish Government proposes to deal with applicants for legal aid under the new Universal Credit arrangements. However, we can confirm that the future legal aid budget figures quoted in paragraph 55 accurately reflect those published in the Scottish Government’s paper “A Sustainable Future for Legal Aid”.

The table included at paragraph 68 shows the outturn and forecast figures for total legal aid spend from 2010/11 to 2014/2015. These are the actual and forecasted figures for legal aid spend for applicants with all types of financial circumstances. Although this includes the 52% of applicants who are in receipt of passported benefits, the figures obviously also include the remaining 48% of applicants who are either employed or self employed, receive non passported benefits or no income at all.

2. Do you consider that the estimated costs set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?

As above, we will be in a better position to comment on this once it is clear how the Scottish Government proposes to deal with applicants for legal aid under the new Universal Credit arrangements.

3. If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

We will only be able to comment on this once it is clear how the Scottish Government proposes to deal with applicants for legal aid under the new Universal Credit arrangements. If the approach to passporting is removed, then full eligibility assessments will have to be undertaken on the civil and criminal legal aid applications which are currently passported into legal aid. Extra resources will be required to undertake these extra full financial assessments.

We also hope that the arrangements we already have in place to verify applicants’ passported benefits with the DWP can be replicated under the new arrangements. This is an automatic computer link from the Board’s IS systems to the DWP IS system, via the Legal Services Commission.

4. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

See the answer to (2) above.

Wider Issues

5. Do you believe that the Financial Memorandum reasonably captures the costs associated with the Bill? If not, which other costs might be incurred and by whom?

See the answer to (2) above.
Finance Committee

Welfare Reform (Further Provision) (Scotland) Bill

Submission from South Lanarkshire Council

Costs

1. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

Response - The Bill does not accurately reflect the financial implications to the Council. The Bill mentions that the main implications for Local Authorities surrounds Free School Lunches but does not give any detail as to the specific costs of having to change the eligibility criteria / hook for this passported benefit. There may be an administrative burden on the Council if this changes but this is unquantifiable at this stage as alternative criteria will not be considered until the Bill is passed. The Bill does not consider the changes to Council Tax Benefit and the potential loss of Administration Grant in respect of this. The Bill does not mention the impact of Welfare Reform on Social Work Services, there is a concern that the Welfare changes could result in a loss of income to Local Authorities as clients are deemed to have less ability to pay.

2. Do you consider that the estimated costs set out in the Financial Memorandum, and the timescale over which they are projected, are reasonable and accurate?

Response - The calculation for the cost of Free School Lunches includes the costs for all lunches both free and paid, less the income from paid lunches. The estimated cost for Local Authorities of £103m by 2014/15 is likely to be an over estimate of the cost of Free School Lunches. This is because the cost relates to all school meals both free and ‘paid for’ less the income from the ‘paid for’ school meals. As mentioned previously there is no detail in the Memorandum regarding the loss of Benefit Administration Grant or the potential reduction in income for Social Work Services, therefore the financial estimates are not deemed accurate.

3. If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

Response - If the Council is no longer in receipt of Benefit Administration Grant, yet still expected to provide some form of Support Scheme, then the Council will not be able to meet the financial costs associated with the Bill. No details are provided regarding this in the Memorandum. The Memorandum does not consider any financial burden as a result of changes to passported benefits which could have an administrative impact on the Council. There may be an increased burden on Social Work Services if there is a reduction in income from clients.

4. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Response -

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Response - The Memorandum does not accurately reflect the financial implications of the Bill as detailed in the responses above.

Wider Issues
5. Do you believe that the Financial Memorandum reasonably captures the costs associated with the Bill? If not, which other costs might be incurred and by whom?

Response - The Memorandum does not mention any costs to Local Authorities associated with changing the eligibility criteria / hook for Free School Lunches. There may be an administrative burden felt by the Council if there is a change from the current legislation. There are also no details regarding the costs of providing a Council Tax Support Scheme in place of the current Council Tax Benefit Provision. The cost of providing CTB administration is currently met from our Administration Grant. At present it is clear that Councils will require the same level of administrative input and therefore costs, with any revised scheme but to date there is no indication as to where this funding will come from. For South Lanarkshire Council this represents a gap of approximately £2.5m. Further to this the Memorandum makes no mention of the potential loss of income from Social Work clients which may affect Local Authorities.
REPORT FROM THE SUBORDINATE LEGISLATION COMMITTEE

INTRODUCTION

1. At its meetings on 27 March, 17 April and 24 April 2012, the Subordinate Legislation Committee considered the delegated powers provisions in the Welfare Reform (Further Provision) (Scotland) Bill (“the Bill”) at Stage 1. The Committee submits this report to the Welfare Reform Committee as lead committee for the Bill under Rule 9.6.2 of Standing Orders.

2. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill (“the DPM”).

3. Officials from the Scottish Government also provided oral evidence to the Committee at its meeting on 17 April 2012. After this evidence session, the Committee agreed to seek further information in writing. The Committee’s letter and the Scottish Government’s response are reproduced in the Annex.

OVERVIEW OF THE BILL

4. The Welfare Reform (Further Provision) (Scotland) Bill was introduced in the Scottish Parliament on 22 March 2012. It comes into force on the day after Royal Assent.

5. The Bill is required as a consequence of the decision of the Parliament to refuse to agree to powers to make consequential and other provision being conferred on the Scottish Ministers by the United Kingdom Welfare Reform Act 2012 (“the UK Act”). In short, it broadly replicates the powers which the Parliament rejected in the UK Act. The Bill is therefore purely enabling.

DELEGATED POWERS PROVISIONS

6. Section 1 of the Bill confers power in consequence of the introduction of universal credit by the UK Act. Section 2 makes similar provision in consequence of personal independence payment introduced by the UK Act. Section 3 expands each of the powers so that the powers may:

- make provision in direct or indirect consequence of the UK Act or instruments made under it;

- make provision which is not of itself in consequence of the UK Act if the provision concerns any matter arising in direct or indirect consequence (or previously arising);

- make different provision for different cases or purposes; and

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- include supplemental, incidental, consequential, transitional, transitory or saving provision.

7. There are two important points to highlight by way of introduction which are of particular relevance to the Committee’s remit and consideration of the powers which it is proposed to confer on Ministers through this Bill.

8. First, the powers in the Bill go further than those which were originally proposed in the bill for the UK Act and which were not consented to by the Parliament. The Bill does not seek solely to deal with the immediate consequences of the UK Act for devolved matters. The Bill also seeks to use the general powers to allow for the “future-proofing” of changes made in consequence of the UK Act.

9. Second, much of the discussion on the exercise of the powers conducted to date has focused on the primary policy objective of ensuring continued access to devolved benefits which currently accrue to those who receive welfare benefits (the devolved benefits are commonly described as “passported benefits”). However, the bill does not restrict the exercise of the powers to delivery of this objective. The powers conferred allow any provision to be made within devolved competence as Ministers consider appropriate provided there is a link back to the consequences of the UK Act or a link to matters which themselves arose in consequence of that Act. The powers are therefore extensive in their potential effect, which goes beyond the task of embedding the changes to the UK welfare system properly within the current sphere of passported benefits.

10. The Bill provides that where the regulations made under either section 1 or 2 textually amend primary legislation they will be subject to the affirmative procedure. In any other case they will be subject to the negative procedure.

Delegation of the powers in principle

11. The Committee recognises the context within which these powers are to be conferred. A substantial amount of work is required in order to make the changes to legislation relating to devolved matters as a result of the UK Act. The Committee understands that the roll-out of the UK changes will commence with effect from 1 April 2013, although this will be a process which will continue for a number of years beyond that date. As a Scottish Government official put it, “the bill provides a practical means to a necessary end.” The Committee accepts that the timetable and the pace at which the changes need to be made are set by the UK Act and by implementing measures that are still to be made by UK Ministers under that Act. These are matters beyond the control of the Scottish Parliament or the Scottish Government. The Committee also recognises that both the timetable and the current lack of availability of the operational detail set out in instruments to be made under the UK Act mean that it would not be possible to deliver these changes by 1 April 2013 through the standard primary legislation process rather than subordinate legislation.

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12. Nevertheless, the Committee also recognises that the changes which these powers could deliver are extremely significant. They are capable of having a profound effect on people in Scotland who currently receive passported benefits or who might in the future expect to be entitled to receive them. Scottish Government officials advised the Committee that the changes made by the UK Act have precipitated the first review of passported benefits “in the round”. This is a matter which is clearly of importance and concern to a wide range of stakeholders.

13. The Committee accepts that it is appropriate in principle to delegate the powers sought in order to achieve the primary objective of ensuring the continued delivery of passported benefits from 1 April 2013. However, the Committee considers that the current context illustrates that the potential reach of ancillary powers of this kind can be of significant impact in practice. The scrutiny of the grant of such powers by the Parliament is therefore an important matter which requires careful consideration in addition to ensuring proper scrutiny of the exercise of the powers themselves. The Committee considers this further below.

Scope and duration of the powers to be conferred

14. As noted above, the powers go further than proposed in the bill for the UK Act and are drafted in terms which permit changes to be made that are wider than is necessary to achieve the primary objective of ensuring the continued delivery of passported benefits to current recipients. In its evidence, the Scottish Government confirmed that a number of these passported benefits are currently regulated through subordinate legislation. Therefore, in a number of cases, Ministers could already have the powers necessary to conduct the exercise of engaging these benefits with the UK Act.

15. As a general principle the Committee considers that it is preferable that subordinate legislation is made using enabling powers which have been conferred for specific purposes where these are available rather than general ancillary powers of the kind proposed in the Bill. Some of those existing specific powers may be subject to additional statutory requirements such as consultation with stakeholders which are not replicated in the general powers proposed in this Bill.

16. The Scottish Government indicated that it is currently too early in the process to determine whether the existing powers are sufficient. The full scope of the necessary work is not known and the policy approach to be adopted is not yet sufficiently developed to be clear whether the existing powers are adequate. The Scottish Government’s legal adviser explained:

“It is true that some of the powers will be sufficient to make the changes that will ultimately be made. However, at the moment, it is not possible to say exactly what the changes will be to a particular provision, which means that we cannot say whether the power that is available under subordinate legislation will be apt to make the change that we ultimately want to make. Against that background, we are looking to take a general power to allow us
to make the changes that we need to make in order to ensure that passported benefits are available.”

17. The Committee accepts that, in the particular circumstances, it is necessary to legislate to confer powers at a point at which the scope of the task is unknown. It recognises that this is a challenging task and that it is important to ensure that Ministers have adequate powers at their disposal to ensure that passported benefits continue to be delivered.

18. Where existing powers are available, the Scottish Government has indicated that this may provide Ministers with a choice whether to use those powers or those to be granted under the Bill and consideration will be given to whether it is appropriate to use existing powers and comply with any existing pre-conditions. Ministers will be accountable to the Parliament for the manner in which they exercise that choice. The Committee accepts that the choice will depend on the context of each case.

19. The Committee is reassured by the Scottish Government’s comments that consideration would be given to fulfilling any existing consultation requirements if it were considered appropriate to do so and if this would not put the timetable at risk.

20. There may also be other necessary consequential changes such as those where the eligibility for receipt of benefits is used as a criterion for other matters. The Scottish Government provided the examples of eligibility to repay debt under the Bankruptcy (Scotland) Act 1985 and determining the ability of disabled persons to vote on their own account. These are consequential changes of a fairly standard nature. Whether the changes made are controversial in policy terms will depend on future policy decisions. However, the Committee recognises that, were eligibility criteria to be altered using these powers, this could prove controversial.

21. The Committee accepts that in the current circumstances it is not possible to draw the powers to be conferred more narrowly without the risk of possibly impeding the primary objective of ensuring the continued availability of passported benefits with effect from 1 April 2013 and making other necessary consequential changes. Therefore, so far as the powers are necessary to enable the UK Act to be fully embedded with devolved matters, the Committee is content with the scope of the powers.

22. The Committee accepts that there is a need for the eligibility criteria for passported benefits which Ministers set out in regulations to remain relevant and up to date. For example, a means should be available so that any financial limits which may be set could be adjusted to retain their real value over time. Future uprating of this kind would not involve any significant policy change. However, the Committee is concerned that these general ancillary powers provide the power to go beyond the ability to future-proof criteria in this manner.

23. In its evidence, the Scottish Government confirmed that the future-proofing element of the powers sought would allow Ministers to introduce very different eligibility criteria from those which are introduced when passporting existing benefits, provided that a link to a change made as a consequence of the UK Act can be established. If such a link is established, the powers permit Ministers to make whatever changes they think fit. If the Bill is passed in this form, the Parliament will have delegated to Ministers the power to make substantial revisions to the criteria by which entitlement to passported benefits is assessed for the foreseeable future.

24. The Committee considers that the Parliament may wish to consider significant revisions to the eligibility criteria for such benefits on a longer timescale and cannot rule out the possibility that the Parliament would prefer to do so using primary legislation rather than through the use of these powers.

25. The Committee accepts that it will be necessary to allow a significant transitional period to encapsulate the time throughout which the UK Act changes are rolled out and to allow for a period of operation during which any practical problems could be identified and rectified. It accepts that it would not be a good use of parliamentary time to revisit the enabling powers during this period. The Committee also recognises that the changes made using the powers would also require to continue in effect.

26. As outlined above, the Committee considers that it is largely the urgency of the current UK welfare reform project and the unknown scope of the current passported benefits which justify the conferral of these broad general powers. The Committee is not satisfied that the delegation of general powers of this kind to permit significant variations once that project is completed, without parameters as to what those variations may comprise, has been justified.

27. The Committee therefore considers that serious consideration should be given to whether the delegated powers should continue to be available indefinitely. The Committee is not in a position to identify a specific period after which the powers should no longer be available. The Committee would expect that a reasonable period should be allowed to ensure full implementation and that some further adjustments may be required beyond 2013 to ensure the system operates effectively and as intended. The Committee therefore recommends that the justification for the continued availability of general powers should be reviewed by the Parliament after the implementation period is complete and that provision to this effect should be included in the Bill. This would not affect the continued operation of provision made under exercise of the powers.

Parliamentary procedure which should apply to the exercise of the powers

28. It is clear from the evidence submitted to the lead committee to date that stakeholders are more concerned with the content of the regulations which are to be made under the Bill than the terms of the Bill itself. For example, Jeannette Campbell from Citizens Advice Scotland said:
“We are more interested to see the subordinate legislation and regulations, because they are where all the information and detail will be; that is the important bit for CAS. We want to see the eligibility criteria and we want to know exactly what system will need to be in place within a year to 18 months.”

29. Stakeholders are therefore concerned to ensure that the regulations which are to be made under the Bill receive as much scrutiny as, if not more than, the Bill itself. John Dickie, from the Child Poverty Action Group in Scotland, said:

“We therefore seek assurance ... that the committee will give equal scrutiny to the regulations that are still to come, where the meat of the issue will be in relation to passporting.”

30. This concern reflects the Committee’s acknowledgement above that the exercise of the powers will have a significant practical impact and that, until the regulations themselves are available, stakeholders will not have the opportunity to see and comment on what that impact will be.

31. The Bill currently provides that regulations which make textual amendments to primary legislation will require the Parliament’s approval. Regulations which do not make such textual amendments do not require approval but could be annulled by resolution of the Parliament within 40 days of being laid.

32. Stakeholders have given evidence that in their opinion this is not a sufficient level of scrutiny given the importance of the subject matter. Some have suggested that consultation on drafts in addition to the affirmative procedure would be merited given the importance of the regulations (“super-affirmative procedure”). Others have recognised that affirmative procedure is merited, although negative procedure would normally be considered sufficient for changes to subordinate legislation, or suggested that affirmative procedure would be appropriate for the first set of regulations to be made under each section.

33. The Scottish Government explained the approach taken in the Bill as follows:

“with regard to amendments to primary legislation, the Parliament has already voted on the actual wording of that legislation and, instead of allowing certain provisions to be made in secondary legislation, has determined that particular terms are sufficiently important to be used in primary legislation ... there is a qualitative difference between that kind of amendment and an amendment to secondary legislation.”

34. The Committee endorses the view that where regulations make amendments to primary legislation they should be approved by the Parliament for the reasons set out by the Scottish Government.
35. However, the Committee questioned whether it was possible to say that the changes which Ministers might wish to make to subordinate legislation using these powers differed in content, effect or their financial implications from those to be made to primary legislation. The Scottish Government responded:

“It is difficult to answer your question about the content, effect and financial implications of instruments, because instruments will vary from case to case. Some will have significant effect, in that they will broadly continue to make a passported benefit available to the group that currently receives it; others might have an effect that varies in some way, depending on the policy. At the moment, however, I am unable to draw a distinction between the content, effect and financial implications of changes to primary and secondary legislation.”¹²⁸

36. The Committee concludes that one of the implications of the breadth of the power and the current stage in the programme of this project is that it is not possible to predict at the moment whether the changes to be made to secondary legislation will be less significant, as significant or more significant than those which are to be made to primary legislation. In light of this, and the concerns clearly expressed by stakeholders, it therefore does not appear to the Committee to be appropriate to make a distinction as to the scrutiny to be applied solely on the basis of whether the regulations amend primary legislation or not.

37. The Committee is not attracted to the proposal that the first set of regulations could be subject to a higher level of scrutiny than subsequent regulations for the same reason. It does not necessarily follow that subsequent regulations will have a less significant effect than the first set of regulations.

38. The Committee recognises that, if some distinction is to be made between regulations which are to be subject to the affirmative procedure and those which are to be subject to the negative procedure, that distinction must be made by way of a clear criterion. The current criterion does fulfil the requirement of clarity. A criterion based on an assessment of the significance of the effect of the regulations or something similar would not be sufficiently clear since whether or not something has a significant effect is essentially a subjective matter.

39. The Committee considers that the reason why stakeholders would prefer affirmative or super-affirmative procedure is because these procedures provide the opportunity to consider the proposed regulations in draft before they are made. The Committee welcomes that the Deputy First Minister and Cabinet Secretary for Health, Wellbeing and Cities Strategy has given a written undertaking to the Welfare Reform Committee that the Scottish Government will make available material on the relevant subordinate legislation from the UK Government as it becomes available and to continue to work with stakeholders throughout the process of developing the Scottish regulations. This is an important commitment and goes a considerable way towards the additional expectations that would be imposed through a super-affirmative form of procedure.

40. The Committee recognises that a formal requirement for consultation drafts to be laid for a standstill period or the blanket application of affirmative procedure could have an adverse effect on the timetable for this project, which is set by matters beyond the Scottish Government’s control. Given that the timetable is fixed, a balance is to be struck between using the limited time available to work up proposals fully and allowing time for consultation. Formalising the Cabinet Secretary’s offer in the legislative process could risk delivery to time if the necessary information from the UK Government is late or there are subsequent changes made as a result of the consultation processes. All of these possibilities are at least foreseeable.

41. The Committee also accepts that affirmative scrutiny of more minor changes would use up valuable committee and parliamentary time which could be better spent on other matters.

42. The Committee considers that in these particular circumstances the pragmatic and collaborative approach already adopted by the Scottish Government, stakeholders and the Welfare Reform Committee is likely to deliver a better solution than a formal requirement for consultation or additional procedure. The Committee encourages all parties to continue to work together in this manner.

43. The Committee recognises that at this point it is not possible to predict whether regulations which modify subordinate legislation will have significant effects or not. The Committee therefore considers that where regulations do not make amendments to primary legislation the Bill should allow the regulations to proceed by either affirmative or negative procedure. The Committee’s expectation would be that the Scottish Government would adopt the affirmative procedure unless it is clear that the subject matter is not significant or, where the regulations do have a significant effect, if for reasons beyond the Scottish Government’s control there is not enough time to adopt the affirmative procedure.

44. The choice of which procedure to use in any particular case would be one for Ministers to make, in addition to considering whether any existing powers would be more appropriate. However, Ministers would be accountable to the Parliament and to stakeholders for their choice of procedure. Given the close working relationship established with the Welfare Reform Committee, which the Committee expects will continue throughout the implementation of this project, the Committee anticipates that this is a matter which the Welfare Reform Committee could pursue as work on the regulations progresses.

45. In conclusion, the Committee agrees that regulations which amend primary legislation should be subject to the affirmative procedure as the Bill currently provides. The Committee recommends that regulations which do not amend primary legislation should be capable of being made under either affirmative or negative procedure. The Committee’s expectation would be that affirmative procedure would be adopted where the subject matter of those regulations is considered to be significant.
SUBORDINATE LEGISLATION COMMITTEE REPORT

Subordinate Legislation Committee letter to Scottish Government

In considering its conclusions on the Bill, the Committee would appreciate further information from the Scottish Government regarding the inclusion in the Bill of a sunset clause applying to the delegated powers provisions once the changes consequential on the UK Act have been made.

Although the issue was explored at the meeting today, the Committee would welcome further explanation from the Scottish Government as to why it is considered that this is an unnecessary provision. In particular, can you provide justification for these powers being retained and further information on the consequences of such a provision on the operation of the Bill?

The Committee accepts that sufficient time must be given to address fully the consequences of the UK Act and that this may extend over a significant period of time as the UK changes are rolled out. Also changes made using the powers must obviously continue in effect. However the Committee would like clarification of the need to maintain powers of this nature beyond the period of full transition to the new UK Act system. In particular, would it be possible for any future changes to be considered on a longer timeframe and for more specific powers to be taken at that point if they were required?

Scottish Government response to the Subordinate Legislation Committee

Thank you for your letter of 17 April. You have asked, on the Committee’s behalf, for a further explanation as to why we consider that a sunset clause would be an unnecessary provision in our Bill. As you acknowledge, this matter was discussed at our meeting with Committee on Tuesday and there will be a limit as to how much further explanation I can provide as I think that discussion covered the salient points. We do not believe that a sunset clause would be appropriate. Furthermore, we consider that if the Bill were to be amended to include such a clause, that this approach would give rise to additional risk as a consequence.

Taking these points in turn, we believe that a sunset clause would be unnecessary because the Bill’s provisions are intended for the longer-term, not just the period immediately affected by the transition to Universal Credit and the Personal Independence Payment. We tried to illustrate this point yesterday by citing the example of an income threshold, which might be set to determine eligibility to passported benefits. Whatever figure is set for the income threshold, this is likely to become less useful over time, as a means of accurately identifying low income for the purposes of entitlement to passported benefits.

This is because inflationary pressures on the cost of living mean that, if a household which is currently in receipt of, for example, an income of £16,000 can hypothetically be said to be in relative poverty in comparison with other households in Scotland, this may not be true in 10 years’ time. By that time, inflationary pressures may mean that households with an income of above £16,000 may also be at an equivalent relative level of poverty. We would require to
adjust the income threshold, in order to ensure that we could continue to accurately capture households with low, relative incomes over time and not exclude those which are at risk of falling into poverty as the cost of living rises.

As things stand, we would be able to make this adjustment using the powers enabled by the Bill. If these powers ceased, because of a sunset clause, we might then have to recourse to further primary legislation – which we do not consider to be a useful or effective use of government or Parliamentary resources. We believe therefore, that this requirement, to use a term from yesterday, to “futureproof” our eligibility criteria for passported benefits justifies these powers being retained in order to keep the related legislation operating effectively over time. I hope this also clarifies the need to maintain powers of this nature beyond the period of full transition to the new UK Act system.

You also asked for further information on the consequences of a sunset clause for the operation of the Bill. We believe that one consequence would be to give rise to additional risk. This is the risk that - if the UK Government were to decide to amend the welfare system in the future, in a way which in turn, also effected devolved legislation - then Scottish Ministers might need to react quickly in order to deal with the implications of those changes. We would expect UK amendments to be made by way of subordinate legislation, which the UK Government would be able to do, in part because the powers delegated by the UK Welfare Reform Act 2012 are not subject to a sunset clause.

For as long as Scottish Ministers are able to use the enabling powers proposed in our Bill, then they would be able to bring about adjustments to timescales which would likely be equivalent to those undertaken in the UK. Depriving Scottish Ministers of these powers could, at some future point, result in a need for further primary legislation which would in turn, potentially cause delay and a risk to continued provision. We believe that we have been quite explicit thus far, about the Scottish Government’s wish in bringing forward this legislation, to avoid any risk to the provision of passported benefits.

Finally, you asked if it would be possible for any future changes to be considered on a longer timeframe and for more specific powers to be taken at that point if they were required. We do not see any reason why this would not be theoretically possible. However, we do not believe that this approach would be as effective a means of ensuring continued provision as the one taken in the Bill. To reiterate something I said on Tuesday, “the primary policy intent of this Bill is to ensure continued access to passported benefits”. Introducing a sunset clause would not, in our view, ensure continued access – it would ensure access for a fixed period, after which the same issue would have to be addressed again.

We understand, to an extent, Committee’s concern about delegating these powers in perpetuity. However, we feel that the existing Parliamentary procedures for scrutinising regulations, such as those which will be made under the Bill, should provide sufficient assurance that these powers will be used appropriately.
ANNEXE B: EXTRACT FROM MINUTES

1st Meeting, 2012 (Session 4), Thursday 23 February 2012

UK Welfare Reform Bill: The Convener and other members made introductory remarks on the role of the Committee.

Work programme: The Committee discussed its approach to developing its work programme.

2nd Meeting, 2012 (Session 4), Tuesday 13 March 2012

Decision on taking business in private: The Committee agreed to take agenda item 2, and also a discussion on working practices at its next meeting, in private.

Legislation (in private): The Committee considered its approach to upcoming legislation and agreed:
- to launch a call for written evidence on the day that the bill is launched;
- to delegate to the Convener and Deputy Convener - the wording of the call for evidence; the list of organisations and individuals at which to target the call for evidence; and the approach to publicising it;
- to delegate responsibility to the Convener to authorise any witness expense claims and
- to review evidence at the end of any evidence taking sessions, and to consider draft reports in private.

Welfare Reform: The Committee took evidence in roundtable format from—
David Griffiths, Chief Executive, Ecas and Scottish Council for Voluntary Organisations;
Matt Lancashire, Social Policy Officer, Citizens Advice Scotland;
Bill Scott, Manager, Inclusion Scotland;
Carolyn Roberts, Head of Policy and Campaigns, Scottish Association for Mental Health;
Michael McClements, Policy Manager, COSLA;
David Ogilvie, Policy and Strategy Manager, Scottish Federation of Housing Associations;
Maggie Kelly, Policy and Campaigns Officer, Poverty Alliance;
Richard Hamer, Director of External Affairs, Capability Scotland;
Dr Jim McCormick, Scotland Adviser, Joseph Rowntree Foundation;
Councillor Matt Kerr, Chair, Scottish Local Government Forum Against Poverty;
John Dickie, Head, Child Poverty Action Group in Scotland;
Robert McGeachy, Policy and Public Affairs Manager, Action for Children Scotland;
Kate Higgins, Policy Manager, Children 1st;
Mark Ballard, Head of Policy, Barnardo’s Scotland;
Marion MacLeod, Senior Policy and Parliamentary Officer, Children in Scotland;
3rd Meeting, 2012 (Session 4), Thursday 29 March 2012

Decisions on taking business in private: The Committee agreed that reviews of evidence and draft reports on the Welfare Reform (Further Provision) (Scotland) Bill should be taken in private at future meetings.

Welfare Reform (Further Provision) (Scotland) Bill: The Committee received a briefing on the general principles of the Bill from—
Beverley Francis, Head of Welfare Reform Team, Chris Boyland, Bill Manager, Ann McVie, Team Leader, Welfare Division, Susan Anton, Analytical Services Division, Alison Stewart, Legal Division, and John Paterson, Legal Division, Scottish Government.

Working practices (in private): The Committee discussed a paper detailing a number of forms of business which are likely to feature regularly in the Committee’s work programme where it may wish to consider agreeing standard working practices.

4th Meeting, 2012 (Session 4), Tuesday 17 April 2012

Welfare Reform (Further Provision) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—
Hanna McCulloch, Scottish Campaign on Welfare Reform;
Jeanette Campbell, Parliamentary Officer, Citizens Advice Scotland;
Michael McClements, Policy Manager, COSLA;
David Ogilvie, Policy and Strategy Manager, Scottish Federation of Housing Associations;
John Dickie, Head, Child Poverty Action Group in Scotland;
Bill Scott, Manager, Inclusion Scotland;
Satwat Rehman, Director, One Parent Families Scotland;
Maggie Kelly, Policy and Campaigns Officer, Poverty Alliance.

Kevin Stewart declared an interest as a councillor for Aberdeen City Council, Margaret Burgess declared an interest due to longstanding involvement with Citizens Advice Scotland and Jamie Hepburn declared an interest as a previous member of Poverty Alliance.

Welfare Reform (Further Provision) (Scotland) Bill (in private): The Committee reviewed the evidence heard earlier in the meeting.
5th Meeting, 2012 (Session 4), Tuesday 24 April 2012

Welfare Reform (Further Provision) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—
Hanna McCulloch, Senior Policy Officer, Capability Scotland;
David Griffiths, Chief Executive, ECAS;
Mike Holmes, Executive Director, Enable Scotland;
Tanith Muller, Parliamentary and Campaigns Officer - Scotland, Parkinson's UK;
Ken Reid, Chair, RNIB;
Carolyn Roberts, Head of Policy and Campaigns, Scottish Association for Mental Health;
Gordon Macrae, Head of Communications and Policy, Shelter Scotland.

Kevin Stewart declared an interest as a councillor for Aberdeen City Council.

Welfare Reform (Further Provision) (Scotland) Bill (in private): The Committee reviewed the evidence heard earlier in the meeting.

6th Meeting, 2012 (Session 4), Tuesday 1 May 2012

Decision on taking business in private: The Committee agreed that its consideration of a draft report on the Welfare Reform (Further Provision) (Scotland) Bill should be taken in private at future meetings.

Welfare Reform (Further Provision) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—
Dr Stephen Carty, General Practitioner, Black Triangle Campaign;
Dr David Bell, BMA Scotland;
Owen Kelly, Chief Executive, Scottish Financial Enterprise;
Dermot O'Neil, General Manager, Scottish League of Credit Unions;
Laurie Russell, Chief Executive, the Wise Group;
Nicola Sturgeon, Cabinet Secretary for Health, Wellbeing and Cities Strategy, Chris Boyland, Policy Executive, Welfare Division, Ann McVie, Team Leader, Welfare Division, and Alison Stewart, Legal Division, Scottish Government.

Kevin Stewart declared an interest as a councillor for Aberdeen City Council and a member of St Machar Credit Union and Jamie Hepburn declared that Chris Boyland was a constituent.

Welfare Reform (Further Provision) (Scotland) Bill (in private): The Committee reviewed the evidence heard earlier in the meeting.

7th Meeting, 2012 (Session 4), Tuesday 8 May 2012

Welfare Reform (Further Provision) (Scotland) Bill (in private): The Committee considered a draft Stage 1 report.
Welfare Reform (Further Provision) (Scotland) Bill (in private): The Committee agreed a Stage 1 report.
ANNEXE C: ORAL AND WRITTEN EVIDENCE AND CORRESPONDENCE

ORAL EVIDENCE

- Official Report of meeting 29 March 2012 (300KB pdf)
- Official Report of meeting 17 April 2012 (432KB pdf)
- Official Report of meeting 24 April 2012 (397KB pdf)
- Official Report of meeting 1 May 2012 (517KB pdf)

WRITTEN EVIDENCE

ABCUL
Barnado's Scotland
Black Triangle Campaign
Capability Scotland
Carers Scotland
Children 1st
Children in Scotland
Citizens Advice Scotland
COSLA
Crohn's and Colitis UK
Disability Agenda Scotland
Disability History Scotland
ECAS
Edinburgh Voluntary Organisations Council
Enable Scotland
Hug (Action for Mental Health) Friday Forum
Inclusion Scotland March 2012
Inclusion Scotland April 2012
Inclusion Scotland April 2012 supplementary evidence
Joseph Rowntree Foundation
Leonard Cheshire
Long Term Conditions Alliance Scotland
NHS Lanarkshire
One Parent Families
Onions, Pat
Parkinsons UK
Poverty Alliance
RNIB Scotland
Save the Children
Scottish Association for Mental Health (SAMH) March 2012
Scottish Association for Mental Health (SAMH) April 2012
Scottish Campaign for a Fair Society
Scottish Campaign on Welfare Reform (SCoWR)
Scottish Central Branch, National Federation of the Blind
Scottish Council for Voluntary Organisations
Scottish Federation of Housing Associations March 2012
Scottish Federation of Housing Associations April 2012
Scottish Financial Enterprise
Scottish Government April 2012
Scottish Government May 2012
Scottish Independent Advocacy Alliance
Scottish Women’s Convention April 2012
Scottish Women’s Convention May 2012
Shelter Scotland
Spicker, Professor Paul
Tucker, Craig
Unison Scotland

CORRESPONDENCE

Lord Freud to Deputy Convener of the Welfare Reform Committee - 14 May 2012
Lord Freud to Convener of the Welfare Reform Committee - 14 May 2012
Convener of the Welfare Reform Committee to Lord Freud – 26 April 2012
Deputy Convener of the Welfare Reform Committee to Lord Freud – 13 April 2012
Welfare Reform (Further Provision) (Scotland) Bill
Scottish Government Briefing Note for Welfare Reform Committee
March 2012

Background

- The Scottish Parliament voted, on 22 December, to support legislative consent for certain provisions in the UK Welfare Reform Bill but to decline consent in those areas which gave rise to the greatest concern. The UK Bill, which has now received Royal Assent, would have given Scottish Ministers powers to make changes to Scottish subordinate legislation governing “passported benefits”, so that these could operate under the new benefits regime. As the Parliament has refused these powers, on the basis that “the necessary provision should be made instead by an Act of the Scottish Parliament”, the Scottish Government has, on 22 March, introduced the Welfare Reform (Further Provision) (Scotland) Bill (“The Bill”) which will make the necessary provision before bringing forward subordinate legislation.

- We will have to complete the legislative process (for both primary and subordinate legislation) before the UK Government’s deadline of April 2013. The Bill should therefore be viewed as the first part of a single, albeit two-part process – firstly primary legislation to enable changes in the first half of the year and secondly changes to subordinate legislation itself in the second half.

- The Scottish Government undertakes that, “where changes to the existing provision in devolved areas are to be proposed in subordinate legislation, it will, at that stage, have regard to the Scottish Parliament’s need to scrutinise and consider the detail of these changes”\(^1\).

Links to wider welfare reform work

- The Bill forms one part of a wider programme of inter-related work which the Scottish Government is required to carry out, in consequence of the UK Welfare Reform Act 2010-12 (“The UK Act”). The other parts of this work comprise: changes to subordinate legislation which will mostly, but not entirely, be in respect of the need to make adjustments to the eligibility criteria for various devolved passported benefits as well as work to deliver the Scottish Government’s new responsibilities in respect of successor arrangements to Council Tax Benefit and some elements of the discretionary Social Fund, namely Community Care Grants and Crisis Loans for living expenses.

- On devolved, passported benefits: this term is used here to refer to a number of Scottish Government-controlled benefits which use receipt of one or more welfare benefits as key eligibility criteria. This generally acts as a proxy measure for the identification of low-income or disability, and avoids the need for SG to run complex verification mechanisms. The Scottish Government recognises the value of passported benefits to individuals and families. Its main priority, in using the powers enabled by the Bill to bring forward changes to subordinate legislation later this year will be to ensure continuity of provision of the passported benefits for which the Scottish Government is

\(^1\) Policy Memorandum, para 9.
responsible. There is still a lack of practical detail around a number of elements of the UK Government's programme of welfare reforms which is hampering the development of the successor arrangements for passported benefits. For example, the conditions for entitlement to universal credit remain to be set out. The Scottish Government does not expect this essential, practical detail to be available until later this year, which has implications for the timetable for changes to subordinate legislation.

- On Council Tax Benefit: The UK Act will abolish the existing Council Tax Benefit, which assists the workless, retired, low paid or vulnerable to meet their Council Tax liabilities, from April 2013. Responsibility for enabling individuals to meet their Council Tax liabilities thereafter will fall to the Scottish Government, which will get a fixed addition to its budget which the UK Government assert will correspond to Council Tax Benefits currently paid in Scotland, minus 10%. The Scottish Government welcomes this additional responsibility but has serious concerns about the 10% reduction in spending which will potentially reduce household incomes for over half a million people in Scotland on the lowest incomes. The Scottish Government has made these concerns clear to the UK Government. The Scottish Government is working with CoSLA and local government to develop arrangements to be put in place in Scotland after April 2013.

- On Community Care Grants and Crisis Loans for living expenses: The Scottish Government has completed an extensive consultation and published its analysis on 27 February. The Scottish Government is working with CoSLA, Local Government and other stakeholders to put in place successor arrangements for Community Care Grants and Crisis Loans for living expenses ready to deliver from April 2013.

- The Scottish Government is also working to develop its analysis of the implications of the UK Act and related matters for the people of Scotland. Previous analysis has been made public and was provided to the Health and Sport Committee at the time of its consideration of the legislative consent in relation to the UK Bill.

- Going forward, the Scottish Government will continue to develop its analysis of the impact of the reforms on Scottish individuals and households, carrying out a detailed examination of specific reforms as and when further detail becomes available. This will help to build up a cumulative picture of the impact on the reforms on specific households in Scotland through case study examples. The Scottish Government will also be assessing the impact of the reforms on Scottish Government targets and measures, including an examination of any changes to official statistics brought about by the introduction of Universal Credit

**Working with Stakeholders**

- The Scottish Government sees expert, stakeholder input as being crucial to the success of its work in consequence of the UK Act. Foremost amongst these will be stakeholders in local government and the Scottish Government expects to work together with COSLA to collaborate on a joint programme of work on various inter-related welfare reform matters.

- The Scottish Government will also continue to consult extensively with all stakeholders with an interest in welfare reform. The Scottish Government, in partnership with CoSLA has convened an external reference group, the Welfare Reform Scrutiny Group. This

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2 [http://www.scotland.gov.uk/Publications/2012/02/1585](http://www.scotland.gov.uk/Publications/2012/02/1585)
group has met twice so far in 2012 and the Scottish Government will continue to seek the group’s valued opinion on relevant matters throughout the legislative process for this Bill. Membership of this group consists of:

- The Scottish Council of Voluntary Organisations
- Citizen’s Advice Scotland
- Scottish Campaign on Welfare Reform
- Rights Advice Scotland
- Emeritus Professor Adrian Sinfield (University of Edinburgh)
- Equality and Human Rights Commission
- One Parent Families Scotland
- Child Poverty Action Group
- Independent Living in Scotland
- Carers Scotland.
Letter from the Committee Convener to the Cabinet Secretary on the Bill timetable, 23 March 2012

As you will be aware, the first substantive task for the newly established Welfare Reform Committee will be to scrutinise the above Bill. The Committee has already discussed the likely timetable and its implications and agreed that I should write to you to highlight a few points from our perspective.

Evidence session

First of all, I would be grateful if you could confirm your availability to attend an evidence session with the Committee on the morning of Tuesday 1 May by email to the above email address. Given the restricted timetable for the Bill this is the only obvious date for an evidence session but if this date presents real difficulties for you please let me know.

The meeting will begin at 10 am but we may well hear from others in advance of your evidence. I will be in touch as soon as I am in a position to confirm more specific timings with you.

Bill timetable

Ideally the Welfare Reform Committee would wish to consider the Welfare Reform (Further Provision) (Scotland) Bill over a timetable which would allow us to pursue normal procedures such as an eight week consultation period at stage 1. On this basis the Bill would be likely to complete its Parliamentary process in September 2012.

However, the Committee recognises the Scottish Government’s strong desire for the Bill to complete its parliamentary process by the end of June, in order that all legislative measures can be in place well before the introduction of the new welfare system on 1 April 2013. We understand the requirement to have these measures in place. We also appreciate that the Government has contained the scale of the Bill.

On this basis the Committee is content to give the Bill a fair wind and endeavour to complete the Parliamentary process by the end of June. There are however, a number of provisos on which this commitment is based:

- That we do not encounter significant opposition from stakeholders to the swiftness of the process
- That the Scottish Government does not introduce substantive amendments at stage 2 or 3
- That the Scottish Government makes available to the Committee at stage 1 all material on the relevant subordinate legislation at its disposal, including its work programme.
If the Committee encounters any of these difficulties during consideration of the Bill, we will need to reconsider the timetable.

We understand that the Government would like the consideration to follow the normal gaps between stages and we will endeavour to achieve this, albeit this will leave the Committee with modest time for its scrutiny. I should make you aware that it may be necessary for the Committee to meet at the same time as the Parliament in order to meet this timescale.

In this context it would be helpful if you were able to place on record the extent to which you have been able to consult with stakeholders in advance of the Bill’s introduction, your rationale for requiring a rapid timescale for consideration of the Bill and a recognition of the Committee’s commitment in attempting to accommodate this.

This timetable will of course put pressure on other Committees, notably Finance and Subordinate Legislation, who may have their own concerns. It may be helpful to note that we are currently unaware of any other committee which has expressed an interest in considering the Bill.

You should also be aware that the timetable for this bill will leave us little or no flexibility with regard to the availability of Ministers or officials.

I trust that this letter will assist you and your staff in promoting the Bill and I look forward to working with you through the legislative process.

May I finish by saying that, beyond scrutiny of this Bill, the Committee very much looks forward to adopting a collaborative approach with the Scottish Government wherever possible in seeking to mitigate the negative impacts of welfare reforms.

Michael McMahon  
Convener  
Welfare Reform Committee

cc Cabinet Secretary for Parliamentary Business
Letter from the Cabinet Secretary in Response to the Committee’s letter on the Bill timetable

Deputy First Minister and
Cabinet Secretary for Health,
Wellbeing and Cities Strategy

Nicola Sturgeon MSP

Dear Micheal

Welfare Reform (Further Provision) (Scotland) Bill

Thank you for your letter of 23 March, regarding the Welfare Reform Committee’s scrutiny of the Bill. I am pleased to see that we are in agreement on many of the key themes underpinning the Bill and the Scottish Government’s wider work on welfare reform going forward. This includes the need to have these measures in place well before the introduction of the UK Government’s welfare reforms in April 2013, the need to work collaboratively with stakeholders and the need to do what we can to try and mitigate some of the negative impacts of the UK Government’s changes.

I would be more than happy, therefore, to attend an evidence session with the Committee and I understand that my officials will confirm arrangements with the Clerks. I further understand that, following Committee’s session with my officials on 29 March, the team have committed to provide some additional information, to aid Committee’s understanding and scrutiny. I believe some of this has already been sent, including a copy of the recent Social Security Advisory Committee review on passported benefits.

Turning to the substantive issues raised in your letter and beginning with the Bill timetable, you asked for some further explanation of the Scottish Government’s rationale in seeking a rapid timetable for consideration of the Bill. This has been set out, to some extent, in the accompanying documents relating to the Bill, for example in the Policy Memorandum which states at paragraph 9:

[T]he Scottish Government is seeking to avoid a situation where provision in devolved areas, for example of some passported benefits, is put at risk if the necessary legislation is not commenced in time or the operational systems and processes are not in place.

Our rationale is based on our desire to manage as best we can the key risk which is that the legislative basis underpinning the provision of passported benefits in Scotland could be adversely impacted if the necessary changes to primary and secondary legislation are not made in time. You are aware that the deadline of April 2013 is driven by the UK Government and is neither of our making nor under our
control. You are also aware that, following the enactment of this Bill, we will be required to bring forward subordinate legislation in order to make technical changes to the operation of passported benefits and that this work will be necessarily detailed and complex.

In seeking rapid consideration, therefore, we are working to manage the key risk by giving ourselves as much time as possible to complete the subordinate legislation work. The alternative would be to wait to bring forward legislation at some point later in this year when the full details of the operation of the new UK system are finally made clear. This is not a realistic alternative, given the lead time which will certainly be needed to put new systems and processes in place to deliver some of these passported benefits.

You have asked for some formal recognition of Committee’s commitment in attempting to accommodate rapid consideration and I am pleased to give this, just as I am pleased to see from your letter that you understand the requirement to have these measures in place. It is good that we are all on the same page as we start this work. I recognise that Committee’s commitment to give the Bill a “fair wind” is based on a number of conditions and you have outlined these in your letter. I am content to agree to proceed on the basis that these conditions will have to be met if we are to complete the process by the end of June. Specifically I am happy to confirm, at this time, that the Scottish Government currently has no plans to introduce substantive amendments at either stage 2 or 3.

On the next substantive matter raised in your letter, the extent to which the Scottish Government has been able to consult with stakeholders in advance of the Bill’s introduction, again this was discussed in the Policy Memorandum. The relevant text explains that we believe that the consultation we held with stakeholders, as part of the legislative consent process for the UK Welfare Reform Bill, has flowed directly into our ongoing and continuing consultation on this Bill. I understand that my officials have provided further details on our existing consultation arrangements, such as the Welfare Reform Scrutiny Group which first met early in 2011, has already met twice this year and will continue to meet throughout 2012.

I would like to be quite clear on this point – I see the involvement of stakeholders, especially our colleagues in local government, as being at the very heart of this process. Their support, intelligence, and practical experience will be vital if we are to achieve our aim of implementing the changes we are required to make expeditiously and efficiently. Their involvement in matters such as the delivery of our wider responsibilities in relation to the UK Act will also be pivotal. For this reason, I am sure that Committee will be as pleased as I am that CoSLA have already agreed to work with us to put successor arrangements for Community Care Grants and Crisis Loans for living expenses in place for April 2013. While this remains separate to our work on the Bill, I think it gives a useful example of the collaborative basis on which we wish to proceed.

On that note, your letter mentions in closing, a “collaborative approach” to working with the Scottish Government in seeking to mitigate, wherever possible, the negative impacts of the UK Government’s welfare reforms. I think this the right approach. Mitigating these impacts is not something that the Scottish Government can do on its
own. We will have to work with DWP, to do what we can to influence and shape the delivery model for their new system. As I mentioned above, we are already working closely with CoSLA and other local government organisations such as the Improvement Service and we will continue draw upon their knowledge and local networks in considering what wider support might be needed for Local Authorities and their delivery partners. Keith Brown recently announced some plans to build capacity in the housing sector and we will continue to work with stakeholders on this. We have provided funding to the Child Poverty Action Group and Citizens Advice Direct, to help us understand the effects these changes may have on their clients, as part of our work to support the advice sector.

I hope what I have said in this letter demonstrates how seriously the Scottish Government is taking its responsibility to do its best for vulnerable people, within the limited powers and resources we have, in the face of these damaging UK cuts. I am grateful to you for the support that you have indicated that Committee will give us as we set about this important work and look forward to discussing it with you when we meet.

NICOLA STURGEON
The Deputy Convener: The next item on the agenda is an evidence-taking session with Scottish Government officials on the newly introduced Welfare Reform (Further Provision) (Scotland) Bill. This is the first of a number of such sessions in advance of our producing a stage 1 report on the bill’s general principles later in the spring, and it gives us an opportunity for the bill team to brief us and for members to seek clarification.

I welcome to the meeting Beverley Francis, head of the welfare reform team; Chris Boyland, bill manager—at this point I should probably declare an interest, as Mr Boyland is one of my constituents; Ann McVie, team leader, welfare division; Susan Anton, analytical services division; and Alison Stewart and John Paterson from the legal division. Thank you for coming to the meeting.

I invite Chris Boyland to make some opening comments to outline the bill’s content and other associated contexts that it might be useful to share with the committee.

Chris Boyland (Scottish Government): Thank you, deputy convener, and we thank the committee for inviting us to give evidence this afternoon.

I should say by way of overall introduction that the Scottish Government sees today as another step on the journey towards full implementation of the United Kingdom Government’s welfare reforms. Some of us have been on this journey for a while now; indeed, officials at the table took part in the legislative consent process for the UK Welfare Reform Act 2012, a process in which MSPs played a decisive part on 22 December 2011. On that day, Parliament made its decision to partially refuse legislative consent to provisions in the UK act that contained enabling powers for Scottish ministers to make provision with regard to the UK Government’s universal credit and personal independence payment reforms on the basis that

“necessary provision should be made instead by an Act of the Scottish Parliament”.

Before you is a bill that does nothing more and nothing less than make the “necessary provision” that would have been made by the UK act had Parliament not refused consent.

The bill provides practical means to a necessary end; it gives Scottish ministers powers to make changes to Scottish legislation in consequence of
the UK act. Those powers are needed mostly, though not exclusively, to ensure that the legislative basis for devolved passported benefits, such as free school lunches and disabled persons’ blue-badge parking permits, can be safely adjusted to take account of the new UK system and that there will be no unfortunate consequences for provision of those important benefits in Scotland.

The new arrangements need to be in place by April 2013. It is worth putting on record that this timetable is not of the Scottish Government’s making, but is driven by the pace of the UK Government’s changes. We are very grateful to the committee for its willingness so far to work within that timetable. We appreciate that it places restrictions on the timetable for committee scrutiny but hope that, in turn, members appreciate that that is being done for sound reasons of risk management. The greater part of the work to make the changes enabled by the bill will come at the subordinate legislation stage; that is when the practical, operational adjustments will be made. The bill’s tight timetable has been set in order to allow as much time as possible to carry out that practical work and, again, we are grateful to the committee for its forbearance in pursuing it.

It is also worth putting on record that in setting this timetable we are seeking to manage risks around the availability or otherwise of information on the new UK system. As the adjustments that we need to make to subordinate legislation depend on that information being available, we have tried to set aside as much time as possible for that part of the process. The UK Government has indicated that the information will not be available before June, which is why the bill that is before the committee is essentially a piece of enabling legislation. The detail of our adjustments will be set out later, once we have the information on the UK system that we need. We appreciate the committee’s desire to have that detail and will do our best to provide it with what we can as soon as we can. Again, however, we will have to ask for the committee’s forbearance, because we do not control the availability of that necessary detail.

The bill has three substantive sections that deal with further provision as a consequence of the introduction of universal credit and personal independence payments and with ancillary provision in respect of regulations made under the first two sections.

With regard to section 1, on universal credit, I have always found it helpful to visualise its purpose by thinking of a statute book that contains all the primary and secondary legislation referring to benefits to be abolished by the UK act, including jobseekers allowance, income-based employment support allowance, income support and others. The bill enables Scottish ministers to strike out those references and replace them. Where the references to existing benefits appear as part of the entitlement criteria for passported benefits, they will be replaced with a new formula to determine entitlement.

That cannot be a simple, like-for-like replacement; for example, we cannot simply insert the phrase “universal credit” in place of, say, “jobseekers allowance”. As its name suggests, universal credit will have a much broader recipient group than the benefits that it will replace and will incorporate in-work as well as out-of-work benefits. Crucially, that means that receipt of universal credit will not in and of itself provide the same evidence of low income as the existing benefits and will not serve as a means of determining entitlement to other passported benefits, as it will be awarded to a much larger group of people.

Section 2 makes similar provision in respect of the personal independence payment.

With regard to the final substantive section, which deals with ancillary provision, of key importance is section 3(2)(b). Members will have read the explanatory notes for that section, which say:

“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.”

It is quite possible that, in future, an income threshold might be used to determine eligibility for some passported benefits. If that happens, Scottish ministers will, over time, be required to adjust that threshold to keep pace with rises in the cost of living, inflation and similar factors and section 3 enables them to make such adjustments without having recourse to further primary legislation.

That is all I have to say by way of introduction. We are very happy to take members’ questions.

The Deputy Convener: Thank you very much, Mr Boyland, for that very comprehensive and helpful introduction. I have a number of questions, but I am quite happy for colleagues to ask any questions that they might have first.

Kevin Stewart (Aberdeen Central) (SNP): I understand that the civil servants are finding it difficult to get detail from Westminster, but we need some of the detail as soon as we can get it. This is not really a matter for the guys before us, but I wonder whether we can write to the lead minister at Westminster to tell him that we are working in a bit of vacuum.

The Deputy Convener: We can discuss that reasonable proposition later; indeed, it leads on to
a question that I wanted to ask the officials. Chris Boyland made it very clear that the scant detail coming from officials south of the border will have implications for the legislative agenda up here. Can you expand on that a little? What problems is that likely to cause?

**Chris Boyland:** Put simply, I think that it will cause problems with, for example, the setting of income thresholds to decide entitlement to specific passported benefits. The income of many of the people involved will be determined by the amount of benefit that they receive. At the moment, we do not have the entitlement criteria for universal credit, so we do not know who exactly will receive it or the amount of benefit that will be paid out. Without some understanding of the amount of money that the system will provide, it is hard to set an income threshold that will accurately describe the group we wish to receive those benefits.

**Jackie Baillie:** I would be interested to find out the current criteria for passported benefits. Usually, they come down to receipt of a particular benefit rather than an income threshold and it would be useful if you could tease that out a bit more. If ministers now favour the setting of an income threshold, which would be a departure from the current system, will the same approach apply to all passported benefits? Will capital be taken into consideration? The issue invites a number of other questions about detail, and I wonder whether you can also tease out some of that.

**Chris Boyland:** I can certainly help with the first question. Universal credit replaces a number of different benefits. Many of the key benefits that entitle people to passported benefits—for example, income-based employment support allowance or income-based jobseekers allowance—indicate that the person in receipt of them is on a low income. Universal credit is an in-work benefit that covers aspects of the working tax credit system, so it does not give the same indication. The fact that a person receives universal credit does not mean that their income is necessarily below the threshold that we might want to set for passported benefits.

**Beverley Francis (Scottish Government):** Universal credit will have a very significant taper. For example, we understand that the minimum award could be as low as 10p—thereafter rising to significant sums—and that it will operate in largely the same way as the current tax credit system. In other words, people could receive very small amounts of universal credit in order to top up their income. However, we have no information on the final taper, the income disregards, the treatment of savings and so on. Although the Department for Work and Pensions is gradually making such policy decisions, the totality is not yet known in full, and without those final details it is very difficult for us to design successor systems for passporting and other things.

We can share with the committee any details that we can share and can continue to update members as and when we get that information. However, it is coming to us fairly gradually. We do not expect to have full details until possibly the beginning of the summer and might well not have the final design of the package of measures until after that.

13:15

**The Deputy Convener:** We appreciate the offer to keep us up to date, which we readily accept.

**Jackie Baillie:** I will pursue that slightly further. I understand what you say about the taper. There comes a point at which an income threshold is picked and if people are a penny the wrong side of that, unfortunately, they will fail to meet the eligibility criteria.

I asked about other income, from capital or other sources. Will such income be taken into account? I do not think that I got an answer to that.

**Ann McVie (Scottish Government):** It is quite early days. On passported benefits, we have been mapping out the existing benefits and the range of eligibility criteria that are in place at the moment. That has been much harder than it might sound, because passported benefits have evolved over quite a long period to meet a variety of needs. They are not a homogeneous group that has been put together at one time—far from it. There is a range of eligibility criteria, which serve different purposes. That is the background.

As far as income from capital and other types of income are concerned, as my colleagues have said, we are still slightly in the dark about what the detail of universal credit will be. However, it is clear from some of the material that is available to us that there will be minimum and maximum capital thresholds for universal credit. Other types of income such as child benefit and income that is not related to earnings will be considered. How that information will be used in relation to universal credit will become clearer over time, which will enable us to think about what hooks we might use in the future for passported benefits in Scotland.

**Jackie Baillie:** Would it be possible for the committee to have that complex list of existing passported benefits and the criteria, given that you are working on that? That would be interesting to have.

**Ann McVie:** Yes, I would be happy to share that with the committee.
Drew Smith (Glasgow) (Lab): I appreciate that you are having problems with the detail. Given that some of those problems may need to be worked out in the longer term, is there a case for having a two-stage process, with previous eligibility criteria being used in the immediate term? I am aware that with free prescriptions, for example, the previous criteria are still used to access some community pharmacy services. Although that is a very imperfect and not particularly desirable solution, do you anticipate that a solution along those lines might be part of what you come up with in the early days of the new system?

Ann McVie: It is quite early days, and I should stress that these are matters for ministers, on which a lot of work will have to be done over the coming months.

Given that universal credit will start to be implemented from April 2013 and the roll-out is envisaged to go on until 2017, it is likely that there will be some transitional arrangements and that not everything will be complete by 1 April 2013. It is possible that there might be some form of interim arrangements for passported benefits, which could evolve over time as we become clearer about how universal credit pans out in practice. However, as I said, it is early days as far as our thinking along those lines is concerned.

The Deputy Convener: Do you have a question, Margaret?

Margaret Burgess (Cunninghame South) (SNP): I was going to ask the question that Drew Smith asked.

Annabelle Ewing (Mid Scotland and Fife) (SNP): It is interesting to get notice of the complexities of the work that the committee has ahead of it.

As far as I understand it from our previous discussions, because the Scottish Parliament voted not to pass the legislative consent motion, the Welfare Reform (Further Provision) (Scotland) Bill is primary legislation that is designed to allow the Parliament to introduce the necessary subordinate legislation. I would like to clarify that that is the case because, although the committee will be thrashing out that debate week in, week out for many months to come, as far as I understand it, our task at the moment is to deal with the bill that we have in front of us, which is a piece of enabling legislation. Please correct me if I have misunderstood that.

Beverley Francis: Annabelle Ewing is absolutely correct. The bill is required because of the Parliament’s decision on the LCM. If the Parliament had chosen to support the LCM, the UK act would have given us the necessary powers to do what we needed to do.

There is obviously a broad agenda, I know that the committee has already heard from some stakeholders about the broad nature of the welfare reforms and some of the implications of the changes. I also know that the committee will, in due course, want to talk to us and ministers about our response to a range of the changes.

However, you are right that the bill plugs the gap that was created as a result of the decision not to agree to the LCM. It simply gives the Scottish ministers the powers that they need to introduce primary or secondary legislation in due course and make the necessary changes to allow us to fulfil our obligations under existing policy and legislation.

Alison Stewart (Scottish Government): I will add a point of clarification. Annabelle Ewing is right that the bill is primary legislation that gives the Scottish ministers enabling powers. Those powers are limited to enabling ministers to make subordinate legislation. That subordinate legislation would be regulations and would be subject to negative or affirmative procedure in the Parliament, depending on what it did.

The Deputy Convener: The UK Welfare Reform Act 2012 will impact on the social fund and council tax benefit, but there is no mention of that in the bill because—clearly—it is an enabling bill. Are those matters likely to be dealt with through subordinate legislation or through other means?

Ann McVie: We are in the early stages of discussion about the social fund, which is not in the bill. If it would be helpful to the committee, I can give a short update on where we are in relation to the successor arrangements to the social fund. It is being dealt with separately from this enabling legislation.

The Deputy Convener: Feel free to update us.

Ann McVie: As members may know, we have announced that we will work with local government to introduce a successor scheme and have it in place for April 2013. That scheme will be subject to review.

At the end of last year, we had a consultation that suggested that there is support for local delivery of a successor scheme with a framework of eligibility criteria set at national level. We will set up a joint design group with the Convention of Scottish Local Authorities and with practitioners from local authorities to work out the detail of how the scheme might be implemented. The first meeting of that group will be on 26 April.

The Deputy Convener: Obviously, the committee will have an interest in the work of that group.

Margaret Burgess: Jackie Baillie asked earlier about whether there would be an income threshold
for all benefits. Currently, there is an income threshold for some benefits, based on the child tax credit. I presume that the bill will enable us to set our own income threshold, if we choose to go that way. The rest of the UK will go through a similar process, because universal credit will cause the same problems for passported benefits in the rest of the UK.

Chris Boyland: It is worth saying two things in general response to that point. First, the list of affected passported benefits is broad and diffuse. We can draw a rough line between a continuing benefit that is paid out regularly and a one-off benefit, such as legal aid, so we would not, at this point, suggest that one set of criteria be applied across the board. Different arrangements will be needed in order to take into account differences between benefits.

Secondly, my understanding is that because the benefits concerned are devolved, the level of any income threshold that may be set is a decision for the Scottish ministers to make. You are entirely correct that that is a problem—if you wish to call it a problem—that faces all the UK Administrations, and not only us. However, the opportunity to make a specifically Scottish decision exists.

Drew Smith: I will ask a specific question about the social fund and council tax benefit and then make a general point, but I will be guided by the convener as to whether the two flow into each other.

Ann McVie said that the successor scheme for the social fund is not in the bill. What will be the statutory authority for devising a successor scheme for the social fund and the council tax benefit? Will it come from subordinate legislation under the bill or will it sit somewhere else?

Ann McVie: We have not taken a view on that. We are still working that up in conjunction with ministers.

John Paterson (Scottish Government): The powers that are taken in the bill are not powers to implement change in the social fund. To do that, we would consider use of provisions that are already on the statute book or the introduction of primary legislation.

The Deputy Convener: I do not want to narrow down conversations, but I want us to focus on the bill.

Jackie Baillie: I will clarify the point and I will tag on another wee issue, if I can.

The Deputy Convener: We will see.

Jackie Baillie: I am less than clear about the statutory provision for council tax benefit and the social fund. You appear to say that, because that was not part of the enabling legislation in the UK Welfare Reform Act 2012, you will have to make subordinate legislation, or introduce primary legislation.

John Paterson: That is right. One option is to make subordinate legislation under existing primary legislation.

Jackie Baillie: The current bill presents such an option.

John Paterson: This bill or another bill would allow such provision, but the current options are to use existing primary legislation or to use the opportunity to introduce other primary legislation that is separate from the current bill and from which secondary legislation would flow.

Jackie Baillie: Why not just add a section to the enabling bill that we are discussing? That strikes me as being the simple thing to do, given that the bill is all about welfare reform.

John Paterson: The decision on that is for ministers.

Jackie Baillie: Okay. Would adding such a section be possible?

John Paterson: Yes.

The Deputy Convener: Of course, we are hoping to deal with the bill quickly.

Annabelle Ewing: Jackie Baillie has not had the benefit of being at our previous meetings—

Jackie Baillie: I read the Official Reports.

Annabelle Ewing: The thrust of the previous discussions, to which everybody seemed to sign up, was that there is a need for speed. The social fund and council tax benefit are substantial issues. It was felt that, in the interests of speed, the most helpful way forward would be to proceed as has been suggested, because we have a very tight timetable. I say that to be helpful to the committee. That is what we discussed, although people can—obviously—change their minds.

The Deputy Convener: Members are starting to talk to each other. Perhaps we can continue our discussion later; we have officials to take evidence from now.

The officials have provided a helpful briefing note on the bill, which says:

“Going forward, the Scottish Government will continue to develop its analysis of the impact of the reforms on Scottish individuals and households, carrying out a detailed examination of specific reforms as and when further detail becomes available.”

That issue was raised with us in evidence—I do not know whether you have seen that in the Official Report. Will that analysis be comparable to what was talked about?
Susan Anton (Scottish Government): I think so.

The Deputy Convener: That is helpful and will probably reassure some of the stakeholders who have engaged with us.

Do members want to raise anything else?

Drew Smith: I will follow up that point. People have talked about the analysis that the Welsh Assembly Government has done. Is that comparable to what you plan to do? What might be the timescales for the work?

Susan Anton: The Scottish Government has published several papers on the analysis that we have done to date, which is broadly comparable to the recent publication from Wales. It is difficult to give a precise timetable for presenting the analysis, because the timetable will be driven by when the UK Government publishes its regulations. When the regulations come out, which I hope will be in June, I will carry out further analysis in five areas: the impact of the reforms on individuals and households; tracking and responding to the roll out of universal credit; analytical support in relation to the bill; successor arrangements for social fund and council tax benefit; and the impact of the reforms on Scottish Government targets and measures. The timetable for that work will be developed as more information becomes available.

13:30

Chris Boyland: It is worth pointing out that we will not be analysing the changes ourselves and that we hope to draw on a considerable amount of stakeholder expertise and knowledge. For example, there is the welfare reform scrutiny group, with which we have been meeting since February last year and which comprises expert stakeholders. We expect to continue to draw on its expertise as well as on more ad hoc work with, for example, Citizens Advice Scotland and the Child Poverty Action Group.

At the same time, a great deal of independent work has been carried out by the Joseph Rowntree Foundation and the Institute for Fiscal Studies, which undertook some of the earliest analysis of the UK Government's overall proposals, and we intend to bring all that together and make it available to the committee and other interested parties.

Beverley Francis: As Chris Boyland indicated, we have placed our analyses in the public domain and have sought to do so in collaboration with stakeholders. In the absence of much detail about how the future benefits system might look, some of that work has had to be fairly speculative. However, we have tried—we will share this with the committee in due course—to put together a number of case studies that allow us to overlay what we know about the impacts on particular household or family circumstances. As more detail becomes available on universal credit, PIP and other benefit changes, we can overlay that information to build a better picture of what the reforms will mean. It has been—for us and for stakeholders—a challenge to grapple with the possible impacts. We will develop the case-studies approach with stakeholders and we will undertake further analysis, which we will—as far as is possible—place in the public domain.

The Deputy Convener: We appreciate the offer to be kept abreast of developments.

Jackie Baillie: I have two tiny questions, convener.

The Deputy Convener: Ask them as long as they are very tiny.

Jackie Baillie: The questions are tiny, but the answers might not be.

It has been some time since I was a member of the Subordinate Legislation Committee, so you must forgive me for asking this question. You have said that affirmative procedure will be used; however, I seem to recall a super-affirmative procedure that gives committee more scrutiny, in particular with regard to fairly substantial issues in draft regulations. Is the process that has been described not super-affirmative procedure? I am sure that someone will give me a clear answer to that.

Finally, I know that this will be an extremely difficult exercise, but I want to share the pain. I realise that the financial memorandum quantifies existing costs, but have you done any scoping work on the potential increased costs?

Alison Stewart: In response to the first question, I must point out that the bill as drafted provides for use of both affirmative and negative procedures, but it does not allow for use of super-affirmative procedure. Affirmative procedure is provided for where regulations that will be made under the bill will add to, replace or delete any part of the text of primary legislation; in all other cases, regulations would be subject to negative procedure.

Chris Boyland: On the cost envelope that has been identified in the financial memorandum, we have no substantive basis on which to proceed other than an assumption that we will as far as we can maintain the existing recipient groups for passported benefits. The financial memorandum refers to costs increasing in line with inflation and to how much more it would cost to provide the benefits to roughly the same groups of people. Given that there has been no policy decision or
design to suggest that the groups will change, we have no means to reflect any such move.

Drew Smith: It would be useful if the witnesses could say for the record the extent to which, in introducing this bill, the Government is seeking to mitigate effects of the UK legislation. I accept that under the Scottish Parliament’s current powers the bill cannot rewrite the benefits system, but to what extent is mitigation one of its objectives and to what extent is the bill team taking the cumulative impact into account? After all, the bill is necessarily drawn very narrow.

Beverley Francis: I understand the point. It is very much an enabling bill. Mitigation is a wider issue that relates to how the Scottish Government and other stakeholder groups in Scotland might have to respond to the cumulative impact, once we know what that is. We and local authorities are already considering some of the potential impacts in the light of the analytical outcomes, but essentially it is not within the power of this bill to mitigate any effects. Indeed, mitigation is not the legislative basis of this bill or any other legislation on welfare reform of which I am aware.

The Deputy Convener: We are back in the chamber at 2.15 pm. Bearing that in mind, do members have any other questions? If not, I thank the witnesses for their helpful responses. I am sure that we will see some, if not all, of them in due course and we look forward to working with them down the line.

That concludes the public part of our business. Before we move into private session, I say that at the committee’s next meeting, which will be after the Easter recess, on 17 April, we will take further evidence on the bill.

13:37

Meeting continued in private until 13:46.
Scottish Parliament
Welfare Reform Committee
Tuesday 17 April 2012

[The Convener opened the meeting at 10:00]

Welfare Reform (Further Provision) (Scotland) Bill

The Convener (Michael McMahon): I welcome witnesses and members of the public to the fourth meeting in 2012 of the Welfare Reform Committee and remind everyone to switch off any electronic equipment, if they have not already done so.

Apologies have been received from Drew Smith, who has to attend a Health and Sport Committee meeting. [Interruption.] I did not realise that I had my BlackBerry on me. I brought it to Parliament only because I have to get it changed this morning. It has not been working until now.

Jackie Baillie, who has an interest in the Welfare Reform (Further Provision) (Scotland) Bill, will also take part in the debate. More important, we are joined by Hannah McCulloch from the Scottish campaign on welfare reform; Jeanette Campbell, who is parliamentary officer for Citizens Advice Scotland; Michael McClements, who is a policy manager for the Convention of Scottish Local Authorities; and David Ogilvie, who is the policy and strategy manager of the Scottish Federation of Housing Associations. Some of you took part in our round-table discussion and others have made written submissions, but I want to give you all the opportunity to say something at the outset to give us your perspective. We will follow up what you say with questions and get into a general discussion on where we are going with the legislation.

Anyone who wants to kick off can open up the discussion.

Do not all rush at once. If you do not want to say anything, I will not force you to do so.

Jeanette Campbell (Citizens Advice Scotland): I will happily start.

We all agree that the bill is absolutely necessary and we would all like it to get through the process quickly—by the summer, if possible. We are more interested to see the subordinate legislation and regulations, because they are where all the information and detail will be; that is the important bit for CAS. We want to see the eligibility criteria and we want to know exactly what system will need to be in place within a year to 18 months.

Michael McClements (Convention of Scottish Local Authorities): Councils in Scotland accept that the bill is necessary, and we realise that it is not possible at this stage for the Scottish Government to detail all the necessary changes to the eligibility criteria for passported benefits. We will work with the Scottish Government on those issues. We accept that the fact that there is no detail yet—through secondary legislation—on the universal credit and personal independence payments impacts on the ability to do work in Scotland.

For councils, the issues are our getting in place new arrangements in time for next year, and the extra administrative burdens that might be necessitated by more complex assessment procedures. It will be crucial that we are able to share data with the Department for Work and Pensions as people apply for the universal credit, otherwise things will be made very complex for councils and individuals who apply for benefits, and the administration of the passported benefits will, potentially, be more costly.

David Ogilvie (Scottish Federation of Housing Associations): The Scottish Federation of Housing Associations more than welcomes the bill. The Scottish Parliament took an historic decision to disagree to, or rather not to consent to, the legislative consent motion, for which we were duly grateful because we really wanted the Scottish Parliament to stand up and show itself, bearing in mind the scant regard for Scottish public policy that had been shown in the process up to that point. However, that has left members with a legacy: you must tidy things up and put in place the necessary legislative framework as rapidly as possible to enable us all to work together to produce regulations that will work for Scotland.

Beyond that, I am concerned by evidence from the likes of Professor Paul Spicker—who is highly respected—which suggests that there is a question about the legislative capacity, under the terms of the Scotland Act 1998, of the Scottish Parliament to provide a successor arrangement to the social fund. As someone who is not an expert in constitutional law, I become slightly concerned when I read such evidence. That is another key consideration for the committee because—let us not beat around the bush—there is likely to be an upturn in the number of tenants who need to apply to the social fund because they have become homeless or what have you. That is a matter of grave concern about which the Scottish Parliament needs to be mindful.

We are also concerned about how much stuff from the Welfare Reform Act 2012 will be pushed through in secondary legislation. For example, in the past two or three weeks we have seen...
suggestions about further cuts to housing benefit. It has been mooted that there might be cuts for the under-25s such that if they were unemployed they would lose any right to housing benefit and would have to return to the family home. However, that presumes that such individuals have a family home. Consideration of the Welfare Reform (Further Provision) (Scotland) Bill therefore needs to be mindful of the sort of things that will come through secondary legislation.

Hannah McCulloch (Scottish Campaign on Welfare Reform): One of SCWR’s main concerns is about how the new system for passported benefits will work. We regard passported benefits as being an effective way of ensuring that people who face obstacles—because of poverty or disability—to participation in health, education or mobility receive targeted assistance. One of the most important issues in designing the new system is to ensure that benefits are preserved, if not enhanced, for those groups. We also want take-up to be maximised, so we would like a relatively simple—but targeted—system of passporting benefits. Ideally, universal credit entitlement would give access to all the passported benefits: we think that that would be the simplest, cheapest and fairest way of proceeding.

The Convener: The Scottish Government has set aside £20 million to fund introduction of the legislation. How involved were you in the discussions on how much would be required? What do you believe the £20 million has been set aside for? Do you consider it to be an adequate sum?

Michael McClements: A number of responsibilities will fall on local authorities. We expect that there will be enhanced requirements around the assessment for passported benefits because we have used the benefits system for many years as an easy proxy for people’s entitlement to benefits. However we look at it, under the universal credit we will have to do something a little bit more complex, even if we try to keep it as simple as possible. It will require redesigning of forms—there will also be a requirement to use electronic forms—and publicity, and more officers will have to be involved. It may also require the gathering of more information about individuals, and different types of evidence may be required in order to prove what people’s circumstances are. We hope that that can be minimised by sharing information with the Department for Work and Pensions as people apply for universal credit and personal independence payments. COSLA has raised that with the DWP and I understand that the Scottish Government has done so, too.

In addition, there are other matters such as the devolved measures for the social fund. Local authorities have agreed to work with the Scottish Government to design the measures for next year, so costs will be associated with that, as well.

The final area of costs will be for mitigation of impacts of welfare reform. Councils will be involved in that, as will a lot of the third sector. All those areas will require to be resourced.

The Convener: Have you had any discussions about resources that might be required and have you looked forward to see where gaps might be? Is £20 million all that will be needed or should we look beyond that to address the mitigation requirements that you have identified?

Michael McClements: We will need to look at the impact of the housing benefit changes on councils and their income streams and we will need to look at the early intervention activities that they and housing associations will have to undertake with people who will be impacted on by the benefit cap and so on. In short, councils and housing associations will have to look at not only the assistance that they give to individuals but what they need to do to secure their own income streams. It is difficult to quantify such things at this point, but clearly all social housing providers and information and advice services will have to be more proactive in supporting people. Moreover, even if you try to graft it on to existing services, the administration of community care grants and crisis payments will have a cost.

The Convener: Have any of our other witnesses examined where gaps might emerge and where resources are going to have to be found?

David Ogilvie: We have just started a piece of work for the Finance Committee, which wants to know about the business impacts of the Welfare Reform Act 2012 on housing associations. As I understand it, we are scheduled to give the committee that evidence in June and are working towards producing it by the end of May. Of course, housing associations across Scotland are undertaking necessary steps to risk assess the legislation’s impacts on their businesses, their tenants and their communities. It is still too early to give the definitive answer that I am sure you seek, but when the evidence that we are working on becomes available towards the end of May, we will share it not only with the Finance Committee but with this committee.

Of course, I should point out that the £30 million for discretionary housing payments across the UK is estimated to be less than 4 per cent of what will be actually needed to meet the shortfall in rent payments that will arise as a result of universal credit. Perhaps I am not qualified to comment but,
nevertheless, I ask the question whether the £20 million for mitigating the effects on local authorities is adequate.

Jeanette Campbell: We have not undertaken specific work on the matter, but CAS certainly expects to see a lot more people coming through the door from next April to October when they migrate across, and as a result of the changes to disability living allowance and other benefits. The majority of our work—about 36 per cent—is to do with benefits: with every change to the benefits system, the number of people seeking advice increases. For example, since the introduction of the employment and support allowance, there has been a 33 per cent increase in the number of people seeking advice about it in the past year and last year there was a spike when people who were already on incapacity benefit—not new claimants—migrated to the new benefit. Such work is time-consuming; we expect many of the changes to consume a lot of time because they will be new to advisers as well as to claimants.

There will be a massive impact on bureaux and, given that we rely on local authorities for the majority of our funding, we think that with the squeeze on councils’ own money, bureaux will have real problems in coping with the expected demand.

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): The word “mitigation” has been bandied about a lot since we began our work. That term can cover a multitude of sins, so I want to tease it out a bit more and find out what we actually mean by mitigation, what needs to be mitigated and how we propose to do that. The written evidence from the Scottish Federation of Housing Associations makes pretty clear its view of what needs to be mitigated against, but I would be interested in hearing other views from across the board. I would like to hear from all the witnesses what could be done to mitigate the effects of the UK legislation.

10:15

Hannah McCulloch: The change from disability living allowance to the PIP will deliver a massive hit to disabled people: something like £268 million a year will be lost to disabled people in Scotland as a direct result. That will not just impact on individuals, but will have a knock-on effect on local authorities, which will have to take up the burden of supporting people who cannot support themselves.

With passporting benefits—as opposed to saying that benefits that were previously passported on DLA will now be passported on the PIP—there is an opportunity to mitigate the effect on the people who will be left out of the PIP by ensuring that households that are in need of passported benefits are not disqualified from them as a direct result of the changes to disability living allowance. I hope that that makes sense.

Jamie Hepburn: Yes—that makes sense. That will incur a cost in Scotland. Have we quantified that, or can we begin to quantify it?

Hannah McCulloch: I cannot give you a number, although I imagine that there will be a cost. The Government has stated that it is in favour of taking a preventative approach and of intervening early. Supporting people with even low-level disabilities to live as independently as possible in order to maintain their health and so on will lead to a cost saving in the long run, but it is not just about cost; it is also about what value we will gain.

Jeanette Campbell: I agree with Hannah McCulloch. If we look at what has happened with the work capability assessment, we see that there are inherent flaws in the system, whereby people are considered to be unfit to work one day but are, by the time they have completed an assessment, fit to work the next day. The number of appeals has been massive and people who have had CAB representatives with them have won in 69 per cent of appeals, which shows that there is a flaw in the system. If the same thing happens with the change from DLA to the PIP, it will create even more problems for disabled people.

The Welfare Reform Act 2012 will impact disproportionately on disabled people. They will feel the impact hugely. Because the PIP is coming in with a 20 per cent cut, 75,000 people in Scotland will automatically not get it. Once people have been through the assessment procedure, the number of people who will get the PIP will have been reduced even more and, as Hannah McCulloch said, we will have a whole load of people who cannot access the other benefits that flow from it, such as the blue badge and the national concessionary scheme. That is in direct contradiction to the policy of self-directed support.

If we are trying to ensure that disabled people have access to work, our taking away something that is imperative in ensuring that they can get to work flies in the face of the policy.

Jamie Hepburn: We obviously need to mitigate that. Do you have any ideas about work that we can take forward within the powers that we have?

Jeanette Campbell: I think that such ideas will have to come out when the eligibility criteria are set, but we are still a wee bit away from that. At the moment, the criteria are set according to which component of DLA a person gets. We will have to wait and see what happens with the PIP, because it has different components—instead of the three components under DLA, it will have two. Also, we do not yet know exactly what the UK Government’s assessment will be for the PIP. At
the moment, there seems to be a problem in that if someone has a mobility adaptation that helps them to get around, they will be seen as therefore not needing the PIP. We will have to wait and see what comes from the UK Government on issues such as that before we can even think about mitigation and ensuring that anyone who misses out on DLA because they are not entitled to the PIP gets looked at.

The Convener: I was going to bring Kevin Stewart in, but Jackie Baillie and Margaret Burgess have supplementary questions on this specific point.

Jackie Baillie (Dumbarton) (Lab): There is proposed mitigation by the Scottish Government in relation to the current cohort who are entitled. However, there is also a cohort of future claimants, who might well have met the present eligibility criteria, were they still to exist. Do you anticipate that the Scottish Government will provide some kind of safety net whereby those people will be caught by passported benefits?

Jeanette Campbell: It would be nice to think so, but I do not know the answer because we are a wee bit away from knowing what the new eligibility criteria will be.

Jackie Baillie: I am asking what you would like to see.

Jeanette Campbell: We would like to ensure that everyone who can access passported benefits at the moment—whether they are benefits such as the blue-badge type or others such as school meals—will still be able to access passported benefits after the migration, because we could have a system in which someone automatically loses their right to something that their next-door neighbour has, because they have not been migrated at the same time as their neighbour.

Margaret Burgess (Cunninghame South) (SNP): My question is on the same lines as Jackie Baillie’s. It relates to Hannah McCulloch’s point—which—if I picked her up right—was that the simplest way of determining eligibility for passported benefits would be to say that everyone who is entitled to universal credit should be eligible for them. What do other panel members think about that idea and have you looked at the costs of mitigation? Some people who are in receipt of passported benefits will lose out and, as we have talked about, there are people who might have been in receipt of them, had the same criteria stayed in existence. We need to weigh up the cost of setting up a whole new set of eligibility criteria.

Michael McClements: Broadly speaking, councils want the priority to be to maintain the existing entitlements as far as possible under the new system, in order to make claiming passported benefits as simple as possible and to avoid a complex system. Any thought of extending the reach of passported benefits would have to be weighed against other priorities for the Scottish budget. The key concern at the moment is to ensure that the people who currently receive those benefits do not lose out as the new system comes in, and that we have in place administrative systems that will enable the process to operate smoothly and to be resourced effectively.

The Convener: I am sorry to keep Kevin Stewart waiting, but other members want to follow up on the same point. Annabelle, is your question on this specific area?

Annabelle Ewing (Mid Scotland and Fife) (SNP): I suppose that it depends on how you define “specific”. My question relates to evidence that has been given, but it is perhaps not directly on the same issue.

The Convener: I will let you come back in later, because Jamie Hepburn has a follow-up and Kevin Stewart is waiting.

Jamie Hepburn: I apologise to Kevin Stewart.

I have a quick observation to make on the idea of everyone who is in receipt of universal credit being entitled to passported benefits. Would not that mean that everyone who was in receipt of universal credit would be entitled to a blue badge or to concessionary travel, regardless of their circumstances? That would be the logical conclusion.

Hannah McCulloch: No. On one hand, there is universal credit and, on the other, there is the PIP. People get DLA and the PIP regardless of whether they are in work and regardless of their income, so those benefits are not means tested. We are talking about something that would be another proxy for disability rather than something that would be an automatic consequence of receiving universal credit.

Jamie Hepburn: I just wanted clarification on that.

Jeanette Campbell: On the idea of everyone who is on universal credit gaining automatic entitlement to passported benefits, I think that you were trying to get at the additional people—those who are on working tax credit. They are the ones for whom entitlement to passported benefits depends on income and other elements, whereas other people would, at the moment, under universal credit, automatically be entitled to passported benefits. The additional people would be people who are on working tax credit. That is merely because of the changes that were made just last week or the week before, which saw the working tax credit and child tax credit thresholds come down. Two parents can now get child tax credit only if their combined salary is less than
£32,000. The child tax credit threshold used to be the knock-off point for getting other benefits. What has happened at UK level has changed the playing field from what it was two weeks ago. Already fewer people will be entitled to passported benefits.

Kevin Stewart (Aberdeen Central) (SNP): First, I declare an interest. I am still a member of Aberdeen City Council and I will stray into some local authority matters with Mr McClements.

We have talked about the £20 million mitigation from the Scottish Government. In the past, the Convention of Scottish Local Authorities has argued very well with the Department for Work and Pensions at Westminster to gain money for changes that have been made. Have attempts been made to ensure that the DWP, which is sometimes very fussy about the information that local authorities must provide, will pay the cost of any administrative change?

Michael McClements: COSLA has discussed with the DWP how the new benefits system will be delivered. The DWP has shown an interest throughout the United Kingdom in using the capabilities of local authorities to support more vulnerable people to be able to claim universal credit. COSLA has indicated that Scottish local authorities would be prepared to assist in that, but we would be talking about, for example, assisting people to make their claims and navigate the system, supporting organisations that can do that, supporting people’s financial capability, or helping them to get online. All that assistance comes at a cost and the services that local authorities have in place to support that kind of activity are probably already under pressure. In our discussions with the DWP, we have made the point that we expect it to resource such activities. It is looking to pilot some activity over the next year or so with local authorities in Scotland, and we are having discussions about the extent of that activity.

In the longer term, if local authorities are to be able to support people effectively, that support will require to be resourced. Since the UK Government has made the change, we expect the DWP to take some responsibility for putting resource into those areas.

Kevin Stewart: I would not say “some responsibility”; the UK Government is making the changes, so it should take all the responsibility.

I will stick with Mr McClements for the moment and go back to the point that the DWP is often extremely fussy with local authorities, and it is probably the same with social landlords about current housing benefit provision. Over the years, a number of local authorities have had their knuckles rapped for not accounting properly. If local authority housing associations have to abide by the DWP’s strict rules, it should provide the resources to ensure that social housing landlords are able to do so.

Michael McClements: That is without doubt. All social landlords will have to invest in additional activity and put in additional systems to ensure that their rents are paid. I made the point at the Local Government and Regeneration Committee that the movement towards paying housing benefit as a benefit to individuals rather than giving people the choice to pay it directly to the landlords could easily threaten 10 per cent of the rents that go into the public sector. If that were to happen across all council housing stock, it would mean the loss of something like £50 million.

We hope that activities such as arrears control, getting in early to help people to budget and so on will mitigate the impact of the changes, but we are unclear what the impact will be. It is not just worrying for social landlords; the Council of Mortgage Lenders has made the same point.

The DWP is undertaking demonstration projects in the UK at the moment to test out the impact of that change in how benefits are administered and to determine what support and exceptions might be necessary. It remains a considerable concern for councils and social landlords throughout the UK. They will certainly have to invest in other support systems to ensure that tenants are supported, and to protect their income streams.

10:30

Kevin Stewart: That has opened up an entirely new can of worms. Has any assessment been made of the impact on local authority housing capital budgets for major refurbishment and new build? I ask the same question for social landlords. At the end of the day, tenants as a whole—not only folk who are on housing benefit—may be punished because it will not be possible to implement programmes as a result of the cuts.

David Ogilvie: That is the purpose of the work on the financial implications of the Welfare Reform Act 2012 that we have just commissioned. We will feed that into the Finance Committee come June.

We have already said in evidence to this Parliament and the Westminster Parliament that, from our conversations with contacts at the Council of Mortgage Lenders, we expect the cost of lending to go up. That will be the case for housing associations and co-operatives, and I assume that it will be similar for local authorities, although they might be seen as slightly less risky. Regardless of that fact, mortgage lending is sticky at the best of times, so we will have to wait and see what happens with development finance. I cannot give you a set of figures, but we anticipate that there will be a knock and that that will cause a
bottleneck at the same time as an upturn takes place in the number of people who are becoming homeless as a result of the overall economic backdrop.

Kevin Stewart: I have a specific question for Ms Campbell, who talked about changing the playing field. In some cases, such as the DWP’s pilot of reassessments in the north-east of Scotland, the playing fields have already been changed. Has Citizens Advice Scotland made any assessment of the additional work that citizens advice bureaux had to carry out because of the pilot in Aberdeen and Aberdeenshire?

Jeanette Campbell: I will have to answer from memory because I do not have the information in front of me.

At the time of the pilot, citizens advice bureaux were the first to see ESA cases come through the door. I think that the numbers have tailed off a little bit for them, because they were ahead. Although we did not do an impact assessment, we have been able to see afterwards the impact of ESA. The impact on all bureaux is huge, not just because of the numbers that are coming through the door but because of the complexity of the cases and how time consuming they are. Some of the work is a case of helping people to fill out the forms in the first place, but the really time-consuming bit is appeals, because so many people are found to be fit for work but do not believe that they are. Those are new claimants, so I think that the picture will become worse as we examine the figures for the past six months and the migration appears. People who are unfit for work and have been out of work for five or 10 years are suddenly being told that they should go back and find their place in the workplace, where there is a lack of jobs.

ESA will continue to be a major problem in citizens advice bureaux while the migration occurs. The same thing will happen with the change from DLA to PIP next year. If 75,000 disabled people are suddenly told that DLA has been taken away from them but they will not get the PIP, they will tend to turn to their local citizens advice bureau.

Kevin Stewart: Convener, it would be useful if we could get a note of that spike in numbers in the north-east from Citizens Advice Scotland, because that might give us some indication of what we are likely to see.

The Convener: We will try to find it somewhere.

Jeanette Campbell: I would be happy to supply what I can to the committee.

Margaret Burgess: Perhaps I was remiss earlier in not noting my long association with Citizens Advice Scotland, so I do that now for the record.

I will follow up what was said about resourcing and impact assessment. Michael McClements said that the role of local authorities and social landlords would change in relation to giving advice on budgeting and benefits or outsourcing that to another organisation. How much thought have they given that? How many housing associations and social landlords are prepared for that? What sort of burden will that be on them? Is that part of the impact assessment?

David Ogilvie: Work to identify our sector’s readiness and preparedness is on-going, so I cannot provide figures today. The minute that we have such stats, they will be shared with the committee.

Margaret Burgess: Jeanette Campbell mentioned that advisers will require to be trained in and knowledgeable about benefits. How well resourced is Citizens Advice Scotland to provide that training to local bureaux?

Jeanette Campbell: We are not well resourced to do that. We are under severe pressure. In the financial year that has just finished, we faced cuts of 9 per cent across the bureaux. We tend not to gather figures until the end of the year, but our estimate is that the situation will be worse this year. Most places are on a standstill budget at best or are facing cuts; I think that one local authority increased its funding. That is happening at the same time as need is going up exponentially every year.

As I said, things will be more complex. We would like CAS to be given more funding centrally, which we could distribute to bureaux and use to bring on more specialist welfare advisers. For example, we would like to train generalist advisers to be specialists, because specialists will be most needed, but we absolutely cannot do that without additional funding from somewhere.

Alex Johnstone (North East Scotland) (Con): I will cover the subject that the past two speakers have covered and I will add a brief point. Off the top of my head, three key types of organisation that I would expect to be involved in meeting the requirement for individual advice and support to people who are going through a transitional period are citizens advice bureaux, local authorities and housing associations. To what extent will the burden fall across your three types of organisation? If we are looking to target resources, is one type of organisation better equipped to take on the responsibility?

Michael McClements: A lot of this is about collaboration locally. A lot of local authorities have in place and are developing a corporate strategy on welfare reform and the impact that it will have
in their areas. Most of them are working with partners on how they will respond. I would not characterise that as competition for resources locally; it is about how local authorities, housing associations and the third sector collaborate.

**Alex Johnstone:** Perhaps I should explain myself a bit better. Do you take the view that local authorities would be better served if housing associations or citizens advice bureaux took responsibility for advice and support, rather than local authorities doing that themselves?

**Michael McClements:** The responsibility will have different parts. Some people will turn up at the local authority’s door no matter what. Local authorities need to be in a position to assist vulnerable people who might be confused about their benefits.

Some local authorities offer a lot of advice and support and some support third sector organisations that do that. A lot of bigger housing associations do quite a lot of information, advice and support activity. It is a case of considering what makes sense in the local context. Councils are probably best placed to work with partners through community planning partnerships and through links with the third sector to work out the most effective way of supporting the most vulnerable people.

**Alex Johnstone:** That does not sound like a one-stop-shop approach to me.

**Michael McClements:** We will want to simplify access to support for individuals as far as possible, but we all expect that, as the momentum of the change grows, all agencies will see an increase in activity and will want to pool resources and collaborate on a local response. Of course, we can talk about all that in a general sense, but the response in different parts of Scotland might well depend on what works best and on what is the most effective means of co-ordinating support to individuals.

**Alex Johnstone:** I am picking up the expectation of a significant increase in demand. Have you looked at all at ways in which response to that demand might be structured across councils?

**Michael McClements:** Individual councils are looking at their own responses to the impact of the welfare reforms. We have discussed with the DWP and the Scottish Government the role that local authorities might play—if they were effectively resourced—in smoothing the delivery of, for example, universal credit. In particular, we want data to be shared as much as possible, we want people applying for benefits to be directed to sources of support and we want effective collaboration to ensure that people are able to access the benefits to which they are entitled and the support that they require. Of course, that will all depend on resourcing and effective local strategies.

**Alex Johnstone:** Finally, do housing associations and Citizens Advice Scotland believe that they will be part of any structured approach?

**David Ogilvie:** I am much more confident that, in a few months’ time, housing association participation in housing options hubs will have increased. A key part of the Scottish Government’s mitigation strategy is the hubs’ involvement in providing housing-related advice and there has been good progress in the west of Scotland as well as in other parts of the country in using the hubs to provide that structure.

I should add that housing associations and co-operatives are already trying to make tenancy sustainment part of the bedrock of their business. As a result, one would expect that, even within the shrinking financial envelope in which they will have to operate, they will seek to protect their tenants’ interests by ensuring that they have the necessary skills or access to advice with regard to financial inclusion and capability. That agenda will become increasingly important; indeed, it is part of a culture change that is already under way but which will, by necessity, have to be accelerated.

In response to your question about structure, we are reasonably confident that collaborative working is possible. We have expressed to other committees our concern that local relationships between housing associations and local authorities are not great in all parts of the country and that there is a pattern of variation with regard to proximity and their ability to get on with each other. That element will always need to be teased out and worked through but, because of the common interest that local authorities and housing associations and co-operatives have in protecting the interests of the communities they serve, we are much more confident that there will be greater collaboration.

10:45

**Jeanette Campbell:** As has been made clear, there will be a need for more independent advice as universal credit and all the rest of it come on stream. However, given that bureaux are mainly funded by local authorities, they already have a close relationship with them; indeed, authorities will quite often identify need and will want a particular bureau to concentrate on that area.

Similarly, bureaux will sometimes have outreach programmes in housing associations specifically for tenants. The role for bureaux will be in the take-up of benefit to ensure that people get the benefits to which they are entitled and the link to passported benefits. People will have to apply
online for universal credit, which will be a major issue, too. Bureaux might be able to collaborate in that area with local authorities, because if somebody does not have access to a computer or to one with a high-enough speed to download all the forms, they might need to go to their local authority or a bureau for that.

It will be tough to find the resources. I think that everybody recognises that, as local authorities’ funding is squeezed, funding for bureaux will be, too. However, there will be a need for independent advice for people, who will turn to their local authority for it, if the authority provides it, or to their citizens advice bureau, because they know that they can trust its advice.

Hannah McCulloch: I reiterate that we want a simplified system of passported benefits to ensure that people will need less advice and support, which is expensive. The more automatic qualification for a benefit can be and the simpler the process, the less support people will need.

Jeanette Campbell: A preventative approach is involved as well. If somebody goes to their local bureau because they have problems paying their rent or council tax, for example, they can get help and advice straight away, which means that they are not presenting on the doorsteps of the organisations that are represented by my colleagues here. People might have problems paying their rent, particularly because housing benefit will now go directly to the tenant and not the landlord.

If people are encouraged to go to bureaux early enough for advice, that will prevent problems downstream. If we can prevent somebody from becoming homeless by helping them with their budget and sorting out their debts, that will obviously have a massive impact on local authorities and social landlords or other landlords.

The Convener: I will take one more point from David Ogilvie before we go to Annabelle Ewing.

David Ogilvie: Obviously, there is a natural will in housing associations and co-operatives to attend to the issues with the communities that they serve, but there is a revenue shortfall that the Scottish Parliament and Government will have to consider. The provision of advice does not come cheap or, indeed, free. Many of the financial inclusion services that were set up through the wider role fund will now have to find alternative sources of funding. The Parliament and the Government need to consider how community-owned organisations deliver advice on the basis of a shrinking revenue stream. Housing benefit is going to cover less and less of the rent, so the ability to fund the services will be constrained. Over time, this or another parliamentary committee will have to consider that issue.

Annabelle Ewing: It is instructive to look at the debate in a different way. It is right that we have spent a lot of time talking about the implications for our advice services, but they can apply to organisations other than the three that have been mentioned. It is ironic that, given that there is no discretion in the operation of the UK benefits system, we have seen the need to spend such a lot of time talking about the potential advice gap and the need for resources and so on. There is no discretion in the benefits system, which therefore suggests that with respect to not just the UK benefits legislation that we are discussing but many examples of such legislation there are issues about how the legislation has been drafted and implemented. It is important to say that.

There are two strands to my question. First, at the moment the UK Government has the power, responsibility and resource, in terms of how the budget is arrived at, to deal with the operation of the benefits system. I recall from when I was in the House of Commons that, when certain things were introduced, at least some lip service was paid to some sort of advisory service being operated directly by the UK Government to help with the implementation of legislation, leaving to one side the quality or otherwise of that legislation. I wonder what intelligence you have about what resources the UK Government will make available for the roll-out of advice to individuals or to help local authorities and other organisations to set up structures to provide advice on the new system.

In the past 10, 11 or 12 years, there have been many issues with the operation of ESA and DLA, in terms of the discredited work assessment and other measures that successive Governments have introduced. In a sense, there is nothing new under the sun. Jeanette Campbell raised the issue that, although many appeals are successful, the expectation is that many people will not have the wherewithal to go to the appeal stage.

I wonder what experience has been garnered on the ground that will help organisations such as CAS to deal with the latest changes to a system that seems to be designed to try to prevent people from getting the benefits to which they are entitled, rather than to facilitate that.

Jeanette Campbell: First, no money has come directly to CAS or to bureaux because of welfare changes. When Neil Couling appeared before the Health and Sport Committee last year, he was asked specifically whether the DWP should give more money for advice, and he said that that was not an appropriate policy response. Having said that, I note that the Westminster Government made £16.2 million available in England last year for free, independent advice services. It did that in the autumn statement, then in the recent budget it announced that it will do the same for the current
financial year and the following one. That means that there is a Barnett consequential of £1.7 million for Scotland in the current year and the next one, and that money could be made available for advice services.

We are trying to make our case to the Scottish Government and to Westminster that extra funding needs to be given, for the very reasons that you have just outlined. We are going to see the impact of the changes. Whether or not the changes will be damaging, the fact that there is a change means that people will need more help and advice. We will continue to press our case to be given more funding to be used to train welfare advisers, to increase opening times, and to make more funding available to bureaux so that they can see more people and they are not put in a position of having to say no because they cannot cope with the demand.

The second bit of your question was—

Annabelle Ewing: The second element was about the fact that, although the bill is draconian, it follows from other, not dissimilar draconian legislation that you have already had to deal with. What experience have you garnered from that?

Jeanette Campbell: Every time that there is a benefit change, bureaux see an increase in demand. If a benefit such as ESA is taken away from people in a day, we will obviously see a huge amount of people going into bureaux to talk about that. ESA came in in 2008 to replace incapacity benefit, and there has been a massive increase in the demand for advice about it. I think that, in the first year, demand increased by about 80 per cent, and the increase last year was 33 per cent. It has been huge. The same has happened any time that a benefit has changed—bureaux automatically see an increase in demand for advice about that benefit.

With universal credit, it will be more difficult, because people will have to apply for it online. At present, people turn up at a bureau with their papers, and they get help with filling them in. It will be more difficult if people have to apply online, which could disenfranchise quite a few people.

The Convener: Our final set of questions to the panel will come from Jackie Baillie.

Jackie Baillie: Thank you very much, convener. I cannot believe that I will ask about subordinate legislation, as it is very techie.

First, a lot of the bill is, quite naturally, to do with draft regulations. Given the limitations of the data that currently exist, do you hope to see some of those draft regulations in advance of the conclusion of the bill process, as they will clearly set out the direction of travel on a number of issues that we have talked about?

Secondly, I am conscious that a number of pieces of subordinate legislation will be dealt with under the negative procedure. Given the detail and substance of the draft regulations, is there a point in our using not the affirmative procedure but the super-affirmative procedure, which is the Parliament’s invention, as that would give us a great deal more scrutiny?

David Ogilvie: I said in my written evidence to the committee that the greater transparency and openness there is in defining the regulations through the Scottish Parliament, the better. We want a consultation system to be established that is as open and transparent as possible because the devil is in the detail, as in every bit of legislation. We want to ensure that there is not too much devil in the system.

Jeanette Campbell: I do not think that it will be possible to see that much detail before the bill needs to be passed, simply because of when the summer recess will be. I do not think that enough detail will be brought forward in that time. It would be great if that were possible, but I do not think that it will be, because we are still waiting for so much from the UK Government. The Welfare Reform Bill was supposed to have been passed in around January, but it took an extra six weeks, which will have had a knock-on effect.

The Scottish Parliament can use the super-affirmative procedure, and it should be used in this case. One reason why CAS wanted this committee to be set up was to scrutinise what the impact of the Welfare Reform Act 2012 will be on people and services in and the economy of Scotland. There will be a huge impact on the economy. Some £2.5 billion will be taken away over the next three years, and it looks like another £1 billion in benefits will be taken away from Scotland through the budget. That will have a massive impact, and we wanted this committee to be established so that there is cognisance of the act’s impact on Scotland.

This is the time to use the super-affirmative procedure, because time is of the essence. We need everything to be in place, but we want to ensure that the process is transparent and accountable, and that there is scrutiny. It would be excellent if we could use that procedure. If we can see proposals beforehand or as they go through, that will help to smooth over the procedures and ensure that, next April, nobody is still waiting for procedures or subordinate legislation to be passed.

Jackie Baillie: I want to pursue the legislative point, but at one step removed. Last week, I pursued the issue of council tax benefit with officials. There is no current power to pay the successor arrangement for council tax benefit. I observed that that is missing from the bill. Has
COSLA been in any discussion with the Government about what legislation would be appropriate for that? Should it be included in the Welfare Reform (Further Provision) (Scotland) Bill, as it is part and parcel of the work that will have to be undertaken quickly?

**Michael McClements:** COSLA has been involved in discussion about the shape of a council tax support scheme based on council tax discounts—I do not think that the support would be a benefit—and how the system would be broadly similar to the existing one, at least for next year. The Scottish Government is looking at what it needs to do legislatively to put that into place, and we await the details of that.

**Jackie Baillie:** Do you see any problem with that being dropped into the bill?

**Michael McClements:** I do not know what stage the Scottish Government is at on what powers it needs to take, so I cannot comment on that.

**Jackie Baillie:** Okay.

I have a final question about councils as delivery agents. My understanding of where we have got to with the council tax benefit discussions is that 10 per cent will be passed on and local government and the Scottish Government will share costs. If that model is applied to community care grants and crisis loans, or grants as they might become, there will be a disproportionate impact on those local authorities through increased levels of poverty and higher levels of claimant count. Are you inventing a new formula for the allocation of the funds, or will you use the existing formula, which does not recognise deprivation as much as we would like it to?

11:00

**Michael McClements:** COSLA will be involved with the Scottish Government in a design implementation group, which will look at the detail of that. There is, however, a difficulty in seeing the devolved elements of the social fund being able to bridge all the gaps in the benefits system, because they simply will not be able to do that.

Most people’s primary concern was that the national eligibility criteria would be consistent and there would be a clear facility for people who are in crisis or suffering hardship to get access to those levels of support. That is our priority, but the sums that Scotland will get will be limited. In effect, they will be based on the existing spend for this year and the UK Government has taken steps to limit eligibility for this year’s crisis payments. Consequently, we do not anticipate that Scotland will get very large funds. It might be that no more than £25 million or something like that will come to Scotland for community care grants and crisis payments. At best, that will provide what is being provided at the moment, but it will not allow for all the other changes that have come in as a consequence of the welfare benefit changes.

**Jackie Baillie:** If we contrast East Dunbartonshire and West Dunbartonshire—I happen to know them because they are on my doorstep—West Dunbartonshire has a much higher claimant count and need than East Dunbartonshire, but that is not necessarily reflected to its true extent within a standard local authority allocation formula. I am trying to establish whether the money will go to where we know the need exists.

**Michael McClements:** COSLA and the Scottish Government will discuss an appropriate distribution formula across local authorities.

**Kevin Stewart:** Following on from Ms Baillie’s questions, I suggest that members should look at the local government funding formula—

**The Convener:** We are not getting into a discussion about the funding formula for local government. That will sidetrack us.

**Kevin Stewart:** No, but if we are going to talk about this, we have to be aware of how it works.

**The Convener:** We all have views on it and I do not think that it will help the committee to get into a debate about it.

**Annabelle Ewing:** This is an important point of principle. If a member makes a statement that another member feels is not accurate—

**The Convener:** That is different.

**Annabelle Ewing:** It is fair for the other member to be given the opportunity to say why they do not think that it is accurate. That is the way that committees work. It has certainly been my experience in two separate committees in the Parliament thus far that members have the opportunity to express a different view if they feel that what a member has said as a fact is incorrect. Perhaps that is not the way in which you intend to operate this committee, convener.

**The Convener:** That was not Kevin Stewart’s point. If Kevin Stewart had wanted to make a point to correct Jackie Baillie, or to put a different view on the record, that would have been fine, but he was trying to open up a dialogue and inviting members to do other things. I do not think that getting into a discussion about the funding formula for local government helps us. Kevin Stewart might want to make a point that there is a different perspective on the funding formula, and that point was made, but that is not the same as opening up a discussion about how that formula works. That is the distinction that I make. If a member wants to
challenge a point that another member has made, that is fine, but let us not have a discussion—like the one that we are now having—about the funding formula for local government.

Kevin Stewart has made the point that he takes a different view from Jackie Baillie about that and he does not think that the funding formula is as Jackie Baillie stated. That is on the record and we will leave it at that.

**Kevin Stewart:** There is a lesson—

**The Convener:** Kevin, please.

**Kevin Stewart:** I was trying to be nice, convenor, by saying that folk need to know how the funding formula works. Next time I will be a bit more blunt when I get to make my comeback.

**The Convener:** Thank you for that contribution.

I thank our witnesses for their contributions, which have been valuable. I am sure that this will not be the final time that we see you. If you have any additional points or information that you want to send to us, feel free to do so. The cabinet secretary will appear before the committee on 26 April, so if you have any points to make it would be useful to have them before that meeting.

I suspend the meeting for 10 minutes to allow for a change of witnesses and a comfort break.

11:05

**Meeting suspended.**

11:15

**On resuming—**

**The Convener:** I welcome our next panel of witnesses. They are John Dickie, the head of the Child Poverty Action Group in Scotland; Bill Scott, the manager of Inclusion Scotland; Satwat Rehman, the director of One Parent Families Scotland; and Maggie Kelly, the policy and campaigns officer of the Poverty Alliance. As with the earlier panel, if you have any comments or observations to make at the outset, feel free to do so now. I will then open up the session to allow committee members to get into a discussion with you. Does someone want to kick off?

**John Dickie (Child Poverty Action Group in Scotland):** As our name implies, our particular interest is the impact of the legislation on children and families and the role that the Government in Scotland can play in protecting them from poverty. The evidence is very clear that the overall impact of the UK-wide welfare reforms combined with wider tax and benefit changes will be to increase dramatically the number of children across the UK who face poverty. In Scotland, up to 100,000 extra children are expected to be living in poverty by the end of the decade as a result of the UK reforms. The key for us is to determine what we can do in Scotland to ensure that our response to the reforms protects children from poverty and contributes to the commitment that has been made to reduce and eradicate child poverty in Scotland. We generally support the aims of the Welfare Reform (Further Provision) (Scotland) Bill and the need for a tight timetable to ensure that the devolved legislation is in place in time for the implementation of the Welfare Reform Act 2012.

I stress that, as became clear in the previous evidence session, the bill deals with just one specific aspect of the response that is required to the UK welfare reforms. We therefore seek assurance—I think that we heard it in the previous evidence session—that the committee will give equal scrutiny to the regulations that are still to come, where the meat of the issue will be in relation to passporting, and the legislative framework that needs to be in place to ensure adequate successor arrangements for council tax benefit and the social fund.

**Maggie Kelly (Poverty Alliance):** Our key concern in relation to the impact of the Welfare Reform Act 2012 in Scotland is the undoubted increase in poverty across the board, including among children and families, and wider inequalities in relation to women and disabled people in particular. We have submitted evidence previously, which has focused on what we believe needs to be done in Scotland on a range of issues, particularly the passporting that the Welfare Reform (Further Provision) (Scotland) Bill is concerned with. We have been keen to suggest that there needs to be a proper legislative framework in place for the council tax benefit and social fund successor arrangements. We are also keen to stress the need for wider mitigation under the Scottish Government’s anti-poverty policy as a whole, looking at childcare, employability and a whole raft of wider issues that come into play.

We welcome the bill and are pleased that it is coming forward at this time. We know that the regulations cannot be made available at the moment—we understand the reasons for that, which are no fault of the Scottish Parliament. Nothing can be done about that, but, as John Dickie said, as part of our response to the bill, we are keen to engage with the Scottish Parliament in looking at the passporting regulations in detail.

For us, the key is to consider the funding of all these issues. I will say a bit more about that later. We must ensure that, in responding to the legislation, we consider the funding implications both for local authorities and for wider mitigation measures across Scotland.

**Satwat Rehman (One Parent Families Scotland):** I echo the comments of John Dickie...
and Maggie Kelly. We welcome the bill, support its aims, appreciate the tightness of the timescale and recognise the need to examine the regulations that will follow and to have the time and opportunity to scrutinise them. As members know, there are more than 163,000 lone parents in Scotland; it is estimated that that figure will rise to 238,000 in the next 20 years, and all of them are going to be affected in some way by the welfare reform changes, be they the changes to child maintenance, the migration to JSA or whatever.

The current lack of detail is causing lone parents a lot of concern and stress. Indeed, as you might know, lone parents whose youngest child is five are starting to receive letters letting them know of the changes and telling them that in mid-May—I believe—they will be migrated from income support to JSA, that they will have to be actively seeking work and that if they cannot demonstrate that they are doing so they will begin to face sanctions to their benefits. We have started to consult lone parents to find out their biggest areas of concern. Their responses so far tend to support Maggie Kelly’s point, in that they have identified childcare, information and support and the need for help with debt and money advice as the three areas where they need support in order to feel in a position to enter the labour market.

In short, we need to look together at the bill itself, the regulations and the interplay with wider policy areas in Scotland.

Bill Scott (Inclusion Scotland): We, too, welcome the bill as a necessary first step and, like others on the panel, we are looking forward to scrutinising the subsequent regulations and secondary legislation. After all, the devil will be in the detail. We recognise the need for urgency, given that everything will have to be in place by next April, but it is important to do things right rather than quickly. If we do not get this right, the consequences for some of the most vulnerable people in society might be even worse.

The committee will not be surprised to learn that we remain very concerned about the cumulative impact on disabled people of the various changes and we have undertaken some modelling for ourselves on the groups that are most likely to be affected. As our written submission makes clear, we are very concerned about the impact on the 45 to 65 age group. Two thirds of all those on the lower-rate care element of the disability living allowance are in that age group. However, when the PIP is introduced, those people will not be entitled to that lower rate because there is no such element to that benefit. As a result, all of that group stand to lose at least some of their current entitlements.

A very similar group will be affected by the loss of the contributory element in the employment support allowance. Those people, who are aged from 45 to 65 and are more likely to have lifetime savings or a partner in work, will also lose their entitlement. Moreover, that same group makes up the main profile of those who will lose some of their entitlement to housing benefit with the introduction of the underoccupancy rule.

We think that the Scottish Government’s modelling is good, because it makes clear that a certain proportion of that particular group will not be able to pay their rent, will get into arrears and will be evicted. However, we suspect that given the very large-scale cuts that that group is already facing a far larger number of people will not have the resilience to deal with the housing benefit cut and the chances are that even more people than is currently projected will end up in arrears and being evicted. The impact is cumulative. We must not lose sight of the fact that all these changes do not just stem from the introduction of the universal credit. The personal independence payment and the shifting of the claimant load from incapacity benefit to employment support allowance are also massive changes, as the tens of thousands of appeals that have been lodged show.

The Convener: I am not saying that what has been said this morning is contradictory, but I am looking for a bit of clarity. Earlier witnesses mentioned the timescale for the bill. John Dickie said that he understands the need for the proposed timetable, because everything needs to be in place. However, Bill Scott said—other witnesses nodded at the time—that it would be better to take our time and get it right than to do it quickly. Am I picking up a contradiction? John, are you saying that, if the option to take a bit more time was available, you would prefer that?

John Dickie: I see two stages. There is the enabling bill, which we must get through pretty quickly and get out of the way, after which we can spend quality time—we must ensure that there is time—focusing on the detail of the regulations, which is where the meat of passporting will lie. I tried to make the point that equal urgency applies to introducing and scrutinising the legislative framework that is needed to underpin the replacement of the social fund and the council tax benefit. We can get the enabling bill through pretty quickly, after which we can really spend time on focusing on the regulations.

The Convener: That is really helpful.

Jamie Hepburn: I will stick to that theme. I should probably declare a kind of interest, as I am a lapsed member of the Poverty Alliance. It is not that I do not want to be a member of it; I keep meaning to renew my membership—I will get round to it eventually.
I will pick up on the Poverty Alliance’s submission. For passported benefits, the devil is in the detail down the line. I was intrigued that Maggie Kelly posed a question to us in saying:

“we would want to know what plans the Committee has to ensure that such regulations”—
on passported benefits—
“receive adequate scrutiny.”

We will ask the questions, if you do not mind. [Laughter.] What plans should we have?

Maggie Kelly: I will follow on from what John Dickie said. The bill provides for the negative procedure to be used. Ideally, we would like to have as much scrutiny as possible, to see the regulations as soon as possible and to have the affirmative procedure used. I posed the question to the committee because, as I am not aware of the committee’s timetable or the overall parliamentary timetable, I am not clear about how much time the committee has for such tasks. Ideally, we would like as much scrutiny as possible, but I cannot say exactly how the committee should do that. We would like the affirmative procedure to be used if possible. I hope that that clarifies my question.

Jamie Hepburn: That is useful. It was interesting to hear John Dickie talk about taking quality time to look at the detail once the enabling bill is through. We all accept that we need to get the enabling bill through quickly but, even thereafter, we must be realistic enough to know that the regulations will have to be brought into force pretty quickly. There might be more quality time, but I am not sure whether it will be much more. What is the perspective on that?

John Dickie: I understand that the Scottish Government thinks that it will have the information that it needs by June. The cabinet secretary has given a commitment to consult on the approach that will be taken to passporting, which is welcome.

There is time to give the subordinate legislation scrutiny. The bill reflects the fact that secondary legislation is normally subject to the negative procedure. Given the importance and scale of the changes and given their impact on many people and on Scottish Government and wider Scottish anti-poverty and inequality policy, there is a strong argument for looking at the first set of regulations under the affirmative procedure.

Whatever approach is taken, it is crucial that we see draft regulations well before they are laid, to create the potential for feeding in, scrutinising and proposing amendments to ensure that the regulations work in the interests of—obviously—children and families and of individuals and households across Scotland.

We are up against time pressures, but we do not want to use that as an excuse for not carrying out appropriate scrutiny. We must ensure that we use the time that we have to conduct adequate scrutiny.

Jamie Hepburn: Broadly, you are satisfied that we have sufficient time to do that.

John Dickie: I think so.

11:30

Maggie Kelly: I have a small point on the business of scrutiny. As we all know, huge welfare reform changes are being introduced that will impact on a raft of devolved responsibilities. Although the Parliament might use the negative procedure in the normal course of events, my point is that, because the changes in question are so huge and so far reaching, there is definitely a need for more scrutiny than might normally be considered necessary.

Satwat Rehman: I was going to say the same thing.

Kevin Stewart: Every time the committee meets, something else is thrown into the mix. We have had submissions in which folk have told us of their experiences of life. Bill Scott threw up a number of issues to do with the 45 to 65 age group and those folk who are on lower-rate DLA, who will disappear out of the picture altogether.

How many folk who are currently on lower-rate DLA do you think that that will happen to, with the result that they will eventually be put on a much higher level of support because of deteriorations in health and all the rest of it? I know that that is extremely difficult to estimate but, as a constituency MSP, I already know of such cases, and the committee has had submissions from folk who have said that that is likely to happen to them. Have you done work on that?

Bill Scott: It is extremely difficult to predict who will eventually end up on a higher rate of benefit because a range of barriers might be put in their way.

In Scotland, there are 60,000 disabled people on lower-rate care. A fair proportion of them—30 per cent of them, certainly—have learning difficulties, mental health issues or cognitive issues such as autism. If all those people lose their benefit, it is possible that they will move from coping with their condition and their current care needs to not coping. Their mental health issues might become more severe, with the result that they need to be hospitalised or to receive medication. People who have learning difficulties might develop a more general health issue, because learning difficulties are often linked to mental health issues. Someone can develop
depression if they become isolated, which is what we expect will happen to a lot of people with learning difficulties. The same is true of people with autism. If the care needs of people with autism are being met, the condition is very controllable and people can live with it, but if their care needs are not being met, there is quite a high chance that they will go into crisis.

All of that will mean additional costs to local authorities and the national health service, but it could also result in the people concerned moving up a stage in their entitlement to benefits. The problem is whether they would be capable of negotiating the benefits system. Because of the nature of their conditions, they may not be able to get past the benefit hurdles that are put in front of them.

When we have talked about DLA, we have tended to talk about the people who are on lower-rate care and that whole group losing their entitlement. We have subsequently seen the DWP’s projected figures for what DLA entitlement would be in 2015-16 if changes did not take place and what the claimant count will be if and when the PIP is introduced. The DWP projects that, in 2015-16, 2.2 million people across the UK would be on DLA and that 1.7 million will be on the PIP, which is a drop of 500,000 or about 23 per cent.

However, that masks what will actually happen. Because there are five elements to disability living allowance and four to the PIP, some people will also lose entitlement to the mobility component. We have analysed the DWP’s figures to see who is likely to lose the mobility component, and the DWP is expecting that in Scotland 27 per cent will lose higher-rate mobility. On that basis, 26,400 people who are currently entitled to higher-rate mobility will lose that entitlement.

That has a knock-on impact because those who are on higher-rate mobility allowance automatically qualify for a blue badge, so everyone in that group will need to be assessed to see whether they still need a blue badge, which will impose additional costs on local authorities. The mobility needs of those individuals will not have changed one iota between now and when they lose their entitlement; they will simply have been assessed out of their entitlement.

For those on lower-rate mobility allowance, the figure is even higher: 40 per cent, or 33,400 people, are expected to lose their entitlement. Again, a large percentage of those people are entitled to a blue badge because of their condition. Another group is entitled to concessionary travel on the basis that they are on lower-rate mobility because of their condition, but because they do not have an on-going entitlement, they will need to be assessed. Until now, those people have not needed to be assessed so that their needs could be found out.

In their entirety, the projected figures show that nearly 75,000 people will lose out on the mobility component. When we say that 55,000 people will lose their entitlement altogether, we need to remember that mass of 75,000—those who might lose part of their entitlement or all of their entitlement; we are not sure which yet. As I say, that has huge implications for passported transport benefits. Scotland has a much larger geographical area per head of population, so getting from one place to another in a rural area without a blue badge or concessionary travel entitlement is going to be so much more difficult and it will make employability and access to education and training much more difficult.

Kevin Stewart: I thank Mr Scott for his comprehensive answer. It is sometimes very difficult for us to get our heads around the amount of folk who are going to be affected by all the changes. Mr Scott has shown us that, even if we can hazard a guess about certain groups, the numbers are likely to increase because of all the anomalies in the current system.

The level of scrutiny that the committee has to apply is immense, and it is sometimes easier to get to the human element of what is likely to happen. That is why I encourage not only the groups represented by the panel but others to talk to individuals and get their views about what might happen to them under the changes. In relation to the scrutiny that the committee has to undertake, that is easier for us to deal with because, although we keep learning about elements of the changes, it is necessary for us to get a human take on them. I encourage the organisations that we are talking to to get folk to use the e-mail address and the other methods that we have in place to give their views.

Satwat Rehman: We have been doing a quantitative survey but we have also been capturing a lot of case-study evidence. While Bill Scott was talking, I thought about a case that came to us last week that shows the complexity of the situation from the individual family’s point of view. That must be our starting point. There was a conversation earlier about who should offer information and advice and how that should be done. The starting point has to be where the family will go.

I will share an example with you. Lucy is a single parent with a 16-year-old son who has cerebral palsy. He has been in receipt of the highest rate of the care component and the higher rate of the mobility component since he was a small boy. Lucy received carer’s allowance and income support as Mark’s full-time carer. He has been reassessed for DLA and it was found that he
is no longer entitled to either the care or the mobility components, despite the fact that his condition remains unchanged. Lucy has lost her carer’s allowance and income support and she has to go on to JSA, so she will have to be actively seeking employment. The type of care that she needs for her son is not available, and she has had a drastic drop in her income, which means that she is struggling financially.

The committee can see from that example the number of different things that are needed to support one family. The UK Government talks about simplification, but it is difficult to impose that when families have such complex situations.

The Convener: Jamie Hepburn has a supplementary question.

Jamie Hepburn: Kevin Stewart raised the prospect of getting personal testimonies. We should remind people that we have a dedicated e-mail address through which individuals can contribute. If the witnesses want to encourage the people with whom they deal to do that, we would be interested to see their testimonies.

My question is on an area that I want to explore, and it seems sensible to do it now given that Bill Scott raised the issue of those who receive certain benefits because they have been assessed as being disabled losing those benefits. Inclusion Scotland’s evidence includes what I think is a neat phrase, when it says that “people will lose their status as disabled persons”.

It also states:

“We would like the Scottish Government to consider ways of safeguarding the passporting of these former benefit claimants if they otherwise lose this status.”

I would be interested to hear how Inclusion Scotland believes that that can be achieved. I would have thought that it would be fairly straightforward: if a record was maintained that they were so assessed, that would carry on. Is that what you mean?

Bill Scott: In the past, when benefits have been changed, residual entitlement has been counted, so somebody who qualified for a benefit continued to qualify for the passported benefit. The problem with that approach is that, as you can imagine, it would protect the 74,000 or 75,000 people who are going to lose the mobility component in the next three or four years, but it would not protect anybody who would have been entitled to that component, because they will no longer be entitled under the new assessment regime. That is a difficulty. The approach would at least offer some protection for existing claimants, but it is far from perfect.

Jamie Hepburn: You pre-empted my next question. We need to focus on that group. Do you have any ideas on how they can be catered for?

Bill Scott: It is exceptionally difficult. I am an ex-welfare rights worker and I am used to seeing proxy indicators being used to determine whether somebody is entitled to a passported benefit. We would usually say that, if somebody was entitled to this benefit, they will be entitled to that one. When we take that approach out of the equation, even though we know that they are a disabled person, their doctor says so, and their school record tells us that they got assistance with their additional needs, all of that is put to one side because they no longer qualify for the benefit. How do we establish what the new criteria are—

Jamie Hepburn: Is there not a suggestion in what you have said? If their doctor says that they are disabled and they have had additional support at school, is that information not relevant?

Bill Scott: I am saying that there might be other proxy indicators, but where we draw the line would be the difficult part. Some disabled people say that blue badges should be for people with mobility issues or people who need to be accompanied when they make a journey. We can determine that if there has been a mobility assessment.

However, with a mental health issue or learning difficulty, it is much harder to draw a line and say that a person’s condition is at this or that point on the spectrum and that, as a result, they might need to be accompanied. Indeed, such a decision might well need a doctor, which will require a new series of medical assessments with subsequent costs to the NHS—or, if the NHS cannot bear those costs, to local government or the Scottish Government.

11:45

Jamie Hepburn: But would that assessment not have been undertaken anyway? If the needs have been identified, surely the assessment has already happened.

Bill Scott: In schools, such assessments relate very specifically to educational needs: what assistance is required with reading and writing, whether the individual has a sensory impairment that requires them to have a computer adapted to their needs and so on. The school might look at mobility issues, whether the individual needs someone to accompany them to new places or whatever. If such assessments do not happen, things could become quite difficult. Although, as I have said, existing information could be drawn on to determine new proxy indicators, there would need to be real discussions with social work, education and so on about the level of information held and the ways in which it could be used.
Jamie Hepburn: We really need to get our heads around this issue.

The Convener: Perhaps Maggie Kelly can help us.

Maggie Kelly: I do not think so.

With regard to working out who might be entitled to passported benefits in the future, we must remember that the new tests for the PIP and ESA are much narrower. Under current criteria, those who receive the higher rate of DLA, for example, get such and such a benefit, and extending those criteria to some of the lower rates might help to catch some people. I admit that such a move will not help the people Bill Scott was talking about—those who should be getting some benefit but who would not get anything; instead, I am thinking of people who in the past would have got a higher rate of a particular benefit and might now just sneak into the very low rate. I wonder whether that approach might be a way of catching some people who are beginning to fall through the net. It is more of a comment than a firm proposal, but it really needs to be considered.

Margaret Burgess: I want to echo a comment made by Jamie Hepburn. Leaving to one side the question whether everyone on universal credit should get passported benefits, I certainly think that there is a real issue with disability benefits. There will be considerable cost implications in setting eligibility criteria for things that cannot be determined but, on the other hand, we cannot simply say that everyone in receipt of the PIP should get passported benefits, given the number of people who will be taken off it. Is that what you are saying to us?

Bill Scott: Yes.

Margaret Burgess: That will be a real issue with regard to disability benefits and we will certainly have to examine the matter in much more detail. Do we know, for example, the number of people receiving DLA who do not get any other benefits?

Bill Scott: Unfortunately, that is where you need the kind of detailed modelling that we have never had from the DWP. We have asked for it. The Westminster Parliament’s Joint Committee on Human Rights, with regard to its report on how the welfare reform changes would impact on independent living, asked Maria Miller whether the DWP had carried out any modelling of how people might be affected and she replied that there was no need for it. As a result, prospects of modelling happening at UK level are about nil. Given that, modelling needs to be done at a Scottish level to determine the number of losers, the likely consequences for them and the possibility of extending the criteria.

One suggestion might be that somebody on the lower rate of the new mobility component could qualify as though they were on the higher rate. However, somebody would have to consider the cost implications of doing that; we have not done it yet. I will provide the committee with a copy of my paper, which is just a couple of pages, on the losers in respect of the mobility component. I think that it is useful because it illustrates that the headline figure of 500,000 losing out masks the roll-out implications for disabled people.

Annabelle Ewing: I am shocked but not surprised by the DWP’s response, which is outrageous. To inform our work, the committee may wish to consider whether to write to the DWP and the Secretary of State for Work and Pensions to seek modelling information.

To pick up on Jamie Hepburn’s point on the important matter of status issues and so on with respect to disability benefits, it would be worth exploring in detail the extent to which we can use existing information. There is a weight of evidence from general practitioners, social work departments, education services and so on, but the UK Government has selected just one body to operate the system that says the converse. Can Bill Scott tell us from his experience of successful appeals what weight is carried by the contradictory information about an individual that is provided by that person’s GP?

Bill Scott: It is important for a successful appeal to have medical evidence from a GP or a consultant who has dealt with the person involved for years, because they are in a much better position to know how the individual’s condition or impairment affects them on a day-to-day basis. My Citizens Advice Scotland colleague is not here any more, but I am sure that CAS would say that having accompanying medical evidence for an appeal was crucial in most of the successful cases.

I heard last week that there is a pilot project in Fife—I have forgotten what it is called—that is attempting to draw together information from sources such as education and social work into one hub so that there can be lifetime tracking of a person’s needs. The problem at the moment is that a lot of young disabled people are well known to education and children and family services when they are at school, drop off the radar completely when they leave school and re-emerge only when they are in crisis. An attempt is being made to track through and ensure that some transitional support is provided when the young disabled person leaves school. That might be something to investigate further.

Alex Johnstone: A thought occurs. Inclusion Scotland suggested that eligibility under the new system could be based on previous entitlement.
That is a general suggestion, but I would like to look at it more specifically. We have talked about the range of passported benefits: some of them are quite complex and expensive, but others are not necessarily so. Can you say a bit more, Mr Scott, on the historic entitlement approach and whether it might be more effectively used for cutting the cost of the analysis process or whether it has a role in other areas?

Bill Scott: John Dickie could probably give evidence on this. The historic entitlement approach has been used when benefits have changed in order to continue to give people residual entitlement that is based on past entitlement. There is a question mark over the approach, though, because some disabled people and some people with long-term health conditions have conditions that improve. It is therefore not always the case—nor should it be—that somebody who has had an entitlement in the past will continue to have that entitlement for the rest of their life.

It will create a problem in the future because people may no longer fit the criteria for a particular type of support. A blue badge, for example, entitles someone to park because their mobility is restricted or they need to be accompanied. If they no longer have that need because their mental health has improved or they have a form of paralysis that then improves, why are they getting that entitlement? People may perceive that someone is getting a blue badge when they do not need it. The historic entitlement approach is a partial solution, but in no way a perfect one. We have suggested it because it is the best solution that we can think of, rather than because it works in every case.

Alex Johnstone: Even if that was not a long-term approach, could it play a transitional role?

Bill Scott: Yes—it could definitely play a transitional role. I support Maggie Kelly’s suggestion that it might be worthwhile to consider extending automatic entitlement to blue badges to those on the lower rate of the new personal independence payment.

Jackie Baillie: You have answered my points about subordinate legislation without my needing to ask.

The council is the delivery agent, and we understand that legislation on the payment of the successor to council tax benefit is required. You will have heard me ask the other panel what the appropriate legislative vehicle is. That is missing from the bill; I understand that ministers are looking for legislative vehicles. Given the interrelationship, as council tax benefit is in itself a passported benefit, is there any obstacle to putting that in the bill?

John Dickie: There is an argument for getting the bill through, given the specific job that it does, but that does not take away from the need for equal urgency in developing the legislative framework that is required for council tax benefits and for the discretionary social fund. We have not taken a view on that, other than that there is an argument for getting those things through, although not at the expense of one another.

We are keen that a national legislative framework should underpin the replacement for the discretionary social fund and the passported benefits. It is important that minimum eligibility criteria continue to be in place for key passported benefits—even where benefits are administered locally—to ensure that, wherever people live in Scotland, they will be able to access those benefits when they need them and would benefit from them.

Jackie Baillie: Some of you participate in the working group that is dealing with the successor arrangements for the social fund, and the consultation on that has now concluded. Are you involved at this stage in devising some of the regulations? I anticipate that, although you do not know the ultimate figures, you could devise regulations on how the fund would operate in the future. Is that happening?

John Dickie: It is not yet happening at that level of detail, but we are continuing to press for a national legislative framework to be in place to underpin those replacement schemes. We understand that the delivery agents would be the local authorities, certainly in the short to medium term. That does not take away from the need to ensure—and indeed, local authorities would be supported by this—that clear national eligibility criteria are set out in law. Given that the funds are limited pots of money, clear criteria will mean that those involved in delivery, as well as those who rely on the crucial support that crisis loans and community care grants currently provide and that the replacements will provide, are clear about what people are entitled to, with regard to managing those budgets. That work is in progress, and we hope to be involved in helping to shape the detail.

12:00

Maggie Kelly: I also sit on the working group that is looking into this and, to echo John Dickie’s comments, we have not yet had sight of any detailed criteria. We hope that details will come forward soon, although there is still debate about how the system will be put in place. As John Dickie said, COSLA will be the delivery agent. We have—like CPAG and our colleagues in SCWR—been pressing strongly for a legislative framework that will, as John Dickie said, protect individuals in
need and ensure that the system is delivered fairly throughout Scotland so that areas of deprivation do not run out of money and the fund assists people based on their needs, rather than on where they happen to live. We are discussing that with the Government at present, and we look forward to seeing details on the criteria quite soon.

To go back to Jackie Baillie’s question, it would be fantastic—the ideal situation—if those things could all be dealt with in the bill. I do not have a view on exactly what the procedure ought to be, except to say that those things need to happen as a matter of urgency. We are certainly keen to engage on the social fund and on council tax benefit.

**The Convener:** There are no more questions. I thank the witnesses for coming this morning; I am sure that we will see them again as we consider the regulations and other aspects of the bill.

Bill Scott indicated that he will provide the committee with some documentation. If any of you wish to submit to us any further comments in writing, we would welcome that. As we said to the previous witnesses, the cabinet secretary is with us on 26 April, so you are welcome to suggest areas of questioning or raise points before then. Please get in touch with us at any time.

I echo Jamie Hepburn’s comment that if you have any case studies, you should encourage people to take the opportunity to use our website to get that information into the public domain so that we can take cognisance of it, as it is vital that we do so.
Scottish Parliament

Welfare Reform Committee

Tuesday 24 April 2012

[The Convener opened the meeting at 10:00]

Welfare Reform (Further Provision) (Scotland) Bill: Stage 1

The Convener (Michael McMahon): I wish a good morning and welcome to witnesses and members of the public to the Welfare Reform Committee. I have received apologies from Drew Smith, who is at the Health and Sport Committee. Jackie Baillie is in attendance as his substitute, so I ask her to declare any relevant interests.

Jackie Baillie (Dumbarton) (Lab): I have no interests to declare other than those that are in my register of interests.

The Convener: The substantive item of business is evidence on the Welfare Reform (Further Provision) (Scotland) Bill. I welcome our panel of witnesses: Hanna McCulloch is a senior policy officer from Capability Scotland; David Griffiths is chief executive of Ecas; Mike Holmes is executive director of Enable Scotland; Tanith Muller is parliamentary and campaigns officer in Scotland for Parkinson’s UK; Ken Reid is the chair of the Royal National Institute of Blind People Scotland; Carolyn Roberts is head of policy and campaigns at the Scottish Association for Mental Health; and Gordon Macrae is head of communications and policy at Shelter Scotland. For anyone who thinks that they are having a double take, Hanna McCulloch gave evidence to the committee last week as part of the Scottish campaign on welfare reform umbrella organisation, but today she is representing Capability Scotland. Members might want to bear that in mind if they have any specific questions about that.

Some of the witnesses have provided written submissions, but I give all of you the opportunity to say something before we get into the discussion so that we can get a sense of where you are on the bill, and so that you can state any pertinent points for the record.

David Griffiths (Ecas): I thank you for inviting us to give evidence.

Ecas’s evidence is based on the concern that there is a tendency to view each problem and each benefit on its own. I welcome the committee’s letter to the Department for Work and Pensions seeking evidence of the cumulative impact, but I would like the committee to think about taking a holistic view of how we can best utilise the resources that we have in Scotland, which are, of course, limited. I assume that the Government’s and Convention of Scottish Local Authorities’ very welcome extension to council tax benefit and filling of the £40 million gap unfortunately do not exist for all the other benefits that have been reduced by Westminster, which means that difficult moral decisions will have to be made.

We can start by identifying who we are targeting and how and why we are doing so. Will it be based on income, disability or age? That is an issue. We can look at the comparative benefits of various types of expenditure on how people are being supported—the benefits should include preventative benefits. There is definite evidence, for example, that aspects of the disability living allowance enable people to get out of their houses to do things that improve their wellbeing, thereby reducing decline in their health.

We could consider the national concessionary card, which costs £180 million a year, I believe, and the benefits that it provides to some of its recipients—perhaps people who are between 60 and pension age. Could a small saving made from that £180 million a year make a bigger difference if it were used to increase the income of community transport operators in Scotland? Community transport operators provide support for elderly and disabled people, who often cannot use public transport, and their income is £10 million a year.

I am not sure how much universal free prescriptions cost, but the Scottish Parliament information centre briefing says that, in 2009-10, about half the applications for community care grants were awarded. There were 41,450 awards from 82,370 applications. Community care grants cost around £25 million a year. That can be compared with £142 million for legal aid. Are we getting the best preventative spend value out of those awards? Can we look at all of those things and decide where the best expenditure would be?

I know that the committee is keen on passported benefits. I have given evidence on passporting before and it is an important issue. If we do not use the United Kingdom Government’s measure—which we do not like—it will be difficult to identify where the goalposts should be and how we will assess who fits. I am not convinced that the right answer is to say that current recipients should keep the award: the list of people to whom you should give it would be out of date on day 2 as new people quality and others no longer qualify, but you will not know who is in either group.

Another issue is crisis support. The evidence that the committee has heard suggests that many
people will be in crisis. Planning how to deal with that will be required, as will finance for it.

I mentioned in previous evidence—it is still true—that increasing numbers of people who would normally have been supported through community care grants are applying for grants from the third sector. That increase is not sustainable. At the moment, the gap is being filled, but I do not see how that can continue—especially if 50 per cent of community care grant applicants are turned down.

**Gordon Macrae (Shelter Scotland):** I thank you very much for inviting us to contribute to the committee’s discussions today.

We welcome the bill. It is necessary and urgent that ministers be able take steps to preserve critical benefits that are often overlooked aspects of the welfare system. The people whom we see day to day through our casework and local services are incredibly reliant on, for example, free school meals, access to travel and education maintenance allowance. Those are the measures that sustain the people who are most vulnerable to changes in their income.

Although we welcome the universal credit in principle—it is good to move towards a simplified benefits system—we are concerned about the pace at which the reforms have been undertaken, and we have increasing concerns that the driver is cost reduction rather than the efficacy of the system. Since the Scottish Parliament decided to withhold legislative consent, those concerns have been supported further by the most recent budget, which indicated that a further £10 billion would in due course be cut from the welfare system.

It is clear that welfare reform is—to borrow a phrase—a process and not an event. It will continue for some time, and it is right that the Scottish ministers should take decisions about how local and important benefits in kind, and other supporting elements of the social sector, are delivered in Scotland. However, we realise that the Scottish Government and local authorities have a set amount of money with which to operate.

It is unlikely that, in the first instance, Scotland will be able to diverge greatly from the direction of policy travel down south, but we should be alive to the increasing divergences in social policy that already exist. For us, a case in point is the 2012 homelessness commitment. The welfare reforms undermine certain choices that local authorities have for where they place people under 35, but such considerations have not been at the forefront of decision making, to date.

We welcome the opportunity that the bill presents to identify the particular Scottish dimension that must be considered, but I am afraid that we remain pessimistic about the space that will be available for the Scottish ministers to take a different view. We welcome, however, the fact that the bill will give them the powers to take decisions that are closer to the needs of the Scottish public.

**Carolyn Roberts (Scottish Association for Mental Health):** Thank you for the opportunity to give evidence today. I will make two points to set some context for our concerns about the bill.

I have said previously to the committee that the concerns that people with mental health problems have about welfare reform are many, varied and quite well justified.

We know that 46 per cent of incapacity benefit claimants receive that benefit because they have mental health problems, and that 60,000 people in Scotland receive disability living allowance because of mental health problems. There is a great deal of fear and concern about what is going to happen and, in many cases, about what is already happening. My point is that the impact is not simply financial: there is also the increasing psychological impact of the repeated assessments to which people are being subjected. That is the context in which we are operating, and the calls and e-mails that we get from people with mental health problems are raising such issues.

On the bill, as Gordon Macrae said, it is clear that a great deal of the power to make changes is reserved to Westminster. We cannot unpick the UK Welfare Reform Act 2012, but there are opportunities to make decisions on passported benefits and to deal with the knock-on effects of some changes that the UK act will introduce. We would like to discuss those opportunities.

We also want to discuss scrutiny of the bill. We understand why it is a skeleton bill and we know that the detail will be in regulations, but we hope that there will be an opportunity to discuss the regulations. We understand that the timetable has largely been set by the UK act, but we hope that there will be opportunities to examine the bill that is before the Scottish Parliament in a lot more detail.

**Mike Holmes (Enable Scotland):** I thank the committee for the opportunity to give evidence. Enable Scotland welcomes the bill and recognises the Parliament’s efforts to mitigate the impact of welfare reform and its effects on people with learning disabilities and their carers in Scotland.

On the broader context, our members and other people with learning disabilities and their carers across Scotland face a perfect storm of changes to services, tightening eligibility criteria, fewer college places and a much harder jobs market—when the level of employment among people with learning disabilities is already shockingly low—coupled with the welfare reform that is coming down the tracks. I genuinely cannot recall a time in
the past 20 years when there was such a level of anxiety among our members. I suspect that the same is true for SAMH members and members of other organisations.

We are therefore particularly pleased that the Scottish Parliament is considering the issue and is aiming to mitigate somewhat the impact. We know that we will not be able entirely to mitigate the impact, but at least some of it can be mitigated, particularly in relation to benefits to which people are passported through other benefits such as DLA.

Ken Reid (Royal National Institute of Blind People): I would echo all that has been said. I also express my gratitude for the RNIB’s involvement in the process. Other panel members have expressed very well many of our concerns about what is coming down the line for our members and other blind and partially sighted people. It is worth pointing out that the benefits that people receive are not somehow a supplement or boost to an already healthy income; most of the people who receive the benefits are on low incomes to start with. That is likely to remain the case, given what we have heard about the chances of employment. The money that people receive at present helps to defray some, but by no means all, of the costs of being disabled.

In considering the impact of the changes on people in Scotland, it is important to recognise that, as has been said, the changes are a gateway to a number of other effects; there will be a consequential cost on other parts of the Scottish budget. If people lose the income that enables them to live independently, they will become dependent on the health service, social services and other agencies, so those agencies will have to be geared up for that.

I expect that we will hear more stories of bed-blocking as people who become disabled have to remain in hospital because they can no longer live safely in their own homes. How we cope with that is part of the thistle that we will have to grasp.

10:15

As for the needs of the future disabled, which David Griffiths referred to, we reckon that every day about 100 people in Scotland start to lose their sight. As David pointed out, on day 2, there will be more blind people than there are blind people who have been passported across, so we must ensure that we support those who are going blind or who acquire other disabilities after the changes have been made.

Finally, how will entitlement be measured? DLA has been used to do that in the past, but it is imperfect; after all, many people who live with severe sight loss do not qualify for the benefit. However, under the proposals, fewer people will qualify for the PIP. The question is not just about what happens to those who currently receive benefits but about how we measure those with a disability who require assistance. For example, many people might have uncorrected sight loss but are not registrable as partially sighted; they might well be unable to drive and are therefore dependent on public transport, but still do not qualify for DLA. Although they are already disabled, they do not measure as such in anyone’s statistics.

Tanith Muller (Parkinson’s UK): Parkinson’s UK deals with people who have a complex set of issues. Commonly, the condition not only affects people’s physical health but has mental health and cognitive aspects that are often hidden. As a result, it is quite a good proxy for a wide range of issues with which people who are currently in receipt of benefits have to live. Because the condition also fluctuates, it creates the kinds of problems with assessing disability that have been well thrashed out.

I want to highlight the anxiety that we are having to deal with among people across Scotland who live with Parkinson’s. Our information and support workers, who support families in, for example, dealing with benefits issues, are already reporting a massive increase in workload from people making applications or putting in appeals. One of the big issues for us, which will be common to all, is that funding cuts are leading to cuts in other advocacy and advice sources, so our workers are increasingly struggling to find others to whom to refer cases. That is giving them a big workload, but it also raises questions about what is happening to people who do not have the kind of support that we are in a position to provide.

The massive increase in people’s anxiety levels is impacting on their health and ability to cope with the condition, and that is likely to be the case for people with other disabling conditions. We predict a big increase in workload for health and care services as a result of the reforms, the anxiety and the uncertainty. In that context, we welcome the bill and the steps that the Scottish Parliament can take to reassure people, to make the transition process as straightforward as possible and to ensure that people do not live with uncertainty about their income for any longer than they need to.

Hanna McCulloch (Capability Scotland): Most of what I was going to say has been covered, but I simply want to highlight the value of passported benefits and that, in many cases, they are more valuable than the original benefit. For example, the eligibility criteria that the Department for Work and Pensions has released for the PIP indicate that someone who can walk up to only 50m without the
use of a wheelchair might lose their entitlement to the higher-rate PIP. If the PIP is substituted for DLA as the passporting benefit, such a person might well lose their blue badge. That could mean that somebody with cerebral palsy who can just about walk 50m without a wheelchair would lose their blue badge. What if the nearest car park was more than 100m walk from their office? It could be devastating if they could not get to work. There is a need to sit down and look at what the knock-on effects of losing such benefits would be for people.

Alex Johnstone (North East Scotland) (Con): I appreciate what Mike Holmes and Tanith Muller said about anxiety. Carolyn Roberts mentioned the proliferation of assessments and her experience of the anxiety surrounding that. That is reflected in what is in my mailbag—I am hearing about that experience from constituents. Can you say a little more about what is happening at the moment? What evidence do you have of the issue around assessments? What might be done to reduce that burden as we start the reform process?

Carolyn Roberts: The issue at the moment relates primarily to employment and support allowance. People are being assessed for that as they come off incapacity benefit or as they make new applications. The outcome might be that they are fit for work and will transfer to jobseekers allowance, that they do not qualify for any benefit at all or that they are put into the work-related activity group or the ESA support group. There are a number of different outcomes, and there can be appeals—as I am sure you are aware, a high number of appeals are made—which will lead to further contact with the DWP and further anxiety as people wait for their cases to be dealt with.

If a person finds that they qualify for ESA in one or other of the groups, they will also find that their assessment tends to come round again really quickly. They are not left for two years, but might find themselves being assessed again after six months. At the moment, there is a regular cycle of assessments. A person is not simply put on a benefit and allowed to proceed, but is assessed regularly. That causes a great deal of anxiety and uncertainty, and it can take up a great deal of time in preparation of evidence and in attending assessments, which are often quite stressful experiences in themselves. That is already happening.

As Hanna McCulloch said, we are also starting to see how the PIP might work. We have the proposals for an assessment and know that the PIP is likely to involve much more face-to-face assessment, which will add another layer to what people already have to go through. That is why I agree with Capability’s written evidence in that we are not keen to see yet another process of written assessment for passported benefits. We must try to find a way of keeping people on the passported benefits that they would have been entitled to without introducing yet another layer of assessment.

Those are the things that we are seeing already. Alex Johnstone’s mailbag is probably a lot like ours in that people are concerned about assessments. They are also concerned about how the assessments are being presented. Reports in the media and, sometimes, statements by the UK Government imply that it is expected that people will be found to have been fit for work all along. People perceive that the process that they are going into is not necessarily going to result in a good outcome for them, so there is a lot of fear and anxiety.

Kevin Stewart (Aberdeen Central) (SNP): I have a question on that specific point. Do you have evidence of situations in which the proliferation of assessments has led to the illnesses of folk with whom your organisation has dealt worsening, meaning that the state in other forms has had to pick up an even greater tab than that for the early intervention that would have been required to help out with the initial difficulty?

Carolyn Roberts: People who are being assessed find it a difficult and stressful process, and there have been cases in which they have sought further support from us—if we are their social care provider—or from health services. That has had knock-on costs. I am talking about employment and support allowance, which is not an issue that is before the committee. However, the process of assessments that is taking place for that is likely to inform the process of assessments for the PIP, which is why it is relevant.

The review of employment and support allowance that Professor Malcolm Harrington was asked to carry out highlighted specific problems with assessing people for ESA in relation to a mental health problem. It found that the assessments could not always assess mental health difficulties correctly, and that the descriptors that were used to assess people did not always reflect a mental health problem. We are very worried that that process will be repeated in relation to the PIP and that the substantial lessons that we need to learn from the ESA process will not be learned.

Alex Johnstone: We all start from the position that the benefits system should be simpler and more efficient. It seems to me that Carolyn Roberts has given an example of how, in trying to achieve that simplicity and efficiency at the level of assessment, the system has been made complex and more expensive.

Carolyn Roberts: We are looking at the PIP consultation—in particular, the assessment...
process for PIP. We are trying to make suggestions that will ensure that it assesses mental health problems correctly without adding another layer of complexity, which is difficult to do. However, we have been told that the direction in which we are going is towards more face-to-face assessments, which makes it inevitable that there will be more anxiety.

Alex Johnstone: That was interesting. Thank you.

Annabelle Ewing (Mid Scotland and Fife) (SNP): In his second report, Professor Harrington said that, in his view, the work capability assessment had “noticeably changed for the better”.

He acknowledged that there was still much work to be done but urged people to be patient. I understand that things have moved on since then in that, on 2 April, Paul Farmer of the mental health charity Mind resigned from the Harrington review’s scrutiny panel. He argued that the WCA process “isn’t working” and that there is “insufficient recognition of the need to change the approach.”

Would you care to comment on that recent development concerning the WCA?

Carolyn Roberts: We are aware of that. We work closely with Mind and we entirely support Paul Farmer’s decision.

The WCA has been the subject of a number of reviews. It is only fair to say that there have been some improvements, but a number of suggestions to improve the WCA have not yet been acted on and we are not seeing a great sense of urgency to act on them. We think that it is extremely important that that happen. People are being assessed for fundamental benefits using a process that we know is not correct and which does not assess mental health correctly.

Ken Reid: I would echo much of what has been said. In relation to blind and partially sighted people, anecdotally it has been shown many times that the people who are doing the WCA assessments do not understand the severity of the impact of sight loss on a person’s capabilities, and that people are being passed as fit to work because they can walk and pick things up with their hands. It is being forgotten that they have to be able to see things. The next time someone passes a blind or partially sighted person as fit for work, we might ask them whether they would like to be operated on by a blind surgeon or driven in a taxi by a blind driver. We find that blind people are being told that they are fit for work all the time, but there is no work that they are fit for.

Tanith Muller: The previous two contributions reflect what is happening to people with Parkinson’s. I will give a couple of examples. I know of someone who is such a frequent flyer in his local accident and emergency department that he practically has a bed set aside for him. He has Parkinson’s, diabetes and a complicated skin condition. He has been put in the work-related activity group. Another person who has Crohn’s disease and Parkinson’s has a significant tremor and cannot cross a road unaccompanied. He, too, has been put in the work-related activity group. Deeply inappropriate assessments are being made, often by practitioners who do not have knowledge of the conditions that they are dealing with and who have no appreciation of the impact that they have on people’s lives and their ability to work.

10:30

Mike Holmes: The points that have been made about the assessment process being flawed are confirmed by the statistics on the success of appeals. About 40 per cent of appeals are successful, of which 60 per cent have come from people who were assessed as having 0 points, when they needed to achieve 15 points.

It seems to me that the initial assessment is almost intended to drive people out of the system. In effect, there seems to be an acceptance that the system is flawed: there will be an attempt to drive as many people out of it as possible and people who go through the appeals process will get through.

Our concern is that many people with learning disabilities—and other people—just get scared and give up. They are anxious and fearful about the assessment process, the bureaucracy that they must go through and what they might be told. Professor Harrington commented after his second review that form ESA50 and the face-to-face assessments are not working and do not take account of the communication difficulties of people with learning disabilities. There is a huge need to make the system user friendly, but we think that it is almost deliberately not being made user friendly, in order to drive people out of the system.

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): It is clear from what we have heard that there are concerns about the assessment process and its outcomes. The submission from Parkinson’s UK mentioned people’s difficulties in even getting to the assessment stage. You said: “We have found significant issues around lack of disability proofing of the application/assessment process.”

What did you mean by that?

Tanith Muller: This is anecdotal evidence, because we have not done specific work in the
area. People are certainly reporting that going to the assessment can be difficult. For example, some people are not wheelchair users but occasionally struggle with stairs, and how letters are framed can make communications difficult to understand for people who have cognitive impairment or difficulties with reading. There are physical barriers and there are barriers to do with people’s ability to understand.

There is also a lack of support. Because people find it difficult to face an assessment, they tend to make sure that they are well medicated and that their symptoms are well under control. They will time the appointment to ensure that they are at their best. Most people do not understand the benefits system before they get into the assessment process, so it is easy for their lack of knowledge to work against them when they fill out the forms. When they subsequently consult a citizens advice bureau or one of our information and support workers, they might be asked, “Why did you talk about how you are when you are at your best? You need to be much more realistic.”

It is often hard for people to face up to and express what is happening to them, particularly when issues are stigmatised and difficult. For example, continence problems are common for people with Parkinson’s, but people probably do not want to put that down on a form for anyone to read—they might not have entirely faced up to the issue themselves.

Jamie Hepburn: I see that a number of the witnesses concur with you, so that is obviously an issue throughout the sector.

The system whereby people qualify for passported benefits on the back of benefit entitlement will change as we go through the process of welfare reform. That is an important issue for the committee, as I think Ken Reid and Hanna McCulloch said. David Griffiths said that he is not convinced that an approach whereby people who are currently in receipt of passported benefits simply continue to receive them is necessarily the best one. Such an approach was proposed as an interim measure, at least, during our previous meeting. If that is not the best system, what is?

David Griffiths: You are right. I said that I do not think that it is the best system. I said that because people come and go with these benefits. Some people will no longer be entitled to them and, as Ken Reid said, given that the number of people whose sight deteriorates increases daily in Scotland, new people will become entitled to them. The list that is used on day 1 will be out of date on day 2.

We are saying that somebody has to draw a line and decide that people on one side of the line get the benefit, whereas people on the other side do not. That is not a good system, but it is the system that we have used in the UK since time immemorial.

The UK Government has decided to move the line to somewhere that we do not like. We must either put up with that—I am not advocating that we do so—or create our own line. If we decide—I say “we”, but I should say you, meaning the Parliament, because it is your privilege not mine, and I do not envy you. If you decide to draw a line in a different place, you must make the difficult moral decision about where the line should be.

For example, I do not accept the premise that disability living allowance is a proxy for disability. A lot of disabled people do not get disability living allowance. They are defined as disabled under the Equality Act 2010, so they are disabled, but they do not meet DLA requirements. Therefore, where do you draw the line?

Jamie Hepburn: To be fair, that was my question to you.

David Griffiths: Sorry. If I may go back to Mr Johnstone’s point, you will have to create another assessment to decide whether people meet your criteria in addition to the UK Government deciding whether people meet its criteria. One way of approaching that is for the Scottish Government to continue to use the DLA assessment—you would implement the current DLA assessment yourself. However, that will involve the cost, pain, stress and time of another assessment. I do not have a better answer—I wish that I did.

Gordon Macrae: We think that there may be a requirement to look at a two-speed process. Under the Welfare Reform (Further Provision) (Scotland) Bill, Scottish ministers will have the power to look again at what the best trigger is in Scotland, but we need to be aware of the process of bringing in the UK legislation. It could be that the universal credit is the best worst system available at the start of the process, and the Scottish Parliament may wish to consider whether to take further time to deliberate on the longer-term position, especially in the light of future welfare reform and cuts that might come further down the line.

Our principal concern at this stage is that there should not be a cliff edge. We should ensure that people who come into the system and might get lost have an easy route to the incredibly important benefits in kind. That point cannot be overstated in relation to universal credit and housing benefit. Most people do not see their existing benefits—they see the things that they rely on daily, such as free school meals, access to transport and the education maintenance allowance. The rent is largely paid, although that is changing under the new system, whereby the money goes into the tenant’s account rather than the landlord’s
account. Most people do not have to deal with the challenge of having to manage various payments and outgoings—although there is an exception for a lot of passported benefits. How we ensure that people are not presented with a multitude of complex decisions on day one must therefore be part of the discussion. That will require the Scottish Parliament to consider how it funds any decision that it takes in the area. We are already hearing real concerns about what is, in effect, a cut in the social fund to enable it to be administered in Scotland, and any decision will have a knock-on effect in terms of short-term mitigation.

Ken Reid: We have a system that does not work and we are about to replace it with another system that will not work, as far as passported benefits are concerned. This might be an opportunity for us to say that linking the additional benefits to the financial benefit has never been the right thing to do.

We talked earlier about the Equality Act 2010 and the definition of disability, which is the crux of the matter. A disability is something that prevents somebody from carrying out their day-to-day life in a normal manner, and it is a long-term condition. Our starting point should be to accept that what people need is assistance to be able to carry out their day-to-day life, so we need to consider what difficulties people have in doing that. How do we go about doing that? As we have just heard, that is perhaps a longer-term debate that needs to be had. We need to move away from linking travel benefits, blue badges and so on to the UK benefits scheme.

Hanna McCulloch: I agree with everything that Ken Reid said. In the long term, that issue needs to be addressed. In the shorter term, there is a need to consider how people who need passported benefits can access them in the simplest possible way and whether expanding the range of benefits that can be used as passported benefits might be an option.

An example is the PIP and the blue badge. At present, DLA passports to a blue badge if the person is found to be eligible for the higher rate. I am not saying that this is the definitive answer, but I wonder whether it would be possible to expand that to include people who are found to be eligible for either the enhanced rate or the standard rate of the PIP. That would probably have a cost implication. However, the DWP estimates that about 1 million people would be eligible for DLA at the higher rate in 2015-16, and the number who will be eligible for the enhanced, or higher rate, PIP is 760,000, so there will be a reduction in the UK of about a quarter of a million people who will lose their blue badges. Under the DWP’s figures, the number who will be eligible for any PIP is about 1.3 million, so the difference is about 0.3 million on either side. When we take into account the expense of setting up a new system, we have to wonder whether the option that I mentioned should be considered.

Kevin Stewart: Can I play devil’s advocate, convener? Has anyone done any studies on linking the likes of blue badges to the condition instead of the benefit? Should it not be the case that the person becomes eligible once a doctor diagnoses their condition as being pretty severe, rather than their being required to complete a huge assessment programme, which is often immensely bureaucratic? We perhaps spend more money on the bureaucracy than we do on delivering the service to people. Has that been thought about in Scotland? Do you know whether it has happened elsewhere?

Hanna McCulloch: I do not think that that would be a good approach. It uses a medical model of disability, under which we would say to people, “You have this disability, so you must have these symptoms, and this is the help that you need.” We prefer to take a social model approach to understanding disability. Rather than just looking at what is wrong with someone and what their illness is, we look at the barriers that they need help to overcome. That is what assessing people and finding out what benefits they need should be about—it should consider what obstacles they face, rather than what the doctor says is wrong with them.

Jamie Hepburn: I am sorry, but I cannot follow that logic. What do you mean by that? Just to back up Mr Stewart’s devil’s advocate approach, a medical assessment would not have to be involved—for example, social work could be involved. Kevin Stewart can correct me if I am wrong, but surely his point—which you and Mr Reid have already made—is that we are trying to disaggregate passported benefits from the formal benefits system. Surely an effective way in which to do that would be for the national health service and social work to have a greater role. Does that not make sense? I would have thought that it might.

10:45

The Convener: A lot of people want to come in on that, now that we are opening up the discussion.

Hanna McCulloch: I would not rule out assessment altogether, but I do not think that basing eligibility on a person having a particular medical condition is the way to go.

Carolyn Roberts: I support Hanna McCulloch’s point. I understand why the suggestion about medical assessment would be made. However,
basing entitlement to a passported benefit on a person being assessed by a doctor assumes that everyone with a disability will be in regular contact with the NHS and a doctor, when that is not necessarily the case. People can have many disabilities that do not involve having any diagnosis or regular medical contact.

I understand that the suggestion was made constructively to try to deal with the situation in which we find ourselves. However, to answer the question specifically, I do not know of any system in which a link has been made between a medical certificate and passported benefits. I wonder whether there is a way forward through the suggestion in Capability Scotland’s written evidence that people could make a written application for their passported benefits. Perhaps we could make that one of a menu of options. Not every disabled person will have regular contact with social care or the NHS, but many will, so that might be one of the options in relation to people’s entitlement to passported benefits. We may need a menu of options to ensure that people do not lose out on benefits that they would otherwise have received. Medical and social care evidence could be a part of that, but we would certainly be reluctant to say that the entire process should be based on that, because that approach does not recognise the social nature of disability.

Ken Reid: There is an area in which medical assessment is already in play in the way that has been suggested, in that the qualification for a blind person to get some benefits is registration as a blind person. I understand that it is the only disability that is still registered in that way. Registration is optional: those who choose to be registered as blind or partially sighted get qualification in that way. That process is under review, so we will have to wait and see what happens to it in the longer term. That is one aspect of my answer to the question about having a medical assessment.

The other aspect is that I would far rather have a medical assessment from an eye doctor who knew something about my condition—that is what the member was suggesting—than a midwife. I have heard of people with sight loss being assessed by midwives for work capability. However, there is one way in which the medical assessment process is valid and relevant.

David Griffiths: Off the top of my head, the only example of such medical assessment that I can think of is the taxi card, for which a person’s general practitioner can state they meet the required conditions. However, I am slightly concerned about going down that route in its entirety. I agree with Carolyn Roberts that we need a menu of options. I can think of a number of conditions whose severity is a bit variable—a person with a particular condition might need no support or a lot of support. For such assessments, we draw a line and ask the GP to decide which side of it the person with the condition is on.

A menu of options would not apply to everybody for the reasons that have been given—for example, not everybody is in touch with social work. However, a good approach would involve the drive towards personalisation and outcomes in the social care field, whereby we try to assess what people want to do and how they can best achieve that with state support. The people making an assessment would have to work out how, for example, a person who wanted to watch a football match would get there. The whole person is considered in that approach. Perhaps we could tap into that approach, which is moving ahead in local authority social care departments.

Jackie Baillie: I want to ask about mitigation and the various levels of entitlement. It seems to me that we are struggling to define what is actually quite a simple issue. With concessionary travel, for example, people who qualify for the new PIP will make up a particular category of entitlement that, one hopes, the Scottish Government will retain. A second category will be made up of people who currently qualify for concessionary travel but will not in future qualify for the PIP, and the question is how we capture that cohort. I suspect that there will be a third cohort of new claimants who will not qualify for the PIP but who, under the old system, would have qualified for community transport. Going back to David Griffiths’s analogy, I wonder where the witnesses will draw the line when they lobby the Scottish Government about what they expect it to do.

Mike Holmes: We know where we would draw the line, but we do not make the decision.

The question takes us to the nub of the matter. About 20 per cent of people—by case and by spending—will lose their DLA and might subsequently lose their passported benefits. The important point that we need to make is that this is not a plea for the Scottish Government to spend additional money on some of those people. That money is already in the system and being spent; given that those people currently benefit from concessionary travel, I assume that they have been taken account of in the budget. As a result, there is a consequential benefit to the Scottish budget from welfare reform. Do you see what I mean?

Annabelle Ewing: I understand where you are going with the point but, looking at the bigger picture, I think that there will almost certainly be a significant net loss to the Scottish budget.

Mike Holmes: I appreciate that £2 billion will come out of the Scottish economy but money is
currently being spent on providing concessionary travel to a group of people who will lose the benefit. As a result, that money will not be spent on them. We argue that those who currently benefit from concessionary travel should continue to do so. Notwithstanding the £2 billion that will come out of the Scottish economy, I do not think that such a move will have any consequences for the Scottish budget.

**Kevin Stewart:** But it will have consequences in following years—

**The Convener:** Everyone else is waiting to speak. Please do not jump in.

**Mike Holmes:** As for where we draw the line, the issue is about those who qualify for concessionary travel and other benefits if the welfare reforms were not being made.

**Carolyn Roberts:** Given that I am not aware of any stated Scottish Government policy to drive down the number of people who receive passported benefits—and given that I have seen no credible evidence to suggest that too many people receive them—we would draw the line to ensure that everyone who previously received such benefits continued to do so.

**Ken Reid:** One might make a credible argument for drawing the line after cohort 4, which, as we have already discussed, is the group of people who are disabled but do not qualify for anything at the moment and will not qualify for anything in future. I know of partially sighted people who do not—indeed, cannot—drive but who do not qualify for the national entitlement card, and I would not like to exclude them either.

**Hanna McCulloch:** I think that this gives the Scottish Government an opportunity to consult disabled people, take a social model approach and think about the benefits of giving certain benefits to a particular range of people. We have talked a lot about the preventative approach; local authorities could save themselves money if they can manage to target benefits at people who might otherwise be housebound or unable to heat their homes. As we have heard, this provides a good opportunity to reassess eligibility.

**The Convener:** I call Margaret Burgess, who waited patiently while other people jumped in front of her.

**Margaret Burgess (Cunninghame South) (SNP):** My point is not on the topic that has just been discussed. Given what has been said and given the written evidence about people giving up and not knowing the rules and about online applications, is the panel concerned that some people will drop out altogether for some time? I have seen that when people have been assessed as no longer qualifying for ESA but have not been told to claim JSA. When they are told to claim JSA, they go along and say that they are not fit for work, so they are batted from pillar to post and can be without money for several months. Is there a concern that that could increase? People could lose out not only on passported benefits but on other benefits which they might be entitled.

**Gordon Macrae:** We are already seeing an element of that in the housing and homelessness field. Welfare reform changes that have taken place—in relation to the shared room rate, for instance—have directly resulted in under-35-year-olds finding themselves unable to meet a shortfall in their rent.

On passported benefits, it is important to understand that the welfare system is used as a proxy to allow speedy access to the courts and to other systems of redress, in addition to access to a number of other key services. Unless we have a simple trigger point for eligibility for legal aid, help with court costs and benefits in kind, such as travel vouchers, people will be unable to represent themselves in court to keep a roof over their head.

An increasing number of people are falling out of the system entirely. We at Shelter Scotland are getting ready for an increase in street homelessness, which Scotland had got close to eradicating. That is not because a safety net is not there to help people but because the system is now making it incredibly difficult for people to access support.

**Tanith Muller:** What has been described is already happening. Our information and support workers report that the DWP and, in relation to ESA, Atos seem to be actively obstructing people from appealing and getting the benefits to which they are entitled, by not including information on what they should apply for instead and by using criteria for rejecting applications that are not in the legal criteria—by suggesting that people are ineligible for reasons that are not in the legislation. People who lack support are trying to navigate the system without any help from the agencies that are rejecting claims, and we expect that to get worse.

**Margaret Burgess:** That makes me think that, even when we make representations to the DWP, we should ask how it will explain to individuals who are not entitled to one benefit what they can do and where they can access help with online applications, for example. People are often turned away from the DWP and told to go to the CAB or somewhere else to get help to apply for a benefit. If applications are made online but people do not have access to a computer or are not able to use one, that will put many people off. I noticed that a number of people referred to that in their submissions. Do the witnesses have any way of dealing with that?
David Griffths: Having only online application will not work for my clients. If they had a computer, they could not use it, for numerous reasons. Despite advances in technology, a lot of people are still, unfortunately, unwilling or unable to tackle simple e-mails and logging on, let alone filling in a form online. I have concerns about that. I have heard too often the answer that people can go to their local library. That assumes that a person can get to the library, that it is accessible for them to get into and that, once they are plonked in front of a computer, they can use it. I am afraid that that is often not the case on all three of those points. There must be another system. We do not have connectivity at a decent speed throughout Scotland anyway.

Annabelle Ewing: I read the RNIB’s submission on that point and on online application, which raises particular issues. What is the DWP saying that people with visual impairments are to do? Is it just going to exclude a swathe of society from applying for universal credit?

11:00

Ken Reid: To be honest, I am not sure what the solution is, but there is legislation for accessible formats, and we will not be excluded by there being solely online application. That would simply be against our human rights. We will be included. You might see us in the streets in order to ensure that we are included, but we will be. That has to be the case for all the applications. For many of the reasons that David Griffths described, online is not the single solution. For me to be able to access that submission process, I have to spend £800 to make my computer work in that way. At the moment, that is paid for by the DLA—thereby hangs another tale. A range of alternative formats—online, Braille, face-to-face meetings—must be available.

Annabelle Ewing: Thank you for that explanation, and for the information about the personal cost to you and, I suspect, many people who are in a similar position.

I am sorry to be the one who suggests extra work for the clerk every week but, to pick up on Margaret Burgess’s point, I agree with her implicit suggestion that we should write to the DWP to present it with the helpful information that we have gathered from this evidence-taking session and ask it what it suggests that people do, as a matter of practice, in order to avoid having a mass demonstration in the streets, as enjoyable as that would be.

Jamie Hepburn: I have a specific question for Carolyn Roberts, which arises from SAMH’s written submission. I was interested to read that a Westminster parliamentary question identified that, although mental health champions should have been introduced in every Jobcentre Plus assessment centre, there are only two such posts across Scotland’s 20 centres. Clearly, SAMH has raised that issue because it believes that we should be concerned about that. Could you explain why we should be? Given that we are just past the first quarter of 2012, do we have a more up-to-date figure?

Carolyn Roberts: We have been pursuing that issue, but we do not have a more up-to-date figure. However, I do not expect that number to go up. We are hearing that there are no plans to increase the number of champions. We are being told that Atos believes that, for logistical reasons, it is not possible to have a champion in every centre. We can understand some of those reasons—for example, the champions are not used frequently enough and it would be impractical to have them in every centre. However, we continue to raise the issue because we are not sure that having only two across the 30 centres is quite enough.

We are making further inquiries to find out whether there is a difference—in terms of the number of people who go into work or are put into a particular group—between the experience that someone has in a centre that has a champion compared with one that does not. It is an on-going issue. We are still not happy with the situation, but I do not have a definitive answer on how the situation is progressing.

Jamie Hepburn: We would like to see any further information that you gather.

With respect, I did not really get out of your answer any information about what a mental champion is meant to be doing and why it is concerning that there are only two.

Carolyn Roberts: Sorry, I will explain that a bit more. The mental health champions were introduced as a result of Professor Harrington’s review, in direct recognition of the fact that the WCA and the process of assessment for ESA were not correctly serving people with mental health problems and were not identifying the issues that they face. The champions are people who have expertise in mental health and can give information and advice about particular mental health conditions to people who are doing the assessments.

Jamie Hepburn: Did I pick you up correctly as saying that Atos employs those people and that they are the same people who are undertaking the assessment? Is there any concern about that?

Carolyn Roberts: Well, that is the role of Atos and we think that it is a good thing if it employs people who have a better understanding and experience of mental health problems. That is something that we think should happen. We do not
perceive a conflict of interest; we want to see more of those people. We were told that they would be in every centre, but they are not, so we continue to pursue the issue.

Jamie Hepburn: Perhaps we will reflect on that later, convener.

Kevin Stewart: Before I ask my local authority questions, I declare an interest as a member of Aberdeen City Council for a very short while.

We have talked about the difficulties of dealing with the process. David Griffiths has said that, if we directly transfer folk over, the lists will not quite be null and void but will need to be refreshed on day 2. Ken Reid has mentioned that there are folk who probably should be entitled to passported benefits who are not, for various reasons. In a lot of cases, local authorities are in the front line of dealing with those passported benefits. Are there any areas where there is really good practice in making determinations about certain things, which may be different from practice in other places? Does anybody have any examples of that?

The Convener: I do not see anyone saying yes.

Kevin Stewart: As well as talking to lots of people, I wonder whether we could write to local authorities to ask where they would draw lines in terms of the passported benefits. I am sure that those in the front line who are dealing with them have some immensely good ideas about how to resolve the difficulties that exist. It might be wise for us to do that.

The Convener: We can talk about that after the evidence session.

Jackie Baillie: I turn to my favourite anorak subject of subordinate legislation. Most of you have acknowledged that most of the detail of the reform will come forward in regulations, and you have expressed a desire to be involved in that process. However, much of the bill relies on negative rather than affirmative instruments, and there has been a suggestion that the level of scrutiny that is required is beyond the negative procedure. Several people—me included—have mentioned the super-affirmative procedure. How do you hope to be involved in the regulations that flow from the bill?

Gordon Macrae: We would be sympathetic to the choice of the procedure for affirmative instruments. As I said in my opening remarks, it is clear that welfare reform is a process rather than an event, and a negative instrument might have unintended consequences that ministers would wish to revisit quite quickly. Enabling full scrutiny that captures the breadth of potential unintended consequences would be to the benefit of ministers and the local authorities, which will be required to deliver on the decisions.

Carolyn Roberts: We agree that we want there to be as much scrutiny as possible. If that means using the affirmative procedure or even the super-affirmative procedure, if time allows, we support that. We have just submitted further written evidence on the bill to the committee this week—I suspect that members will not have seen it yet. In that written evidence, we highlight the fact that the Westminster Joint Committee on Human Rights made the point that the approach to welfare reform at the UK level had been very much to have a skeleton bill and put lots of detail in the regulation. It expressed substantial concerns about that, as it had not allowed sufficient time for scrutiny. We hope not to see that repeated at this level, as we would like there to be as much opportunity as possible to engage and be involved in the debate.

David Griffiths: We were critical of the Welfare Reform Bill for exactly that reason—that it was a skeleton bill and that things could go through without scrutiny. I echo Gordon Macrae’s point that there is a lot of expertise out there. The affirmative procedure might allow better scrutiny by allowing us to talk to our clients and other people who would be affected and to spot any issues, which I am sure would be unintentional. It would be much easier to debate those issues in the Parliament at that stage rather than try to fight it out later. Therefore, using the affirmative procedure, if that is possible, would help us all.

The Convener: As well as having the honour of being on this committee, I have the delight of being a member of the Subordinate Legislation Committee, which has been considering that issue. The rule of thumb by which the Government operates is that instruments that amend primary legislation are dealt with under the affirmative procedure, while those that amend subordinate legislation are negative. Under that rule of thumb, much of the subordinate legislation for welfare reform would be negative and therefore not subject to the detailed scrutiny that all the witnesses would welcome. Is it your view that the rule of thumb should be set aside in this case and that as much as possible of the subordinate legislation should be considered under the affirmative procedure so that a more open approach can be taken?

David Griffiths: Yes. I suppose that I am biased, but we are talking about exceptional legislation. We have heard during this evidence session and in others about the hundreds of thousands of people out there who are very worried about their future. This is an exceptional circumstance, so there certainly is an argument for changing the rule of thumb.

Gordon Macrae: It is a rule of thumb rather than a rule that is set in stone. Ensuring that the broadest possible debate takes place is beneficial
to securing good policy. However, we should not overlook the responsibility that that places on organisations in the sector and on members of this committee to ensure that space is timetabled to allow the process to take place. I understand the anxiety of civil servants and ministers in the Scottish Government, who want to ensure that the legislation is put in place in a timely fashion. We should reflect that to ministers, but we should all accept our responsibility to play a part in smoothing the process.

Mike Holmes: I will give my personal view, because my organisation is more concerned about the impact on our members, so the details of process are left to the Parliament and the anoraks—forgive me for using that term—who deal with subordinate legislation and so on. To me, the preferred option is to provide greater transparency and openness on the issue and the maximum chance to participate for the agencies that deal day in, day out with people who are affected in what is an extremely complex area. The welfare benefits system is in effect a safety net. It is preferable to get the net as tight as possible and to prevent people from falling through it by the greatest use of experts. Therefore, to me, it makes sense to get affirmative procedures in place.

The Convener: That ends the public part of our discussion. I thank our witnesses for their evidence, which has been informative and helpful. Many concerns have been raised and anxieties expressed. We will take all of them on board. As things proceed, please keep us posted on your organisations’ position. If you want to submit anything to us at any time, please do so. We appreciate your giving us your time.
Welfare Reform (Further Provision) (Scotland) Bill: Stage 1

10:00

The Convener: Under agenda item 2, which is our substantive item of business, the committee will take evidence on the Welfare Reform (Further Provision) (Scotland) Bill. There will be two panels, the first of which comprises Dr Stephen Carty, who is a general practitioner representing the black triangle campaign; Dr David Bell of the British Medical Association Scotland; Owen Kelly, who is the chief executive of Scottish Financial Enterprise; Dermot O’Neil, who is the general manager of the Scottish League of Credit Unions; and Laurie Russell, who is the chief executive of the Wise Group. I thank you all for agreeing to come to the meeting. The panel is diverse.

Kevin Stewart (Aberdeen Central) (SNP): To be on the safe side, I had better declare an interest as a member of the St Machar Credit Union Ltd.

The Convener: Thank you. That is helpful.

We have received one written submission, but I would like to give each of the witnesses the opportunity briefly to say something about the bill from their own perspective, which might help members to understand exactly where you are all coming from. Does Dr Bell want to start?

Dr David Bell (British Medical Association Scotland): I am very happy to say a few words.

A lot of the committee’s work is to do with the mechanism for getting the Welfare Reform Bill enacted in Scotland, but the BMA is not so concerned about the mechanism; we are much more concerned about the provisions and the impact that they will have on people in Scotland.

The idea of saving £2 billion, say, from the group of people in question seems to be inhumane and unreasonable to us. We have no concern at all about the simplification of the benefits system—in fact, we welcome that—but that should not happen to the detriment of recipients.

The worries are numerous; I will give members about half a dozen of them, for a start. The work capability assessment that will use computer algorithms is inadequate, particularly in respect of mental health problems, for which it does not really cater. We are also concerned that the one year cap on benefits is too short for many physical and mental problems.

We know from experience that claimants, particularly those who have prolonged issues and comprehension difficulties, are often distressed...
when they are called in—I can return to that later—and we think that the system is insensitive to the feelings of individuals.

The frequency of successful appeals seems to us to demonstrate the mechanism’s shortcomings. There would not be a 60-plus per cent success rate with appeals if the system worked properly in the first place.

The effect on families of the removal of, or reduction in, benefits—even temporally—can be catastrophic, and the knock-on effects on passported benefits can exaggerate that effect.

It was intended that removal of certification from the general practice part of the medical profession would reduce the workload, but it has done exactly the opposite: it has brought in people who are suffering from anxiety who have concerns, and who request us to do something about the mess that they have found themselves in on the basis of assessments. The workload reduction has therefore been negative, and the knock-on effect is reduced availability of general practitioners to the wider range of patients.

Owen Kelly (Scottish Financial Enterprise): Good morning, and thank you very much for inviting us to the meeting.

Scottish Financial Enterprise is the representative body for the financial services industry in Scotland. We have members from all sectors, but I think that the sector that is of most interest to the committee is banking—especially personal banking.

Obviously, the introduction of the universal credit and, in particular, the proposition that payments will be made monthly in single payments, raise questions about what sort of banking products will be necessary to facilitate management of that income. The Department for Work and Pensions has been reasonably clear about the characteristics that are necessary for such a product.

For a start, the product must be portable so that people can take it with them when they move off universal credit, and it must allow people to build up a credit rating and offer them protection not only against misspending on their own part, but against the account provider seeking to recover from one pool of money against another. The product must also allow more than one individual to have access to the account, must manage a number of payment systems to allow people to budget and set up various payment arrangements, and it must be able to receive income from multiple income streams, including benefits and work.

However, although the characteristics are reasonably clear, the industry is still very much waiting for the DWP to be more specific about policy requirements. I am very happy to help the committee as much as I can. If we get into any questions of technical detail, I might have to take them away, pursue them elsewhere and respond to the committee in writing. Generally, all I can say is that we are still waiting for the DWP.

Dermot O’Neil (Scottish League of Credit Unions): Thank you for inviting us this morning, convener.

Many aspects of the legislation will affect many credit union members, but any comments that we make or questions that we raise this morning will pertain to the part relating to payments, which we feel will predominantly affect credit unions and their members. First of all, we believe that, with the adjustment to the monthly cycle of benefits payments, there will be a need for crisis support, so we must ask what plans are in place to provide such support.

Moreover, given that the changes that the legislation will make will potentially result in some of the biggest behavioural changes that have been seen in our communities in decades, some financial re-education will be required. The question is whether individuals and the organisations that support and work with them are ready for such change.

Ultimately, benefits changes that will reduce household incomes will have a direct negative impact on credit unions’ capacity to lend, and are likely to increase incidence of arrears and defaulting on loans. Furthermore, benefits recipients will require a bank account. Approximately 1.5 million such people in the UK are unbanked, which raises the question of how we bank the unbanked and whether that is for banks and/or credit unions to address.

More positively, we should consider whether opportunities exist to get the paying-out part right and to develop a credit-union facilitated budgeting service. How would such a service work? What benefits would it bring? What would be the practicalities of operating it and how would it help credit unions to recover, for example, rent payments from housing associations?

We are conscious of the resources that are currently available to credit unions: the fact is that if they are going to have more input, we will need to think about what additional resources will be required to support the sector and we need to ask from where they will come. Despite the expectation both within the sector and among external stakeholders that credit unions will be involved in the process, we need to realise that there are limitations on their resources.

Laurie Russell (Wise Group): The Wise Group is a social enterprise that supports people in
getting off benefits and going into work, so my experience is mainly to do with that transition. I am sure that members know that about a year ago, in parallel with the welfare reforms, the DWP introduced the mandatory work programme for all people who are unemployed for six months or more, with the timescale depending on which benefit they are on. That was a very significant change in the way people have been supported off benefits and into work. After a competitive tendering process, two private sector companies now run the programme. One of its biggest characteristics is that it is mandatory.

Alongside that, a much higher proportion of people are having their benefits sanctioned for relatively minor offences. As members know, the DWP believes that 16 hours a week constitutes a full-time job for getting off benefits, but I recently spoke to someone who had managed to get a 14-hour-a-week job and was sanctioned for not looking for another job to make up the two-hour shortfall. People in part-time jobs can get extra hours if they prove to be successful. However, instead of being supported and helped for getting a job, the individual in question was sanctioned.

Broadly, we think that we need to simplify the transition from benefits to work. It is an absolute myth that people do not want to work; they do, but the question is whether the jobs are out there and whether people can find one that fits their lifestyle and ability to work. That is a particular problem for people who have been on incapacity benefit or who have health issues. However, I think that if we can work with people and if the jobs exist, we will be able to find work to suit most people.

In certain parts of the benefits system, people rely on payments to others. For example, housing benefit is paid directly to landlords and is therefore not a concern to the people who are on benefits, but the situation changes when people move into work. The proposed housing benefit changes, with payments being made in arrears and monthly, will have a major impact on people who are already poor and who find it difficult to budget on a weekly basis—let alone monthly.

**The Convener:** Dr Carty has already made a written submission.

**Dr Stephen Carty (Black Triangle Campaign):** Yes, I have, but I would like to speak for a couple of minutes, if that is okay.

**The Convener:** That is fine.

**Dr Carty:** First, I thank the committee for the invitation to attend.

I am a general practitioner in Leith and a member of, and medical adviser to, the black triangle campaign, which is a grass-roots organisation that is run by and for disabled people. It was founded two years ago by John McArdle—who, I am sad to say, cannot make it today—following the suicide of Paul Reekie, an author and poet in Leith who took his own life after a work capability assessment. Mr Reekie did not leave a suicide note; instead, he left side by side on his desk two letters, one of which was from the DWP informing him that his incapacity benefit had been stopped and the other from the council informing him that his housing benefit had stopped.

As a GP, I echo many of the views and concerns that Dr Bell has expressed. I have been staggered by some of the DWP’s decisions in finding that patients who are clearly severely ill are fit for work. As I have found out more, I have become increasingly concerned at the extent of the problem and so I felt compelled to act.

The recent General Medical Council publication “Good Medical Practice” states clearly that a doctor must—and has an overriding duty or principle to—take prompt action if they “think that patient safety is or may be seriously compromised by inadequate ... policies or systems”.

In our view, work capability assessments are “inadequate”.

At the recent Scottish local medical committees conference in Clydebank, the Lothian branch proposed that this conference, in respect of Work Capability Assessments ... as performed by Atos Healthcare, believes that:

i. the inadequate computer-based assessments that are used have little regard to the nature or complexity of the needs of long term sick and disabled persons

ii. the WCA should end with immediate effect and be replaced with a rigorous and safe system that does not cause avoidable harm to some of the weakest and most vulnerable in society”.

Both motions were passed with an overwhelming majority.

10:15

We are calling on the Scottish Government to make a statement of support for Scotland’s general practitioners, who have called for the work capability assessment to end with immediate effect. We are also, in part, calling on the BMA and the GMC to make specific statements in response to the grave concerns that were expressed in the LMC motions.

I find the current situation to be intolerable. Now that claimants are to be assessed for the personal independence payment, Westminster has announced that preferred-bidder status has been granted to, among others, Atos Healthcare. No details have been made available about how those assessments are to be performed, but Linda
Burnip of the disabled people against cuts campaign has seen the pilot forms and they bear a striking resemblance to the work capability assessment.

As a GP, I am in a contractual arrangement with the DWP to provide information, so I feel as though I am complicit in a system that has been shown to be harmful. I am calling on the Scottish Government to join the medical profession and disabled persons’ organisations in fighting back against what appears to be an inhumane system. I believe that it is both possible and appropriate to withdraw co-operation unless there are clear changes. As a campaign, we insist on a fair and just Scotland. I feel that it is now time to stand up for Scotland’s sick and disabled people and to resist some of these sinister reforms.

The Convener: Thanks. I will kick off with a question for Mr O’Neil. You talked about a crisis point, and Mr Russell referred to the fact that the new benefits will be paid one month in arrears—I think that that is correct. Can you clarify for me that that is the problem you have identified?

Dermot O’Neil: Yes. The outset of the changes, will there be a period in which people will not be in receipt of benefits, although they will be entitled to them?

Dermot O’Neil: Yes. Our concern is that there will be a gap in the receipt of moneys, which will potentially create cash emergencies. Such scenarios would ultimately feed into the hands of pay day loan lenders or other providers of high-cost credit. Credit unions are not naturally positioned to service that short-term needs market, either operationally or legislatively. Crisis or top-up loans could be used as a short-term solution to assist with cash deficits, but that would create a longer-term problem of indebtedness not through choice, but through necessity. That would increase the crisis or, at the very least, would create a treading-water situation for those people. Therefore, crisis support would be required in the form of some sort of transitional protection for people moving from a different payment arrangement, or from a benefit to a work scenario in order to ensure that there are no cash losses to the recipients at the point of transition.

The Convener: From where would the funding for that transitional support come? Should a system be put in place by the DWP?

Dermot O’Neil: That would be one solution. We have to understand where the obligation lies for assisting in that transition. Credit unions will always attempt to support their members, but there must be capacity to repay. At that point, our members would be borrowing for survival or out of everyday necessity, which is different from a conscious decision to borrow from a credit union for a provident and productive purpose, which would normally be the reason for borrowing.

The Convener: Where would credit unions get the finance to support people in such situations? If public funds were available, what proportion of them would come from Westminster departments and what proportion would come from Scottish Government departments?

Dermot O’Neil: Ultimately, that would be determined by the respective Governments according to their inclination to support the people who need support at that point. The DWP recently concluded a growth-fund type initiative whereby it allocated moneys that credit unions could lend typically to members who would not otherwise be served by banks or by credit unions. A similar loan guarantee fund may be required, so that credit unions could be the vehicle for delivering that emergency credit without jeopardising their own funds.

The Convener: That is helpful.

Before I pass over to the deputy convener, I have a question for Mr Russell. Have you noticed training providers or companies deliberately restricting the number of hours that are available to people? If that is the case, what impact is that having?

Laurie Russell: I am not sure that hours are deliberately being restricted, but there is a trend for companies to employ people on zero-hour contracts so that they maximise flexibility for themselves. That presents a difficulty for people on benefits, because they might be invited to work a certain number of shifts one week, only for that to change the following week, so it is difficult for them to manage their benefits and their income over that period.

The 16-hour rule has been around for a long time. Anyone who is involved in training and employability would see it as an inflexibility in the system, partly because many jobs are not full time. People are offered part-time jobs or a certain number of hours, especially in retail, hospitality and the care world. The nature of that employment is that people do not work a traditional 35 or 40-hour week.

I have something to add to what Dermot O’Neil said. It is not just payments’ being made in arrears that is the problem; the DWP will also pay all benefits to one individual in a household, which could cause difficulties in households in which individuals have received their own benefits. In addition, housing benefit will be paid to the household rather than to the landlord, so it will be difficult for people to manage rent and expenditure on every other household item over a month rather than over a shorter period. As Dermot O’Neil quite
rightly said, that will lead to people taking out more high-cost loans and taking out types of loans that we would prefer them not to take out. Unfortunately, not everyone is a member of a credit union, so not everyone has access to low-cost and more established community-based funds. I think that that could lead to more people losing their housing and their tenancies, to more family breakdowns and to other social problems that everyone here would want to avoid.

A further factor is that it is now mandatory for short-term prisoners, who get no statutory support, to go on the work programme from the moment they are released if they are eligible for benefits. A significant number of such prisoners are homeless or have health issues and require to be supported into services in the community before they can look for work. If they do not attend the work programme, they will lose their benefits. I think that a knock-on effect of that will be increased reoffending. The Scottish Government is strongly supportive of efforts to reduce reoffending, as we would expect. I give that example, because I think that the DWP’s decision and the way in which it is administering the process will have secondary and tertiary knock-on effects.

The Convener: Some decisions by the DWP will change the ability of certain people to access training programmes that the Scottish Government provides. What changes in criteria might be required in order to allow those people to continue to access training? Has any analysis been done of that? What is the perception in your sector?

Laurie Russell: That is a complex issue, because the benefits system is mixed up with the work programme. Some public authorities take the view that they will not train a person only for a private sector company to make a profit out of getting that person into work. That has caused some difficulty.

The work programme was introduced without sufficient consultation of and collaboration with the Scottish Government and the other devolved Governments in the UK. In my view, the different system in Scotland was not taken into account when the work programme was introduced UK-wide. We are working through some of the difficulties that inevitably result from that.

I do not think that it is in anybody in Scotland’s interest to prevent any person, of whatever age, from having access to training that could lead to work. I do not sense that there is a failure to understand that in Scottish organisations, either at Government level or at local level. It is about ensuring that we give the right people access to training without impacting on their benefits. The 16-hour rule is the main thing that has, in the past, impacted on access to training.

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): I will pick up on the convener’s first question and address a point that a number of witnesses have made, and which Mr Russell has reiterated, about the major impact that changes to the system of paying benefits will have on individuals and their families. I was struck by a comment that Mr O’Neil made in his opening remarks. He posed the question, “Are individuals and organisations ready for the changes?” I pose that question back to you.

Dermot O’Neil: Do you mean from a credit union’s perspective?

Jamie Hepburn: Yes. I mean from your perspective and that of other witnesses. I am particularly interested in Mr Kelly’s perspective.

Dermot O’Neil: Uncertainty around what will actually happen is preventing organisations from fully readying themselves. We are still not sure how the programme will be delivered and what the actual changes will be. Only when we have definite clarity about the final outcome can we fully ready ourselves.

From a credit union perspective, we will continue to do the best that we can to service our members’ needs, but the challenge for our sector is that their needs are likely to change. There is currently a general requirement for access to affordable credit, but in the future we envisage a landscape emerging that is more about reacting to cash crises. That will require our sector—the credit union sector—to change how we deliver our services. Historically, credit union services are delivered on a “save first, borrow later” basis. If credit unions are to be expected, minded or required to service intervention in cash crises, that will require us to change quite dramatically how we operate.

Jamie Hepburn: What about the other side of the equation? You asked whether individuals are ready for the changes. Do you have a perspective on that? Mr Russell is indicating that he does not think that they are.

Dermot O’Neil: It is difficult to quantify, but we suggest that people are less ready than they should be for the significant changes that are being made, in particular the reduction of benefits, which will result in lower household incomes. What steps have been taken to address how that will change the realities of people’s lives? If budgets are already stretched and managed the best that they can be, what will be the consequence for budget management among lower-income households? We suggest that that will not be a good place to be.

Jamie Hepburn: I am interested to hear Mr Kelly’s perspective.
**The Convener:** Mr Kelly and Dr Bell want to comment.

**Owen Kelly:** I will not comment on how individuals might approach the changes, except to note that the DWP’s own figures indicate that approximately 3 million claimants will need some support to move to a monthly budgeting system, and that approximately 1.5 million claimants do not have transactional bank accounts, but have Post Office type savings accounts, so they cannot manage transactions. That suggests that the transition for individuals, in terms both of how individuals are affected and the scale of the issue, is pretty significant.

I come back to Mr Hepburn’s question on readiness. It is fair to say that the banking industry stands ready to discuss and be helpful, but the DWP still needs to clarify some very significant policy issues—I echo what Mr O’Neill said—before banks can respond by considering specific products, changes to products or, indeed, how some of the costs of such products would be met. The UK has been very unusual in European terms in being used to having free personal banking, but there are cost issues.

10:30

**Dr Bell:** The University of Glasgow is currently preparing a series of reports, as part of its deep end project, on 100 GP practices in the most deprived areas in Scotland. I have seen a draft of some of that work.

In a significant number of families, money management towards the end of the week leads to a choice between heating or eating for perhaps two days. If a family has a monthly income, they will not manage it so that they starve for two days in a week, but rather they will starve for eight days at the end of the month, and we are greatly concerned about that. No family in the land will spread out a month’s money to allow for gap days during each week, so I have major concerns about people’s physical welfare if they are surviving on that money.

**Jamie Hepburn:** Mr Kelly reiterated the stark fact—which I think Mr O’Neil also mentioned—that 1.5 million people across the UK do not have access to a bank account. This might be an unfair question, and I understand why you might not have an answer, but the committee must reflect on the issue. Do we have any idea what proportion of those people are in the welfare system?

**Dermot O’Neil:** Absolutely.

**Jamie Hepburn:** Okay. You have spoken about the readiness of credit unions and banks for the change, notwithstanding the fact that some of the detail is not clear. How are the banks and credit unions seeking to deal with the specific issue of people who do not have a bank account?

**Owen Kelly:** I will go first. I do not want to be unhelpful to the committee, but, while there is no doubt that the banks are willing to engage in discussions and consider how to deal with that issue, we are waiting for the DWP to be clearer so that those discussions can move forward.

The question of how people who do not have a bank account might be encouraged to have one—assuming that they want one—is not a new one. However, you have put your finger on an important point. In a way, there is a double task that involves the issue of people using a bank account when they have not done so in the past and the need to mesh that with the benefits and payments system.

As Laurie Russell and others have said, people have very limited discretion in budgetary terms. The DWP’s figures from its own survey showed that 81 per cent of those asked were worried about running out of money before the end of the month under the new system.

The task is sizeable. We must not only bring people who have never been there into the world of banking as customers, but do so when they are in receipt of benefits and face those budgetary challenges. It is a double challenge, rather than simply the challenge of bringing people into the banking system in the first place.

**Dermot O’Neil:** There is some commonality there. It is important to look at the reasons why people remain unbanked. The issue is not just access to bank accounts, but people’s inclination to have a bank account.

To be realistic, it is also about profitability for organisations that provide basic bank accounts, and the lack of inclination among those organisations to provide such accounts. In recent years, more questions have been asked of the credit union sector with regard to whether it can serve that gap and provide access to credit union current accounts. A number of credit unions in Scotland and across the UK now provide full current account-type transactional accounts.

We must ask, however, whether there is an obligation or responsibility on credit unions to create new products in the absence of organisations that would be better placed to provide bank accounts but are not inclined to do so. A number of credit unions have aspirations to
expand the range of products and services that they offer and provide, for example, bank accounts, but such expansion requires a level of capital investment that is beyond their current stage of development. If the Scottish Government and similar stakeholders are looking to the credit union sector to step up and deliver, they must be partners in that approach and they must be prepared to invest the capital that is required to upskill and upscale credit unions to become full providers of financial services.

Jamie Hepburn: I suppose that it is not so much that the Scottish Government is looking to credit unions to step up in that way, as it is the DWP that is forcing through the changes. It is clear from what Mr Kelly said, which reflects what almost every other witness has told us, and indeed our own experience, that details are somewhat scant. We await more information with more than a little interest.

In that vein, it is clear that you have had some dialogue, but will you tell us what kind of dialogue you have had, what information you require that has not yet been forthcoming, and whether you feel that you were consulted on the principle of direct payments? Given that it is pretty clear that the UK Government is determined to go down that line, were you consulted on the matter before it came to that position?

My question is especially for Mr O’Neil and Mr Kelly, but I would be interested to hear the other witnesses’ perspectives as well.

Owen Kelly: We as an organisation were not consulted, but that is not a problem, because our UK big brother organisations were involved in discussions, although I do not think that they preceded the policy decisions.

I will add a little to what Dermot O’Neil said about bank accounts, costs and so on. Only a year or so ago, Vince Cable proposed a Post Office bank, which would have been partly aimed at bringing banking to people who are unbanked, but the proposal did not go anywhere. Many of the big questions that we are facing have been aired already, including how we manage the month-in-arrears problem.

From our point of view, the overall issues are what expectations the Government has of the commercial businesses that are in the business of banking and the balance between the Government’s responsibility, the benefits system’s responsibility and the responsibilities that the Government is perhaps looking to private companies to accept. My organisation is different from Dermot O’Neil’s, but I think that those points are similar to the ones that he made.

Dermot O’Neil: Owen Kelly mentioned the proposal for a Post Office bank. The credit union sector awaits the findings of the feasibility study that the DWP has undertaken on a potential credit union modernisation project, which are due at the end of May. I suggest that the outcome of that study will determine what role the UK Government sees credit unions playing in the delivery of a Post Office bank type service. That label is perhaps a wee bit unfortunate, as the idea is more about using the nationwide Post Office network and allowing credit unions to plug into it, thus increasing access to credit union services.

Alex Johnstone (North East Scotland) (Con): My experience of the retail banking industry in the past four years is that it has become significantly more risk averse and has been less willing to tolerate those who occasionally slip into overdraft, but we are talking about a group of people coming into the banking sector who are likely to be higher-risk clients. In his initial remarks, Owen Kelly spoke about the development of banking products, and I understand what he means by that, but in the context of the past four years, is the banking industry ready to step into a new, higher-risk marketplace? Is it prepared to take on the difficulties that will be associated with that?

Owen Kelly: On its own terms, no. That is why it is very important, as I said, to understand the precise nature of the relationship with the benefits system and with the Government. The models that have been touched on could involve some kind of a loan guarantee fund—I am just making that up, but we can imagine such arrangements. You are right to highlight risks. You are also right that the banking industry has completely rethought its approach to risk, as it should have done.

The honest answer to your question is that it is not ready to do so right now, but let us hear from the DWP on how such a transition could be managed and how such products could be prepared. If one looks at the issue in straight commercial terms, the points that you make are absolutely right.

Alex Johnstone: That more or less answers my next question. You said that you still do not understand what is required of you. Is what you are looking for from Government some kind of assurance on how any deficit will be financed under such an arrangement?

Owen Kelly: That is certainly a large part of it.

Kevin Stewart: I will follow up on that. Although there have been discussions with the DWP, it seems that there is no clarity at all.

I have not been overdrawn for a wee while, thank God, but when that occurred in days gone by, the charges used to be excessive. If, for example, someone’s housing benefit was paid into their bank account and they took it out and spent it before the landlord took their cash by direct debit,
standing order or whatever, what charges would that customer be likely to face? Is it likely that they would face lower charges than a normal customer? Have such discussions been had with the DWP?

**Owen Kelly:** My honest answer is that I do not know, but I would be happy to go and find out whether that level of detail has been discussed. My understanding is that that level of detail has not been reached. That may be because all banks are different—they are in competition with each other and bank charges vary from one bank to another. I would have to take that question away and write to the committee, because I am afraid that I do not know the answer. My suspicion is that the discussions have not reached that level of detail.

**Kevin Stewart:** Do you agree that if one such charge were imposed on a customer, it might well lead to more charges being imposed, with the result that the customer could spiral into debt?

**Owen Kelly:** It is difficult to imagine how the accumulation of bank charges would help the sort of people who are in receipt of benefits, so that issue should form a significant part of the discussions with the DWP about how the system could work.

**Kevin Stewart:** Earlier, you spoke about the tailoring of specific products. Has there been any discussion with the DWP about the possibility of setting up different accounts for different benefits, whereby housing benefit would go into an account that would remain largely untouched? There could be other accounts to deal with pay-outs to other family members. Have there been any such discussions?

**Owen Kelly:** My understanding is that the policy is very much geared towards a single monthly payment. I am not speaking for the DWP, of course, but as I understand the matter, it sees a single monthly payment of the sort that people who are in work receive as an important part of the overall policy. I do not think that there has been a debate about fragmenting that into hypothecated payments for particular areas of expenditure. That is possible, but it might conflict with the DWP’s basic policy approach, as far as I understand it.

**Kevin Stewart:** A single monthly payment will be made into a single account. If transactions took place that led to the banking sector imposing charges, that could lead to a continuing debt spiral. In the situation that Dr Bell referred to, it might well be the case that, at the very start of the month, there will be no money in the account because it will all have been cleared out because of the possibility of charges.

10:45

**Owen Kelly:** As I said, I do not think that bank charges have yet been the subject of detailed discussion, but I will confirm that and come back to the committee.

In theory, you must be right, but I suspect that at present that situation is more of a theoretical possibility. It would so obviously be unhelpful that I would hope that the DWP would look at ways to avoid it.

**Kevin Stewart:** It bothers me that discussions on bank charges with the DWP have not taken place. I imagine that your industry will want to clarify those issues, because otherwise you—rather than the Government that is contracting the entire benefits system—may become the bad guys. I am sure that you will have those discussions.

I will move on to Mr O’Neil, who described the short-term market needs and the cash crisis situation that may well occur. Let us be honest: no one around the table would want to see some of the dodgy folk in the market benefit from the situation any more than needs be. There is obviously a risk to credit unions in entering that market as some of those loans will not be paid back. Has there been any discussion with members of credit unions throughout the country to find out how they feel about credit unions entering that area?

**Dermot O’Neil:** The important thing is to start that conversation now with those people who are likely to be affected by future changes. We would encourage the habit of saving as early as possible, however small the amount. The lead-in time of a year and a half before the programme is due to be deployed offers a period in which savings—albeit modest ones—can be accumulated to provide a buffer at the initial point of transition. The habit of saving also has wider benefits beyond simply providing a buffer for cash crisis, as it enables the member to borrow on a basis that suits them.

The single payment, which Kevin Stewart mentioned in his question to Owen Kelly, is essentially how the universal credit is likely to be delivered. A single payment is made to the recipient, and they must manage it and use it to pay their various creditors.

One solution—or an aid to that process—could involve the creation of a budgeting service that is facilitated by credit unions on behalf of the member. The credit union could receive the universal credit as a single payment and disburse the moneys to the relevant creditors—for example, loan repayments to credit unions, or moneys paid to housing associations or utility companies. The remaining free moneys could be loaded on to a relatively cheap pre-paid debit card that would
make them available to the member in the form of credit.

Such a new service would, like anything, require to be costed and funded. One solution to that dilemma could involve the creditors who are most interested in continuing to receive the payments that are due to them—housing associations, for example—working in partnership with credit unions on some type of transactional cost basis. The housing association could pay a transactional cost to receive those funds, and that cost could in turn pay for—or help the credit union to pay for—the delivery of that service.

We must be clear that the only income stream that credit unions have comes not from the receipt of moneys, in a climate of zero interest rates on deposits, but from the lending of moneys at 1 per cent—or up to the legal maximum of 2 per cent—per month. Any new initiative that we are asked to deliver would need to be funded in some way.

**Kevin Stewart:** Mr O’Neil suggests that the moneys are paid direct to the credit unions to help individuals and families to budget. Has the DWP given any indication that it would be willing to pay moneys directly to credit unions rather than to banks?

**Dermot O’Neil:** The DWP has intimated that it would like a jamjar product—which, under its definition, would mean that the moneys received would be split into various component parts for, say, council tax, housing benefit or utility payments.

**Kevin Stewart:** That is fair play, but has it said that it is willing to pay the money directly to credit unions rather than just to banks? To me, the key point, particularly for those who are on their uppers, is that those who have a number of accounts tend to juggle money between them to keep the debt collector, whoever that might be, away. However, that can lead people into even worse debt. I suggest that if money paid into a bank is expected to go directly to a credit union some payments will come off before that happens.

**Dermot O’Neil:** The outcome of the feasibility study, which the DWP expects to receive at the end of this month, will give our sector more clarity on what the department expects from credit unions. However, the jamjar accounts deal with the kind of juggling that you referred to, as they allow credit unions to take from individual members the burden of juggling money and to make disbursements on their behalf.

**Kevin Stewart:** I can see exactly how that would work, but surely that money would need to go directly to credit unions without first going into a bank account. While the money sits in that account, people will always be tempted to use some of it for some other purpose—to feed their kids or whatever—before you can use it to help them through your jamjar account. For you to do as you have described, the single payment would have to be made directly to you in the first place. I will be interested in the findings of the report on the credit union modernisation project when it is released at the end of the month.

I come back to my point that credit union members have a say in how each credit union operates. Some of those folks, who might well be some of the poorest in society, might be a bit risk-averse with regard to, say, the crisis loans that you have proposed because that money might be very difficult to recover. Are you aware of any discussions with members in individual credit unions about the tailoring of such products?

**Dermot O’Neil:** That is a really pertinent point, because it comes down to the question of what a credit union is—or, to be more relevant, what a credit union can be. Ultimately, given that every credit union is an independent, autonomous organisation that is owned and controlled by members, members themselves will determine the types of services that they want or need to deliver to their communities.

**Jackie Baillie (Dumbarton) (Lab):** I want to ask the GPs on the panel a brief question about health. [Interuption.]

**The Convener:** Annabelle Ewing has indicated that she would like to ask a supplementary on the credit union issue.

**Annabelle Ewing (Mid Scotland and Fife) (SNP):** I think that Margaret Burgess, too, has a question. I will be very brief, because many of the points that I want to make have already been made and I do not want to reinvent the wheel.

I wonder whether Mr Kelly and Mr O’Neil can tell us what detailed discussions they have had with housing associations and other social landlords on the practical implementation of the payment of housing benefit and the like. Mr O’Neil suggested, for example, that housing associations could pay a transactional cost. One of the key concerns in the debate is the possible impact on homelessness in Scotland if, at the instigation of the UK Government—which, regrettably, still retains control of benefits—money is not paid directly to landlords.

**Dermot O’Neil:** There are already partnerships between credit unions and housing associations and our sector expects that number to increase, particularly as housing associations become aware of the potential risk to their revenue streams with regard to rent payments. They see credit unions as potential vehicles for facilitating the recovery of rent moneys. If it comes down to housing associations having to choose between being prepared to pay transactional charges or not
receiving rent, I think that they will see that there is a natural fit with credit unions. Credit unions can provide such services but, in isolation, they create no income or revenue; however, partnering with housing associations will have a mutual benefit in that respect. The credit union member and the housing association continue to be served, in that they both continue to receive rent payments.

**Annabelle Ewing:** Mr Kelly, can you explain the situation regarding the banks?

**Owen Kelly:** Although we have not had discussions with housing associations, that does not mean that they have not happened at a UK level. I am very happy to find out and respond to the committee in writing.

**The Convener:** Margaret, is your question on the finance aspects?

**Margaret Burgess (Cunninghame South) (SNP):** A lot of what I wanted to ask about has been answered, but I would like to pursue the issue of people's difficulties in accessing bank accounts. Many of those who have a post office account do so either because they cannot get a basic bank account or because, when they had one, they incurred charges or other bills and other creditors took their money. The UK Government has said that it wants everyone to be banked and, as Mr Kelly indicated, the banks are involved in that move. However, it has also said that it wants direct debits to be used in order to protect housing associations and social landlords. According to Mr Kelly, that is not something that the banks do; indeed, it is almost like the bill-paying account that Mr O'Neil suggested. Will the banks be able offer everyone a bank account in the way that the DWP has suggested?

**Owen Kelly:** I think that the policy objective is achievable, but it will have to be subject to quite a lot of detailed discussion, not least with regard to the impacts on the banks' other customers. As I said, we are used to having free bank accounts, but there are costs involved in serving customers of all kinds and, if all this becomes more complicated and expensive for the banks, the costs will have to be covered somehow.

I suppose that it comes back to the question of where we want responsibility to sit and how much of this is just something that we expect the banks to do. It is theoretically possible, but I would need to understand just how far the DWP was willing to depart from the policy position behind the universal credit, which, as I understand it, is the provision of a single unhypothecated payment. Dermot O'Neil is quite right to refer to the jamjar model, which I, too, have heard the DWP refer to. However, as I understand it, even in that model the individual has discretion as to where the money is put. It seems to me that moving to the sort of system that has been suggested might conflict with the essential policy objective of making an individual responsible for their money on a monthly basis. Whether or not that is realistic is really a policy question for the DWP and others. As I said, it is theoretically possible, but I am not sure whether it fits with the policy.

**The Convener:** Jackie Baillie will now ask some questions about health.

**Jackie Baillie:** In your opening remarks, Dr Bell, you said that GPs were already seeing increased numbers of patients about work capability assessments, never mind the further welfare reforms that are coming down the line. Has the BMA or indeed anyone you are aware of done any scoping work on the likely increase in demand for individual GPs and health services in general? If so, have they even begun to guess at the costs for those GPs and services?

**Dr Bell:** I am not aware that scoping has been done but, at this stage, I would not even understand what question to ask. For example, it is extremely difficult to scope changes in activity in general practice because of the way that the system is set up. Anecdotally, there has already been a lot of increase. However, that is anecdotal evidence and no one has actually measured the increase in a way that we could put sums or timings to.

**Jackie Baillie:** It would be useful if that anecdotal evidence could be turned into something a bit more concrete. If there is already an impact, there is likely to be a future impact. I am not sure whether GPs, as independent contractors, would absorb all the cost.

**Dr Bell:** I think that they would. I could take the issue to Graham Watt and his colleagues at the University of Glasgow, who are doing a lot of work on the issue in relation to deprived populations and who have the best handle on it at present.

**Jackie Baillie:** That would be helpful.

**Dr Carty:** Disability Rights UK has produced an assessment of the impact on healthcare of the proposed PIP reforms. That is another report that might inform the issue, but it has not been submitted to the committee. If I understand the figures from the DWP correctly, it is estimated that 0.5 million people who claim disability living allowance will not be eligible for the PIP. The report contains figures that suggest that there will be an increased reliance on the health service. I fail to see how withdrawing funding for the support of some of the most needy in society will not result in increased hospital admissions as a result of a collapse in social support, at a time when the
Scottish Government is working hard to focus on prevention of hospital admission and readmission.

In relation to the financial sector, which I know nothing about, I have concerns about how some of the patients that I see will negotiate the complexity of holding a bank account. They are people with low educational attainment, low IQ, poor coping skills, emotionally and intellectually, and poor levels of literacy. Where is the safety net?

To return to the impact on hospitals, over generations, we have moved from institutional care for those with high-level disability to a situation in which care is provided in the community. It took decades to correct the problems that existed when places such as Gogarburn hospital closed. I have patients who lived in Gogarburn and who now live in the community. They include people whose IQ is considerably below 70, who cannot read or write and who have other complex health problems. Some of them have been through a work capability assessment, as a result of which, on the basis of information that they provided—bearing in mind that they cannot read or write—they were found fit for work. Those individuals have found themselves without benefits for upwards of nine months because the tribunal appeal system is absolutely logjammed, with 330,000 people awaiting appeal.

There will be a massive increase in preventable hospital admission. Social workers who work in hospitals will find it difficult to discharge some people with complex needs into the community, because the same level of social support will perhaps not exist. I work as a hospital practitioner in rehabilitation, which involves discharging people with complex needs. To do that successfully and avoid hospital readmission requires a lot of co-ordinated and joined-up thinking.

If the 20 per cent cut happens, that will have a real impact on our patients and on the provision of elective hospital work. After all, if hospital wards are full of bed-blocking patients who cannot be discharged because of a lack of social support, elective procedures will end and waiting lists will rise.

Jackie Baillie: To take that a step further, is it not the case that we perhaps face a perfect storm in relation to that 20 per cent, because part of the social care package that such people would expect on discharge relies on their being in receipt of the benefit, so they will be charged for that package?

Dr Carty: Undoubtedly.

Jackie Baillie: You mentioned a figure of 0.5 million people. Is that across the UK or just in Scotland?

Dr Carty: It is for the UK.

Jackie Baillie: So there is not a figure for Scotland.

Dr Carty: I can get back to the committee with the breakdown. Some of the report by Disability Rights UK was speculative, but some was highly detailed and would be informative.

Jackie Baillie: Okay—we will have a look at that.

NHS Lanarkshire suggested in its submission to the committee that it anticipates significant increases in demand for mental health services and for aids and adaptations, and it expressed concerns about the lack of budget for those purposes. Do you agree with that?

Dr Carty: I certainly support that view; I do not know whether Dr Bell would like to add anything.

Dr Bell: It is hard to quantify what the impact will be, and to know what the baseline is and whether we are assessing the right people at present. We are certainly aware that problems will arise that will hit health, social and organisational factors very hard, but the main impact will be on vulnerable people themselves, who will lose out. As our colleagues have said, those people do not easily find their way around a system, and many of them need help with that.

Jackie Baillie: I have a specific question for Dr Carty. You invited us to consider whether the time is now right to withdraw co-operation. In what way? To nail that down, are there specific things that you want the Scottish Government to do?

Dr Carty: The LMC conference is the political representative wing of general practice, and it made an unequivocal statement calling for the assessment process to end because it perceived that process to be harmful. That same motion will go to the UK conference in Liverpool in May, and I certainly hope that it will be supported there.

The contractual arrangement between general practice and the Department for Work and Pensions existed when there used to be a safe system. If a patient required an independent medical assessment, they saw a consultant or a senior occupational health physician who made balanced decisions and would often inform the GP of concerns that they had picked up during the assessment.

I know of examples of patients who went for what was formerly an incapacity benefit medical, with the doctor who carried out the medical writing to the patient’s GP and saying, “I am very concerned about your patient’s mental welfare and I recommend that you arrange a psychiatric assessment”.

Jackie Baillie: Absolutely.
The people who are currently carrying out the work capability assessments have no system by which to inform GPs of concerns. Indeed, I am led to believe that they are trained to ignore extraneous information, and to focus simply on a tick-box exercise.

Jackie Baillie: So the statement was a call to general practice rather than the Scottish Government. I just want to be clear about that; I am sure that the BMA will answer in due course.

Dr Carty: I feel as if I am complicit in a system that is harmful by continuing to provide information. The information is sought using inadequate paperwork: the employment support allowance form covers only two sides of A4, and there is only half of one side in which to summarise the person’s entire health history. We know all that.

The information is provided free of charge, which is hardly an incentive for the form to be completed comprehensively. Most GPs feel that where information is provided either it is not understood or it is ignored. Frequently, the decision maker does not understand the medical terms that are included.

The assessment system is not fit for purpose. I am seeking some direction from the senior political figures in medicine, who must make a statement. As health is a devolved matter, the system should be renegotiated as part of the Scottish GP contract.

Kevin Stewart: Convener, in terms of—

The Convener: The member should not jump in. Dr Bell, do you want to comment?

Dr Bell: Yes, if I may.

I take issue with a few things that my colleague said. Our contractual arrangement is to provide reports without charge when they are requested from certain bodies, including the DWP. We do not have a contractual relationship with those bodies to make decisions—we have to give reports, which is different.

I absolutely agree that we are concerned about assessments of people’s capability being carried out by people without the training to be able to make those decisions, particularly around complex physical needs, chronic illness and—exceptionally importantly—mental health. The assessments are done in a very poor way—that was the crux of the debate that took place in Clydebank.

As our statement said, we reject a system that allows a computer-based decision-making protocol, with someone who may have no medical training making decisions about people’s lives, which leads to a tribunal and delays in receiving benefits. That snowballing effect leads to people becoming more and more disadvantaged by the system. We want to obviate that.

Annabelle Ewing: The submission from the black triangle campaign says:

“We implore the Scottish Government to halt the implementation of the Welfare Reform Bill”.

I am confused, because your answer to Jackie Baillie suggested that you are not saying that. I put it to you that the voluntary organisations from which we have taken evidence are anxious that the enabling legislation that we are talking about today be enacted as soon as possible so that there is no negative impact on passported benefits. That was a clear message from all the voluntary and third sector organisations to which we have spoken. I am not quite sure how those views sit with what you state in your written submission.

Dr Carty: I took particular interest in the submission from disability history Scotland, many of whose views are shared by the black triangle campaign. Like Dr Bell, my view on welfare reform is to do with the assessment end of things and whether general practice can take a stand to prevent harm.

Annabelle Ewing: I thank you for that, but just to clarify, am I right in thinking that you are not actually calling on the Scottish Government to halt the bill? If the bill is halted, that will impact on people getting passported benefits next spring. I assume that nobody wants that outcome.

Dr Carty: I understand the nature of your question. Clearly, there is no straightforward answer. I am not a constitutional lawyer, so I do not know what situation the Parliament would be put in if you were to withhold your assent to the bill. However, there is a lack of detail—to my mind, speaking as a general practitioner—about how the reforms will impact on patients and on the health service in general. The legislation appears to have been put through at a time when distraction was caused by a lot of other political issues that were affecting the health service. I do not think that general practice has been allowed to contribute in detail, other than, perhaps, in this forum.

Annabelle Ewing: We can agree that there has been a disgraceful lack of detail from the DWP during and after the passage of the legislation at Westminster, which still, sadly, retains jurisdiction. That point has been fairly made by everyone this morning.

With regard to the motion that was passed at the recent GP conference, to which Dr Carty referred, I ask Dr Carty and Dr Bell to assure the committee that, as far as appeals are concerned, the very useful information from GPs and consultants will still be available. My
understanding is that that information can make the key difference to the success of an appeal.

Dr Carty: I estimate that, in my practice, I spend around two and a half hours a week providing information and reports related to appeals. The workload implications across general practice are enormous. All that time is given because it is the right thing to do, and that will continue, but we are looking for some direction and guidance about how to address what appears to be an escalating problem.

The Convener: We are really up against the time, as the cabinet secretary is sitting outside waiting to come in. Does Dr Bell want to make a final brief comment?

11:15

Dr Bell: I just wanted to say that this is priority work for general practice—and indeed for secondary care, I hope, although I cannot speak for all my consultant colleagues. It has to be done, and quickly. There is an opportunity cost for everyone else. I think that that is what Ms Baillie was asking me to quantify, and I will attempt to do so.

The Convener: I will take one final contribution, from Alex Johnstone.

Alex Johnstone: I will make this extremely brief. I have questions on a couple of issues that follow from the financial discussion that we had earlier.

First, I would like the necessary assistance in relation to financial matters to be achieved as efficiently as possible. Do the retail banks have any plans to make staff available on a voluntary basis to work with citizens advice bureaux or credit unions in order to ensure that there is a mutual understanding of the position that people are likely to be in? The line that I have used in the past, half tongue-in-cheek, is that future banking executives would perhaps benefit from spending six months or a year working in a citizens advice bureau.

My other question leads on from that, to some extent. We have heard a lot about partnerships today. In particular, we heard Dermot O’Neil’s comments on partnerships with housing associations. If there is an issue about preparing a banking product to suit the purposes of the group that we are talking about, is there room for the retail banking sector and the credit unions to work in partnership to jointly provide a product that can be financed and administered in a way that will help to plug the gap?

Dermot O’Neil: First, we will accept volunteers from any walk of life, including the banking sector. On the creation and delivery of a product, it might be the case that such products already exist but there is no appetite to deliver them. We should explore that rather than expending energy on duplicating what already exists.

Owen Kelly: I know that banking staff across the industry already engage in an awful lot of volunteering. However, I will find out whether there is involvement with that specific focus, and I will include the issue in my letter to the committee.

The Convener: Before I close the session, I have a small question for Mr Russell. We have heard a lot about the interaction between the banking sector, credit unions, the DWP and the Government. Is your sector involved in those discussions, or even in discussions with Atos, to get an understanding of what we are looking to do in getting people off benefits and back into work?

Laurie Russell: The third sector is involved in discussions across the board, whether with the Government or at a local level, and it is often involved in the partnerships that we have discussed this morning. That ranges from the kind of organisations that Dr Carty mentioned and the work of Disability Rights UK, through to involvement at a very local level.

Consultation with a big Government department is often difficult. The question is more whether we feel that our comments are being listened to, rather than whether we are being talked to. I am not sure that people feel that they are being listened to as much as they would like in the current debate.

The Convener: I thank you all for your evidence. If you want to send us any further, supplementary evidence or submissions based on the discussion that we have had or things that you wanted, but did not get the opportunity, to say, that would be great. It would be helpful if you could get that evidence to us quickly, because we are trying to get our report done within the next fortnight. If you could get them to us by Thursday—[Laughter.] If you speak to the clerks, we will try to work round that, but we are up against a tight timescale. I think that people understand and appreciate that. We have to do what is required in the circumstances.

Your evidence this morning has been very helpful. Thank you for taking the time to come. No doubt we will have an opportunity to have more discussions in future as things develop.
11:19
*Meeting suspended.*

11:23
*On resuming—*

The Convener: I welcome to the meeting Nicola Sturgeon MSP, the Cabinet Secretary for Health, Wellbeing and Cities Strategy, and accompanying Scottish Government officials. As I serve on three committees that have considered the bill, the officials are becoming very familiar to me; indeed, they are probably sick of the sight of me by now. Nevertheless, I welcome them to the meeting to continue our discussions and deliberations on the matter.

Before I invite the cabinet secretary to make some opening remarks, I must thank her for her patience this morning. As colleagues will confirm, we have just had a very substantial discussion on certain aspects of the bill—as, indeed, we have had in previous weeks—and it is becoming very clear just how important the bill is. In that light, we certainly welcome the cabinet secretary’s comments on the issue.

The Deputy First Minister and Cabinet Secretary for Health, Wellbeing and Cities Strategy (Nicola Sturgeon): Thank you very much, convener. First, I thank the committee for inviting me to discuss some of these issues. When I wrote to the committee last month, I said that the involvement of stakeholders lies at the very heart of the bill process and I am pleased to see that, in quite a limited time, the committee has already stimulated a wide-ranging and, from what I have seen so far, very well-informed response to the consultation. As I was at another committee meeting this morning, I saw only snippets of the previous evidence session. However, I look forward to reading the *Official Report*, because it certainly seemed as if the discussion was getting to the guts of some of these issues.

With regard to the committee’s work so far, I am also pleased to see that the stakeholder responses that have been received have broadly supported the Scottish Government’s approach. Indeed, I understand that every submission that expressed an opinion on whether they agreed with the Government’s position in introducing the bill and whether ministers should be given the powers delegated in the bill supported the Government. That provides a good consensual basis on which to proceed and, with your permission, convener, I want to take a wee bit of time to tell the committee what we are going to do and how we are going to proceed from here.

As the committee knows, we are expecting further information from the Department for Work and Pensions around June about the operation of universal credit but, as we currently understand it, we do not expect the DWP to lay its regulations on the new system’s operation until the autumn. As a result, we will not be able to finish our work on the new entitlement criteria for passported benefits until towards the end of the year, which means that it is likely to be early 2013 before Parliament sees the draft subordinate legislation. However, I make it clear to the committee that we will share as much information with it as we can and keep members as up to date as possible about our emerging thinking as the DWP fills the still significant gaps in information. It might also help the committee to know that we intend to consult publicly on passported benefits later in the year, probably over the summer and into the autumn.

I also want to say something about what will happen when we bring our subordinate legislation to Parliament, particularly with regard to the parliamentary procedure that will apply. Like me, the committee will have seen the Subordinate Legislation Committee’s report, which says that it should be possible to make regulations that do not amend primary legislation under either the affirmative or the negative procedure. I intend to fully consider all the Subordinate Legislation Committee’s recommendations, including that one, and to discuss the matter further with it. I am also happy to keep the committee informed of those discussions.

Nevertheless, I should say something about my current thinking because we need to be clear about what will happen and when it will happen. For that reason, I think that it makes sense for the bill to set out the parliamentary procedure that will apply to the instruments that we introduce. The advantage of such an approach is that it provides clarity ahead of a process for which the timetable will necessarily be tight. Doing anything else will risk delay and, as we and a number of stakeholders have made clear, the overriding interest is to ensure that there is no risk to the provision of these important passported benefits.

I know that concerns have been expressed on the scrutiny that will be carried out on these changes. All I can say is, first, that we have undertaken to have regard to the Scottish Parliament’s need to scrutinise and consider the detail of the changes. Indeed, we make that commitment in the policy memorandum and I have also made clear our intention to consult publicly.

Secondly, we have looked at the original procedure for making the subordinate legislation that we will have to review and perhaps change. That research is not yet complete, but I have been advised that only two of the 120 or so pieces of legislation that we have identified as perhaps requiring to be reviewed were subject to the affirmative procedure when originally introduced.
That appears to support the approach that we have set out for introducing subordinate legislation, with the affirmative procedure used for amendments to primary legislation and negative procedure for the rest. However, as I have said, we will consider the Subordinate Legislation Committee’s views and discuss the matter further with it.

While we are working on this, we will of course be working on the changes that are required to deliver on our new devolved responsibilities for elements of the social fund. Although those responsibilities are new, they do not necessitate additional primary legislation, which is why the bill contains no provision for the social fund. However, as I realise that there might be questions on this matter, I should set out our intention with regard to the journey to the new arrangements.

We have been discussing with the Convention of Scottish Local Authorities our intention to introduce interim arrangements in April 2013 that will be delivered by local government but which will be set firmly within a national framework of criteria. We will allow those arrangements to work and will review and monitor their operation. The intention will be to put those arrangements, as amended—if that is considered necessary as a result of our experience of them in practice—on a statutory footing. At this stage—although this is not finalised—we will look to introduce a social fund bill in 2013-14, with a view to it coming into force in April 2015. That is our present thinking on that journey.

COSLA has agreed to work in partnership with us to put in place the arrangements that are necessary for the social fund in time for April 2013. Such a partnership emphasises what I said at the beginning about the importance of stakeholders to this work.

11:30

The final point that I want to make before we start our discussion relates to what will happen once the Parliament has voted on the bill. That brings me back to the report of the Subordinate Legislation Committee. It has expressed concerns about the ancillary provision that will allow us to adjust the entitlement criteria for our passported benefits in the future. More specifically, it is concerned that the bill will delegate to ministers “the power to make substantial revisions to the criteria by which entitlement to passported benefits is assessed for the foreseeable future.”

I understand those concerns. As I said on another matter, we will discuss the issue further with the committee. However, at this stage, I do not know that those concerns are entirely justified. The fact is that the power is needed to allow us to make adjustments to, for example, an income threshold without always having to return to the Parliament with further primary legislation. I think that that approach is sensible. Once it has been set up, the system should be able to run without us having to pass a new act of Parliament every time the rate of inflation goes above a certain level.

We will respond to the Subordinate Legislation Committee in due course and will discuss the matter further with it. At this stage, all that it remains for me to do is to thank the committee for stimulating what, so far, has been a very good and intelligent debate on the bill and the issues that it seeks to address. I will be happy to enter into discussion. There are some big and complex issues to address, many of which are driven by policy that many members here do not agree with, but we have a duty to ensure that we implement it in a way that is fair and just to the people whom we were elected to serve. That is what the Scottish Government aims to do.

The Convener: Thank you very much, cabinet secretary.

We understand the difficult situation that you are in, given the lack of information from the DWP about what it intends to introduce, so I suppose that we are focusing on speculation about what will happen if certain things do or do not come about. Although a lot of the evidence that we have taken so far has included a recognition that we have to get things in place quickly, people have erred on the side of making haste slowly, so that we carry out proper scrutiny and know what the full impact of any changes will be. Can that approach work within the structure that you want to see as we take the bill forward?

Nicola Sturgeon: We will have to strike an extremely difficult balance. I should say at the outset that the process is not necessarily driven by what I want to see—it is driven by the timetables and timescales that are being set by the DWP.

On the one hand, we have a paucity and scarcity of information—we still do not know how much will be paid under universal credit, to whom it will be paid, what the conditions for entitlement will be or how it will interact with other things. We do not have any of that information and, as I said in my opening remarks, it may be the autumn before we start to get the level of meaningful information that allows us to take our decisions.

On the other hand, we know that the system will start to be implemented from April next year. Therefore, from April next year, we will require to have in place arrangements that mean that people do not lose out on the passported benefits for which we are responsible. There is a tension between what I—and, I am sure, the committee and the Parliament as a whole—would like, which
is ample time for consultation and scrutiny, and the timetable that says that we must have arrangements in place by 2013, which is being driven from elsewhere. We will do everything that we can to maximise the time and the opportunity for scrutiny.

On the social fund, as I indicated, we are seeking to manage that tension by putting in place interim arrangements but allowing some time for us to improve on or to tweak those interim arrangements before we fix them in statute. However, with passported benefits, we will need to ensure that we get new arrangements in place and that we provide the statutory underpinning for them in the timescale that we have set out.

The Convener: This morning’s evidence has reflected the concern of various organisations that, although the Government and individual organisations representing people who will be affected by the changes might understand the process, there is clearly unreadiness for the changes among individuals. Have you considered how the bill process could inform those who will be impacted?

Nicola Sturgeon: The short answer is yes, those are the kind of things that we are thinking about. I am happy to give that further consideration and to work with the committee to see what we can do to use the process as an educational and awareness-raising process. It is no secret that I was keen to see this committee set up because, not just for the passage of the bill but on an on-going basis, there will be a need to keep a focus on, and ensure a profile for, some of the issues.

The primary responsibility for informing people about the changes lies with the people who are making those changes. That is not the Scottish Government but the UK Government and the DWP. Whether they discharge their obligation to a degree that we would consider adequate remains to be seen, but they have an obligation to ensure that people understand and are aware of the changes that are being made. We will play our part in augmenting that as much as we can. Obviously, we have a responsibility to ensure that some of the knock-on effects of the changes that they are making into our devolved responsibilities are properly handled and dealt with.

The Convener: Before I come to other members, I want to ask you about COSLA’s preparedness. We have seen from other discussions, the Finance Committee’s report and elsewhere that, although there is an understanding of what passported benefits are, they differ from local authority to local authority. Will information come from you or from COSLA about how the passported benefits will be brought forward?

Nicola Sturgeon: The consultation that I mentioned is the key vehicle for doing that. COSLA is being extremely constructive and we are working in close partnership with it. Like us, COSLA is a victim of the lack of information and detail. However, we are trying to work together as closely as possible in our engagements with the DWP and in the preparations that we are having to make.

On your specific question about passported benefits, I have said already and no doubt will say again that none of what we are talking about today originated in things that the Scottish Government wants to do. In a sense, all of this is being forced on us by the UK Government’s welfare reform agenda. That said, it gives us an opportunity to look at the range of passported benefits in Scotland, which have grown up in a fairly ad hoc way, with not necessarily a great deal of coherence or consistency.

In looking at passported benefits as a result of the welfare reform agenda, we have an opportunity to look at whether that range of passported benefits is right for us and whether we could make it better or join it up better. We should take that opportunity as well as doing the bit that we will have to do, which is to look at the triggers for eligibility that flow from the changes to the headline welfare benefits. We are still unable to be precise about those because of the lack of detail that we have spoken about.

Jamie Hepburn: I thank the cabinet secretary for her opening statement, which I think pre-empted many questions and was very helpful.

I repeat the declaration that I made when the Scottish Government officials gave evidence here last, which is that I know Chris Boyland outwith the work of the committee, as he is one of my constituents.

Cabinet secretary, you just raised an issue that I want to touch on. You correctly identified that this whole process has not emanated from anything that the Scottish Government wanted to drive forward but that there is an opportunity to look at the range of passported benefits and potentially make them work better. When you set out the regulations for the bill, how far will you seek to ensure that there is a specific, peculiarly Scottish system of passported benefits, as opposed to following what is happening elsewhere in the UK?

Nicola Sturgeon: That is a good question. We will look to do a range of things. We will start the work in the consultation that I spoke about and it will run through until we have sufficient information in detail to produce the draft regulations early next year. As I said in response to the convener, we definitely have the opportunity to look at the range of passported benefits and to ensure that we have
a package of passported benefits and individual components of that package that meet the needs that we should meet and take a particularly Scottish approach, to use Jamie Hepburn’s words.

Passported benefits as they operate in England already differ from those in Scotland. For example, exemption from prescription charges is a passported benefit in England, but such exemption is universal up here. The education maintenance allowance provides another example—it no longer exists in England, but it still exists in Scotland. We have seen the embryonic shape of something that looks different.

The consultation will definitely allow us to consider what else we might want to do. As I said, there is not always a lot of rhyme or reason to how the existing passported benefits have grown up. They might be right and we might want to keep the range that we have, or we might want to look at doing things differently. We should take that opportunity.

The second thing that we need to do is to look at what triggers eligibility. I share the concern that has been expressed that, if people lose entitlement to benefit as a result of the UK-led welfare changes, they will risk losing the knock-on entitlement to passported benefits. We will want to look at whether we can do anything to minimise that impact. We cannot be specific about that until we know more about who will get universal credit and in what circumstances they will get it, but we will need to look at such general matters and we will have the opportunity to look at them as we find our way through passported benefits for ourselves.

Jamie Hepburn: I will pick up on a point that you just made. It is clear that Scotland’s policy agenda already diverges to a degree from what Westminster might pursue. A number of witnesses have said that the broad thrust of welfare reform from London takes no cognisance of the policy agenda in the homelessness legislation in Scotland, for example. What is your perspective on that? What has been the Scottish Government’s thinking on that?

Nicola Sturgeon: I largely share those concerns. One reason why the Scottish Government came to the view, which Parliament ultimately shared, that we should withhold legislative consent on universal credit and personal independence payments was that, whatever the stated objective of welfare reform might be, we were concerned that it would not translate into reality in the way that we would want it to.

You cited the example of homelessness. I am concerned that there is a risk that changes to housing benefit—we should remember that some of the changes do not lie in the future but are in place and are taking effect—will at best frustrate our work to tackle and eradicate homelessness and at worst make the homelessness problem worse. A range of changes could contribute to that. One of the changes that give me greatest concern relates to underoccupancy, which will have significant impacts on people who live alone or in underoccupied premises.

Welfare is reserved—I do not agree with that—and, from the Scottish Government’s perspective, the overarching general frustration that has run through the entire exercise is that the impact of a lot of the changes to that reserved issue will be felt in areas that are within our devolved responsibility. That will not only make some of our policy objectives more difficult to achieve but create difficulties for us in trying to deal with the impact within the fixed budget that we have.

11:45

Jamie Hepburn: My next question is on communication with the DWP, which the committee has certainly found to be an interesting task. We have written to the DWP a couple of times but, as far as I am aware, we await a response to both letters. To an extent, that suggests that the DWP does not have a sense of the urgency of the circumstances that it is creating through welfare reform.

The cabinet secretary referred to the fact that the DWP is not likely to lay its regulations until the autumn. One of our letters was written on the back of our earlier evidence session with her officials, in which a concern was expressed that not enough detail was coming to the Scottish Government. We wrote to support the Scottish Government in getting that information, but we await a response. What has communication been like? Is the Scottish Government experiencing the same problem?

Nicola Sturgeon: If we have not already done so, we can provide a comprehensive list of engagement between us and the DWP. There has been extensive engagement at ministerial level and between officials, and that is on-going. My engagement at ministerial level has been amiable enough, in that the intention has been expressed that ministers want to keep the Scottish Government informed. However, we struggle with the fact that the detail simply has not been forthcoming. We sometimes find that the DWP is keen to communicate when it has something to tell us, but not so keen to communicate when we are trying to get information out of it. The lack of detail makes life extremely difficult in trying to do the work that we have to do. I set out in my opening remarks just how challenging the timescale is. We continue to press for as much detail as early as possible.
On the social fund successor arrangements, a key bit of information that is not yet absolutely nailed down is on the transfer of resource that goes with the transfer of responsibilities. We are waiting for final confirmation on that, which makes our planning difficult. It is often a frustrating process that makes the work that we have to do all the harder.

Margaret Burgess: You mentioned the plans for the social fund. Will you say a bit more about your thinking on that? I understand that the scheme will be operated locally, but will it be a national scheme? Many of our stakeholders have said clearly that they want a right of appeal in the scheme. How do you envisage the scheme progressing?

Nicola Sturgeon: Before I answer that question as well as I can, I point out that COSLA is taking part with us in a design and implementation group on the social fund, which is at a relatively early stage. We will keep the committee informed as the detail of the successor arrangements starts to shape up.

At this stage, I can say a couple of things clearly. First, I agree that we should have a clear national framework. I do not agree with a system that leaves the issue to the discretion of individual local authorities. The system will be delivered through local authorities, but I believe that it is in the interests of potential recipients of the funds, and of those who deliver and administer the arrangements, to have a clear set of criteria. I envisage an appeals mechanism as part of that.

The second point is on the arrangements, which I outlined briefly in my initial remarks. As with universal credit and passported benefits, we are operating to a tight timescale. We can put in place arrangements for social fund successor schemes without primary legislation, through the general power of wellbeing of local authorities, along with a section 30 order to facilitate that. We intend to use that route to put in place interim arrangements.

As I described, a clear national framework will be delivered at local level. We will then take time to monitor, in partnership with stakeholders, how the scheme is working and whether we need to change it along the way. Ultimately, our intention is to put the arrangements in statute. Although we do not need to have them in statute, once we are sure that we have them right, there is a lot to be said for taking the opportunity to legislate and ensuring that the arrangements have a statutory footing.

Annabelle Ewing: We have sought information from the DWP on various matters, such as what modelling it has conducted. Are you privy to information on modelling that the committee does not have, or do you know whether the DWP intends to do modelling? How can it anticipate the detail of what is needed as it drafts regulations without modelling the impact on different groups? I am at a loss as to how we can make sense of the regulations if they are not based on a detailed assessment of the situation.

Nicola Sturgeon: I cannot speak for the DWP—that is probably a relief. I am not aware that we have information on modelling or proposed modelling to which the committee is not privy, but we will double-check that and make the committee aware of anything that we think would be helpful to you.

The ability accurately to assess the impact of what we are talking about is a real issue. I assume that, even though the information is not yet public, the DWP has a better idea than we do about the arrangements for the operation of universal credit in relation to who gets paid how much money—that is a basic set of facts that we do not currently have. We can estimate impacts and we can start to look at actual impact in relation to changes that are already in train, such as changes to housing benefit, but without detailed information we are not able to make proper, accurate assessments of the impact.

I am not aware that the DWP has made such assessments, which makes the issue difficult and concerning for the Government, our partner agencies, who will have to deal with the impacts as they emerge, and the individuals who will be affected. Given that the system will begin to be implemented in April next year, I wish that we were not sitting here in May without having possession of some of the basic facts.

Jackie Baillie: Evidence from Professor Paul Spicker suggested that the Scottish Government does not have the power and competence to deliver benefits and the replacement social fund, and you appear to have opted to use local government powers, through a section 30 order. Is that why you said that you are considering introducing a social fund bill in 2013-14?

Nicola Sturgeon: We would need the section 30 order to legislate, as well. We have chosen the approach that I described partly for reasons of speed, so that we can get the interim arrangements in place, and because we are confident that we can do it in such a way. Our preferred approach of legislating later is just that—a preferred approach—and is not being taken because we consider that we require primary legislation. However, because of the interaction with social security we need a section 30 order, combined with the general power to advance wellbeing that local authorities have, to put the arrangements in place.
Jackie Baillie: Was he correct to say that there are issues of competence, which you have managed to overcome?

Nicola Sturgeon: To whom are you referring?

Jackie Baillie: Professor Paul Spicker.

Nicola Sturgeon: Before I could say whether he was correct I would need to look at the evidence. I would be happy to do so and to tell the committee what we think of it, if that would be helpful.

Jackie Baillie: It would be helpful to our consideration to understand what powers the Scottish Government has and for what purpose you would seek a section 30 order.

Does the same approach apply to, for example, the replacement for council tax benefit, whatever the successor arrangements are? We had a discussion with your officials about whether ministers were looking for a legislative vehicle for introducing the arrangements. Why was not the bill used as such a vehicle?

Nicola Sturgeon: The situation with council tax benefit is that we will introduce a schedule of discounts to council tax from April next year, which will be based on existing entitlement to council tax benefit. That can be done through existing powers under the Local Government Finance Act 1992 and does not need a section 30 order.

That gives me the opportunity to say, with regard to council tax benefit, that although there are other issues that we will seek to mitigate, the substantial announcement that was made around council tax benefit a couple of weeks ago gave a clear indication of the Government’s determination to do as much around mitigation as we possibly can, even though we have to do all that within a fixed budget.

Jackie Baillie: I was not aware that the cabinet secretary would take this opportunity to raise that issue, so she will forgive me if I tease out some of the detail around that. I understand that the Scottish Government’s contribution to the £40 million gap is £23 million, but that local government has to find £17 million out of its existing resources. Is it the case that that might pose a challenge that will cause unintended consequences?

Nicola Sturgeon: I do not necessarily agree with the point about unintended consequences, but we are not talking about something that has been imposed on local government by the Scottish Government; it is an agreement—COSLA has fully signed up to the partnership. It is an excellent example of partnership working between the Scottish Government and local government in order to deal with a situation that is not of our making but which, if we had not taken action, would have adversely affected half a million vulnerable people in Scotland. It is an excellent and positive example of what can be achieved when national Government and local government are prepared to work together, and national Government is prepared to invest significant additional resources.

Jackie Baillie: I invite you to look again at that positive relationship. Obviously, taking £17 million out of a budget, whether there is agreement about it or not, still represents a challenge. You and I have discussed previously how we are approaching what could be a perfect storm, in which local authorities are charging people for the delivery of social care services based on their receipt of DLA or the independent living fund, which we know will be transferred with a cut of 20 per cent. How does the Scottish Government work positively with local government to mitigate that? I suspect that that will cause difficulty to some people who will no longer receive benefit but will be expected to pay for services.

Nicola Sturgeon: All of this will cause difficulty. I think that Jackie Baillie is getting close to making an argument that I make often and which I will come on to in a second.

Jackie Baillie talks about the money from local government coming out of existing budgets. The £23 million from the Scottish Government is coming out of our fixed budget. We operate within a fixed budget, so anything that we do to mitigate the impact of benefit cuts or the other welfare changes comes from somewhere else.

The argument that I often make, which Jackie Baillie sounds as if she is getting close to making, is that I wish we did not operate within a fixed budget; I wish that we had greater fiscal and financial independence that would not only allow us greater fiscal flexibility, but would give us control over welfare and perhaps get us into a position in which we were not being forced to deal with some of the implications of a Tory Government’s welfare reforms.

On the question about the cut to DLA as it translates to personal independence payments, that 20 per cent cut is severely concerning and is one of the main reasons why most of us have significant concerns about this agenda. We will work as constructively as we can with local government, the health service and other partner agencies to mitigate problems and protect people as much as possible. However, nobody should be under any illusions about what we can do. Within a fixed budget and having no powers over welfare, we cannot completely and utterly take away the impact of what the Tory Government is doing. We would be able to do that only if we had independence of decision making, as well as the financial flexibility that would allow us to do it.
Annabelle Ewing: I entirely agree that if we do not have the powers to make decisions on welfare and other issues in our country, we are at the mercy of decisions that are made elsewhere, and with which we do not necessarily agree. Many members of this committee take that view with regard to the detail of the Welfare Reform Act 2012.

The cabinet secretary mentioned the consultation that is planned for the summer. An important feature of this committee is that we have not only sought views from the larger organisations that are involved, particularly in the voluntary sector, but have gone out of our way to seek the views of individuals and smaller voluntary organisations. Can you provide a bit more clarity about the extent and scope of that consultation—in particular with regard to the stakeholders who will be involved?

12:00

Nicola Sturgeon: We intend that there will be a full public consultation. We are happy to talk to the committee about how best to facilitate input to it, given the timing and so on, but I do not anticipate that the consultation will be limited to parliamentary scrutiny. We want as much input as possible. As I said earlier, I hope that we will by the time we consult have more detail from the DWP on eligibility for passported benefits, but we will perhaps not have all the detail that we need. We will need to manage that as we get the information.

The consultation will also be an opportunity to look at passported benefits in the round and—to reflect the point that Jamie Hepburn made earlier—to consider whether our current range of passported benefits is the right one or whether we should change it or add to it to make it more coherent. It is important that we get as much evidence and input on that from as wide a range of people as possible.

Kevin Stewart: As we have strayed into local government matters, I had better declare—probably for the last time—an interest as a member of Aberdeen City Council.

I welcome the cooperation between COSLA and the Scottish Government on council tax benefit, and I am pleased to hear that there is also consultation with COSLA on the social fund. Community care grants have been eroded under the current UK Government and the previous UK regime. Do we have an indication from south of the border about what moneys we are likely to have for the social fund, or is that yet another area in which we will have to use other budgets to mitigate the effects of the changes? I, too, agree that it is difficult to deal with them under a fixed budget and wish that the situation were otherwise.

Nicola Sturgeon: That is a good question. As I said, we do not have final confirmation of the resource transfer that will take place. The DWP says that the amount to be transferred will be the amount that is being spent at the point of transfer, which will be in the last quarter of the financial year 2012-13. We therefore expect to be transferred to us a sum equivalent to what is spent in 2012-13. I cannot give a precise figure, but we anticipate that it will be about £20 million to £25 million. There is also a commitment to fund the set-up costs of our successor arrangements, and the sum of money that will be involved in that is the subject of negotiation.

The DWP’s approach allows it to say that, unlike in the case of council tax benefit, there will be no cut in the money at the point of transfer. What it does not show—or what it masks—is what I think Kevin Stewart is getting at, which is that the budgets have been eroded over years. In the case of community care grants, that process started under the Labour UK Administration and has continued under the current UK Administration. The erosion is more acute in the case of crisis loans, the sum of money for which has been diminishing quite dramatically. Although there will be no cut at the point of transfer, the fact is that the sum of money has been reducing, so a reduced sum will be transferred to the Scottish Government.

The Convener: Do members have any other questions?

Jackie Baillie: I am sorry, but I do. I want to ask the cabinet secretary about the work that is being done in Scotland on the impact of the welfare reform changes. My understanding is that you are modelling households. You might well have seen the report from the Welsh Assembly Government which, rather than just modelling households, looks at the wider economic and social impacts and the impacts on devolved services. Are we likely to produce something similar in Scotland? I know that many of the organisations that are grappling with the implementation of the reforms would find that useful.

Nicola Sturgeon: One of my officials will say a bit more about the modelling that has been done and that will be done. I have an open mind on suggestions on doing as much modelling as we can reasonably do, because it is in our interests to understand as much as we can about the impact of what is happening so that we can prepare best for dealing with that impact.

Chris Boyland (Scottish Government): I will comment briefly on the material that has been produced for the Welsh Assembly Government,
which was based largely on an Institute for Fiscal Studies study—I think—last year. We have put papers in front of the Health and Sport Committee that I think this committee has also seen and which cover very similar ground to the Welsh analysis.

**Jackie Baillie:** In a very late submission to the committee, the Scottish campaign on welfare reform pushed that point and said that it would be particularly helpful.

**Nicola Sturgeon:** I am happy to look at that to see whether there is more that we can and should do.

**Jackie Baillie:** That is appreciated. I invite you to look at evidence from the previous panel and at written submissions from national health service boards, which estimate that there will be additional costs for things such as mental health services, and indicate that GPs are already reporting increased footfall at their surgeries. There has also been a suggestion that there may be a requirement for an increased level of aids and adaptations. I do not know what dialogue there has been on how you can—in the context of restricted resources—protect budgets and allow flexibility to meet such requirements.

**Nicola Sturgeon:** The committee can be assured that I will look at all the evidence that has or will come to it. I heard a wee bit of the last part of the previous evidence session. I cannot remember which witness it was—one of the GPs, I think—who said that it is very difficult to assess the impact at this stage and gave the same reasons that we have experienced in terms of the lack of available detail and information. However, as members will understand and appreciate, I have regular discussions with people in the NHS about a range of things, including the impact of welfare changes. We will therefore continue to monitor that and try to react to it as best we can.

Members will appreciate why I make this final point. We can talk about the situation and, as we have demonstrated with the council tax benefit, we will act where we can to mitigate the worst effects, but I come back to the point about there being a fixed budget. If we have to increase one part of a budget to deal with the impact of a policy that is not of our making, by definition another part of our budget takes the strain. That is the real and inescapable difficulty that we face in all this, but we will continue to work with partner agencies. For example, I met not that long ago with Citizens Advice Scotland to discuss its concerns about the increasing impacts of the changes. We will continue to have such discussions and to work as closely as possible with those organisations in order that we deal with the issues as best we can.

**Jackie Baillie:** I try to appreciate the cabinet secretary's direction of travel in terms of mitigation and I understand her point about fixed budgets, but it strikes me that there are three affected cohorts. There are the people who used to be in receipt of DLA who will now be in receipt of a PIP, and there are those who used to be in receipt of DLA who will now not receive anything, within which category are people who have learning disabilities and who currently qualify for concessionary travel but who will not qualify for it in the future because they do not have the DLA passport. However, you will retain the budget, which has not disappeared. Finally, there is a third cohort of new applicants coming into the system who were previously not in receipt of DLA or a PIP. I wonder where among those three cohorts you are trying to mitigate. Your points about the budget do not hold in relation to people who previously received concessionary travel, for example.

**Nicola Sturgeon:** My earlier point—which I am sure members were listening to—addressed the second cohort. There are people who will not be affected at all and there are things that we could do to mitigate that would extend eligibility; and there is the middle area, which is people who are currently eligible but who will lose eligibility because of changes to their headline benefit. When I talked earlier about the consultation on passported benefits, I deliberately said two things: it is an opportunity to look at the range of passported benefits and to look at the hook for eligibility to see how we can mitigate for people who will lose eligibility for passported benefits because they are losing their headline benefit—in other words, people for whom we have already budgeted to provide passported benefits. I deliberately addressed that point; I hope that that gives the committee some indication of my thinking and direction of travel.

**The Convener:** Everyone has asked their questions, cabinet secretary. I thank you very much for finding the time to come this morning. You suggested that you may want to give us updates on a few areas; we would welcome that. I appreciate that the timescale is tight, but we will start to consider our report next week, so anything that you can provide before that will be very welcome.

**Nicola Sturgeon:** We will provide as much information as we can. If there is anything that the committee feels it needs, by all means get in touch and we will do our best to help.
Executive Summary

The Association of British Credit Unions Limited (ABCUL) welcomes the opportunity to submit evidence to the Scottish Parliament’s Welfare Reform Committee. ABCUL is the main trade association for credit unions in Scotland, England and Wales. As a co-operative itself, ABCUL is owned, funded and democratically controlled by its member credit unions. The majority of Scotland’s credit unions are ABCUL members, and they in turn serve the majority of Scotland’s individual credit union members.

Credit unions are not-for-profit financial co-operatives owned and controlled by their members for whom they provide safe savings and affordable loans. Credit unions provide inclusive services to the whole of their communities rather than simply the better-off. Increasingly, some credit unions can offer more sophisticated products such as prepaid debit cards, current accounts, cash ISAs and mortgages.

There are currently 109 credit unions in Scotland serving around 280,000 members, holding over £210 million in savings and lending £180 million.

As has been well documented, the UK Parliament’s Welfare Reform Act 2012 will make significant changes to the experience of people across Scotland in receipt of benefits. A high proportion of those affected will on low incomes, with low or no savings, with limited access to financial services, and those considered financially vulnerable.

This submission will be focused purely on the issue of Universal Credit. ABCUL believes Scotland’s growing credit union movement can play a very important role in ensuring a smooth transition to Universal Credit, both in terms of helping the recipient to manage their finances, and ensuring service providers including landlords are not adversely affected by the changes.

The key points we will be expanding upon below are:

- Credit unions are well placed as service providers which can play a key role in building financial capability in the population and helping recipients of Universal Credit to manage the changes and challenges in their budgeting;

- Changes to UK credit union legislation in force from January 2012 make it much easier for credit union services to be available to every person in Scotland;

- The UK Department for Work and Pensions (DWP) recognises the advantages of a thriving credit union movement across Scotland, England and Wales, and an announcement is expected very soon on the details of a
programme to support the modernisation and sustainability of credit unions across the country, including their ability to help people manage their money;

- Credit unions have an existing and potential future product range which can provide financial services to people currently excluded from mainstream products, both in terms of affordable credit and budgeting or “jam jar” accounts;

- These credit union products can also ensure an individual’s service providers, including local authorities and housing providers, receive their payments on time – benefiting both the service provider and the individual, who does not need to worry about or face being pursued for bills.

**Building Financial Capability**

For many people, the change from perhaps several benefit payments received weekly or fortnightly to a single monthly payment of Universal Credit will be a very significant change to their financial circumstances and budgeting habits.

It is very important that due regard is given to how tight the weekly or monthly budgets are for many of the people in receipt of benefits. Such a significant change as the amount and frequency of payments could, without the necessary support and preparation, see even prudent individuals fall vulnerable to miscalculating the conversion of budgets from weekly to monthly, missing bill payments, and potentially over-spending early in the month with a shortfall towards the end.

This increased financial vulnerability could be exacerbated by the proposal to pay Universal Credit in arrears. While understanding the UK Government’s arguments for this approach, it could create an unavoidable shortfall in individuals’ budgets – again, including those who are prudent with their money – which many may have no choice but to fill with borrowing.

ABCUL believes it is essential that measures to build financial capability and budgeting skills are supported to assist all affected with transitioning to Universal Credit.

**Access to Financial Services**

A key aspect of increased financial capability is ensuring people have access to appropriate financial services. It is a proudly held principle of Scotland’s credit union movement that our services should be available to everyone in the community, and not just better off people who may prove more profitable customers. Similarly, credit unions are proud to treat everyone fairly, charging ethical interest rates on loans in contrast to the very high interest rates charged by most of the lenders prepared to serve people on low incomes.

As noted above, many of the people in receipt of benefits work to very tight budgets. A consequence of this is that few have any savings to fall back upon if they suffer a financial shock, such as the need to repair or replace a faulty household appliance, or to pay for special expenses such as Christmas, birthdays, school uniforms or holidays. For many, this gap is filled by taking out a short term loan, often with a
doorstep lender – who typically charge anything between 272% APR and 433% APR – or increasingly using so-called “payday” lenders, accessed either in high street shops or online, whose interest rates can be several thousand percent APR and get ever higher when the loans are “rolled over”.

Such short term loan products have a deeply damaging effect on the financial wellbeing of individuals when used to fill a gap in the monthly budget, since the borrower not only needs to save the say £200 they were short in last month’s budget – plus interest – to repay the loan, but they must also somehow cut back that £200 they went over budget, meaning that in order to repay such a payday loan, the borrower actually has to be £420 better off the following month. As this is highly unlikely in most cases, there is therefore a very high risk of vulnerable individuals being trapped in a permanent and apparently inescapable debt spiral. We would be extremely concerned if the transition to Universal Credit was to prove such a financial shock for people and push them towards high cost lenders.

While credit unions are able to provide loans at ethical rates to many people – with interest on credit union loans currently capped at 26.8% APR, and many choosing to charge significantly less than this maximum – we believe the role credit unions can play in encouraging saving can sometimes be overlooked. It is a crucial element of financial capability that people should have some savings set aside, whether for the emergencies or special occasions mentioned above, and credit unions have a proven track record of encouraging a savings culture, including among people on lower incomes and in receipt of benefit.

ABCUL believes that credit union membership would therefore be of significant benefit to those transitioning to Universal Credit in Scotland. The ABCUL Scotland Credit Union Charter which we published prior to the 2011 Scottish Parliament Election outlined the aspiration to widen credit union membership, including a specific pledge to encourage credit union membership for every social tenant in Scotland. Our Charter was supported by MSPs from across the parties, including the Leaders of the SNP, Scottish Labour and the Scottish Conservatives, and we hope all parties will recognise the value of credit union membership and work to extend it across this group.

While almost everyone in Scotland is currently able to join a credit union (only residents of Perth & Kinross are not served at present), we recognise that the accessibility and level of service available from credit unions is not uniform across Scotland. However, we are very pleased that measures are being taken by the UK Government to help make high quality credit union services available to more people across the country.

Following years of campaigning and with broad cross-party support, the Legislative Reform (Industrial & Provident Societies and Credit Unions) Order 2011 came into force from January 2012 and loosens a number of the restrictions placed on credit unions by the previous 33 year old legislation. In this context, the most significant change is removing the requirement in establishing a credit union’s “common bond” (ie, eligibility for membership) that a new member must have something in common (place of residence or employment, etc) with every other member of the credit union. While credit unions still have restricted memberships and common bonds, the new
legislation allows the same credit union to combine more than one common bond. So for example, a credit union could serve anyone who lives or works in a G postcode and anyone who lives or works in a PA postcode. Or they could serve anyone who lives or works in an EH postcode and anyone who is a tenant of X Housing Association. This legislative change significantly broadens the scope for successful credit unions to offer their services to groups and areas previously underserved.

The UK Government has also expressed its intention to make a significant investment in the credit union sector to help facilitate a step-change to being more modern, accessible and sustainable providers of financial services. An announcement of the full details of this DWP Modernisation Fund is expected very soon, and we would anticipate support for credit unions across Scotland, England and Wales to work collaboratively to provide a consistent high quality product offering, including accounts to help with budgeting. ABCUL would also support any measures which may be considered to make credit union services accessible through the Post Office network, which has over 11,000 outlets across the UK, including approximately 1300 in Scotland.

Budgeting Accounts

We have outlined the need for greater financial education and financial capability support to help people transition to a single monthly payment of Universal Credit. With a number of existing benefits being rolled into Universal Credit, including Housing Benefit, there is a serious risk that the recipient may not appreciate that all their bills and liabilities must be met from this payment and they may unwittingly overspend on other goods. This could have a very negative effect on the individual’s financial wellbeing as they may fall into arrears with rent and utilities bills, their credit rating may be damaged, and they may feel forced to turn to high cost lenders for apparent relief which could in fact become a debt spiral. However, there could also be a very serious impact on local authorities and other service providers who could be left significantly out of pocket if this proves to be the case. With Housing Benefit no longer to be paid direct to the landlord but to be paid to the tenant as part of their Universal Credit payment, we believe there is a particular risk of loss of income for social landlords.

ABCUL believes credit unions are very well placed to offer a potential solution to both sides of this challenge. Credit unions, banks and building societies are the only nominated recipients of DWP benefits on behalf of individuals, and many people in Scotland already have their benefits paid into a credit union account. A widely available account which, with the member’s authorisation, ring-fences and pays rent, council tax, utilities bills, etc, while making the remainder available to withdraw and spend, could be a significant measure to mitigate any adverse impact on individuals, landlords and other service providers.

25 credit unions across the UK already offer current accounts to their members, upon which direct debits and standing orders can easily be set up, and an increasing number are offering prepaid debit cards. Credit unions are well placed then to receive a member’s Universal Credit payment, process payments to landlords and other service providers, and then charge the disposable remainder to the member’s
prepaid or VISA Debit card. We would hope that with Government support, these more sophisticated products might soon be available through more credit unions and to more people across the country.

Conclusion

ABCUL recognises that Welfare Reform is going to have a very significant impact on many people across Scotland, and we are keen to support measures to avoid potentially adverse affects. Scotland’s credit unions are uniquely well placed to provide the financial products – savings, affordable credit and budgeting accounts – which can help build financial capability and facilitate the money management required to cope with the transition to Universal Credit. These credit union products would not only prove beneficial to individuals, but could also protect social landlords and other service providers from a potentially crippling loss of income.

We hope this information about the potential role of credit unions in the receipt and distribution of Universal Credit is of interest to the Committee, and we would be very happy to provide further detailed evidence if requested as the Committee continues its work.

FRANK MCKILLOP – POLICY & RELATIONS MANAGER (SCOTLAND) ASSOCIATION OF BRITISH CREDIT UNIONS LIMITED (ABCUL) MAY 2012
SUBMISSION FROM BARNARDO’S SCOTLAND

1. Context

1.1 Barnardo’s Scotland is a national voluntary organisation providing over 100 services throughout Scotland to nearly 10,000 children and families. Every Barnardo's project is different but each believes in the potential in every child and young person, no matter who they are, what they have done or what they have been through.

1.2 Many of the children and families we work with are reliant on some form of benefits or welfare payments, including both out-of-work payments such as income support and in-work payments such as tax credits. Barnardo’s Scotland has worked with other children’s charities to highlight the particular and serious issues faced by vulnerable children and their families arising from the bill, both in terms of the impacts of specific changes and the impact in the round of the expected reductions in welfare spending.

1.3 Barnardo’s Scotland believes that there is a real danger that the UK welfare changes could impose an unmanageable burden on the poorest and most vulnerable children and their families. Whilst we are supportive of many of the principles that sit behind the UK Government's welfare reform agenda - in particular proposals to improve work incentives through the introduction of Universal Credit - we believe that some of the planned changes could have huge unintended consequences that will mount even greater pressure on vulnerable families who are already struggling to make ends meet.

2. Views on the Bill as a whole and the general principles underlying the bill

2.1 This bill is urgently required to ensure that proper provisions in relation to the Westminster Welfare Reform Act are put in place in areas relating to devolved Scottish competences. Enabling legislation along these lines can help ensure there is a smooth transition to the new benefit system which will be adopted after April 2013. We look forward to the opportunity to scrutinise the regulations arising from this legislation in the future.

2.2 Our main wish is that this legislation is passed as swiftly as possible, and that regulations are published and agreed with a sufficient timescale to allow them to be disseminated and widely understood by all those who will be affected by them.

3. Proposed powers in relation to Universal Credit (UC) and Personal Independence Payments, and other comments on the introduction of UC

3.1 Barnardo’s Scotland broadly supports the proposed powers in relation to UC and PIP. However, any new regulations introduced in Scotland must integrate well with existing systems in Scotland and the new UK-wide benefits system.
3.2 More broadly, we hope that any such powers for regulation will allow any Scotland-specific anomalies in the new system to be identified and action taken to rectify them.

4. Views on the proposed subordinate legislation powers in the Bill?

4.1 Barnardo’s Scotland agrees with the powers and believes them to be appropriate.

5. Other comments on regulations that would follow this Bill on “passported” benefits and eligibility for them?

5.1 Many of the vulnerable children and families we work with greatly benefit from access to reduced or low cost services by virtue of their benefit status. We recognise that the replacement of benefits such as job seekers allowance by the broader UC presents a technical problem for defining access to these services, and we also recognise, as highlighted in the Explanatory Notes to the bill (para 32) 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.

5.2 Barnardo’s Scotland supports the position of the Scottish Campaign on Welfare Reform that “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”. However, we fully understand the financial pressure that Scottish Local Authorities are under and therefore do not believe that it would be appropriate for any UC entitlement to give access to all currently passported benefits.

5.3 Barnardo’s Scotland would therefore ask the committee to consider maintaining eligibility by using receipt of other benefits such as the revised Council Tax Benefit, or who are on government schemes such as the Work Programme, as a passport to accessing services. Further to this we would ask the committee to explore extending age itself as a passport to access currently passported services, perhaps up to the age of 21. This would ensure that the large number of young people who are not council tax payers were also eligible. The committee could also explore how the Scottish National Entitlement Card could also potentially be used as part of any future passporting scheme.

5.4 The Committee should also seek to engage as widely as possible on any future regulations. It is important to ensure that the voices of those who currently access
passported benefit are heard and their concerns taken on board in the design of any new system.

6. Conclusion

6.1 Barnardo’s Scotland welcomes this new legislation. We believe it’s swift passage, and that of the regulations that will follow, will help bring much-needed clarity to all those who rely on welfare and benefits in Scotland. However, there is still a lack of information about the implications for Scotland of the proposed changes, and we would urge the committee to consider, as part of their scrutiny of this bill and subsequent regulations, ensuring that material along similar lines to that produced by the Welsh Assembly Government

(Analysing the impact of the UK Government’s welfare reforms in Wales - Stage 1 Analysis, http://wales.gov.uk/topics/educationandskills/publications/reports/analysingreforms/?lang=en is produced in Scotland. This would also help local authorities, voluntary organisations and other bodies working with those on benefits to better understand, and comment on the material in this bill and subsequent regulations.

6.2 We would be happy to provide oral evidence to the Committee on any of the above points.

7. Contact

7.1 For more information please contact

Mark Ballard
Head of Policy
Barnardo’s Scotland
SUBMISSION FROM BLACK TRIANGLE CAMPAIGN

We express our burning concern about the Work Capability Assessment that continues to cause harm on a daily basis.

The GMC in its recent publication on Good Medical Practice states that a doctor must (overriding duty or principle) take prompt action if he thinks that "patient safety is or may be seriously compromised by inadequate... policies or systems.

We are concerned about the contractual arrangements between the DWP and General Practice and it is our view that this contractual arrangement needs to be renegotiated.

The new assessment process, measuring eligibility for about 2.2 million no longer able to access DLA, not only costs government to deliver. It also requires the disabled people being assessed to provide independent medical evidence.

For most disabled people this will be accessed via a GP. GPs are already inundated with ESA tribunal appeal requests. This is at times complicated and time consuming and done through good will - good will which I fear may be in short supply.

The Scottish Government is in a difficult position with Welfare a reserved matter and Health devolved and it is unclear how to mitigate for the changes to come. There exists a nexus between the two areas. The latest report from Disability Rights UK (DRUK) examines the cost of obtaining independent medical evidence from GPs and consultants as part of the new PIP assessment process, and of extra spending on GP appointments and hospital stays as a result of reduced support.

As Cabinet Secretary for Health and Wellbeing, I am sure Mrs. Sturgeon in only too aware of the implications of welfare reform on her brief.

Through changes to the Quality and Outcomes Framework and local and direct enhanced services, The Scottish Government has worked hard with General practices and the health service as a whole to address the perennial problems of reducing avoidable hospital admissions and preventing unnecessary hospital re-admissions

The Disability Alliance survey of disabled people published last year also suggested 16% would be more reliant on the NHS.

Many disabled people told Disability Alliance that hospitalisation would be required due to an inability to manage health needs through a difficulty attending routine appointments or being unable to meet other health related costs
The Commons Public Accounts Committee has also estimated that ‘bed blocking’ costs the NHS £170 million per year. If more people need treatment, there is a lower ability to self-manage conditions (as a result of losing financial support under DLA plans), and if less support is available from councils, the risk is also that delayed discharges will rise - resulting in even greater costs for hospitals as a result of DLA plans.
There will be an increase in people requiring council-funded residential care placements

We may be on the brink of a Heath and Social care crisis the like of which has not been seen for a generation.

The Black Triangle Campaign would like to insist upon a commitment to establish an Independent Living Fund for Scotland. Independent living is a fundamental human right of disabled persons and must be fully protected.

We will not stand by and see disabled people returned to institutions which will in any event cost a great deal more in the long run than providing the necessary support to disabled people to live in their own homes.

The voice of Scotland’s Doctors must be Heeded

General practice in Scotland has called for an end to the WCA “with immediate effect”.

The GMC guidelines are clear that a doctor must take prompt action if he thinks that "patient safety is or may be seriously compromised by inadequate... policies or systems"

As a GP I am in a contractual arrangement with the DWP whereby I am *complicit with a process which has been shown to be harmful*.

We are looking upon the Scottish Government and the BMA to take a lead in protecting the safety and the rights of long term sick and disabled persons.

We implore the Scottish Government to halt the implementation of the Welfare Reform Bill until these grave ethical concerns are addressed by the Scotland’s health and allied professions.

Wherever it is possible to do so, it is crucial that the assessment system for assessing disability and ‘fitness for work’ be ‘fit for purpose’. We attach an open letter which we prepared to go out to the BMA which sets out our grave concerns in detail.

As Black Triangle, we say with one voice that it is possible to resist Westminster’s decrees and that we must if we are not to see more deaths such as Paul Reekie’s and the one linked to above.#

This situation is intolerable and we, as Scotland’s people must unite across the entire spectrum of our civil society to prevent further harm and maintain our highest ethical standards. UK Welfare ‘Reform’ threatens to stain with blood our good reputation as a beacon of the progressive values of social solidarity and cohesion.

The Scottish Government must join with the rest of us and the medical profession in fighting back against this barbarism. You have our mandate to do so.
It is possible to withdraw co-operation. The Nuremberg Defence is not an option.

We must insist on a fair and just Scotland. It is our inheritance and birthright and now is the time to stand up for Scotland’s sick and disabled people and mobilize a campaign of resistance.

BLACK TRIANGLE CAMPAIGN
APRIL 2012
SUBMISSION FROM CAPABILITY SCOTLAND

Capability campaigns with, and provides education, employment and care services, to disabled people across Scotland

Summary

- In December 2011 Capability Scotland campaigned for the Scottish Parliament to vote against the Legislative Consent Motion on the Welfare Reform Act 2012. As such, we are strongly in favour of the introduction of the Welfare Reform (Further Provisions) (Scotland) Bill 2012 and the principles behind it.

- We are keen for the Welfare Reform Committee to focus on how the Scottish Government will regulate for the introduction of passported benefits. Passported benefits are an effective way of ensuring that people who face obstacles to participation, health, education and mobility receive targeted assistance. As members of the Scottish Campaign on Welfare Reform (SCoWR) we are in favour of the Scottish Government taking a universal approach to the passporting of benefits.

- We would urge the committee to give particular consideration to passporting from disability related benefits. Disability Living Allowance (DLA) is currently an effective passporting benefit because it is a reliable proxy for disability. We are concerned that the replacement of DLA with Personal Independence Payments (PIP) will remove this proxy and result in thousands of disabled people being denied passported benefits they should be entitled to.
Our Response

Question 1: Are you generally in favour of the Bill and its provisions?
Yes. During December 2011 Capability campaigned for the Scottish Parliament to vote against passage of the Legislative Consent Motion. As such, we are in favour of the Bill.

Question 2: What are your views on the proposed powers in relation to Universal Credit / Personal Independence Payments?
The proposed powers duplicate the corresponding provisions of the Welfare Reform Act 2012. We agree with this approach as it gives the Scottish Government the maximum competency to make provisions in relation to welfare reform.

Question 3: Do you have any other comments on the introduction of Universal Credit?
We are concerned about the impact the introduction of Universal Credit (UC) will have on disabled people and, in particular:
- The impact the planned 50% reduction of the disability element of child tax credit will have on families with disabled children
- The disproportionate impact on disabled people of reducing the housing element of Universal Credit for those judged to be under-occupying their property
- How sanctions and conditionality of Universal Credit will affect those disabled people less able to understand and comply with conditions.
Our concerns in this area are well documented in previous evidence, consultation responses and letters to MSPs which can be found on our website1.

Question 4: Do you have any other comments on the introduction of Personal Independence Payments?
Our main concern is that the UK Government will spend 20% less on Personal Independence Payments (PIP) than it currently spends on Disability Living Allowance (DLA). This equates to a staggering £268 million lost to the Scottish economy every year. This will disproportionately affect Scotland given that 8% of the Scottish population under 65 are claiming DLA compared with just 6.2% of the UK population.2 We have outlined our numerous concerns about the effect this will have on Scottish public bodies and disabled individuals in previous submissions to this Committee3.

Question 5: Do you have any other comments on regulations that would follow this Bill on ‘passported’ benefits and eligibility for them?
It is essential that the Scottish Government considers its approach to passported benefits in relation to disability. There are many benefits that disabled people currently receive as a direct or indirect result of their eligibility for DLA. The reason for this is that an award of DLA is generally accepted as an accurate proxy for disability. The various components (mobility and care) and levels of eligibility (low, medium and high) provide further information about the nature and extent of that

1 http://www.capability-scotland.org.uk/consultations
2 Department of Work and Pensions Data (Nomis 2011)
3 http://www.capability-scotland.org.uk/consultations
disability. If eligibility for DLA/PIP is reduced by 20%, many disabled people will become ineligible for these passported benefits.

If PIP cannot be used as a trustworthy proxy for disability (which we believe it cannot), then the ‘benchmarking’ function currently fulfilled by DLA will be lost. This will affect the following passported benefits:

**Disabled Parking Badge (the ‘Blue Badge’)**
People who receive the Higher Rate Mobility component of DLA are currently eligible to receive a blue badge which entitles them to park in disabled parking spaces. Higher Rate DLA is a good proxy for this entitlement because all people eligible for this benefit are either unable or virtually unable to walk and will therefore benefit from parking close to their destination. Eligibility for the Enhanced Rate Mobility Component of PIP, however, may not be such a suitable proxy. The Enhanced rate will not, for instance, be available to people in the following categories:
- Those who can move up to 50 metres without a wheelchair or
- Those who can move 50 metres (but no further) unaided.
It is highly likely that people in these categories whose movement was slow or caused them discomfort would currently qualify for Higher Rate DLA on the basis that they are unable or virtually unable to walk. The DWP’s own figures suggest that 760,000 people in the UK are likely to be found eligible for Enhanced Rate PIP (and therefore a blue badge) compared to the 910,000 who would qualify for Higher Rate DLA. This is likely to have a serious impact on the ability of disabled people in Scotland to live independently.

**The Concessionary Travel Card**
Individuals who claim Higher Rate Mobility or Middle or Higher Rate Care components of DLA are currently entitled to a card which gives them free bus travel across Scotland. Case studies produced by the UK Government suggest that certain groups – including certain individuals with epilepsy – might not qualify for the Enhanced Rate PIP or the Enhanced Rate Care component – despite their inability to drive safely. It is therefore essential that the Scottish Government considers how to ensure everyone who is unable to drive as a result of a long term condition or disability is entitled to free bus travel.

**The Energy Assistance Package**
Currently, certain disabled people are eligible for Stage 4 grants under the Energy Assistance Package. They will fall into this category if they have a poor energy rating, they receive any means tested benefit and they receive either the Higher Rate Mobility or Highest Rate Care component of DLA. In practice, this means people can qualify for grants to install new central heating system, draught proofing and/or insulation if the are:
- Unable or virtually unable to walk.

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4 Personal Independence Payments: Assessment Thresholds and Consultation (DWP 2012)

5 Personal Independence Payments: Assessment Thresholds and Consultation (DWP 2012)

6 The Home Energy Assistance Scheme (Scotland) Regulations 2011
- Need help or supervision frequently throughout the day and during the night.

It is essential that anyone whose health or wellbeing will be put at risk as a result of insufficient heat in the home should remain covered by the provision. The DWP’s own case studies suggest that the following people would not qualify for Enhanced Rate PIP (and therefore the Energy Assistance Package)\(^7\):
- A 45 year old women who, every few days is unable to get up, get dressed or go out as a result of chronic fatigue.
- A woman whose suffers from mental health problems so severe that she cannot get dressed or have a shower in the morning.

**Local Authority Concessionary Leisure Cards**
Most local authorities in Scotland offer discounted entry to health and leisure facilities such as gyms and swimming pools. In most cases, all DLA claimants are eligible for these discounts\(^8\). These schemes allow those on low incomes and/or those in poor health to benefit from exercise and relaxation which can have such an impact on mental and physical health outcomes.

Replacing DLA with PIP as the main passporting passport would not be sufficient given that the UK Government plans to cut eligibility for DLA/PIP by 20\(^9\). This means there is likely to be a significant fall in the number of people who qualify for concessionary leisure. Furthermore, the UK Government has stated that it wants to focus PIP on those with the most severe and profound disabilities\(^10\). It is therefore likely that the majority of those who find that they become ineligible for disability benefits are those who are most able to live independently and benefit from health and leisure facilities. This would undermine the effectiveness of the concessionary schemes.

**Potential Solutions**
We suggest that the Scottish Government considers how another proxy for disability can be developed in the absence of Disability Living Allowance. We would urge the Scottish Government to consider making all PIP claimants eligible for the passported benefits listed above, regardless of the rate they receive. We would also suggest that the Scottish Government give disabled people the option of making written applications or (in limited circumstances) undergoing independent assessments to allow those who don’t qualify for PIP to claim passported benefits. This could be loosely modelled on the ‘Independent Mobility Assessment’ which is currently carried out by local authority occupational therapists to assess entitlement for blue badges amongst those who don’t qualify for DLA (mainly because they are aged 65 or over).

While Capability are generally reluctant to suggest disabled people to undergo assessment of any kind, it is essential that an accurate and reliable proxy for

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\(^7\) Personal Independence Payments: Assessment Thresholds and Consultation (DWP 2012)

\(^8\) For example, East Dunbartonshire’s Passport for Health, Lothian’s Pleasure Pass Plus

\(^9\) June 2012, DWP, Emergency Budget Announcement

\(^10\) DWP 2011, DLA Reform consultation
Disability is developed as DLA is phased out. Such an assessment would only be acceptable if it had the following characteristics. It must:

- Be based on criteria coproduced in partnership with disabled people and in keeping with the social model of disability.
- Be transparent, easy to understand and challenge
- Ensure claimants are treated with dignity and respect at all times

**Universal Credit**

The UK Government has given much consideration to how a system of passported benefits will continue to operate after the introduction of Universal Credit. Their concern is that Universal Credit will be paid to people a much wider range of incomes than any existing individual benefit or tax credit.

As members of the Scottish Campaign on Welfare Reform we believe that any Universal Credit entitlement should give access to all passported benefits. We also believe the Scottish Government should:

- Make passported benefits available to anyone claiming any disability or health related benefit (such as DLA, PIP, ESA etc).
- Ensure that anyone currently eligible for passported benefits, but who will not be eligible for Universal Credit are not be excluded. This is likely to include asylum seekers.

**The Benefits of a ‘Universal’ Approach**

Such an approach would have the following benefits:

- It would reduce administrative costs for Government. Introducing a new system to calculate eligibility would potentially cost more than allowing all universal credit recipients to access passported benefits, as it would do this whilst simultaneously increasing complexity in the system.
- It would reduce complexity for claimants and increase take up. Currently, passported benefits which are seen as difficult to claim (such as the Healthy Start Vouchers) have low rates of uptake. In remote areas of Scotland, for instance, take up of this entitlement is as low as 62.5 per cent. In only one health board region of the country does take-up reach 80 per cent[^11].
- It would remove any cliff edge make people worse of as they move into paid employment or increase their hours. For example, a lone parent has 3 children in a school which charges £1.20 for lunch (a below average figure nationally), and qualifies for free school meals, saving £18.00 a week. If s/he is offered a job at the national minimum wage and the free school meals entitlement is removed at the point at which universal credit is first tapered away, s/he would need to work an extra 5 hours a week to offset this loss of entitlement.

Allowing all those on a disability related benefit to claim passported benefit would help ensure that disabled people are supported to fulfil their right to health, employment and education on an equal basis with other members in society. Disabled people currently struggle to access certain service on an equal basis regardless of their income. Furthermore, several passported benefits (including free travel to NHS appointments and free glasses) are currently only available to those

[^11]: Department of Health ‘Healthy Start Management Information Reports’ (figures to 8 May 2011)
who collect a working tax credit in addition to DLA. Given that DLA is being phased out, the Scottish Government needs to consider an alternative approach.

About Us
Capability Scotland campaigns with, and provides education, employment and care services for, disabled people across Scotland. The organisation aims to be a major ally in supporting disabled people to achieve full equality and to have choice and control of their lives by 2020. More information about Capability can be found at www.capability-scotland.org.uk.

Contact Us
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SUBMISSION FROM CARERS SCOTLAND

Carers Scotland is a charity set up to support the thousands of people who care for an elderly partner, sick friend or disabled family member. Carers Scotland is the Scottish nation office of Carers UK. Caring is part of life. Three in five of us will provide unpaid care for someone at some point in our lives. However, without the right support the personal cost of caring can be high with many carers experiencing poor health, poverty and disadvantage. Carers Scotland helps carers and campaigns to make their lives better.

Background
There are 660,000 million carers in Scotland. 72% of are worse off financially as a result of becoming carers\(^1\) because of the combined pressure of low-level benefits, reduced earnings, higher disability related living costs. Many carers’ family finances rely on income from carers and disability benefits, changes or reductions to which could have a serious impact on their capacity to carry on caring.

Despite contributing an estimated £10.3 billion to Scotland with the unpaid care they provide, carers receive the lowest benefit of its kind and are often in a financially precarious situation. A Carers Scotland and Carers UK survey of over 1,700 carers showed:

- 79% were struggling to pay essential utility bills
- 53% were cutting back on food to make ends meet.
- 69% were using their own income to pay for care for the person they cared for
- 57% were in debt as a result of caring\(^2\).

It is clear that carers will be affected directly or, indirectly through the impact of welfare reform on the disabled people for whom they care. This response in its first pages provides background to these impacts.

Carers, Carers Allowance and Universal Credit
There was discussion that Carers Allowance would be wrapped up in Universal Credit and means-tested. However, following campaigning by Carers UK, Carers Scotland and many other organisations, the Government announced last year that Carer’s Allowance would be preserved as an independent benefit.

Because Carers Allowance is staying outside Universal Credit, around 49,200\(^3\) carers who are in receipt of Carers Allowance in the UK and who receive no means-tested benefits, will be unaffected by Universal Credit.

A further 25,000\(^4\) carers in the UK receive the carer premium to means-tested benefits like Income Support, as well as their entitlement to Carers Allowance. These carers will be moved onto Universal Credit, but the Government has said that their

\(^1\) Carers in Crisis: Summary results for Scotland. (2008) Carers Scotland and Carers UK
\(^2\) Of 1,734 carers responding to the survey Carers in Crisis (2008) Carers UK
\(^3\) DWP 2008 in Caring in Scotland: Analysis of Existing Data Sources on Unpaid Carers (2010) Scottish Government
\(^4\) Approximate based on DWP figures for the UK
carer premium will be mirrored by a similar ‘additional amount’ in Universal Credit, so these carers should not lose out.

However, some carers will lose out. The earnings disregard for carers will not be protected under Universal Credit. This is the amount of money that benefits claimants can earn before their benefits are affected. For Carers Allowance this is £100 a week and this level will not change. But, for carers in receipt of Income Support, the earnings disregard is currently £20 a week. Our analysis showed that, because of the way the earnings disregards are set up in Universal Credit around 50,000 carers in the UK would see their disregard reduced to £13.50 a week if they were able to juggle work and care.

**Household benefit cap**

Whilst households including a DLA/PIP claimant will be exempt from the proposed household benefit cap this does not protect all carers. The definition of a ‘household’ in the benefits system includes partners and children under 18, but adult children and other adult relatives are considered to be in a different ‘household’ for the purposes of the benefits system, even if they live together.

As a result, whilst parents of disabled children and carers caring for a disabled partner would be exempt from the cap, carers caring for adult disabled children or other working-age or older relatives could have their benefits capped. The cap would apply to couples or single parents receiving £500 a week or more, or single people in receipt of £350 or more in benefits. A new impact assessment from the UK Government estimates that 5,000 of around 550,000 carers on benefits in the UK would see their benefits capped, each losing an average of £87 a week.

With Carers UK, we have argued that carers’ contribution and the challenges they face in trying to meet the additional costs of caring, set them apart as particularly deserving of exemption from cuts to welfare support. However, whilst acknowledging the contribution made by carers, the UK Government was not willing to accept these amendments, arguing that the number of carers affected would be relatively small and that these reforms were always going to produce ‘winners and losers.’

**Outstanding issues with Universal Credit**

The Welfare Reform Bill states that carers with ‘regular and substantial’ caring responsibilities will be eligible for the ‘additional amount for caring responsibilities’ within Universal Credit, and uses the same description when setting out which claimants will be exempt from work-related conditionality. These details will be set out in regulations later this year and Carers UK will be working with the Government and Parliamentarians to ensure that these regulations to not reduce the numbers of carers entitled to the premium or who are protected from conditionality.

In addition, the UK Government has pressed ahead with plans to time-limit claims for the contributory sickness benefit Employment and Support Allowance (ESA). Many people being looked after by carers will be in receipt of ESA as well as DLA. Carers Scotland shares the deep concerns of disability organisations that cutting off support for people recovering from a serious health condition or disability after a year, will not give many people anywhere near enough time to recover sufficiently to start looking for work and will have a significant financial impact on disabled people and carers.
**Working Tax Credit**

As part of changes to Working Tax Credits, the Government had announced that, from April 2012, couples with children would have to work 24 hours a week between them, rather than the current level of 16 hours a week, in order to qualify for Working Tax Credit. If they were unable to find more work, the benefit would be removed.

At the start of the year, Carers Scotland and Carers campaigned with others to encourage carers to write to the Prime Minister, calling for a rethink on the policy and arguing that carers should be exempt from these changes. Given the unique barriers to work faced by families juggling full-time caring responsibilities for an older or disabled relative along with childcare, we argued many would find it impossible to work the additional eight hours needed and would simply lose the £3,870 tax credit.

In March, the UK Government announced a change to exempt couples with at least one dependent child and where one partner is entitled to Carers Allowance, will continue to be able to receive Working Tax Credit if one parent is working for at least 16 hours a week. This includes people with an ‘underlying entitlement’ to Carers Allowance. Carers Scotland welcomes this decision but, as the decision was not made until the middle of March many carers will find that they will be required to reclaim if they had not informed the Tax Credits office of their entitlement to Carers Allowance by 6 April 2012.

**New entitlement to childcare costs**

As well as protecting carers from this change, the Government has announced that couples receiving Working Tax Credit which include someone receiving Carers Allowance will now be able to claim extra tax credits for childcare if they pay for registered/approved childcare. Again this is to be welcomed. However, carers must inform the Tax Credits office by 6 May 2012.

**Personal Independence Payment**

The UK Government’s plans to introduce Personal Independence Payment (PIP) to replace Disability Living Allowance (DLA) are of significant concern. Alongside changes to the structure of the benefit, all existing and new claimants will be reassessed through a new face-to-face assessment, and there will be significant reductions in the budget as DLA is replaced by PIP.

We have deep concerns about the devastating impact of planned cut to the budget which impact assessments show will lead to 500,000 fewer disabled people being entitled to benefits when Personal Independence Payment replaces Disability Living Allowance. We believe this reduction of 23% in the number of people eligible for disability benefits will have a devastating impact on the lives of disabled people and their families. Members of the House of Lords echoed our disappointment at the lack of a carer impact assessment – as there is the risk that people currently in receipt of the higher and middle rate care component of DLA will lose their benefits as PIP is introduced, and that carers looking after them will lose Carer’s Allowance as a result.

However, we welcome the decision in December following campaigning from Carers UK and pressure from all parties, to bring forward a decision on how Carer’s Allowance would be linked to Personal Independence Payment and that both rates of PIP “daily living” component would act as ‘gateways’ to Carer’s Allowance. Carers
UK had raised strong concerns that only the highest rate of Personal Independence Payment would be linked to Carer’s Allowance, meaning that fewer carers would be entitled to support. This decision helps to maintain carers’ existing rights to Carer’s Allowance.

**Welfare Reform (Further Provisions) (Scotland) Bill – Stage 1**

Carers Scotland welcomes this opportunity to respond to the Bill at Stage 1. In the first instance we recognise the necessity of the Bill and the need to provide Ministers with the relevant powers before comprehensive information is available on Universal Credit and Personal Independence Payment. We believe this is necessary to ensure that families, particularly those with disabled people and carers are not further disadvantaged through losing out on other “passported” benefits by delays beyond the control of the Scottish Parliament.

Carers Scotland has been sought to provide a perspective on the issues that will impact upon carers in the Welfare Reform Scrutiny Group and in its subgroup on disability and has welcomed the partnership approach taken by the Scottish Government, Scottish Parliament and statutory and voluntary partners. The impact on carers and their families has been considered throughout the process and we urge the Scottish Parliament to continue this to mitigate some of the negative effects of welfare reform on carers in the areas where the Scottish Parliament has these powers.

Carers Scotland strongly urges the Scottish Parliament to ensure that Carers Allowance and those with an underlying entitlement to Carers Allowance remains a benefit passport to existing support. This includes support currently available through eligibility to income support (for those carers with an underlying entitlement) which includes legal aid, 100% of approved expense for disability adaptations and help with health costs and for support where receipt of Carers Allowance is the qualifying criteria, for example, individual learning accounts and a gateway to support in Stages 3 and 4 of the Scottish Energy Assistance Package.

Furthermore, in order to support carers to provide care, it is also vital that existing passported benefits available to those receiving Disability Living Allowance whose allowance continues under Personal Independence Payment. Carers Scotland recommends that all current support continues to be passported but in particular, support for transport and mobility (e.g. the blue badge scheme and concessionary travel).

We would also urge the Scottish Government to consider examining the merits and costs of developing transitional arrangements for passported benefits for those disabled people and carers who lose their entitlement through the introduction of Personal Independence Payments.

**Successor arrangements for Council Tax**

Carers Scotland again would recommend that carers existing entitlements and those of disabled people are protected within successor arrangements. These

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5 The entitlement to Stages 3 and 4 of the Scottish Energy Assistance Package to those in receipt of Carers Allowance was not included in the list detailed within the Financial Memorandum (para 64).
entitlements are currently linked to caring responsibilities and the disability or disability benefits of the person they care for rather than through the benefit system.

At present, some carers can qualify for a council tax reduction if they live in the same property as the person they care for, provide at least 35 hours of care each week and the person they care for is receiving one of the following:

- higher rate of the care component of Disability Living Allowance
- higher rate of Attendance Allowance
- an increased Disablement Pension
- an increased Constant Attendance Allowance

However, the person they are caring for cannot be their spouse, partner or child under 18 years old.

This can make carers and the person they care for invisible for council tax purposes and be eligible for a reduction of up to 50% of council tax.

In addition, people who are severely mentally impaired can also be deemed invisible for council tax purposes and, if they live alone, would be exempt from paying Council Tax. Furthermore, carers who leave their own property to care for someone, leaving it unoccupied can be exempt from paying Council Tax on the empty property.

The successor arrangements should also incorporate the current disabled band reduction. This is available to disabled people whose home has been adapted to provide an additional room, bathroom or kitchen to meet the needs of that disabled person or where extra space is required to allow for the use of a wheelchair. If one or more of these requirements are in place, the Council Tax Band is reduced in recognition that the person (whether they are a child or an adult) requires a larger property because of their disability.

**Successor arrangements for Community Care Grants and the Social Fund**

Carers Scotland urges the Scottish Parliament to ensure that successor arrangements continue to provide support and work for disabled people and their carers and that future regulations developed reflect aim to improve outcomes for both.

As outlined on page one of this response, carers (and often therefore carer/disabled person households) face real financial hardship. These households on low incomes (including those over relevant means tested thresholds) often have little flexibility to be able to purchase disability or household items. Many carers are in debt (57%), with over half (59%) reporting debts between £1,000 and £10,000 and more than a third (34%) having debts of more than £10,000. Most carers (69%) have used savings or income to pay for care and over a third report having difficulty paying for normal household costs including rent or mortgage (34%), the cost of essential repairs (79%) and utility bills (79%).

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6 Carers in Crisis: Summary results for Scotland (2008), Carers Scotland and Carers UK
Moreover, with increasing charges for social care services, this lack of financial flexibility has meant that 48% of carers report cutting back on caring support services or supplies (such as respite or equipment) because they cannot afford them. This does little to prevent crisis or to improve outcomes for carers and disabled people.7

With this in mind, Carers Scotland recommends, as outlined as a potential option the Scottish Government consultation “Devolution of Community Care Grants and Crisis Loans” that it would support carers and disabled people more effectively and mitigate the financial impact of caring to extend eligibility to include those in receipt of non-contributory benefits e.g. Carers Allowance and Disability Living Allowance. We recognise that there are financial constraints on the Scottish Government and local authorities and suggest that this recommendation could be particularly focused to those on low incomes that are above the current income support or pension credit guarantee element levels. Consideration should be given to the role of social work departments in delivering support to disabled people and their carers and tightening eligibility criteria. Utilising reformed community care grants could help deliver better outcomes by enabling low level interventions to reduce the likelihood of crisis that currently do not meet authorities eligibility criteria.

Conclusion
Carers Scotland hopes that consideration of the Welfare Reform (Further Provisions) (Scotland) Bill at Stage 1 recognises that key role that carers play in supporting disabled and older people to remain in their homes and communities, preventing more costly interventions such as admission to hospital or residential care. In recognising this role, it is essential that devolved provisions seek to mitigate the impact of welfare reform on carers and those they care for by ensuring, at a minimum, that they are not further disadvantaged by loss of support from passported benefits and in successor arrangements for council tax benefit, community care grants and the social fund.

CARERS SCOTLAND
22 APRIL 2012

About Carers Scotland
Carers Scotland is a charity set up to support the thousands of people who care for an elderly partner, sick friend or disabled family member. Carers Scotland is the Scottish nation office of Carers UK. Caring is part of life. Three in five of us will provide unpaid care for someone at some point in our lives. However, without the right support the personal cost of caring can be high with many carers experiencing poor health, poverty and disadvantage. Carers Scotland helps carers and campaigns to make their lives better.

Carers Scotland achieves this by:
• campaigning for the changes that make a real difference for carers.
• providing information and advice to carers about their rights and how to get support

7 ibid
• mobilising carers and supporters to influence decision makers.
• gathering hard evidence about what needs to change.
• transforming the understanding of caring so that carers are valued and not discriminated against.
• providing carer awareness and specialist training for staff in health, social care and the voluntary sector
• promoting training for carers to maximise their skills and experience.
SUBMISSION FROM CHILDREN 1ST

Views on the Bill as a whole

1. Are you generally in favour of the Bill and its provisions?

CHILDREN 1ST welcomes the Welfare Reform (Further Provision) (Scotland) Bill and acknowledges the need to pass and enact the bill as quickly as possible. This will allow the introduction of the secondary legislation which is required to ensure provision is in place for the implementation of measures from the UK Welfare Reform Act from 2013.

Moreover, we welcome the Scottish Government’s commitment to work closely with the committee and indeed, other stakeholders in relation to the bill process and in particular, sharing information and analysis of the impact of the changes. Given that most of the 5000 vulnerable children, young people and families we work with every year will be directly affected by many changes, CHILDREN 1ST is keen to support the Scottish Government and the Scottish Parliament through information sharing and collaborative working.

We would draw the committee’s attention once more to our discovery that take-up of council tax benefit (and indeed, housing benefit) is low, particularly among two parent families. Using the Department of Work and Pensions’ own data and analysis, we have estimated that Scots on low incomes may be missing out on up to £340 million annually. Increasing take-up in the next twelve months would provide much needed additional income (or at least offset household costs) for many families who are struggling financially. It would have the additional benefit of ameliorating the 10% cut in council tax benefit monies which forms part of the devolution of this benefit. CHILDREN 1ST would urge the Scottish Government, the committee and indeed, all MSPs to do all they can to increase take-up of council tax and housing benefit in the coming year.

General Principles Underlying the Bill

The Bill proposes that the Scottish Government be given powers to introduce regulations under the UK Welfare Reform Act and amend other Scottish legislation that relates to it. This would allow the Scottish Government to make the link between the devolved welfare matters for which it has responsibility and the reserved welfare matters which have been amended by the UK Welfare Reform Act. The Bill is necessary because in December 2011 the Scottish Parliament voted to take responsibility for these aspects rather than agreeing that the Westminster Parliament do so.

2. What are your views on this principle?

The Bill does not include provisions to devolve responsibility for replacement of council tax benefit and administration of elements of the Social Fund (Community Care Grants and Crisis Loans). Yet, the briefing session held by the committee teased out that such primary and/or secondary legislation will be required. While we
acknowledge the need to act urgently in relation to passported benefits, we would encourage the Scottish Government to include provision for these two devolved areas of welfare in this bill. To create a separate legislative process for this seems to be an unnecessary duplication of Parliamentary resources. CHILDREN 1ST would welcome amendments to this bill in this regard.

**Universal Credit**

Section 1 of the Bill contains provisions relating to the introduction of Universal Credit. It gives the Scottish Government powers to introduce regulations and amend existing legislation in relation to the introduction of Universal Credit in April 2013.

3. **What are your views on the proposed powers in relation to Universal Credit?**

4. **Do you have any other comments on the introduction of Universal Credit?**

**Personal Independence Payments**

Section 2 of the Bill contains provisions relating to the introduction of Personal Independence Payments. It gives the Scottish Government powers to introduce regulations and amend existing legislations in relation to the introduction of Personal Independence Payments in April 2013.

5. **What are your views on the proposed powers in relation to Personal Independence Payments?**

6. **Do you have any other comments on the introduction of Personal Independence Payments?**

**Subordinate Legislation**

Subordinate Legislation is legislation below the level of Parliamentary Bills – often regulations. Section 4 of the Bill contains provisions relating to subordinate legislation. It gives the Scottish Government powers to make regulations that relate to the UK Welfare Reform Act directly or indirectly.

Sections 1-3 of the Bill also include new subordinate legislation powers for the Scottish Government. Under these sections it may make regulations which amend Acts as well as old regulations.

7. **What are your views on the proposed subordinate legislation powers in the Bill?**

Given the extent, scope and importance of these regulations, it is essential that they receive proper and extensive parliamentary scrutiny. CHILDREN 1ST therefore recommends that a super-affirmatory procedure is used when these regulations are first introduced. This would allow for drafts to be considered by the secondary legislation and welfare reform committees before the final regulations are laid for approval, allowing for detailed consideration and potential changes to be made. CHILDREN 1ST recommends that the bill is amended accordingly.
8. Do you have any other comments on regulations that would follow this Bill on 'passported' benefits and eligibility for them?

A number of MSPs in the bill briefing session held on 29 March 2012 asked about eligibility criteria and the use of income thresholds. CHILDREN 1ST was concerned to note the Scottish Government’s focus on income being the primary factor in the provision of passported benefits, which suggests a shift from the current universal nature of some passported benefits and also does not acknowledge the very particular needs of some groups, especially families with dependent children, which current criteria fail to acknowledge.

This bill and regulatory process should be driven by two objectives. The first is to make transitional provision on passported benefits so that no one currently receiving one loses out in April 2013. CHILDREN 1ST recognises the urgency required here and supports wholeheartedly the Scottish Government’s intentions in this regard.

The second should be to use the opportunity welfare reform presents to fundamentally review our approach to passported benefits - what they are, what their purpose is, to whom they are available, how people qualify for them, how they are accessed and also administered. CHILDREN 1ST has a particular interest in ensuring that all vulnerable families with dependent children are receiving additional supports that help to address poverty but also acknowledge their – like kinship care families – particular needs.

We are concerned to note from the report on the briefing session that the Scottish Government seems minded to limit eligibility criteria to future passported benefits to an income threshold alone and also that there is some indication that people in work on low incomes might be excluded from eligibility. CHILDREN 1ST considers that we need a much wider debate and review involving all stakeholders with an interest in these issues before reaching conclusions on such details. We would hope that the committee will seek assurance from the Scottish Government that this wider review and debate will be conducted with a view to future proofing passported benefits to better meet the needs of vulnerable children and young people, and their families, in Scotland.

Financial Memorandum

The Financial Memorandum accompanying the Bill outlines the costs associated with this Bill and summarises them in a table at the end. However, as the Scottish Government states in the Memorandum ‘the timetable being pursued by the UK Government presents limits to the Scottish Parliament’s ability to assess the financial implications of legislation it considers.’

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

The financial memorandum that accompanies the Bill states “it is expected that the provision of passported benefits will be retained at the current level and that costs
will be met from within existing budgets”¹. As the bill manager indicated, it is impossible to gauge currently the full financial impact of changes occasioned by the shift to universal credit. Yet, the very fact that some people currently entitled to passported benefits under existing benefits and criteria will no longer receive universal credit and therefore, fall out of eligibility for some passported benefits, suggests that current expenditure will be affected.

Moreover, while finance is obviously a key driver in the current climate, CHILDREN 1ST is concerned that existing budgetary provision informs the approach to be taken to future provision of passported benefits, rather than designing the system to best meet need. The Scottish Government’s commitment to share modelling – hopefully this will include passported benefits implemented by local authorities and health boards, as well as nationally – will assist the consideration of financial issues greatly.

Effects on Equal Opportunities, Human Rights, Island Communities and Sustainable Development

The Policy Memorandum accompanying the Bill (para 21-25) outlines the assessments made by the Scottish Government on the potential impact of the Bill on equal opportunities, human rights, island communities and sustainable development. It notes that Equalities Impact Assessments will be published when it introduces subordinate legislation later in the year.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

CHILDREN 1ST

¹ Paragraph 33, Financial memorandum to the Welfare Reform (Further Provision) Scotland Bill
Children in Scotland welcomes the opportunity to submit further evidence to the Welfare Reform Committee. We are concerned primarily about the impact that the changes to the UK benefits system will have on Scottish children.

We will focus here on the changes to the current passported benefits that will be an inevitable consequence of the introduction of the UK’s Universal Credit. Entitlement to many benefits provided through the Scottish Government, the NHS and local authorities has historically been dependent on eligibility for certain UK welfare payments. The Scottish Parliament now has the opportunity to introduce a scheme that effectively meets the needs of children and families in Scotland in a straightforward and accessible way.

Children in Scotland believes that a key principle underpinning the Committee’s eventual conclusions should be that no Scottish family should end up being worse off as a consequence of these UK changes.

Most recipients of current benefits are expected to receive Universal Credit (and should transfer seamlessly to the new system). Thus, eligibility for Universal Credit should provide an automatic entitlement to passported benefits under the new system. Any current recipients of a passported benefit should continue to receive it, including those whose entitlement to Universal Credit has not been established at the point of the new system being introduced. The Scottish Campaign on Welfare Reform submitted evidence to the Social Security Advisory Committee in 2011 that sets out a detailed rationale for taking this approach.

Children in Scotland urges the Welfare Reform Committee to ensure that the new system is simple to understand and straightforward to access.

While the Scottish Parliament has made clear its disquiet in respect of the impact of much of the UK Welfare Reform Act, its objective of simplifying the benefits system is one with which few would disagree. The Welfare Reform Committee has the opportunity to develop a simple and accessible system in respect of passported benefits. Again, using Universal Credit as the ‘passport’ would seem to provide an obvious and manageable way of achieving this end. This has the advantage of not requiring multiple, complex and costly assessments.

Children in Scotland recommends that the Welfare Reform Committee prioritises the needs of children above other considerations.

One in four Scottish children is currently living in poverty, with children under three being the most impoverished group in our society. Poverty is not only a disadvantage in itself; it is highly correlated with other factors that limit children’s potential and inhibit their wellbeing. It is not a child’s fault that they are part of a family that depends on the welfare system for their income. Key policies of successive Scottish governments have sought to reduce inequality and support children’s healthy development. The rights of children to be brought up in circumstances that help them do as well as possible should be respected and promoted. Any decision made by the
Committee should reflect this. Strenuous efforts should be made to look at, and plan for, meeting family needs holistically. Access to benefits should (in line with GIRFEC) facilitate signposting, referral and shared plans in respect of child and family wellbeing. This should include access to services such as childcare that support children’s healthy development and enable parents to enter the labour market. The Committee should consider how it might encourage the Scottish Government to invest in such services. The forthcoming Children’s Services Bill provides an ideal opportunity to ensure that each Scottish child and family has a specific entitlement to childcare. As well as no family losing out, no Scottish child should be left behind as a result of UK welfare reform.

Children in Scotland is the national umbrella agency for organisations and professionals working with and for children, young people and their families. It exists to identify and promote the interests of children and their families and to ensure that policies and services and other provisions are of the highest possible quality and are able to meet the needs of a diverse society. Children in Scotland represents more than 400 members, including the majority of Scottish local authorities, all major voluntary, statutory and private children’s agencies, professional organisations, as well as many other smaller community groups and children’s services. It is linked with similar agencies in other parts of the UK and Europe.

The work of Children in Scotland encompasses extensive information, policy, research and practice development programmes. The agency works closely with MSPs, the Scottish Government, local authorities and practitioners. It also services groups such as the Cross Party Parliamentary Group on Children and Young People (with YouthLink Scotland). In addition, Children in Scotland hosts Enquire - the national advice service for additional support for learning, and Resolve: ASL, Scotland’s largest independent education mediation service.
Please find below the submission from Citizens Advice Scotland (CAS) in regards to the Scottish Government’s Welfare Reform (Further Provision) (Scotland) Bill using the ten questions posed by the Committee. CAS looks forward to expanding on these replies in front of the committee later this month.

1. Are you generally in favour of the Bill and its provisions?
2. What are your views on this principle?
3. What are your views on the proposed powers in relation to Universal Credit?
5. What are your views on the proposed powers in relation to Personal Independence Payments?
7. What are your views on the proposed subordinate legislation powers in the Bill?
8. Do you have any other comments on regulations that would follow this Bill on ‘passported’ benefits and eligibility for them?

As the Scottish Parliament rejected aspects of the UK Welfare Reform Bill Legislative Consent Motion, this bill is absolutely necessary to ensure that the citizens of Scotland still have access to passported benefits on 1 April 2013 when a raft of current benefits are effectively abolished and replaced by the new Universal Credit which is for people both in and out of work. CAS also believes there has been a lack of detail about many aspects within the UK Welfare Reform Act with much still being left to regulation or secondary legislation. This is unhelpful in policy and legislative planning. We also believe that there is much work still being done to assess what the impact will be of the UK Welfare Reform Act on Scotland’s people and services, including passported benefits.

Therefore CAS agrees that it is right that the Scottish Government now make the necessary provisions as it applies to areas of devolved competence both in terms of primarily legislation and subordinate legislation. CAS agrees the Scottish Government needs the powers to be able to amend legislation and introduce regulations as Universal Credit is introduced and DLA is abolished and replaced by PIP. We are content that the bill will also provide for regulations that directly or indirectly relate to the UK Welfare Reform Act to be changed in the future, as shown in the example from the Scottish Government in relation to varying income thresholds. CAS also welcomes the additional scrutiny that the Scottish Parliament will now have over aspects of the UK Act through the publication of primary and subordinate legislation and regulations tabled by the Scottish Government.

CAS expressed concern over the possible rejection of the LCM on the grounds that we wanted to ensure that the people of Scotland would not be in any way adversely affected by a rejection that could lead to a delay for people accessing passported benefits. CAS already believes that there are very tight timescales for the changes being introduced through the UK Welfare Reform Act, indeed the delay in the Bill becoming an Act, has added to those concerns. The Scottish Government said it was confident that legislation could be enacted in time but we would like to take this opportunity to remind MSPs that we are now less than a year away from the introduction of Universal Credit and PIP. Therefore there is only a short time to get legislation and processes into place to ensure the smooth transition and delivery of
passported benefits by Scottish Government, local authorities, and various other stakeholders. Whilst we absolutely support and recognise that necessary time must be taken to scrutinise this bill fully and adequately, the timescales involved must be borne in mind.

CAS also hopes and assumes that regulations to follow from the Scottish Government along with policy on passported benefits will be scrutinised by the Welfare Reform Committee. Much work will need to be done by the Scottish Government, local authorities, and various other stakeholders in establishing the new eligibility criteria and CAS welcome the opportunity to be part of that process.

For the people who currently access passported benefits, they are a necessary and a vital means of support. They are often an important part of a household’s overall income or budgeting and removal would cause hardship. Access to passported benefits such as school meals and those associated with health and education are relied on by hundreds of thousands of individuals and families. Equally passported benefits for areas such as legal aid and court exemption fees are important to ensure people have access to justice.

The new eligibility criteria which will be set up by the Scottish Government is important to ensure that those who were in previous receipt of passported benefits remain eligible under the criteria established within the new Universal Credit benefit and PIP benefits (more below). The most important aspects of the new eligibility system will be to ensure that it is simple, clear and easy to access. The whole process will have to be very carefully managed and co-ordinated and we hope stakeholders will engage in this fully and in a timeous manner. Equally local authorities will also have a role in establishing local eligibility criteria for any passported benefits they have under their discretion such as school uniform grants or access to local facilities such as leisure centres.

We want all citizens who currently access passported benefits to remain franchised in the new system. Passported benefits play an important role in meeting education, health and anti-poverty objectives and targets. In considering how passported benefits fit with the new Universal Credit we hope that such considerations and outcomes will be taken into account. CAS also wants to ensure that the replacement eligibility criteria do not impact on work incentives or impoverish people who want to move into work from welfare.

Therefore, as this new criteria is developed, we would argue that a big picture view be taken. CAS suggests that establishing eligibility be done in conjunction with other policy areas – or at least have a role in recommendations for other policy areas. For example, if local authorities were to roll out free school meals for P1-3 as a minimum, then what is currently a passported benefit for those children with parents who meet the current criteria, would be an entitlement for all (also reducing the perceived stigma of such benefits). Equally providing accessible and affordable childcare in early years and wraparound care in school years, would help lone parents and parents on low incomes in the workplace – including entering the workforce. We can see already how this would work: as Scotland now has free prescriptions, there will be no need to establish the criteria for eligibility for
prescriptions, therefore also no need to see if anyone would be disenfranchised through new eligibility rules under the new Universal Credit.

We are concerned that stricter sanctions and conditionality which could lead people to losing out on aspects of the Universal Credit may also have a major knock on effect on accessing passported benefits and believe this will have to be examined carefully during the drawing up of the new eligibility criteria. Equally during the 2013-17 migration process, we are concerned that any delays or appeals could also lead to delays or missing out on vital passported benefits. As well as being of detriment to adults, CAS would not want to see situations where children were missing out on passported benefits due to parental migration problems or sanctions imposed at the very time they were needed the most.

CAS would also like to point Committee Members to the newly published Report by the Social Security Advisory Committee ‘Universal Credit: the impact on passported benefits’ which shows the importance of passported benefits. This review found that:

- All passported benefits fulfil important needs, are highly valued by those who receive them, and make a significant contribution to:
  - Children’s health and wellbeing and their educational and emotional development
  - The health, wellbeing and quality of life for adults and families who are out of work or living on a low income
  - Reducing child poverty, health inequalities and social exclusion

Benefits-in-kind are generally regarded as particularly beneficial in helping low-income families and there was little support from review respondents for cashing these up within UC

There is no rigorous research evidence to show that the provision of passported benefits acts as a work disincentive: when people take decisions about moving into work or increasing working hours, they take a range of factors into account

The loss of out-of-work passported benefits when people take a job can create an unhelpful cliff-edge and reduce the apparent gains to work

As the number of passported benefits has increased, so too has the complexity in the system and greater simplicity and better coordination of passported benefits is essential: this should reduce administration costs, render passporting more effective and efficient, improve awareness, understanding and take-up, and ensure better targeting

Options for the future should not undermine the policy objectives of individual passported benefits, nor undermine the overarching principle that people should be better off in work than they are on benefits

It is unlikely that one approach will suit all passported benefits in future, and more radical options will need further consideration and may require additional expenditure
The constraint of cost-neutrality creates tensions which will need to be balanced.

4. **Do you have any other comments on the introduction of Universal Credit?**

CAS agrees with the principle of simplifying the benefits system into one Universal Credit and to improve work incentives by allowing individuals to keep more of their income as they move into work. However, during the passage of the Welfare Reform Bill we expressed our concern over many of the accompanying changes we believe will be to the detriment of the people, services and economy of Scotland. These include the taper rate for Universal Credit and minimum and maximum disregards; cuts in benefit payments which will mean many people receive lower entitlement payments; increased sanctions and conditionality; monthly payments to one member of the household only (including housing benefit which has previously been paid direct to landlords); and entitlement to passported benefits, especially those that are devolved to Scottish or local governments. We would be happy to provide more information on any or all of these issues.

6. **Do you have any other comments on the introduction of Personal Independence Payments?**

The Scottish Government must introduce new PIP eligibility criteria in relation to accessing the two passported schemes Blue Badge Scheme (BB) and National Concessionary Travel Scheme (NCT) benefits that are currently accessed through DLA Mobility and Care components. Whilst we would argue that again no-one should lose out on these schemes if they received them previously, this could be problematic due the numbers expected to lose DLA and therefore their entitlement to these schemes.

The first thing to note about the change of DLA to PIP is that the UK Government has already determined that they will cut the budget for disability benefits by 20%. The change from DLA to PIP will disenfranchise one in three working age DLA clients in Scotland from their current DLA entitlement. This remains our biggest concern over the move from DLA to PIP. Inclusion Scotland estimate 75,000 people of the 225,000 to be assessed and migrated from DLA to PIP will no longer be entitled to their previous benefit. They will therefore of course, not be eligible for BB or NCT. Therefore as well as losing out on vital DLA, disabled people will also be unable to access these schemes, limiting further access to independent travel.

There are two specific concerns we have over the introduction of PIP. The first is the assessment process. We have seen major problems with the Work Capability Assessment (WCA) as people have applied for Employment and Support Allowance which is the replacement for Incapacity Benefit. In 2010/11 Scottish bureaux saw a 33% increase in the number of new ESA issues which were both time consuming and stressful for both bureaux and clients. In the case of ESA tribunals where a CAB provided representation, 69% found in favour of the claimant. This shows there are inherent flaws in the WCA, an issue we have pressed UK Governments on since 2008 and can provide further information on if required.

CAS is concerned that the assessment process for PIP may also have inherent flaws and lead to a large amount of appeals as we have seen with ESA. This could lead to
other problems, for example whilst someone goes through an appeal process will they be able to access BB or NCT? When PIP is decided for an individual, the length of time that person is entitled to it for will also be set. Depending on your circumstances the award could be a short award of up to two years or a longer award lasting up to five or ten years. Therefore people will have to face the stress of continual reassessment for PIP and the worry of losing it and associated benefits.

Our other area of concern is that it has been suggested that the use of mobility aids and adaptations may be taken into account in the assessment. So for example, an electric wheelchair-user may be assessed as not having restricted mobility and therefore not eligible for the mobility component of PIP.

DLA is already within the top ten most common problems clients present to Scottish bureaux. In 2010/11, DLA (Care) was the third most common problem with 20,222 issues (an increase of 3% on the previous year) and DLA (Mobility) was the seventh most common with 18,216 issues dealt with by bureaux (an increase of 2% on the previous year). We expect to see an increase in demand for advice during the migration of DLA to PIP.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

As stated in the Scottish Government Financial Memorandum, ‘it is not possible to set out the detail of the likely financial impact of future plans to modify entitlement to passported benefits until the operational detail of the UK Government’s welfare reform is available’ and that they will instead provide this when subordinate legislation is tabled later in the year. As such CAS feels we cannot make a comment on the financial implications of this bill. However, to reiterate what was stated earlier, time is of the essence and we agree with the Scottish Government’s approach in bringing forward this legislation now rather than waiting to legislate after further successor arrangements and details are brought forward by the UK Government.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

We have no comment to make on this question.

CITIZENS ADVICE SCOTLAND
SUBMISSION FROM COSLA

[Intis a copy of the submission provided by CoSLA to the Finance Committee on the Bill’s Financial Memorandum.]

Introduction

COSLA welcomes the opportunity to respond to the Scottish Parliament Finance Committee’s call for evidence in relation to the Welfare Reform (Further Provision) (Scotland) Bill - Financial Memorandum.

COSLA accepts that, since the Scottish Parliament only agreed to a partial Legislative Consent Motion in relation to the UK Welfare Reform Act, it is necessary for the above enabling Bill to confer powers to Scottish Ministers to make changes to devolved matters, primarily passported benefits affected by that Act.

This Bill does not cover new arrangements for example for the administration of Council Tax support, following abolition of Council Tax Benefit and devolved elements of the Social Fund, both of which require to be in place by April 2013. Therefore, whilst we look forward to a future discussion with the Parliament about these critically important areas, in our response we are not making any further comment on these.

The Committee should also take note that it is too early for COSLA to offer anything other than broad comments on the financial implications of the elements contained in the Bill, as the level of detail needed to quantify the impacts is not yet available. Nonetheless the Committee should appreciate that where the response below refers to additional costs these will need to be addressed and, as the detail begins to unfold, COSLA will seek to work in partnership with the Scottish Government to quantify and seek ways to mitigate any financial impacts on Local Government.

Taking account of the caveats provided above, COSLA has set out the following responses to the Finance Committee Questionnaire which was attached with the request for evidence.

Costs

The Financial Memorandum covers the costs of existing statutory passported benefits in Scotland. We do not anticipate the costs of this existing provision changing as a result of the Bill, however any subsequent change to eligibility arising from regulations would have financial implications for Councils and these would need to be understood and quantified.
The Financial Memorandum also refers to possible increases in administration costs for Councils if more complex assessment schemes need to be put in place to maintain existing entitlements, without the same ability to use benefit entitlement as a proxy for income levels.

In response COSLA would wish to draw the Committee’s attention to the fact that the costs are very much dependent on whether information on the breakdown of claims for Universal Credit is available and is shared with Councils by the Department of Work and Pensions. Until the position becomes clear as to whether this breakdown will be available it is too early to quantify meaningfully the level of these costs.

Even if a breakdown of benefit information is readily available to Councils there will be costs associated with maintaining the schemes and these could include publicity, devising new assessment forms and procedures, changes to IT systems and electronic claim forms and increased assistance to claimants, but these examples are not exhaustive. We do not consider that Local Government can accommodate these additional administrative costs and therefore further discussion would be required with Scottish Government about how these costs can be addressed. Without the breakdown of Universal Credit, Councils will have to devise much more complex assessment procedures and these could have significant costs attached.

Therefore, whilst COSLA is working closely with the DWP on the implementation of Universal Credit and the issue of having a breakdown of costs is well understood, we would welcome the support of Parliament in pursuing this issue.

Additionally since most claimants will only gradually move on to new benefits between 2013 and 2017, parallel systems of entitlement will need to operate during the transition period and this is likely to further increase the administrative burdens on Councils.

**Wider Issues**

COSLA understands that the Scottish Government is dependent on further information from the UK Government on how Universal Credit and Personal Independence Payments (PIP) will operate in practice, before it is able to finalise the regulations governing passported benefits. However we would be concerned if sufficient time is not allowed to adjust operational arrangements and to be able to communicate changes. COSLA will however seek to work with the Scottish Government as necessary to ensure the necessary arrangements are put in place timeously.

Councils also provide non statutory passported benefits, for example, school clothing grants which are linked to free school meals, admission to leisure centres and other concessionary entitlements. It is anticipated that additional administration costs may be incurred to continue this provision as a consequence of the move to Universal
Credit and PIP but these are not quantifiable at this stage until the detail of the new schemes are available.
Inflammatory Bowel Disease

Approximately 240,000 people in the UK have Crohn’s Disease or Ulcerative Colitis, collectively known as Inflammatory Bowel Disease (IBD). Prevalence is higher in Scotland than in other parts of the UK, with latest research suggesting that one in every two hundred people in Scotland live with one of these lifelong conditions. IBD most commonly first presents in the teens and early twenties (mean age a diagnosis is 29.5 years). In IBD the intestines become swollen, ulcerated and inflamed. Symptoms include acute abdominal pain, weight loss, diarrhoea (sometimes with blood and mucus), tenesmus (constant urge to have a bowel movement), and severe fatigue. Symptoms vary in severity from person to person and from time to time and relapses often occur suddenly and unpredictably. Between 50% and 70% of patients with Crohn’s Disease will undergo surgery within five years of diagnosis. In Ulcerative Colitis, lifetime surgery rates are approximately 20-30%

Crohn’s and Colitis UK

Crohn’s and Colitis UK is the leading charity offering information and support to anyone affected by these conditions. Established in 1979 as a partnership between patients, their families and the health professionals caring for them, the charity’s services include four helplines, a website, a wide range of accredited information sheets and booklets and a nationwide network of locally-based Groups. The charity raises awareness of these little understood or known conditions, campaigns for improved care for patients, funds vital research and seeks to influence policy to ensure that it reflects and meets the needs of people living with IBD.

Personal Independence Payments

Crohn’s and Colitis UK are calling for a fairer assessment which includes a wider range of activities. This is needed to make the system more sensitive to the complex needs of people living with long-term conditions and to ensure the system is able to adequately recognise and measure the additional costs encountered by people with little understood conditions such as IBD.

We are disappointed that draft regulations published by the UK Government appear to include a much narrower range of activities than DLA, which PIP seeks to replace, and are concerned that these focus only on those activities required for the bare essentials of existing.

Range of activities

For people with IBD, participation in social activities can be important in reducing the sense of social isolation, which is known to be a serious problem for some, and help needed to support people to engage in such activities should be recognised in the assessment. Failing to account for activities of particular importance to the individual, beyond those currently included in the draft descriptors proposed by the UK Government, will lead to a system that is less sensitive to the complex needs of people living with the myriad of disabilities and medical conditions that PIP aims to
support. Consequently, the assessment will fail to adequately recognise or measure the additional disability costs and barriers to participation encountered by people with little understood conditions such as IBD.

We know from members of Crohn’s and Colitis UK that the fluctuating nature of their condition makes it more difficult for them to establish their entitlement to DLA. The criteria for PIP should recognise the difficulties of people whose abilities may fluctuate within each day, but also others whose abilities may fluctuate over a longer period of time. The nature of IBD means that a person may experience periods of reduced symptoms if their disease is in remission, but the unpredictability of the condition means that they never know when it may flare-up again. We remain concerned that the proposed 12 month rule may have a disproportionate effect on people with conditions such as IBD who may have periods within this time when their symptoms are reduced.

Crohn’s and Colitis UK welcome the inclusion of a descriptor which specifically assesses the impact of managing toilet needs or incontinence. However, we believe that this descriptor should account for the impact of the frequency and urgency experienced twenty four hours a day by people living with conditions such as IBD, and that it will be limited in its application if it fails to take into account the difficulties experienced in getting to a toilet (inside or outside the home) and cleaning up after using the toilet or an episode of incontinence. Help with cleaning the toilet or surrounding area is a specific need arising from a medical condition which goes beyond the cleaning that is required in relation to general household duties. We believe that the need for assistance with changing bedding following an episode of incontinence or leakage from a stoma appliance should also be addressed in the assessment.

**Mobility Activities**

Planning and following a journey:

For people with IBD, what determines whether a journey is achievable or not is often the proximity and availability of publically accessible toilets.

Crohn’s and Colitis UK believe that the descriptor which assesses mobility activities should account for the full range of disability-related costs in getting around, including the need to use taxis or the additional fuel and wear and tear on a personal car for those who have rely on these modes of transport because their toilet needs, continence problems and lack of public toilet facilities prohibit the use of public transport.

Moving around:

Crohn’s and Colitis UK would like to draw attention to CDLA/217/2009 which considered “the physical and muscular effort involved in trying to control [her] bowels” and “the very real effects of an episode of faecal incontinence" on the appellants mobility.
We believe these factors should be recognised and taken into account in the PIP assessment of this descriptor.

**Measuring additional IBD-related costs**

Planning and buying food and drink:

People with IBD may experience additional costs associated with buying food and drink. For example, they may need to buy more costly food to increase their intake of certain nutrients to address deficiencies, or modify their diet to avoid certain foods or food additives which exacerbate their symptoms. The need for frequent and urgent access to toilet facilities and the fatigue associated with IBD may necessitate the use of taxis to and from the shops or the use of online shopping facilities. Crohn’s and Colitis UK ask that these additional costs of buying food and drink are recognised in the assessment.

Dressing and undressing:

Laundry or high utility costs may be incurred by people with IBD who have to wash their clothes more frequently due to soiling. The need to replace clothes more frequently because of excessive wear and tear arising from frequent washing, or extreme fluctuations in weight due to the condition or the drugs prescribed to treat it, also attracts additional expenditure. Crohn’s and Colitis UK believe these extra costs should be recognised in the assessment, in addition to the needs arising from the physical ability to dress.

**Other factors**

Crohn’s and Colitis UK believe that consideration should be given to the additional cost of utilities for people living with disabilities or long-term medical conditions. In particular, we know from calls to our Helplines that people with IBD worry about water bills arising from increased laundry costs and the need flush the toilet more frequently. Higher heating costs also apply to people whose condition means that they spend more time in the house.

**Blue Badge**

Ineligibility for the blue badge means that, for a substantial number of people with IBD, participation in daily life is a difficult challenge. The sudden and uncontrollable need to use a toilet is a genuine and recognised symptom of IBD, and experiencing an episode on incontinence is each individual’s worst nightmare. Such an episode often results in a devastating impact on the individual’s ability to engage in activities beyond the home and can lead to social exclusion and poorer health. Many people with IBD apply for the blue badge, hoping that it will allow them to quickly access parking facilities and find a nearby toilet should they experience a flare in their condition away from the home.

In linking eligibility for a Blue Badge to the receipt of the Mobility Component of PIP, an application made by a person with IBD is likely to be identified as ineligible within the confines of restrictive criteria which continues to ignore how the condition can impact on mobility.
Crohn’s and Colitis UK believe the underlying problem to be a fundamental lack of knowledge and understanding of IBD and the impact the condition can have on the mobility of an individual, such as the pain and discomfort experienced by those experiencing a flare when attempting to walk. Any assessment should measure the impact IBD has on the individual's mobility during a flare; more specifically, it must account for the affect that severe diarrhoea, abdominal pains and the urgent and uncontrollable need to access a toilet can have on the individual's capacity to walk (move around). Crohn’s and Colitis UK would like to draw attention to CDLA/217/2009 which recognises “the physical and muscular effort involved in trying to control [her] bowels” and “the very real effects of an episode of faecal incontinence” on the appellants mobility.

**In conclusion**

Crohn’s and Colitis UK are concerned that the range of activities covered in regulations which will determine entitlement to PIP is too narrow. This, we suggest, could render it ineffective in its stated aims of supporting participation and contributing to the extra costs associated with living with a disabiling condition such as Crohn’s or Ulcerative Colitis.

We would be happy to discuss any of the comments or suggestions made in this paper, and look forward to the opportunity to engage further with the Scottish Government in relation to the Welfare Reform agenda in Scotland.

**CROHN’S AND COLITIS UK (NACC)**
**23 APRIL 2012**
SUBMISSION FORM DISABILITY AGENDA SCOTLAND

We note that, to date, evidence sessions heard by the Welfare Reform Committee have highlighted a number of recurring themes – including the complex area of eligibility for passported benefits after the introduction of the Universal Credit and the change from Disability Living Allowance to Personal Independence Payment.

Disability Agenda Scotland (DAS) welcomes the Committee’s work in seeking to establish what eligibility criteria the Parliament could adopt to help mitigate some of the impact of the welfare reform programme. We believe it is important that the Committee does so, though this is particularly challenging given that there is a parallel process around the eligibility criteria currently going through the UK Parliament.

That said, DAS has had further discussions on what new eligibility criteria for passported benefits and entitlements may look like and we enclose our initial suggestions. Clearly, as many of the witnesses have recognised, the devil is in the detail with much of the reforms, and until the final details are established it is difficult to come to a definitive view.

Disability Agenda Scotland would like to offer the Committee a representative who would attend meetings of any implementation group that will be set up to mitigate the effects of the Welfare Reform Act for passported benefits.

Introduction

Founded in 1998, Disability Agenda Scotland (DAS) is an alliance of Scotland’s major disability organisations. Together our experience, expertise and interests cover physical disability, sensory impairment, learning disability, challenging behaviour and mental health problems.

Working closely with the thousands of disabled children, young people and adults, families and carers involved with the member organisations, DAS aims to:

1. Influence public policy and legislation
2. Provide a forum for decision makers and influencers to obtain advice and information.
3. Promote a better understanding of the diverse experiences, needs and aspirations of disabled people.

DAS aims to promote the interests of disabled people whose views are hard to reach into the mainstream of public policy. Views may be hard to reach because people are not involved in consultation processes, are not included in or have no influence on lobby groups, have communication support needs which are not met or are poorly understood, or they may simply not be asked.

Members of Disability Agenda Scotland are: Capability Scotland; ENABLE; RNIB Scotland (Royal National Institute of the Blind, Scotland); Action on Hearing Loss Scotland; SAMH (Scottish Association for Mental Health); and Sense Scotland.
Passported benefits

A number of the benefits replaced within the terms of the Welfare Reform Act are known as ‘passport benefits’. This is because they enable people to qualify for other entitlements. For instance, receipt of the higher rate of the mobility component of Disability Living Allowance enables people to qualify for concessionary travel and blue badge schemes.

Disability Agenda Scotland believes that there are four cohorts of people for whom future passporting needs to be considered.

1. People who currently qualify for passported benefits and will continue as a result of the Welfare Reform Act

2. People who currently qualify for passported benefits but will lose out as a result of the Welfare Reform Act

3. People who would have qualified for passported benefits under the old rules but will not qualify in the future

4. Disabled People who don’t currently have access to passported benefits

Universal Credit

We agree with comments from the Scottish Campaign on Welfare Reform’s submission to the Committee that “the design of new eligibility criteria for passported benefits must ensure that there is a simple structure without too many complicated rules.” As such, we believe that Universal Credit claimants should qualify for available passported benefits as listed in the Annexe of the SPICE briefing on the Welfare Reform (Further Provision) (Scotland) Bill.

These include Educational Maintenance Allowance, student loan cancellation, legal aid – advice and assistance, Individual Learning Allowance, free glasses, free dental treatment, free travel to NHS treatment, free school lunches and court fees exemptions.

The introduction of the Universal Credit will see a reduction in the number of eligible claimants and spend. There will therefore be a consequential impact on the Scottish budget as fewer people are entitled to passported benefits. There is currently an absence of detailed modelling on disabled people and indeed on the Scottish budget. Detailed modelling would greatly inform subordinate legislation, guidance and regulations relating to passported benefits and entitlements.

Disability Living Allowance and Personal Independence Payment

We believe that people receiving Disability Living Allowance at present should continue to receive access to passported benefits after the introduction of the Personal Independence Payment. We would like to see eligibility for these benefits move to the following:
• **Blue Badge Scheme** – enhanced or standard rate mobility component of Personal Independence Payment

• **National Concessionary Travel scheme** – enhanced or standard rate mobility component or enhanced or standard rate care component of Personal Independence Payment

We are concerned to note that within the UK Government’s second draft criteria for the Personal Independence Payment\(^1\) the present cohort of people who receive the mobility component of Disability Living Allowance will reduce across the UK from 1,040,000 to around 760,000. This could mean as many as 30,000 people across Scotland who currently qualify for concessionary travel or blue badge could lose out.

It is vital to the independence of many disabled people that they continue to receive access to the National Concessionary Travel scheme. We believe that that Scottish Government should maintain access to passported benefits for this group of people as a bridging/transitional measure and review this at a later date. Disability Agenda Scotland would like to see the Scottish Government carry out a review of the process in 2015, in the lifetime of the implementation of the Universal Credit and the Personal Independence Payment.

We believe that people should be entitled to the Blue Badge Scheme and the National Concessionary Travel scheme on the production of evidence of receipt of Disability Living Allowance at any point between 1st April 2011 to 31st March 2013.

In our 2012 manifesto, Disability Agenda Scotland has called for local authorities to protect concessionary leisure activities and transport schemes for people who currently qualify through the Disability Living Allowance after the introduction of the Personal Independence Payment. We would like to reiterate this request and seek the support of the Scottish Government for this – through the issuing of guidance to local authorities in order to help mitigate the impact of welfare reform.

In respect to cohort 3, people who would have qualified for passported benefits under the old rules but will not qualify in the future, we believe that a number of pathways to qualification for passported benefits should be available.

These could include:

- Self-referral and written application
- Medical certificate
- Inclusion in assessment by Social Work services (see below)

Disability Agenda Scotland would also like to echo calls in Citizens Advice Scotland’s evidence to the Committee for further investigation into “the dichotomy between some aspects of welfare reform and Scottish Government policy”. In particular, the Committee should give a particular focus to the Scottish Government’s Self-Directed Support (SDS) policy.

If implemented properly SDS will enable people to meet their own agreed outcomes and the value of passported benefits is not considered as part of their individual budget. If people lose this entitlement their outcomes may be impossible to achieve unless the local authority is able to increase their budget to meet the costs. This is at the same time that we are seeing the introduction of stricter eligibility criteria for social work services and increasing demand because of demographic and other pressures.

**Existing systems that could be extended**

**Minimum Information Standards for Assessment and Care Planning for Adults**

Social work departments provide services to adults following an assessment process. This assessment is done using Minimum Information Standards. We would like the Government to consider adjusting these so that they consider a number of passported benefits or entitlements. Furthermore, we think that consideration should be given to authorising GPs, District Nurses and other health professionals to allow them to authorise that individuals get access to passported benefits.

**National Entitlement Card**

Since 2006, there have been national rules for entitlement to a National Entitlement Card for free bus travel across Scotland. Eligibility for the card includes people whose ability to travel is impaired by a mental disorder that has persisted for more than a year and who need to travel in order to keep health or social care appointments or to take part in a treatment or rehabilitation.

Proof accepted includes signature of Form NCT002 (Transport Scotland, Certificate of Eligibility – Mental Health) by one of the following:

- Psychiatrist
- Community psychiatric nurse
- Educational psychologist
- Head Teacher of a Special School
- Occupational Therapist
- Mental Health Officer
- Social Worker – specialising in mental health
- Clinical psychologist
- Support Service manager
- Day Service manager

We would like the committee to consider adopting this model as one route to enable people to access passported benefits.

**Conclusion**

Disability Agenda Scotland (DAS) welcomes the Committee’s work in seeking to establish what eligibility criteria the Parliament could adapt to help mitigate
some of the impact of the welfare reform programme. However, whilst much of the detail remains unclear, it is difficult to come to a definitive view. We invite the committee to consider some of the systems that we have proposed could be extended to achieve this aim.

ANDY KERR
CONVENOR
DISABILITY AGENDA SCOTLAND
SUBMISSION FROM DISABILITY HISTORY SCOTLAND

‘Others Make Plans. We Make History...’

Summary

‘Just Speak the Truth Even if Your Voice Shakes’

- We are generally in favour of giving the Scottish Government powers to link devolved and reserved welfare matters as we hope this will mitigate against the worst aspects of the Welfare Reform Act.

- We believe there is a compelling need for the Scottish Government to learn the lessons of history and use the discretion it will have in implementing the Welfare Reform Act in a way that reflects progressive Scottish values of social justice, equality and fairness.

- We urge the Scottish Government to resist the unrealistic timetable for the ‘roll out’ and implementation of Universal Credit in Scotland.

- We do not believe that the Coalition has made a convincing case for abolishing DLA and that the introduction of PIP is not in the best interests of disabled people living in Scotland. We urge the Scottish Government to formulate the descriptors for Scottish PIP so as to reflect We believe that that the principle underpinning the passporting of benefits should be one of universality and we would urge the Scottish Government to adhere to this.

- We believe that all impact assessments relating to welfare reform matters should be undertaken by an impartial body that is independent of the Scottish Government.

- We believe that the Scottish Government should establish an Independent Living Fund for Scotland in order to effectively support disabled people, whether in employment or not, to live in their own homes and participate in every aspect of Scottish Society.

- We urge the Scottish Government to ensure that the Scottish Social Fund should be ring fenced and those criteria as to eligibility for support from the Scottish Social Fund should be drawn up with the involvement of poor and marginalised people in a way that is transparent, humane and equitable.

- We urge the Scottish Government to condemn mandatory work activity for disabled people and to end the Work Programme in its current form.

- We urge the Scottish Government to expand the Work Choice Programme for disabled people who have freely chosen to look for employment.
We urge the Scottish Government to assist Remploy Workers in taking over the remaining factories in Scotland and enabling them to be run as social enterprises or workers co-operatives.

Disability History Scotland

About Us

In autumn 2010 a group of disabled people from trade unions and community organisations met and agreed to establish UK Disability History Month.

We wanted to celebrate the history, culture and achievements of disabled people and we felt that there was a need to have a specific time in the year when the history of our struggle for equality and liberation could be focused on.

At very short notice a series of events were held throughout England but not in Scotland. So in 2011 a small group of disabled people formed Disability History Month Scotland (DHMS) with the endorsement and support of the UK Disability History Month steering group.

Eleven community organisations also supported us. The theme for DHMS 2011 was ‘Celebrating Our Struggle for Equality’ in order to reflect on our history as disabled people in Scotland and our campaign for civil rights. This theme was also relevant to more current events such as the ‘Hardest Hit’ demonstrations in May and October 2011, and the recent attacks on the rights, dignity and standards of living of disabled people throughout the UK.

We put together two events, an official launch and a national conference which were both very successful. A motion welcoming Disability History Month Scotland was also debated in the Scottish Parliament. We were determined to build on this and make DHMS an annual fixture that is recognised throughout Scotland.

We held an open meeting in February 2012 where the decision was taken to establish Disability History Scotland which incorporates Disability History Month Scotland. Our aim is to make sure that the history of disabled people in Scotland is never forgotten.

Disability History Scotland now has a formal constitution, an Advisory Board and a team of committed volunteers and we are already hard at work, planning DHMS 2012 and a number of other events which will run throughout the coming year.

Why we are responding to the Scottish Government’s Call for Evidence

Disability History Scotland would not usually make a submission to the Scottish Government on a directly political issue because we see our remit as primarily an educational one. However, our Advisory Board is of the opinion that the implications of the Westminster Welfare Reform Act and the resultant Welfare Reform (Further Provision) (Scotland) Bill are so serious and far reaching for disabled people living in Scotland that we have no alternative but to respond.
1. Are you generally in favour of the Bill and its provisions?

The most important point we wish to make is that we do not accept the current neo-conservative narrative of a ‘crisis of welfare’ in relation to disabled people in Scotland. The ‘moral panic’ driving the Coalition Government’s welfare reform agenda is fuelled by an imperative both to label people as ‘deserving’ or ‘undeserving’ and as a crude mechanism for rationing resources. We have been here before; this is very similar to the rhetoric used to justify the introduction of the draconian 1834 Poor Law Act, the 1845 Scottish Poor Law Amendment Act and the arbitrary 1913 Mental Deficiency Act which led to the compulsory institutionalisation of nearly half a million disabled children and adults in the UK.

The historian E.P. Thompson described the Poor Law as a ‘Statute of Quite Uncommon Callousness’ and our belief is that this could equally be said of the Coalition’s Welfare Reform Act in its present form. This legislation is a retrograde step that will take us back to the 19th century unless the Scottish Government intervenes.

- We are generally in favour of giving the Scottish Government powers to link devolved and reserved welfare matters as we hope this will mitigate against the worst aspects of the Welfare Reform Act.

2. What are your views on this principle?

- We believe there is a compelling need for the Scottish Government to learn the lessons of history and use the discretion it will have in implementing the Welfare Reform Act in a way that reflects progressive Scottish values of social justice, equality and fairness.

3. What are your views on the proposed powers in relation to Universal Credit?

4. Do you have any other comments on the introduction of Universal Credit?

Whilst we welcome the proposed powers for the Scottish Government we are generally extremely concerned about the introduction of Universal Credit and its impact on disabled people in Scotland. It is laudable to want a benefits system that is streamlined, responsive and flexible. It is quite another thing to attempt to run two huge computer systems (DWP and HMRC) concurrently within a timescale that is almost impossible to meet. We cannot find examples of projects on anything like this scale that have been delivered on time and within budget and our fear is that the people who are least able to deal with the fallout from this epic folly will be the ones who in the frontline when it implodes. The last time something like this was attempted was in the 1980’s when responsibility for Housing Benefit payments was transferred from central to local government and it was an extremely painful experience; This move to harmonise 6 ‘dynamic benefits’ is likely to be even more traumatic.
We also believe that the move to a computerised claim system is potentially discriminatory and will also lead to job losses in DWP processing centres throughout Scotland.

- We urge the Scottish Government to resist the unrealistic timetable for the ‘roll out’ and implementation of Universal Credit in Scotland.

5. What are your views on the proposed powers in relation to Personal Independence Payments?

6. Do you have any other comments on the introduction of Personal Independence Payments?

The introduction of Disability Living Allowance (DLA) in 1992 fundamentally transformed the lives of thousands of disabled Scots for the better. The progressive nature of DLA reflected, at least in part, the Social Model of Disability because it recognised the barriers that disabled people often face in participating in society.

The scrapping of DLA and its replacement by the ill thought out Personal Independence Payment (PIP) in 2013, despite the overwhelming opposition of disabled people and disabled peoples organisations, is to be condemned.

Maria Miller, the Minister for Disabled People has said that PIP also reflects the Social Model of Disability but as disabled people we refute this. PIP is a Medical Model throwback, reminiscent of a utilitarian approach to disability last seen in the 1970’s.

As the Coalition has made clear that the introduction of PIP will result in a 20% reduction in eligibility, we feel that this, rather than the needs of disabled people, is what is motivating the Westminster Government to make this change.

We have an additional concern regarding the tentative proposal from Maria Miller to combine the assessment processes for PIP, Employment and Support Allowance (ESA) and Social Care. We believe that the rationale for the assessments of each of these is fundamentally different and should not be brought together in Scotland. We do not believe that assessments for disability related benefits should be outsourced to private sector corporations as current arrangements have resulted in a breakdown of trust between disabled people and the state.

- We do not believe that the Coalition has made a convincing case for abolishing DLA and that the introduction of PIP is not in the best interests of disabled people living in Scotland. We urge the Scottish Government to formulate the descriptors for Scottish PIP so as to reflect the social model of disability.

8. Do you have any other comments on regulations that would follow this Bill on ‘passported' benefits and eligibility for them?
• We believe that the principle underpinning the passporting of benefits should be one of universality and we would urge the Scottish Government to adhere to this.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

• We believe that all impact assessments relating to welfare reform matters should be undertaken by an impartial body that is independent of the Scottish Government.

Additional Evidence

This struggle for autonomy and civil rights in Scotland has been led by disabled people and we believe this is the reason why it has been so successful. From the creation of the Scottish Union of Mental Patients in the 1970’s, to the emergence of the Disability Arts Movement in the 1980’s, to the ‘Free Our People’ campaign of the 1990’s, it is disabled people who have fought for inclusion. All the gains we have made are now in jeopardy and it is with dismay that we contemplate a future where real choice and self-determination for disabled people have disappeared in all but name.

The closure of the Independent Living Fund to new applicants and its winding down are already having a detrimental effect on young disabled Scots who would once have been eligible for support from this funding stream.

Our concern is that this will result in a move away from independent living and a return to ‘group homes’ or even large residential units as this will be seen as a more ‘affordable’ option by hard pressed social work departments.

• We believe that the Scottish Government should establish an Independent Living Fund for Scotland in order to effectively support disabled people, whether in employment or not, to live in their own homes and participate in every aspect of Scottish Society.

We welcome the proposal that under the Welfare Reform Act administration of the Social Fund will be a devolved matter.

• We urge the Scottish Government to ensure that the Scottish Social Fund should be ring fenced and those criteria as to eligibility for support from the Scottish Social Fund should be drawn up with the involvement of poor and marginalised people in a way that is transparent, humane and equitable.

In order to justify their agenda for welfare reform Coalition Ministers stress the need to be ‘fair’ to ‘tax payers’. This term seems to be almost exclusively used to describe people who are taxed on their wages and salaries. All Scots are tax payers, whether in employment or not; we pay VAT on aids and adaptations, our utility bills and other purchases. Our savings are taxable and benefits like Carers Allowance are classed
as taxable income. Sadly there is a real danger of this being ignored or even forgotten in the drive for welfare reform.

Disabled people have worked to build the Scottish economy over generations and their achievements should be celebrated. Scottish members of the National League of the Blind marched to London to campaign for jobs and pensions and disabled Scots helped to build the welfare state after the Second World War. However, people should not be defined only by the paid jobs they do and disabled people contribute to Scottish society in many ways. Some of us are employers of support staff, some of us are volunteers, some of us are parents, some of us are carers and some of us are campaigners and educators. We all play our part.

We are extremely concerned that the Welfare Reform Act allows for indefinite, unpaid ‘mandatory work activity’ and work placements for disabled people. We believe that this is completely unacceptable and that people with learning difficulties or mental health support needs could be open to exploitation from unscrupulous employers.

There are significant numbers of disabled Scots who would like to work if they could find employment and have the right support in the workplace and this cohort of disabled people should be the first priority for the DWP, rather than coercing disabled people who are not able or ready to enter the workplace.

We are also concerned that as part of its welfare reform agenda, the Coalition has announced its intention to close or privatise all nine remaining Remploy factories in Scotland. Whilst we are in favour of disabled people accessing mainstream employment we believe that closing Remploy in the current economic climate will inevitably lead to the majority of the workforce becoming unemployed, possibly for the rest of their working lives. Of the Remploy workers who lost their jobs in the previous round of redundancies only 5% - 8% are still in employment. This is despite the fact that many of them have substantial in-work experience and high level transferable skills.

- We urge the Scottish Government to condemn mandatory work activity for disabled people and to end the Work Programme in its current form.

- We urge the Scottish Government to expand the Work Choice Programme for disabled people who have freely chosen to look for employment.

- We urge the Scottish Government to assist Remploy Workers in taking over the remaining factories in Scotland and enabling them to be run as social enterprises or workers co-operatives.

Conclusion

We welcome the opportunity to make this submission. Coalition Ministers have consistently failed to engage with the people who will be most affected
by the Welfare Reform Act and we congratulate our Government in its attempt to begin a meaningful dialogue on this issue.

‘We Make History but Not in Circumstances of Our Choosing.’

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SUBMISSION FROM ECAS

Background

Ecas is an Edinburgh based charity which works to improve the lives of people with disabilities. Current activities include the provision of clubs and classes, a befriending project, grants to individuals and raising the profile of disabled people and the issues that affect them.

The chief executive of Ecas, David Griffiths, has given oral evidence to the Scottish Parliament’s Welfare Reform Committee, Health & Sport Committee and Scotland Bill Committee on relevant issues.

Should the committee wish to discuss the issues in this evidence he would be very happy to attend an oral evidence session.

Basic Principles

Before answering the specific questions in the call for evidence, it is important to consider the basic principles the committee may wish to decide upon as these will affect further discussions. It seems inevitable that there will be some harsh, moral decisions required on where to invest limited funds. We would recommend consideration of the following:

Funding  It is not yet entirely clear to us what funding gap there will be. However, with an ageing population and statements to the effect that the change from DLA to PIP will save 20% and that Council Tax Benefit will be devolved less 10% (a shortfall of about £40m) there are bound to be areas where the committee will wish to recommend increased expenditure to mitigate the effects. The committee may therefore wish to consider:

- Measuring the benefit to people in need, and the preventative spend value in terms of health and wellbeing, of various current benefits and concessions, for example free travel for people of working age and universal free prescriptions, and comparing these to the potential benefit to people in need and the associated preventative benefit of, for example, increasing provision for Community Care Grants (CCGs), community accessible transport and measures to support those who are homeless and/or in need of crisis support. This comparison would enable informed decisions to be made.
- The explanatory notes provided with the Bill indicate that concessionary travel costs £180m a year and legal aid £142m. It is understood that Community Care Grants costs about £25m a year. A relatively small reduction in the first two could make a large difference to CCGs and for this reason the committee may wish to consider the comparative benefits, in particular the preventative benefits.
- A recent report by the Community Transport Association\(^1\) identifies the considerable benefits from community transport, especially accessible

\(^1\) The CTA State of the Sector Report for Scotland 2012 available via [www.ctauk.org](http://www.ctauk.org)
transport, with a combined total income of £10 million. Again, the committee may wish to identify and consider the comparative benefits when considering, for example, the benefit of those below pension age (particularly those in employment) receiving a concessionary pass.

The committee may wish to note that Ecas provides grants to individual disabled people, mostly similar to Community Care Grants. We have seen a dramatic rise in applications and expenditure with a 30% increase in applications in the last year alone. Discussions with other charities indicate we are not alone. This pressure on local charities is not sustainable and the committee may wish to seek evidence as to whether or not this is replicated elsewhere in the country and if it is indeed a potentially major issue; such evidence should influence the thinking behind the resources needed for the replacement for CCGs and Crisis Loans.

Crisis support Evidence provided to the committee’s earlier meetings suggests that there is a real risk of a significant number of people becoming homeless and/or in poverty. We would recommend that the committee considers how funds can be identified to enable shelter and food to be provided if this situation does occur.

Who is to be targeted? It is clear that both the revised passporting arrangements and any mitigating action will need to be carefully targeted and will be subject to very limited cash availability. Taking the change from DLA to PIP as an example, based on data issued by DWP² there will, in effect be five groups of people:

- DLA recipients who move to PIP and receive the same, or very similar, amounts.
- DLA recipients who move to PIP but at a much lower rate.
- DLA recipients who will not receive any PIP.
- Non-DLA recipients who will get PIP.
- Non-DLA recipients who will not get PIP.

The committee will need to consider which of these groups will need to be supported through passporting and mitigation measures. Another relevant figure is that DWP estimates show that by 2015/16 there would be 1,040,000 people in receipt of higher rate DLA (Mobility) but only 760,00 will be on the Enhanced Mobility rate of PIP. This could drastically affect the mobility of those who do not get the enhanced rate when transferring to PIP.

Passporting Keeping DLA and PIP as an example, the simple option with passporting will be to replace DLA with PIP in the legislation. It should be noted that this would exclude those who do not get transferred to PIP and the key question here is whether or not their need for the passported benefit has gone? DWP figures suggest that 0.5 million people currently on DLA will not transfer to PIP and it could

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² Personal Independence Payment; second draft assessment criteria and consultation document
be assumed that the UK government has assessed that they no longer need the support provided by DLA/PIP and the associated passported benefits. However, the committee may feel it appropriate to seek some clear evidence that this is the case before deciding on the new passporting mechanism. The transfer to Universal Credit is more complex due to the absence of a straight replacement.

**Mitigating effects**  Given the anticipated very large reduction in the overall spend on benefits by DWP we assume that the Scottish Government cannot simply fund the reductions faced by individuals; nor are we convinced that to do so would be appropriate in all cases. Again, we would ask the committee to seek an evidence base from which to decide where any money that can be made available could be spent. This should include consideration of funding organisations to help individuals as well as funding individuals directly (see, for example, community transport above).

**Methods of delivery**  When considering how Community Care Grants, for example, are to be delivered the Committee may wish to consider moving towards the direct provision of goods, or the use of vouchers. The voluntary sector has a number of sources of cost-effective provision of furniture, floorings and household goods and this could be an opportunity for co-production. Similarly, the committee may wish to consider the best method of providing support with transport costs. Currently provision can be provided by some or all of: subsidised community accessible transport; subsidised taxis using a taxi card; Disability Living Allowance; a Motability vehicle; national concessionary cards. Not all of these are within the Scottish Parliament’s control, but it is only by taking an holistic view that the Parliament can ensure that any action they may take is the most effective.

**Specific Questions**

1. **Are you generally in favour of the Bill and its provisions?**

   Yes, noting that it is essential that it is passed as an enabling bill. Of more concern will be the regulations that follow.

2. **What are your views on this principle?**

   It is correct.

3. **What are your views on the proposed powers in relation to UC?** And

4. **Do you have any other comments on the introduction of UC?** And

5. **What are your views on the proposed powers in relation to PIP?**

   Whilst we still have many concerns regarding the introduction of UC and PIP, they relate to reserved matters. The powers in the proposed Scottish Bill are essential.

6. **Do you have any other comments on the introduction of PIP?**
We continue to have concerns over the assessment process and how PIP will interact with the Scottish health and social care system. We are also concerned that DLA/PIP is, in many ways, a preventative spend and removing it from 0.5 million people using the new assessment is likely to lead to increased problems for local authorities, the NHS and the third sector to deal with. We would therefore urge, as stated above, that the merits of mitigating and preventative spends, either via organisations or to individuals, be considered.

7. What are your views on the proposed subordinate legislation powers in the Bill?

They are correct.

8. Do you have any other comments on regulations that would follow this Bill on “passported” benefits and eligibility for them?

Please see the general principles above.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

No.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

We agree that there needs to be detailed assessment of the impact the changes will have as part of the scrutiny of secondary legislation. Some of the suggestions in this evidence concerning the measurement of the benefit and anticipated benefit of various courses of action should be used to inform those assessments.
SUBMISSION FROM EDINBURGH VOLUNTARY ORGANISATIONS COUNCIL

On Friday 23 March 2012, the Scottish Parliament’s Welfare Reform Committee opened a call for written views on the general principles of the Welfare Reform (Further Provisions) (Scotland) Bill.

This Bill follows from the Scottish Parliament decision in December 2011 to withhold Legislative Consent (in part) to the UK Welfare Reform Act 2012, and is – in that respect – unique in the history of the Scottish Parliament. The Bill itself enables Scottish Ministers to introduce regulations as needed primarily to ensure that people in Scotland are not disadvantaged when Universal Credit and Personal Independence Payment come into force.

The Bill proposes that the Scottish Government be given powers over devolved welfare matters and reserved welfare matters on which the Scottish Parliament voted to accept responsibility itself, rather than agreeing that the UK Parliament do so.

On behalf of Edinburgh’s Third Sector – a term which encompasses the breadth of organised voluntary and community activity that enriches the lives of citizens and the social fabric of the city – Edinburgh Voluntary Organisations’ Council held an open discussion event on Thursday 5th April to share information about the Scottish Parliament’s intentions regarding Welfare Reform, and to gather views from Edinburgh’s Third Sector.

Edinburgh Voluntary Organisations’ Council (EVOC) is the capital city’s CVS (Council for Voluntary Service) and helps to support, develop and promote the interests and the work of voluntary and community organisations in Edinburgh.

We did not attempt to answer the Committee’s questions directly, but ourselves posed this set of questions for participants to consider:

- Is the Welfare Reform (Further Provisions) (Scotland) Bill adequate to deal with the impacts of UK Welfare Reform?
- What powers should the Scottish Parliament and Scottish Local Authorities use to minimise the negative impacts of UK Welfare Reform? and, perhaps the ‘core’ question:
- What principles would you like to see characterise a Scottish response to Welfare Reform?

We have not attempted to reproduce here the full detail of the conversation, but have drawn out the key themes which clearly evoked interest from representatives of Edinburgh’s Third Sector.

CONTEXT

Last Summer EVOC led on the development of the Edinburgh Third Sector Manifesto for Council Elections 2012 published in Autumn 2011. This document describes the city’s Third Sector as:
• Essential to citizens’ Health and Well-Being
• Driven by a desire to co-create a Just Society
• Rooted in communities and Responsive to Need
• Expert in Prevention, Early Intervention and Innovation
• A Voice for people and communities which are least heard
• Vital to the city’s Economic, Social and Environmental Sustainability

Broadly, these are the values which drive the Third Sector’s work: Mutuality, Equality and Human Rights.

The Third Sector traditionally engages with marginalised and disadvantaged communities who are least often listened to. In many – if not most – cases charities, voluntary groups and social enterprises are founded on a desire to right a wrong, motivated by a thirst for social justice.

Ever since the global recession of 2008 the impacts of fiscal tightening, rising inflation and a dearth of stable jobs paying a living wage have been filtering through the system. There is a sense within the Sector that vulnerable people are running out of options fast. Caught between reducing resources and increasing demand, Third Sector organisations find themselves in an impossible bind. Individuals and organisations report growing levels of stress and anxiety which show few signs of abating.

We do recognise that the vision of a Welfare State which provides a universal ‘safety net’ for those who need supports which enable the exercise of their inherent capabilities may not be in fashion today, but until our society has a workable alternative we must see welfare as central to a whole-society response to poverty and inequalities.

It is precisely because the Third Sector is rooted in (and because the Sector often feels responsible for) vulnerable communities that we consider it vital to respond to the Welfare Reform Committee’s call for written views.

KEY THEMES

Tough Choices:

We understand that the Committee and the Parliament will have to make difficult moral judgments which will impact significantly on Scottish citizens. We recognise that Parliamentarians are elected – in part – precisely for that purpose: to make tough choices on our behalf. We will not, therefore, attempt to make those choices for you – our only hope is to help provide views which will inform the Committee’s and the Parliament’s ‘moral compass.’

Urgency, not Haste:

We urge the Committee and the Parliament particularly to seek the appropriate balance between the need for urgent action (disadvantaged and vulnerable people are already feeling the impacts of UK Welfare Reform) and
the imperative not to take hasty decisions. We would expect the Committee and the Parliament to act decisively, but not too hastily.

That some details of how UK Welfare Reform will play out are still unclear is, in this regard, an added complication. This lack of clarity should not be allowed to prevent the Committee and the Parliament from taking action urgently.

The role of Evidence:

There is currently much interest in and energy around the concept of ‘evidence-based policy-making.’ Broadly, the drive is to base policy on credible evidence rather than on matters of belief. This way, the argument goes; policies will better stand the test of time and will not be susceptible to a change of heart. Rather, policy will respond to robust, credible and objective evidence. Two points are worth noting at this point: ‘evidence’ must include both statistical data and stories, and ‘policy’ founded on shared moral values should not be confused with policy based on subjective sentiment.

One trend which clearly concerns observers is the apparent increase in policy-making that is based on ‘outlying’ evidence rather than on the majority of cases. One example might be the current proposal to cap tax relief from charitable donations. While few would question that there are some wealthy people who avoid tax by making donations which have the semblance of being charitable, most would question whether universally-applicable Government policy ought to be built on the experiences of a tiny minority of people.

We call upon the Scottish Parliament – and particularly the Welfare Reform Committee – to seek out and gather robust and credible evidence on three core themes.

1. The Committee should gather evidence regarding the impacts (immediate, indirect and consequential) both on individuals and on agencies (including Third Sector organisations, Local Authorities, and all Registered Social Landlords.)

2. With experience of preventative approaches, the Committee should gather evidence of what works to prevent what has come to be described as ‘failure demand’ in the future. Recognising that the Welfare Reform is already under way and the impacts of these changes are already being felt, the Committee and the Parliament should consider what steps they can take to prevent negative outcomes arising as a result of these changes.

3. The Parliament and the Committee needs to develop a measure of relative benefit to different sections of Scottish society of universally provided ‘goods.’ Recognising that times are tough and hard choices would have to be made, we think the Committee and the Parliament should develop nuanced analyses of the real benefits to all sections of Scottish society of such ‘public goods’ as (for example) free prescriptions, free bus travel for pensioners.
Such evidence will – in our opinion - enable the Committee to make informed moral choices, based on a robust evidence base. It is worth noting here – in the context of the previous section ‘Urgency, not Haste’ – that significant evidence of what works is already available. This is not an argument for delay.

An Enabling Approach:

We clearly recognise that this Bill will be ‘enabling’ legislation, and will not spell out the particular changes which will need to be brought in via regulations in due course. Simultaneously, we are mindful that Scotland is a diverse country, where Welfare Reform is likely to impact quite differently on (for example) rural and urban populations.

That being the case, we call on the Committee to take steps to ensure that locally appropriate solutions can be developed, funded and delivered by ‘intermediaries’ on behalf of the Scottish Parliament. The Committee and the Parliament should empower Local Authorities and Third Sector organisations to trial solutions (to the ‘problem’ of Welfare Reform which could harm individuals and communities) which work for them and for their communities. If such ‘trials’ are successful, with robust evidentiary analyses they could then be ‘rolled-out’ as appropriate.

Obviously, we would expect the Committee and the Parliament to ensure that such ‘locally appropriate’ solutions meet a minimum standard – avoiding unjustified geographical variations.

An Opportunity instead of a Threat:

Whilst we have little doubt that changes to the Welfare system are very likely to impact negatively on some (perhaps many) people, the optimists among us consider this an opportunity for the Committee and the Parliament to stand up for the values it holds dear. If the Parliament and the Committee believe that it is the role of the State to support the most vulnerable people in our society, then this is an opportunity to make that manifest. If the Committee and the Parliament believe that enabling and encouraging others to take action where its own powers might have limited reach, then here is an opportunity to unlock the untapped talent that lies in Scottish Civil Society. As the Committee and the Parliament develop the relevant regulations, they must ensure that further consultation takes place, and that any decisions are subject to robust scrutiny. This process must meaningfully include Scotland’s Third Sector.

CONCLUSION

We hope that these comments are taken in the constructive spirit in which they are intended. Although we have not submitted these views in time to be considered to give oral evidence to the Committee, we are more than happy to share our thoughts with yourselves by any other means you may think best.
Introduction

ENABLE Scotland is the largest voluntary organisation in Scotland of and for children and adults who have learning disabilities and their families. We have a strong voluntary network with around 4,000 members in 51 local branches as well as 500 national members throughout Scotland. Around a third of our members have a learning disability. ENABLE Scotland campaigns to improve the lives of people who have learning disabilities and their families and carers.

We also provide services to around 1,900 people who have learning disabilities from across Scotland – including supported living services and employment programmes. Employment is extremely important to people who have learning disabilities – many want to work and welcome the opportunity to do so. However, there are significant barriers stopping many people who have learning disabilities from working.

Barriers include a shortage of places within Supported Employment services, a lack of knowledge about what help is available to help people into work and whilst they are in work (including benefits such as Access to Work) and attitudinal problems with employers. Recent figures for adults who have learning disabilities in Scotland\(^1\) show that as little as 3.7% are known to be in open employment. People who have learning disabilities in Scotland are significantly disadvantaged in the labour market and at risk of poverty. Simply removing welfare benefits from people who have learning disabilities will not overcome the barriers they face.

We are concerned that the range of changes being introduced will be extremely difficult for disabled people to sustain. At present, disabled people across Scotland face a “perfect storm” of increased charges for social care services, reductions to social care services, tightening eligibility criteria and fewer employment opportunities. This is alongside ongoing reforms to the benefits system, such as the roll out of Employment Support Allowance.

Broadly, ENABLE Scotland agrees that certain aspects of the welfare benefits system may need reform. However, we reject the assertion that Disability Living Allowance is no longer fit for purpose and in particular, we do not accept that there are huge incidences of fraud within the benefits system as portrayed in the mass media.

The following is a summary of our key concerns about the impact the Welfare Reform Act will have for people who have learning disabilities across Scotland:

- The UK Government’s initial policy briefing suggested a 20% reduction in expenditure and caseload\(^2\). It remains unclear how the 20% figure was established. However, 500,000 people\(^3\) across the UK who would have

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2. [http://www.hm-treasury.gov.uk/d/junebudget_costings.pdf](http://www.hm-treasury.gov.uk/d/junebudget_costings.pdf)

qualified for Disability Living Allowance by 2016 will not qualify for the Personal Independence Payment. Whilst the moves towards reform may be necessary, its drivers appear to be an attempt to meet a financial end, rather than achieving a better system and better lives for its users.

- There is a popular belief Disability Living Allowance is a work-related benefit and that it is the cause of low work expectations. Worryingly, initial evidence from assessments for the new Employment Support Allowance also suggests there is a lack of understanding about the needs of people who have learning disabilities amongst people who are carrying out benefits assessments.

- The cumulative impact of a series of changes and cuts for disabled people and their families. ENABLE Scotland is concerned that many of the same people who are affected by changes to benefits such as Disability Living Allowance will also lose out in the changes to ESA and Housing Benefit. We are concerned that this will undermine their ability to continue to live independently and push them further into poverty.

Issues for the Scottish Parliament

Concessionary Travel

The terms of the Welfare Reform Act will see Disability Living Allowance (DLA) replaced with the Personal Independence Payment (PIP). DLA is known as a ‘passport’ benefit because those that qualify for it automatically qualify for other entitlements including – but not limited to – concessionary travel, council tax exemption, energy saving packages, Housing Benefit (Disability Premium), and Jobseekers Allowance (Disability Premium). It is not clear if the UK Government intend those in receipt of the PIP to be automatically passported onto these entitlements.

We believe that it is of immediate concern that some people who currently access the concessionary travel scheme will lose this if they lose their right to the PIP. There is an opportunity for the Scottish Government to give a commitment to ensure that all those who currently qualify for concessionary travel will continue to do so irrespective of the cuts being imposed from the UK Government. We believe that this will not require any additional investment from the Scottish Government.

The concessionary travel scheme is the responsibility of the Scottish Government. It currently costs the Scottish purse £180million a year. This is effectively the amount given to bus companies to subsidise travel by the over 60s and some disabled people under the age of 60.

ENABLE Scotland would encourage the Committee to ask the Scottish Government to clarify its position on passported entitlements and whether they are under threat as a result of the implementation of the Welfare Reform Act.

The national concessionary travel scheme was introduced in 2006 and afforded free bus travel to people over 60 and to some younger disabled people. The scheme is vital to lives of people who have learning disabilities – enabling them to get out and
about in their own communities. Many people who have a learning disability have some difficulty when handling money. The national concessionary travel scheme makes independent travel possible for them.

**People who have learning disabilities being pushed further into poverty**

The links between poverty and disability are well established. 73.3% of families with disabled children have an income below the UK mean income and around one-fifth of families with disabled children have an income below 50% of the UK mean income\(^4\). At the same time, many disabled people need to spend more than non-disabled people to achieve the same standard of living\(^5\). Additional costs can include special costs of goods and services required by disabled people but not by non-disabled people, e.g. buying medicine or paying for personal care, good and services required by both disabled and non-disabled people but which disabled people require more of, e.g. additional heating and electricity bills, and recurrent costs, e.g. wheelchair maintenance.

Despite the UK Government’s stated commitment to supporting disabled people to lead independent and active lives we believe that the proposed changes to the benefits system could have the opposite effect. Demos\(^6\) have estimated that disabled benefit claimants will lose £9 billion in support over the course of this Parliament. This will be extremely difficult for disabled people to sustain, especially in the context of wider changes, such as the proposed closure of the Independent Living Fund, the proposed introduction of the Universal Credit, the roll out of Employment Support Allowance to replace Incapacity Benefit, tightening eligibility criteria for services and increasing charges for services.

The Welfare Reform Act is likely to result in around £2bn being removed from the Scottish economy\(^7\), with further reductions as a result of the 2012 budget announcements. Under the current proposals disabled people will be disproportionately hit by these changes. According to the Campaign for a Fair Society, across the UK “24% of cuts target the 1.9% of the population with the most severe impairments”\(^8\). This will have significant consequences for the funding of local authority services because community care is partly paid for by financial contributions from individuals. These contributions will decrease if people receive fewer benefits.

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\(^4\) [http://www.dcmw.org.uk/resources/PolicyBriefingPoverty.pdf](http://www.dcmw.org.uk/resources/PolicyBriefingPoverty.pdf) [Link no longer operates]


\(^7\) [http://www.strath.ac.uk/media/departments/economics/fairse/backissues/ Fraser_of_Allander_Economic_Commentary_Vol34No2.pdf](http://www.strath.ac.uk/media/departments/economics/fairse/backissues/ Fraser_of_Allander_Economic_Commentary_Vol34No2.pdf)

I apologise for the brevity of this response. Due to the short time scale this is all we can manage. If you wish us to give oral evidence we are happy to.

Question 1.

At present we have more faith in the Scottish government being receptive to the needs of unemployed and disabled people than the present UK coalition. This doesn’t necessarily mean that we are giving a view on the need for independence or not for Scotland.

As such we would prefer the Scottish Government to have influence over welfare reform and related legislation.

We think the Scottish government should have influence in these areas:

Our comments on welfare reform have been made elsewhere but we would encourage you to look at our report on POVERTY at hug.uk.net.

We are increasingly concerned about the provisions of the Welfare Reform Bill. We feel that people with mental health problems have been unfairly targeted by these changes over the last few years. Questions assessing fitness to work are grossly unfair and are increasingly giving the impression that substantial numbers of our community are fit to work when they are patently unfit to do so. Many of us are made ill by medical reviews and treated inappropriately at such events.

We struggle to live on our present income and are fearful that our lives will become increasingly unmanageable our health at greater risk and the degree of exclusion we experience heightened.

We find the changes in almost all areas of benefit ranging from housing benefit to ESA unpalatable and retrograde. We have great worries about DLA which many of us rely on for an adequate life and for passported benefits such as blue badges and concessionary transport.
The welfare reform changes being introduced will increase inequality and decrease our chances and faith in recovery.

The knowledge legislators seem to have about people with a mental illness on benefit leaves us alarmed and greatly concerned. They seem to have no appreciation of the reality of our lives and happy to make changes that will make life unsupportable for many of us.

If the Scottish Government can pass legislation that minimises the burden we are facing we would be in favour of this legislation. We hope that by being in contact with communities such as ours the Scottish government can be more in tune with our needs than the UK government seems to be.

Yours

Sincerely

Graham Morgan
HUG action for mental health
1. What are the biggest concerns/priorities for your organisation in relation to welfare reform?

1.1 (a) The cumulative impact of cuts to benefits on disabled people/children and their families. Inclusion Scotland are concerned that many of the same people/families will be affected by loss of ESA and entitlement to DLA/PIP and then also affected by the under-occupation rule introduced by the Welfare Reform Bill for Housing Benefit (the “bedroom tax”). We believe this will impact on their ability to live independently and greatly increase the depth and extent of poverty amongst disabled people leading to increased homelessness and destitution.

1.2 Research by Sheffield Hallam university\(^1\) suggests that by 2014 sixty five thousand Scottish disabled people currently claiming Incapacity Benefit/Employment Support Allowance (ESA) will have been removed from benefit entitlement altogether (through a combination of the Work Capability Assessments and time limiting contributory ESA to 12 months). Contributory ESA is paid at the rate of £91.40 per week and that is the minimum that these households will be losing. A further 36,000 disabled people will be moved off ESA onto Job Seekers Allowance (paid at the considerably lower rate of £67.50 per week).

1.3 During the same period assessments will be introduced for the Personal Independence Payment (PIP) which will gradually replace Disability Living Allowance (DLA). The total saving that is being sought is 20% of the current DLA budget.

1.4 Although there is no way of estimating exactly how many current claimants of DLA will lose entitlement we do know that there is no Lower Rate Care element of PIP whereas there is such a rate for DLA. There are currently 60,000 Scots recipients of the Lower Rate Care element of Disability Living Allowance. We believe that nearly all of this group will lose £19.55 a week.

1.5 Inclusion Scotland also believes that there is a high potential for overlap between those losing ESA (because they are found fit for work/exhaustion of 12 month entitlement) and those losing the Lower Rate Care component (because the UK Government’s intention is that entitlement to Personal Independence Payment will be focused on those with higher levels of impairment). There will also be a disproportionate impacts on particular impairment groups (e.g. 30% of Lower Rate Care recipients have learning difficulties and/or mental health issues).

1.6 The Scottish Government estimates that the “Bedroom Tax” will affect 95,000 households living in social housing\(^2\). They will be penalised by losing 15% of their Housing Benefit if they have a bedroom more than the UK Government deems that they require (25% for 2 bedrooms more). As the Department of Work & Pensions (DWP) estimate that two thirds\(^3\) of the households (i.e. 60,000+) affected by the under-occupation rule will contain a disabled person then there is a very real concern that many of those who have already lost ESA and/or DLA/PIP will also be required to find additional rent payments with the threat of eviction if they do not. We believe that this will considerably increase the risk of homelessness amongst disabled...
people. The Scottish Government estimate that in the most likely scenario over 10,000 households may be evicted due to the under-occupancy rule alone.

1.7 (b) Impact of particular cuts on disabled people’s ability to live independently and participate in Scottish community life e.g. effect of loss of Independent Living Fund (2015) and/or potential for thousands of disabled people to lose the mobility component of DLA/PIP.

1.8 The loss of the ILF will potentially prevent disabled people from being able to continue to work as their travel and care costs will become unaffordable. Similarly the loss of entitlement to the Mobility Component will also impact on disabled people’s ability to work and also to access shops, services and to participate in family and community life – particularly in rural/semi-rural areas.

1.9 We are also concerned that the loss of the Mobility Component will lead to loss of passport benefits such as the Blue Badge and Travel Pass – further restricting disabled people’s ability to travel and access services and community life.

2. What would your organisation want the Committee’s focus to be on?

2.1 (a) In the near term the Committee should focus on the need for primary legislation giving Scottish Ministers regulatory powers to deal with the introduction of Universal Credit and Personal Independence Payments and the devolution of the discretionary Social Fund and Council Tax Benefit to Scotland. The timescale for this is tight and everything possible should be done to protect those on low incomes who might otherwise lose entitlements.

2.2 (b) In the near to medium term the Committee also has to address the issue of “passport benefits” whereby people can gain access to a “benefit” from a local authority or other public body. These passport benefits can take many forms including local authority grants (e.g. for school uniforms), bursaries, school meals, travel passes, the Blue Badge scheme or cheaper/free access to leisure services.

2.3 These passport benefits can thus be of great value as they increase the ability of those living on a low income to survive and manage on a low budget; they increase the ability of low income families to feed and clothe their children and they increase access to services, education, training and employment. There are also benefits to wider society flowing from passport benefits such as reduced social isolation, health inequalities, poor educational attainment/low skills and worklessness.

2.4 (c) In the mid to longer term the Committee should investigate the impact of reforms on various groups e.g. disabled people/children, carers, lone parents, unemployed people, low income households & homeless people.

3. If you could question the Government about their implementation of the UK Bill what would you be asking?
3.1 Inclusion Scotland would be asking the Scottish Government how it intends to go about protecting disabled people and others on low incomes from the worst impacts of the reforms that are being introduced.

3.2 We would also be asking the Scottish Government to give real consideration to truly radical solutions which address the scale of the social devastation that might otherwise occur. Given that £2 billion is going to be taken out of the Scottish economy and at least 100,000 disabled people pushed into poverty⁴ (from the changes to ESA alone) we do not believe that tinkering at the edges is going to be sufficient.

4. What information would you suggest should be collected on how to monitor the implementation of the UK Bill?

4.1 We believe that a variety of information sources both formal and informal should be used to monitor the impact of implementation. Given the known disproportionate impacts on women and disabled people we would suggest that additional information is sought through the Scottish Households Below Average Income survey; DWP claimant statistics; Local Authority Homelessness statistics and CAS and Rights Advice Scotland user statistics.

References:
2. Welfare Reform - Impact of under-occupancy provision, Communities Analytical Services, Scottish Government, Jan 2012

BILL SCOTT
MANAGER
INCLUSION SCOTLAND
MARCH 2012
Inclusion Scotland is a network of organisations led by disabled people, individual disabled people and other organisations that support the principles of the Social Model of Disability. Our main aim is to draw attention to the physical, social, economic, cultural and attitudinal barriers that affect disabled people’s everyday lives and exclude us from participating in the mainstream of society.

We welcome the opportunity to provide written evidence to the Welfare Reform Committee on the Welfare Reform (Further Provisions) (Scotland) Bill.

1. Are you generally in favour of the Bill and its provisions?

Yes. We believe this bill is necessary but insufficient alone to address the devolved aspects of the Welfare Reform Act 2012. We eagerly await the details that will be necessary in the secondary legislation and regulations to this bill, including clear guidance for Local Authorities and Public Bodies and for those people impacted.

2. What are your views on this principle?

Tens of thousands of people will lose their status as disabled persons but will still be affected by their impairments/conditions and the barriers they face to living independently in the community.

Modelling of the cumulative impact of the cuts is required by the Scottish Government - or could be requested from the DWP- so that secondary legislation and regulations can be designed to mitigate the worst of the impacts. Otherwise those who will be disproportionately impacted by the cumulative loss of a variety of benefits, but whose needs and additional expenses will be no less, could be severely affected. We provide further information on the groups most likely to fall foul of the Act below.

Modelling could also identify more precisely where loss of benefits will carry across to devolved passported benefits and new eligibility criteria, for example, could then be designed with those people in mind.

Universal Credit

3. What are your views on the proposed powers in relation to Universal Credit?

We are pleased to see that the Government has proposed powers in relation to the Universal Credit. However, we are very concerned how new legislation will safeguard passported benefits for those new ‘claimants’ who would normally qualify under the existing (to be phased out) benefits but fail to qualify under UC.

For example, we can suggest that one potential way of addressing this problem might be to continue to passport people onto devolved passported benefits after they have lost entitlement to one of their disability benefits (e.g. ESA) under the Universal Credit. Many of those losing this and other disability benefits (e.g. via the
introduction of PIP, see below) will lose their status as disabled people yet still experience the impact of living in society with an impairment or condition. It will create a limbo where people with limiting long term health conditions or impairments will no longer have the status of a disabled person, even if their impairments and conditions continue to limit their equal access to good and public services. We would like the Scottish Government to consider ways of safeguarding the passporting of these former benefit claimants if they otherwise lose this status.

We do recognise however that there are inherent problems in such an approach. For example, this would not provide entitlement to a new claimant who fails to get the new disability benefit but who would have got it under the previous entitlement regime. They might have similar, or even greater, impairments to those who continue to be passported due to past entitlements, but would not themselves be entitled due to failing to meet the requirement of having previously qualified.

However, we are concerned that over time tens of thousands of disabled people will lose access to passported benefits either through loss of entitlement under Universal Credit or under PIP. As many of these will be losing entitlement to more than one of the current benefits due to be replaced then they would potentially require the passported benefits even more than before.

4. Do you have any other comments on the introduction of Universal Credit?

A substantial number of claimants already classed as disabled people, or might become ill or impaired in future, but still fail to qualify for the new disability related benefits. Therefore any secondary legislation, regulations and guidance introduced by the Scottish Government should attempt to put in place alternative simple and efficient eligibility criteria for passported benefits. We readily admit that this will not be easy to achieve as few proxy indicators of entitlement exist.

Personal Independence Payments

5. What are your views on the proposed powers in relation to Personal Independence Payments?

Again, we do not have an alternative proposal for the proposed powers in relation to further provision under the new Personal Independent Payment.

We reiterate that there needs to be some far reaching changes to the way people qualify for the devolved passported benefits as to have a disabling condition or impairment alone may no longer be sufficient for a large number of people who have (or would have) previously been entitled to DLA.

6. Do you have any other comments on the introduction of Personal Independence Payments?

In order to assess the true impact of cutting 20% from DLA by introducing PIP, as well as the unanticipated impacts of changes brought about by the introduction of the Universal Credit, the Scottish Government should commission additional research i.e. it should undertake a cumulative impact assessment.
Thus far, the DWP has not conducted such an assessment due to what it argues are the difficulties in modelling ‘behaviour effects’. However, using the DWP’s own figures in relation to the benefits disabled people received, we have already been able to calculate that working age disabled people who are 40+ will be devastatingly impacted by cuts to:

- PIP (2/3 of people on the soon to be defunct lower rate of care are over 45);

- ESA (the majority of people who will lose entitlement to the means-tested PIP will be 40+, more likely to have savings and/or a partner in work); and,

- The Bedroom tax (65% of those who will lose are disabled (DWP) and 55% are aged 45+); according to Scottish government modelling, this will account for something over +60,000 households) and of those we know that the most likely people to have a spare room are those whose grown up children have left home.

**Subordinate Legislation**

7. What are your views on the proposed subordinate legislation powers in the Bill?

Please see our comments above regarding disability status and passporting benefits.

8. Do you have any other comments on regulations that would follow this Bill on ‘passported’ benefits and eligibility for them?

No, please see responses given above.

**Financial Memorandum**

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

There is potential that people could lose automatic entitlement to legal aid due to losing their entitlement to, for example, means-tested ESA. Our key concern is that those losing ESA because of a poor work capability assessment decision may also automatically lose the access to assistance in appealing this decision if necessary. We fear that as an unintended consequence this would nevertheless be a retrogressive step in terms of realising disabled people’s human right to access to justice (article 12 of UN CRPD) and the Scottish Legal Aid board would itself be breaching this Convention in-so-doing.

**Effects on equal opportunities, human rights, island communities and sustainable development**

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?
Please see our response to question 9 regarding human rights assessments on potential consequences of loss of passported benefits and please reconsider the human rights implications of further provision and in drafting secondary legislation.
SUPPLEMENTARY SUBMISSION FROM INCLUSION SCOTLAND

How many disabled people will lose Mobility Support when the Personal Independence Payment (PIP) is introduced? : An analysis of DWP projections

The DWP have given the following figures as their projection of the DLA caseload for 2015/16:

<table>
<thead>
<tr>
<th>2015/16 16-64 DLA rate combination</th>
<th>Caseload</th>
</tr>
</thead>
<tbody>
<tr>
<td>Higher Mobility, Higher Care</td>
<td>350,000</td>
</tr>
<tr>
<td>Higher Mobility, Middle Care</td>
<td>290,000</td>
</tr>
<tr>
<td>Higher Mobility, Lower Care</td>
<td>270,000</td>
</tr>
<tr>
<td>Higher Mobility, No Care</td>
<td>130,000</td>
</tr>
<tr>
<td>Lower Mobility, Higher Care</td>
<td>170,000</td>
</tr>
<tr>
<td>Lower Mobility, Middle Care</td>
<td>450,000</td>
</tr>
<tr>
<td>Lower Mobility, Lower Care</td>
<td>250,000</td>
</tr>
<tr>
<td>Lower Mobility, No Care</td>
<td>50,000</td>
</tr>
<tr>
<td>No Mobility, Higher Care</td>
<td>10,000</td>
</tr>
<tr>
<td>No Mobility, Middle Care</td>
<td>40,000</td>
</tr>
<tr>
<td>No Mobility, Lower Care</td>
<td>190,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>2,200,000</strong></td>
</tr>
</tbody>
</table>

For PIP the UK Government is projecting around **500,000** fewer claimants on the total caseload, broken down as follows –

<table>
<thead>
<tr>
<th>2015/16 PIP rate combination</th>
<th>Second draft criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enhanced Mobility, Enhanced Daily Living</td>
<td>340,000</td>
</tr>
<tr>
<td>Enhanced Mobility, Standard Daily Living</td>
<td>190,000</td>
</tr>
<tr>
<td>Enhanced Mobility, No Daily Living</td>
<td>230,000</td>
</tr>
<tr>
<td>Standard Mobility, Enhanced Daily Living</td>
<td>110,000</td>
</tr>
<tr>
<td>Standard Mobility, Standard Daily Living</td>
<td>250,000</td>
</tr>
<tr>
<td>Standard Mobility, No Daily Living</td>
<td>190,000</td>
</tr>
<tr>
<td>No Mobility, Enhanced Daily Living</td>
<td>90,000</td>
</tr>
<tr>
<td>No Mobility, Standard Daily Living</td>
<td>250,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1,700,000</strong></td>
</tr>
</tbody>
</table>


This suggests a drop of 500,000 in the projected caseload or nearly **23%** of all claims. However this masks the true number of losers as the emphasis is on those losing all entitlement (both care and mobility components of DLA/PIP) whereas many will only lose part of their entitlement or have their entitlement to care or mobility reduced.
Thus 280,000 claimants (27% of all those who would otherwise have been entitled) will lose entitlement to Enhanced/Higher Rate Mobility whilst there will be 370,000 (40%) fewer claimants entitled to Standard/Lower Rate Mobility.

Using Aug. 2011 caseload figures for DLA (which are lower than the DWP’s projected figures for 2015/16) if 27% of those disabled people living in Scotland who are currently on the Higher Rate Mobility component were to lose entitlement on the introduction of PIP that would be 26,400 people who would either lose entitlement entirely or be moved onto a lower rate.

Using Aug. 2011 figures for DLA if 40% of those disabled people living in Scotland (who are currently entitled to the Lower Rate Mobility Component) were to lose entitlement on the introduction of PIP that would be 33,400 people who would lose out.

Thus in total very nearly 60,000 (i.e. 26,400 + 33,400) Scots disabled people would stand to lose entitlement to their current level of mobility support. As such their losses will range between £20.55 and £54.05 per week (i.e. between £1070 and £2800 p.a.).

Another way to arrive at a figure for the number of Scots disabled people likely to lose out in future is to work out Scottish losses relative to forecasted losses across the UK. Scotland currently has 11% of all claims to Higher Rate Mobility. Thus if 280,000 fewer people across the UK are to qualify for this level of support in future that would translate into 30,800 disabled people in Scotland losing entitlement to support at the Higher Rate.

Similarly 11.6% of all those currently entitled to Lower Rate Mobility live in Scotland. Thus if 370,000 across the UK are expected to lose entitlement to the Lower Rate then we would expect that to lead to 42,920 Scots disabled people losing their entitlement to Lower Rate Mobility. As such the numbers that we would expect to lose some, or all, of their mobility support would be even higher totalling nearly 74,000 (i.e. 30,800 + 42,920)

**Effect on Passport Benefits:** Being on the Higher Rate of DLA Mobility Component gives automatic entitlement to the Blue Badge. If somewhere between 26,400 to 30,800 Scots disabled people lose automatic entitlement to the Blue Badge that means that they will all have to undergo local authority medical assessments to determine if they are to be entitled to a Blue Badge in the future. This could considerably increase the assessment costs for local authorities.

Entitlement to Higher Rate Mobility also automatically entitles a disabled person to Concessionary Travel under the National Entitlement scheme. A disabled person on Lower Rate Mobility might or might not qualify for Concessionary Travel depending on the type of impairment that they have. Thus perhaps thousands, of disabled people will lose their entitlement to Blue Badges and/or Concessionary Travel when they lose entitlement to the Mobility Components of DLA/PIP.

BILL SCOTT, INCLUSION SCOTLAND, 16 APRIL 2012
SUBMISSION FROM JOSEPH ROWNTREE FOUNDATION

The following report recommendations were submitted on behalf of the Joseph Rowntree Foundation which will convey key findings from the foundation’s work:

Working-age ‘welfare’: who gets it, why and what it costs

Children and working-age poverty from 2010 to 2020

DR JIM MCCORMICK
SCOTLAND ADVISER
JOSEPH ROWNTREE FOUNDATION
SUBMISSION FROM LEONARD CHESHIRE

Leonard Cheshire Disability works for a society in which every person is equally valued. We believe that disabled people should have the freedom to live their lives the way they choose - with the opportunity and support to live independently, to contribute economically, and to participate fully in society.

Are you generally in favour of the Bill and its provisions?

Yes. We support the Bill. However, we believe that more detail is required from the Scottish Government relating to its spending priorities, its political priorities and the specific details relating to the secondary legislation and regulations. At the present time, there is a lack of certainty around the issue of passported benefits and we urge the committee to press the Government on these details as a matter of urgency.

General Principles Underlying the Scottish Bill

The Scottish Parliament’s decision to take responsibility for devolved aspects of the UK Government’s Welfare Reform Bill presents a unique opportunity for Scotland to build on the progressive policies that have been adopted since the Parliament’s inception in 1999.

We hope that the MSPs and Scottish Ministers will use this Bill as an opportunity to introduce provisions that will help to circumvent some of the worst effects of the UK Government’s Welfare Reform Bill.

We particularly hope that Scottish ministers will take a strong line on protecting those passported benefits, such as concessionary travel for disabled people that have been put at risk as a result of cuts being implemented by the UK Government. We hope that Scotland will lead the way in protecting benefits, and resist changes that could push disabled people further into poverty.

What are your views on the proposed powers in relation to Universal Credit?

The introduction of new legislation presents a threat to the passported benefits of claimants who are currently eligible for the higher components of DLA and are therefore be eligible for a Blue Badge or a concessionary travel card, but may lose this benefit should they be assessed – under the Personal Independence Payments – as eligible for a lower component of PIP, or ineligible for any support whatsoever under the new plans.

The lack of clarity over the future of these benefits is a source of anxiety for many disabled people, who depend on them in to get to work, access vital services and have full access to the opportunities that many of us take for granted.
More detail is needed on whether the recipients of these benefits will have their rights safeguarded, as well as detail on how “new claimants” will be assessed for passported benefits in the future.

What are your views on the proposed powers in relation to Personal Independence Payments?

We have placed on the record our concerns about the proposed changes to Disability Living Allowance/Personal Independence Payment. The UK Government’s spending reforms mean that it is more important than ever that we take action to fight disability poverty in Scotland.

Across the UK disabled people are twice as likely to live in poverty as non-disabled people.\(^1\) In Scotland, the general figure for people living in poverty is 17%,\(^2\) meaning that an alarming 34% of disabled people in Scotland are estimated to be living in poverty.

Since 1999 the Scottish Parliament has introduced measures that have improved the lives of disabled people, the introduction of concessionary travel being just one example.

This legislation presents a further opportunity for Scotland to lead the way in protecting support for disabled people. While we recognise that the Scottish Parliament has limited powers in relation to welfare, other measures can be taken to mitigate some of the worst effects of the UK Government’s Welfare Reform Act.

Measures must be taken to ensure that disabled people currently in receipt of passported benefits continue to receive them, and that there are systems in place to fairly assess new claimants.

The Scottish Government could also consider further progressive measures, that would introduce minor but welcome savings for households with a disabled person.

For example, there is a lack of uniformity across Scotland in relation to how concessionary travel cards can be used in different parts of the country. While some local authorities offer a ‘companion concession’ for card holders registered in that local authority (for example, in Glasgow, West Lothian, Highland and Fife) which allows the card holder to travel with one other person who also travels free of charge or at a discounted rate, others do not. A card-holder living in Glasgow, for example, may be able to travel with a companion within the Strathclyde Passenger Transport

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area, but would not be entitled to travel by train with a companion on their card to Edinburgh.

The introduction of a uniform “companion” element to concessionary travel for disabled people could help ease some of the additional financial hardship experienced by households with a disabled member who has lost some or all of their benefit entitlement under PIP, but who may be eligible to retain their card due to Scottish Government support for the ongoing scheme, or who may qualify under some other criteria.

Of particular concern are people currently receiving lower rate care DLA. With future spending on DLA being reduced this group is especially vulnerable to losing their support. Many people in this group are using their benefit to meet low level needs, delivering the kind of preventative support that helps prevent more significant interventions at a later date. As the Scottish Government has control over social care, we call on the Government to look at ways it can do more to meet those low level needs, all too often missed by social care support and now likely to be excluded from benefit support.

What are your views on the proposed subordinate legislation powers in the Bill?

As previously stated, we support measures that would safeguard benefits for disabled people, but would like to see more information on the detail of the Bill.

Do you have any other comments on regulations that would follow this Bill on ‘passported’ benefits and eligibility for them?

Please see previous responses.

JACQ KELLY
LEONARD CHESHIRE
MAY 2012
The Long Term Conditions Alliance Scotland (LTCAS) strongly welcomes the establishment of a Welfare Reform Committee within the Scottish Parliament and the introduction of the Welfare Reform (Further Provision) (Scotland) Bill.

While the simplification of social security benefits into a Universal Credit is broadly welcome, the drive from the Department for Work and Pensions to reduce spending on disability benefits by 20% from 2013-14 is creating significant concern among many people who are disabled and/or living with long term conditions.

It is essential that the Scottish Government acts to mitigate the negative impacts so that we avoid a legacy of inequality and complex social problems that will be very difficult to reverse.

1. What are the biggest concerns/priorities for your organisation in relation to welfare reform?

People who are disabled and/or living with long term conditions are already far more likely than others to be living in poverty, experiencing debt and be unemployed or in low paid, less secure employment. There is a wealth of evidence demonstrating the higher cost of living associated with being disabled.

The welfare reforms are resulting in a significant drop in income for many people who are disabled/living with long term conditions, accompanied by greater compulsion to enter work. This is compounded by the current context in which cost of living generally is rising, the labour market is becoming more competitive and much of the support and services upon which people rely are being cut (or eligibility criteria and charges raised).

The UK’s Joint Committee on Human Rights recently highlighted the threat to independent living as a result of the welfare reform programme. It warned that; “restrictions in local authority eligibility criteria for social care support, the replacement of the Disability Living Allowance with Personal Independence Payment, the closure of the Independent Living Fund and changes to housing benefit risk interacting in a particularly harmful way for disabled people”. The report further suggested that people may be forced out of their homes and communities and into residential care.

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1 Wendy Loretto and Matt Taylor, Characteristics of adults in Scotland with long-term health conditions, University of Edinburgh and Scottish Executive Social Research (2007)
2 Clare Lardner, Paying the Price: The real costs of illness and disability for CAB clients, Citizens Advice Scotland (July 2006)
4 Counting the Cost, DEMOS (2010)
5 Commissioning Social Care, Audit Scotland (March 2012)
There is a severe risk that the impact of welfare reform will undermine Scottish policy on public service reform, independent living, preventative spending and reshaping care for older people.

2. What would your organisation want the Committee’s focus to be on?

- The Welfare Reform (Further Provision) (Scotland) Bill – LTCAS supports legislation to give powers to Scottish Ministers in relation to certain aspects of welfare reform. We would urge them to focus on protecting incomes and support for disabled people who may be put at risk of poverty and exclusion as a result of the change from current benefits to the new Universal Credit and Personal Independence Payments, devolution of the Social Fund and Council Tax Benefit, and potential changes to eligibility criteria for passported benefits.

- LTCAS would urge the Welfare Reform Committee to undertake robust scrutiny of (1) the impact of welfare reform on particular groups, including people who are disabled and/or live with long term conditions, (2) the interplay between welfare reform and the broader economic climate, including reductions in support and services and (3) the effectiveness of Scottish Government action (working with local government) to mitigate the negative impacts.

3. If you could question the Government about their implementation of the UK Bill what would you be asking?

LTCAS would ask the Scottish Government how it will ensure the welfare reforms do not undermine the key policy agendas in Scotland and how it will work in partnership with local government to achieve this.

If the vision of a Scotland in which people – including older people – enjoy their right to citizenship and independent living, have access to preventative support and services and remain in their homes and communities for as long as possible is to be realised, the trends we are already seeing must be urgently addressed.

About LTCAS

*LTCAS’ vision is for a Scotland where people with long term conditions enjoy, not endure, full and positive lives, free from discrimination and supported by access to high quality services, information and support.*

LTCAS is the national third sector intermediary for a range of health and social care organisations. LTCAS has over 220 members including large, national support providers as well as small, local volunteer-led groups.

Additional Evidence

Poverty, Debt and Cost of Living

- DEMOS offers analysis of the higher cost of living for disabled people and the
disproportionate impact of public expenditure reductions on them\(^6\).

- In Scotland, someone in a deprived area is more than twice as likely as someone in an affluent area to have a long term condition\(^7\).

- Disabled people experience additional costs in most areas of life and those who rely on benefits or work part time are likely to have a significant gap between how much they have and how much they require for an ‘acceptable, equitable quality of life’\(^8\).

- On average, someone with a long term condition is:\(^9\)
  - less likely to be employed, have savings or own their own home
  - more likely to have fewer educational qualifications and a lower household income
  - more likely to live in areas associated with deprivation
  - more likely to experience financial difficulty including debt and inability to meet health related costs\(^10\).

**Barriers to the labour market (worse as competition for jobs increases)**

- Just under half of disabled people in Scotland are in paid employment, compared to around 75% of the general population\(^11\).

- A third of employers say they deliberately exclude people with a history of long term sickness or incapacity when recruiting staff\(^12\) and, even in employment, there is an inability to access higher level, desk-based jobs that may offer greater flexibility and support.\(^13\)

- The economic activity rates of people who live with long term conditions have improved little in recent years. They are amongst those furthest from the labour market and particularly vulnerable to the economic downturn and contracting economy\(^14\).

- Disabled people are more than twice as likely as non-disabled people to have no

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\(^6\) Counting the Cost, DEMOS (2010)
\(^7\) Building a Health Service Fit for the Future, A National Framework for Service Change in the NHS in Scotland, Scottish Government (2005)
\(^9\) Wendy Loretto and Matt Taylor, Characteristics of adults in Scotland with long-term health conditions, University of Edinburgh and Scottish Executive Social Research (2007)
\(^10\) Clare Lardner, Paying the Price: The real costs of illness and disability for CAB clients, Citizens Advice Scotland (July 2006)
\(^12\) Chartered Institute of Personnel and Development via Citizens Advice Bureau
Young disabled people aged 16 are twice as likely not to be in any form of education, employment or training as their non-disabled peers, increasing to 3 times as likely by the age of 19\textsuperscript{16}

Joseph Rowntree Foundation recently said: \textit{...the issue is the lack of jobs, not an unwillingness to look for work. Policies that focus solely on changing incentives to find work via benefit reform cannot solve this problem.}\textsuperscript{17}

\textsuperscript{15} Disabled People, The Scottish Government (2011) (http://www.scotland.gov.uk/Topics/People/Equality/disability)

\textsuperscript{16} Disabled People and Employability, DGVoice (http://new.dgvoice.co.uk/employability.html)

\textsuperscript{17} Monitoring Poverty and Social Exclusion 2011 (http://www.jrf.org.uk/publications/monitoring-poverty-2011)
SUBMISSION FROM NHS LANARKSHIRE

Views on the Bill as a whole

1. Are you generally in favour of the Bill and its provisions?

NHS Lanarkshire (NHSL) welcomes the opportunity to comment on the proposed Bill. NHSL’s comments are based upon the potential impact of the Bill upon the health and wellbeing of residents of Lanarkshire i.e. people living in North and South Lanarkshire Council areas. NHSL is generally in favour of the Bill and its provisions as it provides the Scottish Government with appropriate flexibility to meet some of the health needs that may arise as result of the UK Welfare Reform Act.

General Principles Underlying the Bill

The Bill proposes that the Scottish Government be given powers to introduce regulations under the UK Welfare Reform Act and amend other Scottish legislation that relates to it. This would allow the Scottish Government to make the link between the devolved welfare matters for which it has responsibility and the reserved welfare matters which have been amended by the UK Welfare Reform Act. The Bill is necessary because in December 2011 the Scottish Parliament voted to take responsibility for these aspects rather than agreeing that the Westminster Parliament do so.

2. What are your views on this principle?

NHSL agrees with this principle as it seems sensible to make provisions to establish links between the devolved and the reserved welfare matters. This should enable the Scottish Government to make appropriate provisions for people living in Scotland with oversight by the Scottish Parliament. For example, NHS Lanarkshire is currently in discussions with representatives of the Local Medical Committee with regard to the issue of patients who independently seek support from their general practitioner with regards to appealing the outcome of a Department of Work and Pensions’ Work Capability Assessment carried out by ATOS. This may have a significant impact upon the demands placed upon general practitioners in Lanarkshire. The Scottish Government may wish to consider a Scotland-wide response to this issue. NHSL is also anticipating a greater demand on its mental health services.

Universal Credit

Section 1 of the Bill contains provisions relating to the introduction of Universal Credit. It gives the Scottish Government powers to introduce regulations and amend existing legislation in relation to the introduction of Universal Credit in April 2013.

3. What are your views on the proposed powers in relation to Universal Credit?

NHSL supports this provision in principle as it will enable the Scottish Government to take appropriate action to try to address issues that arise as a result of the introduction of the Universal Credit.
4. Do you have any other comments on the introduction of Universal Credit?

NHSL does not consider itself expert enough to comment on the pros and cons of the introduction of the Universal Credit, however, there is some concern that the proposed changes to the current payment of Housing Benefits may lead negative impacts upon some of our most vulnerable members of our community. There is the potential that an unintended consequence of the reform may be an increase in numbers of evictions due to rent arrears. Perhaps the introduction of this Bill may enable the Scottish Government to take appropriate action.

Personal Independence Payments Section 2 of the Bill contains provisions relating to the introduction of Personal Independence Payments. It gives the Scottish Government powers to introduce regulations and amend existing legislations in relation to the introduction of Personal Independence Payments in April 2013.

5. What are your views on the proposed powers in relation to Personal Independence Payments?

NHSL supports this provision in principle as it will enable the Scottish Government to take appropriate action to try to address issues that arise as a result of the introduction of Personal Independence Payments.

6. Do you have any other comments on the introduction of Personal Independence Payments?

It is NHSL’s understanding that, with the introduction of Personal Independence Payments, there will be greater emphasis on the provision of aids and the adaptation of homes to assist independent living. This emphasis is welcomed however there is concern with regard to the financing of adaptations and of the demands that will be placed on staff.

Subordinate Legislation

Subordinate Legislation is legislation below the level of Parliamentary Bills – often regulations. Section 4 of the Bill contains provisions relating to subordinate legislation. It gives the Scottish Government powers to make regulations that relate to the UK Welfare Reform Act directly or indirectly. Sections 1-3 of the Bill also include new subordinate legislation powers for the Scottish Government. Under these sections it may make regulations which amend Acts as well as old regulations.

7. What are your views on the proposed subordinate legislation powers in the Bill?

These powers are welcomed as they should help to ensure that current benefits, often referred to as ‘passported’ benefits, can continue to be paid.

8. Do you have any other comments on regulations that would follow this Bill on ‘passported’ benefits and eligibility for them?
From a health perspective there is a need to ensure that those who need access to ‘passported’ benefits such as free school meals, Carers Allowance and Motability schemes are able to continue to access them once the new Welfare legislation is introduced.

Financial Memorandum

The Financial Memorandum accompanying the Bill outlines the costs associated with this Bill and summarises them in a table at the end. However, as the Scottish Government states in the Memorandum ‘the timetable being pursued by the UK Government presents limits to the Scottish Parliament’s ability to assess the financial implications of legislation it considers.’

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

At this stage, it is not possible for NHSL to accurately assess the financial impact of the reforms on NHSL’s ability to deliver services. It would seem that we will need to wait until the Welfare legislation comes into effect before a robust financial impact can be undertaken. That stated, we are concerned about the impact which the reforms may bring on the demands of NHSL staff working in the fields of mental health and long term conditions and general practice.

Effects on Equal Opportunities, Human Rights, Island Communities and Sustainable Development

The Policy Memorandum accompanying the Bill (para 21-25) outlines the assessments made by the Scottish Government on the potential impact of the Bill on equal opportunities, human rights, island communities and sustainable development. It notes that Equalities Impact Assessments will be published when it introduces subordinate legislation later in the year.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

The assessments and the conclusions seem reasonable.

NHS LANARKSHIRE
One Parent Families Scotland (OPFS)

OPFS is Scotland’s national, independent lone parent organisation which promotes positive policies & delivers quality services to lone parent families and others facing disadvantage.

There are over 163,000 lone parents with 295,000 children in Scotland (almost 1 in 4 of all families). This will increase to 238,000 in next 20yrs.¹ The biggest issue affecting lone parent families is poverty.

Government welfare reform should give priority to consideration of the important caring role that lone parents undertake and the added difficulties that they face in the workplace juggling work and home life singlehandedly. Proposals to compel lone parents to look for work when their youngest child is 5 yrs & increase conditionality and sanctions are unjust & will not be effective. This approach diminishes the unpaid care work that parents and carers carry out and its role in the economy and society. It also risks further distancing those parents who experience multiple disadvantages, and those who want to care full-time for their children when they are young.

Both Westminster and Scottish Governments have committed themselves to eradicating child poverty by 2010. We should measure the impact of the Welfare Reform Bill in terms of its contribution to reducing child poverty.

1. What are the biggest concerns / priorities for your organisation in relation to Welfare Reform?

All of Scotland’s 163,000 Lone Parents are affected in some in some way by the wide ranging changes to benefits including:

- Universal Credit (Many Lone Parents on low pay will be worse off)
- Conditionality (Requirement to claim JSA & Benefit Penalties if not compliant)
- The Work Programme (Focus on work first / Payment by results)
- Benefits and disability (Medical reassessments/ "Work related activity"/The reform of DLA)
- Changes to Child Maintenance (Charging & voluntary arrangements)
- Benefit cuts (Uprating / Housing Benefit cuts)

The aim of making work pay has been questioned. Research by Loughborough University’s “Centre for Research in Social Policy”, underlines that any improvement in the incentive to increase earnings in work will be fairly limited and for some groups the incentive will be reduced.²

² The Resolution Foundation
A report by the Institute for Fiscal Studies projects child poverty to rise by 800,000 children as a result of the Government’s policies.³

Lone mothers will be hardest hit by the government’s programme of benefit cuts and tax rises, according to an analysis conducted by the Institute for Fiscal Studies. It estimates they will lose an average 8.5% of their income after tax by 2015. This compared with 6.5% for couples with children and 2.5% for couples without children.⁴ As a result of the changes being introduced between January 2011 and April 2014 non-working lone parents lose more than 12% of their income on average – equivalent to £2,000 per year. Such a steep drop for lone parents is of very real concern; in order to find work they will have to confront the dual challenges of finding a flexible job in a highly uncertain labour market and meeting the costs of childcare.⁵

The Scottish Government Equality Statement on Scottish Spending Review 2011 and Draft Budget 2012-13 states

“Scotland continues to carry deep rooted and structural inequalities which limit opportunities and hold people back. These are evident in labour market participation, income and health. Although more women in Scotland are becoming economically active, single mothers, who are on the lowest incomes, are the poorest qualified, have the weakest financial resilience, and are set to be disproportionately and negatively affected by the UK Government welfare reform measures.”⁶

2. What would your organisation want the Committee’s focus to be on?

Key Issues

The Westminster Government argues that welfare reform will bring: simplicity; personalisation; commercialisation; more emphasis on work; and individual responsibility

However if government wants a welfare state which supports families & contributes to eradicating child poverty then any proposals should also: manage complexity; ensure stable incomes; offer cost-effective services; provide social protection & support for the labour market & parents in the labour market.⁷ OPFS doesn’t believe the Westminster Governments proposals can meet these criteria.

We hope that the committee will focus on how we can mitigate the worst effects of the Welfare Reform Bill as well as the immediate legislative priorities.

At the centre of the policy focus to mitigate the effects should be the aim of increasing the Disposable Income of our poorest families by:

• **Reducing family costs, both in & out of work** by ensuring: lone parents have maximised their income & reduced their debts through accessing free, high quality, independent advice; the provision of free school meals to all primary school children & financial help with school clothing grants which is consistent across all local authorities

• **Increasing parent's ability to earn a living wage** by ensuring lone parents: get support to increase their confidence & self-esteem; have opportunity to improve skills & qualifications; and have access to affordable, high quality flexible childcare.

**Key Areas in the Bill affecting Lone Parents:**

• **Universal Credit:** -Research by Save the Children shows over 96,000 Scottish working lone parents face being pushed into poverty under the new Universal Credit. 8

• **Conditionality** – “Out of work” & planned “in work” conditionality will increase demand for devolved services particularly childcare. Lone parents not in paid work, whose youngest child is age five or six are now required to seek employment or face potential cuts to their benefits. At a time when unemployment is high, OPFS believes that this will put unfair and unrealistic pressure on thousands of families and lead to harmful levels of family stress, with consequent effects on health. Most lone parents want to have the opportunity to combine paid work with the vital job of being a parent. The Welfare Reform Bill, however, fails to recognise that the required childcare infrastructure is lacking in many parts of the UK including Scotland – particularly before school starts and after it finishes, and during school holidays – and is insufficient to meet the demands being made upon benefit claimants. Conditionality will also apply to Lone Parents who are working & claiming Universal Credit, who will be told they must earn more or face a sliding scale of cuts to their income. 9 This will be defined by an earnings threshold, the equivalent of a 35-hour week on the national minimum wage (currently £212.80). Workers who fall below this threshold must increase their work with their current employer, or look for an additional job or for a new one. The threshold for Lone Parents with a child under 13 will be about 20 hours with gross pay of £120. With children over 12 they will be expected to work full time within 90 minutes of their home. 10 OPFS does not believe the affordable, flexible, high quality childcare infrastructure is place to meet these stringent demands. 11

• **Child Maintenance Changes:** The implications of the UK Welfare Reform Bill on the child maintenance system are extremely serious for parents. The new system is designed to encourage parents to come to voluntary agreements. However there are concerns as to how voluntary arrangements would be conducted safely in the context of an abusive relationship. Family support services required to support voluntary agreements operate on a different basis in Scotland and England, and little account appears to have been taken of this

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9 [http://www.guardian.co.uk/commentisfree/2011/nov/10/welfare-plan](http://www.guardian.co.uk/commentisfree/2011/nov/10/welfare-plan)
11 [www.childreninscotland.org.uk/docs/pubs/Costs%20of%20childcare%20report_Lay%20out%201.pdf](http://www.childreninscotland.org.uk/docs/pubs/Costs%20of%20childcare%20report_Lay%20out%201.pdf)
in the UK legislation. The proposed new statutory maintenance service will charge an up-front access fee of between £50 and £100, and deduct as much as 12% from the parent with care and as much as 20% from the non resident parent. This will have major impact on families in poverty.

**Council Tax Benefit, Passported Benefits & Social Fund**

- **Council Tax Benefit**: OPFS supports the call on Scottish Ministers, made by the End Child Poverty Campaign (Scotland) charities, to ensure that any scheme developed to replace CTB is adequately funded within the Scottish budget.

- **Passported Benefits**: The introduction of universal credit is an opportunity for the Scottish Government to improve the protection offered by passported benefits such as free school meals, school clothing grants and the energy assistance package. Such support can and does play an important part in helping meet Scottish child poverty objectives.

- **Social Fund**: Funding for any replacement scheme should be maintained, if not enhanced, to recognise the vital support that it provides to families in need. We would argue eligibility should be linked to need. Decision makers should never be forced to reject a valid claim due to lack of a budget to meet the genuine need.

3. **If you could question the Government about their implementation of the UK Bill what would you be asking?**

Although welfare reform is a reserved matter OPFS believes the Scottish Government has within its powers options to ameliorate some of the impact.

1. **Universal Credit**

Work search and work availability requirements will severely limit lone parents’ ability to train and gain skills that could help them find higher paid employment that is sustainable, and to make the most of opportunities to progress once working. Without the opportunity to train, lone parents face a future of low paid, insecure employment; cycling between in-work poverty and out-of-work benefits with little prospect of their financial or social circumstances improving.

It is vital that parents in receipt of out-of-work benefits have the opportunity to gain additional qualifications that will help them secure a job that pays a decent wage with the prospect of progression.

OPFS holds the view that lone parents whose youngest child is five or six should have the opportunity to access further education and training without the risk of sanction until their child turns seven (or until their course ends). Prescribed circumstances should permit access to further education (up to and including level 3) and training for responsible carers claiming JSA or Universal Credit; meaning that, if undertaking a further education or training course, they should be treated as fulfilling work search and work availability requirements until their course ends or their
youngest child turns seven. **Can the Scottish Government lobby Westminster to allow flexibilities in Scotland to match with our skill strategy**

### 2. Conditionality:

It should be possible for the regulations that will be part of secondary legislation, to be adapted to take into account the Scottish conditions. This option is available in Northern Ireland where Jobseeker’s Allowance (Lone Parents) (Availability for Work) Regulations (Northern Ireland) 2010 include the provision that “In preparing a jobseeker’s agreement for a claimant, the officer must have regard (so far as practicable) to its impact on the well-being of any child who may be affected by it.”

A Scottish specific regulation could make provision to ensure that: “Where a parent does not have guaranteed and predictable access to high quality, flexible and affordable child care, JCP must have regard to the impact on the well-being of any child who may be affected by this, and the Secretary of State may not impose a sanction on the claimant.” **Can the Scottish Government investigate ways of introducing the extra powers which means Scotland would have regulation making powers similar to Northern Ireland?**

### 3. Childcare:

Westminster & Scottish governments should recognise the impact on Scottish Childcare Infrastructure of requirement for Lone Parents to claim JSA & look for work when their youngest child is 5 years & for lone parents in work to increase their hours.

In England the Childcare Act 2006 places a duty on all local authorities in England and Wales to “secure, as far as reasonably practical, sufficient childcare for working parents.

To ensure Local Authority childcare provision is adequate in light of this, Local Authority (Eng) sufficiency assessments are closely monitored by the Department for Education...” Additional funding has been made available to ensure local authorities can address gaps identified in their childcare sufficiency assessments. Each local authority has been asked to prepare a robust action plan detailing how it will address any gaps in provision identified within their assessment. New proposals on changes to entitlement to free early education and childcare sufficiency are out for consultation in England. None of this legislation applies to Scotland.

**Can the Scottish Government consider a request for extra resources from Westminster to respond to increased demand for childcare created by their welfare reform changes?**

### 4. Child Maintenance:

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Scottish Government should plan to address the potential impact of child maintenance changes in Scotland and to look at what infrastructure exists that might support parents through the separation/divorce process. Greater public investment in information, advice and support services for separating parents to empower them to adjust to the emotional impact and practicalities of solo parenting, to overcome conflict with their ex-partner and to cooperate in matters relating to their children would be in the best interests of the child. **Will the Scottish Government ensure investment in the appropriate services?**

5. Support for Parents:

Welfare rights advice, money advice & family support services maximize the resources parents have at their disposal to give their children the best start in life. Research shows welfare rights services “improve take up and deliver significant financial gains for clients”; that the “extra resources acquired by clients tends to be directed toward extra spending on fuel, food, education, recreation and transport”; and that the “local economy gains”. Furthermore evidence suggests welfare rights advice is cost effective. RNIB estimate that for every £1 of funding £44 worth of unclaimed benefit is raised, whilst CAB estimate every £1 spent on take up campaigns nets up to £85 for local areas.  

The complexity inevitably associated with means testing will be a significant feature of Universal Credit, which will continue to be based on hundreds of detailed rules relating to a claimant’s income, capital, family composition, housing costs, capacity and availability for work, disabilities etc – all of which are subject to frequent change. With adequate support for frontline advice and advocacy services there is significant potential for reducing losses to individual households and the wider Scottish economy.

The devolution of elements of social security provision to Scotland including council tax benefit, community care grants and crisis loans are further significant changes. It is therefore more important than ever that families in Scotland have access to high quality information and advice to ensure they receive the combination of reserved and devolved financial supports to which they are entitled.

As part of the End Child Poverty (ECP) group of organisations OPFS welcomed the fact that the Scottish Parliament’s Health and Sport Committee Report on the Legislative Consent Memorandum on the Welfare Reform Bill highlighted the importance of advice and advocacy and agree that the UK government “should provide additional resources for advice and advocacy services”. However we also believe that the Scottish budget, if it is to be consistent with national anti-poverty and solidarity objectives, needs to prioritise spending on supporting the capacity of frontline agencies across Scotland to provide that high quality advice and information.

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Will adequate resources be put in place to support and hold local authorities and community planning partnerships to account in delivering the income maximization services highlighted as a priority in the jointly agreed Achieving our Potential anti-poverty framework?

6. Council Tax Benefit:

We welcome the commitment by the Scottish Government to consult on council tax benefit (CTB) replacement in Scotland. OPFS supports the call on Scottish Ministers, made by the End Child Poverty Campaign (Scotland) charities, to ensure that any scheme developed to replace CTB is adequately funded within the Scottish budget.

It is vital that adequate resources are transferred to the Scottish government to support the new responsibility but we urge Scottish Ministers not to automatically pass the UK governments 10% cut in funding on to families and other claimants. As well as ensuring that any replacement scheme does not reduce the level of support on which low income families depend, will the Scottish Government ensure that any replacement does not introduce a myriad of differing taper rates at which benefit is withdrawn that could increase work disincentives?

7. Passported Benefits:

The introduction of universal credit is an opportunity for the Scottish Government to improve the protection offered by passported benefits such as free school meals, school clothing grants and the energy assistance package. Such support can and does play an important part in helping meet Scottish child poverty objectives.

OPFS welcomes the Cabinet Secretary’s commitment to consult on passporting arrangements and recognition of the “opportunity to look innovatively” at them but remain concerned with the proposition in the Scottish Government Legislative Consent Memorandum that the fact that universal credit is to be paid to those in work means it is “not, in itself, reliable proof of sufficiently low income” for establishing entitlement to passported benefits. In fact most children in poverty live in working families. Work will not be a viable option for many if a cliff-edge is created at which passported benefits are lost. Furthermore, passported benefits play an important role in enabling government at every level to meet wider education, health and anti-poverty objectives and targets. Will Scottish Ministers start from a position that any universal credit entitlement should generally be enough to establish eligibility, due to the importance of entitlement for those in low paid work?

8. Replacement of community care grants and crisis loans

The Social Fund is a very important source of zero-interest credit for parents who are reliant on low incomes from benefits; and a fund of this nature will be particularly needed as other budget and spending review measures are implemented and more people struggle in a difficult economic climate. Furthermore, we believe Scottish budget decisions must ensure that funding for any replacement scheme is maintained, if not enhanced, to recognise the vital support that it provides to families.

in need. We would argue eligibility should be linked to need. Decision makers should never be forced to reject a valid claim due to lack of a budget to meet the genuine need.

Development of, and investment in, an improved replacement to community care grants and crisis loans would play an important role in helping meet the Scottish Governments national solidarity outcome. Will any scheme for the devolution of Community Care Grants and Crisis Loans, set out a national framework that protects the conditions of eligibility in law and allows for a right to independent review of adverse decisions?

4. What information would you suggest should be collected on how to monitor the implementation of the UK Bill?

There is an urgent need for better information, including at a local level, in relation to the impact.

OPFS delivers services directly to parents across Scotland. During the past year 4,212 parents called the Lone Parent Helpline and 2,099 families received support from our local projects in Dundee, Falkirk, Aberdeenshire, Renfrewshire, North Lanarkshire and Glasgow.

Feedback from parents, using OPFS services & messages left on the OPFS website highlight cases of lone parents who are worried about information they report as being given by Jobcentre Plus & Work Programme contractors causing fear & distress. The majority of cases are about lone parents who say they have been told that they have to work full-time, at weekends and evenings or must take a job even if they don't have suitable childcare. There have been calls from lone parents, with primary school age children, who say that they have been told they have to look for full-time work to be entitled to JSA. Helpline Advisors have also dealt with calls from student LPs. Some Further Education students for example say they have been told they could not get Income Support when they were entitled.

Pressures parents can be placed under due to the potential use of benefit penalties can be devastating. There are many lone parents who haven't worked for some time. Some parents have health and social circumstances that mean they could be faced with the choice of making claims for Employment and Support Allowance (ESA) or transferring to the harsher conditionality of Jobseekers Allowance (JSA). Many people are worried about the work-related conditions attached to receipt of JSA and a genuine fear of losing their benefits. This is not because they don't want to work or that they want to spend the rest of their lives on out of work benefits. They see the JSA regime as giving them no choice in the type of work that they may be required to do rather than preparing them for the work that would take their family out of poverty or even allowing them any reasonable prospect of acquiring those skills.

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18 http://www.scotland.gov.uk/About/scotPerforms/purposes
Voices of parents show that welfare reform is affecting family wellbeing & will ultimately hinder the Scottish Government in achieving its child poverty reduction & solidarity targets.

ONE PARENT FAMILIES SCOTLAND
SUBMISSION FROM PAT ONIONS

The effect of the Welfare Reform Act in Scotland.

Throughout the UK the Welfare Reform Act is falling disproportionately on disabled people, their carers and families.

People in Scotland face even harsher cuts. My hope is that the Scottish government will not allow this to happen.

The one aim of the WRA is to cut costs at the expense of all disabled people. The Coalition tries to promote 'Work is good for you.' This may be so if you are fit and healthy but to those who aren't it only instils fear and huge uncertainty of how they will survive.

There is a huge shortage of jobs and the promises of support for those in need of that support just isn't happening. This has been shown time and again in recent months. Disabled people cannot be beaten with big sticks into non-existent jobs at the expense of their health, sanity and wellbeing.

Scotland must not allow this appalling barbaric practice to happen to those of us who live here.

Social works are cutting services due to their own funding being dramatically reduced. They are already running a very reduced 'care service' often relying on agency staff. At the moment remote places get very little, if any, services.

This situation is only going to get worse as the WRA hits the most vulnerable.

There is no care support for those disabled of working age.

The Sutherland report showed there was not enough money to support those disabled of working age as well as those over 65. As the law stands it only looks at providing care for those over 65. It was left to individual Local Authorities as to whether they supported other groups. They were given no encouragement by the Scottish government to do so.

Those 16 - 64 were left with no services or support.

As a result that group rely heavily on DLA (PIP) to pay for their own care, equipment and extra needs that go with their disability. As DLA is both an in and out of work allowance many will not be able to work anymore. They will be left isolated in their own homes with no chance of independent living.

In the small print of the new WRA - come 2017 - people will not receive PIP as an out of work benefit anymore.

The National Eligibility Criteria is denying huge numbers of disabled people their right to services from social works.
The eligibility for services has been set so high that even those with complex needs are not getting the care they need.

To qualify for hospital transport you must be in receipt of the highest rate of DLA care. Those who lose this allowance will be left to struggle, often long distances, to appointments.

In the small print of the new regulations - those whose stay in hospital is more than 29 days stand to lose their Motability lease car. Paid for out of a person's higher rate DLA Mobility component.

The climate in Scotland is approximately 5 degrees colder than the average in England. Heating bills are high. Many villages do not have mains gas and 'bottle' gas/oil commands a higher premium. We had no choice and cannot 'shop around' for better deals.

The huge burden of the unpaid carer is unacceptable. Their own health and wellbeing is suffering and many cannot continue with their caring role.

There are around 650,000 unpaid carers in Scotland saving the government £10.3bn per year and yet the Carers Allowance is the lowest of all allowances.

Many day centres are closing putting further strain on already over worked unpaid carers. Many of those being cared for will end up in hospital putting increased pressure on overstretched NHS services.

Carers are not getting the respite they desperately need in spite of promises this will happen.

ADDITIONAL SUBMISSION FROM PAT ONIONS

This is submitted by Pat's Petition. An on line Disabled People's Organisation and member of UKDPC.

The aim is to bring together all those who feel strongly about the Welfare Reform changes. They are asked to sign the epetition which registers their 'signature.'

As of 3rd April 2012 over 34,450 people have signed.

Pat's Petition says:
"Stop and review the cuts to benefits and services which are falling disproportionately on disabled people, their carers and families."

"The government were embarking on wholesale reform of the benefit system when the economic crisis struck. These welfare reforms had not been piloted and the plan was to monitor and assess the impact of the new untried approach as it was introduced in a buoyant economy."
Unfortunately since then the economy has gone into crisis and the government has simultaneously embarked on a massive programme of cuts. This has created a perfect storm and left disabled people/those with ill health, and their carers reeling, confused and afraid.

We ask the government to stop this massive programme of piecemeal change until they can review the impact of all these changes, taken together, on disabled people and their carers. We ask the government to stand by its duty of care to disabled people and their carers. At the moment the covenant seems to be broken and they do not feel safe.

Illness or disability could affect any one of us at any time, while many more of us are potential carers.

Pat's Petition 4th April 2012
SUBMISSION FROM PARKINSON'S UK

The Committee invites views on all aspects of the Bill. Responses should address all or any of the following points in turn:

Views on the Bill as a whole

1. Are you generally in favour of the Bill and its provisions?

Parkinson’s UK finds it difficult to comment on the Bill because of the lack of information available about the way in which the Bill’s provisions may be used.

We recognise that - although Welfare Reform is a reserved issue - policy in this area has a very significant impact on areas of devolved responsibility including health, social care, local government and housing policy. Co-ordinated policy in these areas is essential for people with Parkinson’s and their families.

We appreciate the constraints imposed as a result of the Westminster Government’s timetable for implementing the Welfare Reform Act 2012, and the limitations of the information available about its proposals for further regulations. We strongly support the Bill’s aim of ensuring that individuals and families in Scotland are able to access a full range of support that they are entitled to after the UK Welfare Reform Act 2012 is enacted.

In common with other organisations representing disabled people and people with long term conditions, we have significant concerns about the Welfare Reform Act.

There are about 10,000 people with Parkinson’s in Scotland. Parkinson’s is a progressive, fluctuating neurological disorder, which affects all aspects of daily living including talking, walking, swallowing and writing. People with Parkinson’s often find it hard to move freely. Their muscles can become stiff and sometimes they freeze suddenly when moving. There also other issues such as tiredness, pain, depression, dementia, compulsive behaviours and continence problems which can have a huge impact on peoples’ day-to-day lives. The severity of symptoms can fluctuate, both from day to day and with rapid changes in functionality during the course of the day, including sudden ‘freezing’.

Parkinson’s affects people from all social and ethnic backgrounds and age groups. The average age of onset of Parkinson’s is between 50-60 years of age, though one in seven will be diagnosed before the age of 50 and one in twenty are diagnosed before the age of 40.

We believe that the Welfare Reform Act will have a negative impact on many people living with Parkinson’s. Some of our concerns are outlined below.
General Principles Underlying the Bill

2. What are your views on this principle?

Parkinson’s UK supports this principle because we believe that it is important that policy is joined up as much as is possible. There is a large degree of political consensus in Scotland about the need for Scottish Government policy to focus on preventative spending in devolved policy areas such as health, social care and housing. However, there remains an enormous tension between these policies and the nature of the reforms to welfare benefits.

In common with other organisations working with disabled people and those with long term conditions, we believe that the Welfare Reform Act removes sources of low-level early intervention and is likely to stimulate additional demand for devolved services, including unplanned and crisis interventions. For example, someone with Parkinson’s may use their DLA to pay for more expensive pre-prepared food to enable them to prepare nutritious food safely. If they lose their DLA they may be at risk of accidents from kitchen equipment or malnutrition through not being able to prepare meals.

We acknowledge that this Bill is limited in its scope to address these issues, which reflects the nature of the devolution settlement and note the calls by civic organisations including SCVO and the STUC for the welfare system to be devolved to Scotland for these reasons.

Universal Credit

3. What are your views on the proposed powers in relation to Universal Credit?

We support these powers, although we have ongoing frustrations about the lack of information available at UK and Scottish level about how these powers may be used and the full implications of the introduction of Universal Credit.

4. Do you have any other comments on the introduction of Universal Credit?

Parkinson’s UK is not opposed in principle to the introduction of the Universal Credit, which could simplify and streamline the process of applying for benefits. However, it will be essential to make sure that people are accurately assessed for benefits included in the Universal Credit, and particularly for contributory Employment Support Allowance (ESA). The experience of people with Parkinson’s in being assessed for ESA raises serious questions about the accuracy of the Work Capability Assessment (WCA), and therefore the whole assessment process. Benefits assessors often underestimate the impact of Parkinson’s on a claimant’s wellbeing and care and mobility needs, and people with Parkinson’s in Scotland have reported very mixed experiences of assessment for ESA.

Parkinson’s UK has Information and Support Workers based in every mainland health board in Scotland (also providing cover to the islands), and it is their role to provide free, confidential one-to-one advice and emotional support to anyone affected by Parkinson’s. Last year, our service reached nearly 1,000 people affected by Parkinson’s, and supported people to raise well over half a million pounds in benefits.
Our Information and Support work enables us to have a good overview into how benefits changes are impacting on people living with progressive, fluctuating neurological conditions like Parkinson’s.

The majority of people with Parkinson’s are being allocated to the Work Related Activity Group (WRAG), but increasing numbers of ESA claims are being rejected. Claims that would have been awarded in the past are now being refused, and people with very significant Parkinson’s symptoms are being allocated to the Work Related Activity Group or to Job Seekers’ Allowance (JSA).

We have found significant issues around lack of disability proofing of the application / assessment process. Problems include distance to travel for assessment, difficulties with completing forms due to issues with handwriting and a lack of clarity in the information that people receive from DWP after their assessment. Our Information and Support Workers are finding that people are often unclear about the group they have been put into and the implications of this – making it harder to meet the 14 day time limit for lodging appeals where people are inappropriately classified.

The revolving door of assessment and appeal is affecting people with Parkinson’s across Scotland.

Where people are being allocated to the WRAG, we are finding people who have received no contact from Jobcentre Plus or other agencies offering work related activities – they have heard nothing at all since receiving their award, making a mockery of the idea that people are being supported to find work.

In addition to financial hardship, people with Parkinson’s and their carers are expressing very high levels of anxiety about the process of application, assessment and appeals. Our Information and Support Workers are frequently told that people would simply not have had the courage to submit or attend an appeal without our support.

**Personal Independence Payments**

5. What are your views on the proposed powers in relation to Personal Independence Payments?

Parkinson’s UK recognises the Scottish Government’s difficulty in specifying the form that regulations might take in relation to PIPs. We are supportive of the principle that the Scottish Government should have power to make regulations in this area, but note that the Bill is limited in its scope by the devolution settlement.

One area of particular concern is the Blue Badge scheme, which is seen as a lifeline for many people with Parkinson’s and their families. We believe that PIP recipients ought to have passported eligibility to the Blue Badge scheme. However, Parkinson’s UK would be concerned about any regulation that sought to limit eligibility for the Blue Badge scheme to those who qualify for PIPs. This would seriously reduce the numbers of people with Parkinson’s eligible for a Blue Badge, particularly as it may
mean that most older people with Parkinson’s (who receive Attendance Allowance and not DLA / PIP) would be excluded from the scheme.

6. Do you have any other comments on the introduction of Personal Independence Payments?

Parkinson’s UK has significant concerns about the introduction of PIP, and in particular the Westminster Government’s stated intention to reduce expenditure on this benefit by 20%. In Scotland about 1,800 people with Parkinson’s receive DLA. In its consultation on the criteria for PIP and associated regulations, the Westminster Government revealed that of the 2.2 million people of working age who currently receive DLA, some 0.5 million people will not be eligible for PIP.1

It is very hard to ascertain who will lose their DLA and be unable to access PIP under the proposed criteria. As the Westminster Welfare Reform Committee2 commented:

“We are unable to ascertain, from the latest figures released by DWP in January, from which DLA rate combinations the projected PIP caseload reduction of 500,000 claimants will come and therefore which current DLA recipients are likely to have their benefit withdrawn altogether. We recommend that, in its response to this Report, DWP sets out further case studies to show how the introduction of PIP is likely to affect current working-age recipients of each rate combination of DLA.”

We are therefore very concerned about the implications of the proposed eligibility criteria for PIP, and are consulting people with Parkinson’s for more detail about how the changes will impact on them. Our initial thoughts are that the proposed criteria are potentially extremely problematic for people with fluctuating conditions like Parkinson’s. People with Parkinson’s have already experienced significant problems with the introduction of the Work Capability Assessment, and we are concerned that the PIP process will also impact negatively on them.

PIP eligibility will focus on those with “greatest need”. This ignores the fact that people with “low needs” often face significant additional costs because they are not receiving help elsewhere. This preventative support averts costs to social care and the NHS, and we are concerned that demand for these services will increase markedly if benefit support is withdrawn. We are also concerned of the impact of the removal of DLA / PIP on people with Parkinson’s and their families, who may find themselves requiring more intensive support sooner as a result of losing these benefits.

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1 See Personal Independence Payment thresholds and consultation (16 January 2012)

2 See Work and Pensions Committee (2012) 7th report - Government support towards the additional living costs of working-age disabled people
http://www.publications.parliament.uk/pa/cm201012/cmselect/cmworpen/1493/149302.htm
In addition despite the focus of PIP on those in “greatest need” we also have concerns that people with Parkinson’s who have high needs may fall foul of the new criteria. The majority of people with Parkinson’s receive the high rate of mobility DLA but it is by no means certain that they will do so under the new PIP regime.

In particular:

- The draft PIP criteria are less appropriate for assessing people with Parkinson’s than the system currently in place. The assessment will not take into account life-limiting symptoms associated with Parkinson’s such as problems with getting out of bed, moving around indoors, the risk of falls and night-time care needs, along with managing high levels of medication (the latter scores “O” points in the proposed criteria).
- Although fluctuations will be measured, the proposal is for someone to ask themselves “does this criteria apply to me at some stage of the day, and if so, does it apply for 50% of those days in a year?” The focus on cumulative scores over 12 months may make it difficult for someone to recall their condition accurately – a shorter timeframe such as a month may make it easier for people to assess their capacity. It may also be difficult to establish “proof” of the extent of disability over a year
- There is a risk that someone may be on the borderline (ie unable to perform a function for half of the time, but could score zero points because they are able to do it the other half of the time). This is particularly likely if people have a fluctuating condition like Parkinson’s
- The definitions of key words in the draft PIP criteria (like repeatedly, reliably, safely and in a timely fashion) are provided, but are ambiguous

There are a number of issues in relation to passported benefits that are reserved. The Westminster Government has clarified that both standard and enhanced rates of PIP will provide a gateway to Carer’s Allowance, and has recently published its proposals for retained links on other passported benefits including Motability\(^3\), which is welcome. Both carers’ allowances and the Motability scheme are hugely important to people with Parkinson’s and their families. However, passporting is more than just a case of retaining existing links between DLA and transferring them to PIP. When 500,000 people lose their entitlement to DLA, they will also lose these essential passported benefits.

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\(^3\) DLA reform and Personal Independence Payment – completing the detailed design (March 2012)  
http://www.dwp.gov.uk/docs/pip-detailed-design-consultation.pdf
**Subordinate Legislation**

7. What are your views on the proposed subordinate legislation powers in the Bill?

Parkinson’s UK supports these provisions.

8. Do you have any other comments on regulations that would follow this Bill on ‘passported’ benefits and eligibility for them?

We welcome the Bill’s provisions to make provisions relating to passported benefits that have a particular impact on people with Parkinson’s in devolved areas. In particular NHS travel costs reimbursement, free NHS dental treatment and optical vouchers are of importance. People with Parkinson’s sometimes need additional dental treatment and experience vision problems as a result of their condition, and require frequent attention from medical specialists. Some people will experience significant hardship if their travel costs to NHS treatment are not reimbursed. Furthermore, the concessionary travel scheme is highly valued by many people living with Parkinson’s who are still able to access public transport. The scheme can enable people to travel and remain engaged in their communities.

Once again, there is an issue of what happens to people who are deemed to be no longer eligible for benefits under the Welfare Reform Act, and who will therefore lose their passported benefits too. We would be concerned if eligibility for these schemes were to be further restricted as a result of regulations.

**Financial Memorandum**

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

The financial assumptions and calculations are currently very limited. We understand the reasons for this, but it will be important for the Parliament to scrutinise these in light of new information that comes to light as the UK Welfare Reform Act is implemented.

**Effects on Equal Opportunities, Human Rights, Island Communities and Sustainable Development**

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

Parkinson’s UK regrets that so much of the detail needed to make an accurate assessment of these issues remains unavailable to the Scottish Government and other interested parties.

We note that the Joint Committee on Human Rights, in its legislative scrutiny of the Welfare Reform Act⁴ found that the Westminster Government had failed to produce

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an analysis of the Act’s compatibility with international treaties on human rights, had not demonstrated reasonable justification for the negative impact of the introduction of Personal Independence Payments on the right of disabled people to independent living and had produced inadequate assessment of the impact on carers and cumulative impacts of multiple provisions on particular groups with protected characteristics (including disabled people).

We believe that the Bill may perpetuate these ongoing issues, and look to the Committee to seek advice on whether and how the Bill might better protect human rights of people with protected characteristics in Scotland.

I wish to give oral evidence: YES
SUBMISSION FROM POVERTY ALLIANCE

About the Poverty Alliance

The Poverty Alliance is a national membership organisation with over 160 members. Our primary aim is to tackle poverty. We seek to do this by empowering people living in poverty to combat poverty on their own behalf and to build the capacity of agencies working with them, to do this. We work to foster public debate about poverty and social exclusion and support the development of social policies that promote social justice and combat poverty in Scotland.

The Poverty Alliance plays a leading role in the Scottish Campaign for Welfare Reform (SCOWR) campaigning, alongside our partners, for a welfare system which protects people from poverty, respect human rights and treat people with dignity, is simple, enables everyone to participate fully in society and is suitable for Scotland. We have been actively campaigning alongside our colleagues to mitigate the worst impacts of welfare reform and to highlight the issues for the Scottish Parliament.

1. Are you generally in favour of the Bill and its provisions?

2. What are your views on this principle?

We are in favour of the Bill in general because having voted to reject parts of the Legislative Consent Motion it is clear that the Scottish Parliament must now bring forward legislation which is required to introduce various legislative changes to areas of devolved competency, which will inevitably flow from the implementation of the UK Welfare Reform Act in 2013.

3. What are your views on the proposed powers in relation to Universal Credit?

4. Do you have any other comments on the introduction of Universal Credit?

5. What are your views on the proposed powers in relation to Personal Independence Payments?

6. Do you have any other comments on the introduction of Personal Independence Payments?

The powers in relation to both Universal Credit and PIP are necessary since it was in relation to these elements of the UK Bill that the Scottish Parliament voted to refuse the Legislative Consent Motion.

From a technical point of view these powers must enable the Scottish Parliament to make secondary legislation which will set out entitlement to passported benefits which will in future, be linked to entitlement to both Universal Credit and PIP (and indeed other criteria which Parliament may decide).
The Poverty Alliance have set out in detail our wider concerns about the introduction of Universal Credit and PIP in our submission to the Health and Sport Committee last year available at http://povertyalliance.org/news_pubs/briefings/hscm_welfare_evidencenov2011.

In relation to Universal Credit we conclude that we are unconvinced by the arguments that individuals and families will be better off under Universal Credit. Since the publication of that paper there have not been any significant changes in UK government policy (for example, on help with child care costs, cuts to housing benefit or council tax - all of which will fundamentally impact on the claims that people will be better off), which would substantially alter that conclusion. Furthermore, the £18 billion worth of cuts currently being implemented and which will be rolled up into the new system, will outweigh any potential benefits. The recent announcement in the Budget of the UK Government’s intention to cut a further £10 billion from the welfare budget undermines these arguments further.

With regard to wider concerns about the introduction of PIP, again, as noted in our previous evidence, individuals living in poverty and grassroots organisations who we work with have raised very serious concerns about the cumulative impact of the introduction of PIP alongside a whole range of other changes (including the speeded up transfer to Employment and Support Allowance) on disabled people and those in ill health.

Whilst these wider concerns will not have a direct bearing on the Bill currently before the Committee, they will nevertheless have an important bearing on the subordinate legislation which will flow from the Bill, including legislation setting out the new criteria for passported benefit discussed below.

We also note that the Bill intends that regulations which will amend subordinate legislation under Part 1 and Part 2, 3(b) are subject to the negative procedure. We are mindful of the fact that the Parliament has only partial information at this stage about the structure of UC and PIP. However, given that much of the important detail about the new criteria for passported benefits will be in such amendments, we would want to know what plans the Committee has to ensure that such regulations receive adequate scrutiny.

7. What are your views on the proposed subordinate legislation powers in the Bill?

We cannot comment on the provisions from a legal point of view, as to whether they will achieve the aims set out in the commentary (or indeed whether they may have some other unintended consequences). However, we agree broadly that the Scottish Parliament should have the powers to make appropriate amendments to both Acts and regulations since without these there would be detrimental impacts on many individuals and families living in poverty.

8. Do you have any other comments on regulations that would follow this Bill on ‘passported’ benefits and eligibility for them?
Yes, as a member of SCOWR we have submitted evidence to the UK Social Security Advisory Committee last year. Although this was evidence to a Westminster Committee the points we make are equally applicable in Scotland. Indeed we hope that unlike Westminster, the Scottish Parliament will engage positively with the suggestions we have put forward.

Our detailed comments are available at: http://www.povertyalliance.org.uk/ckfinder/userfiles/files/SCoWR%20response%20to %20passported%20benefits%20consultation%20July%202011%20FINAL.pdf

However, two key points are that with regard to Universal Credit we are calling for entitlement to any amount of universal credit to act as a passport to the various “passported benefits”. This would be a significant contribution toward a broader strategy to mitigate the impact of the UK Welfare Reform Act and contribute to the Scottish Government’s wider anti poverty strategy set out in Achieving our Potential and the Scottish Child Poverty Strategy. It would also simplify the current system and dramatically reduce the administrative costs involved in complex means testing.

With regard to PIP, it is clear that the intention is to disqualify large numbers of individuals who are currently in receipt of DLA. It is essential therefore that entitlement to passported benefits for disabled people is structured so that individuals who are denied benefit following the introduction of PIP can still access the additional help they need. There will also be a need (at least) for a proxy to passport those who fail on making a new claim for PIP but would clearly have been entitled to help via DLA.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

We note the Financial Memorandum states that “It is expected that provision of passported benefits will be retained at the current level and that the cost will be met from existing budgets.” (at 33).

Given that the projected impact of the £18 billion worth of welfare benefit cuts currently being implemented is impacting on the poorest and often most vulnerable members in society, committing additional resources at this time toward passported benefits, as described above, would help in mitigating against these impacts.

Effects on Equal Opportunities, Human Rights, Island Communities and Sustainable Development

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

In our recent briefing to this Committee (on March 13th) we highlight that there is wealth of evidence which shows that the UK Welfare Reform Act will increase not only socio - economic inequality but also other types of inequality (for example disabled people and women who will both be disproportionally impacted by the changes). When bringing forward subordinate legislation for passported entitlement therefore we would urge the Scottish Parliament to draw on this evidence in
formulating new criteria, so that as far as possible the new schemes mitigate against these impacts.

MAGGIE KELLY
POLICY AND CAMPAIGNS OFFICER
THE POVERTY ALLIANCE
Submission from the Royal National Institute of blind people, Scotland (RNIB Scotland)

1.1 RNIB Scotland is the leading charity working with blind and partially sighted people in Scotland. As a membership organisation we are dedicated to delivering services our members need and campaigning for their civil and welfare rights. We support children and adults with sight loss to live full and independent lives.

1.2 At present, around 35,000 people in Scotland are formally registered as blind or partially sighted, with up to 188,000 living with significant sight loss. However, the number of Scottish people with sight loss could almost double to 400,000 between now and 2030 due to our ageing population and the persistently poor health that continues to disadvantage many of our communities.

1.3 We welcome the opportunity to provide written evidence to the Welfare Reform Committee on the Welfare Reform (Further Provisions) (Scotland) Bill.

Views on the Bill as a whole

1. Are you generally in favour of the Bill and its provisions?

1.1 RNIB Scotland accepts that, since the Scottish Parliament rejected aspects of the UK Welfare Reform Bill Legislative Consent Motion, this Bill is necessary to ensure that Scottish people will continue to have access to passported benefits on April 1st, 2013 when a range of current benefits are replaced by the new Universal Credit and Disability Living Allowance (DLA) is replaced by Personal Independence Payment (PIP). RNIB Scotland agrees that the Scottish Government needs the appropriate powers to amend legislation and introduce new regulations in relation to these changes.

1.2 Access to passported benefits for visually impaired people is a vital and necessary means of support.

RNIB Scotland agrees with the findings in the Social Security Advisory Committee report “Universal Credit: The impact on passported benefits” which shows the importance of passported benefits and found that:

“All passported benefits fulfil important needs, are highly valued by those who receive them, and make a significant contribution to the health, wellbeing and quality of life for adults and families who are out of work or living on a low income.”

1.3 RNIB Scotland understands that the Scottish Government is dependent on further information from the UK Government on how Universal Credit and PIP will operate in practice, before it is able to finalise the regulations governing passported benefits. However, there is only a short time prior to the introduction of these changes to ensure that legislation and processes are in place and we would like to highlight our concerns that enough time must be allowed to enable a smooth transition and delivery of passported benefits by the Scottish Government, local authorities and various other stakeholders.

General Principles Underlying the Bill
The Bill proposes that the Scottish Government be given powers to introduce regulations under the UK Welfare Reform Act and amend other Scottish legislation that relates to it. This would allow the Scottish Government to make the link between the devolved welfare matters for which it has responsibility and the reserved welfare matters which have been amended by the UK Welfare Reform Act. The Bill is necessary because in December 2011 the Scottish Parliament voted to take responsibility for these aspects rather than agreeing that the Westminster Parliament do so.

2. What are your views on this principle?

2.1 RNIB Scotland agrees with this principle. We do hope that the regulations which follow from the Scottish Government, in addition to the policy on passported benefits, will be scrutinised by the Welfare Reform Committee. It must be emphasised that a great deal of work will be required by the Scottish Government, local authorities and various other stakeholders in establishing the new eligibility criteria.

Universal Credit

Section 1 of the Bill contains provisions relating to the introduction of Universal Credit. It gives the Scottish Government powers to introduce regulations and amend existing legislation in relation to the introduction of Universal Credit in April 2013.

3. What are your views on the proposed powers in relation to Universal Credit?

3.1 RNIB Scotland are seriously concerned about the impact that the introduction of Universal Credit will have upon the way in which people are able to manage their finances and as a result, live their day to day lives. We are therefore pleased that the Scottish Government has proposed powers in relation to Universal Credit.

3.2 RNIB Scotland share the view of the Scottish Campaign on Welfare Reform that entitlement to Universal Credit should give access to all passported benefits and that anyone currently eligible to passported benefits, but who will not be eligible for Universal Credit are not excluded under any new system. Passported benefits currently allow and will continue to allow visually impaired people maintain their independence, mobility, daily living and aids and equipment. We therefore welcome the new eligibility criteria which will be set up by the Scottish Government.

3.3 For many of those blind and partially sighted people who are likely to lose their entitlement to their disability benefits (such as ESA) through the introduction of Universal Credit, will also lose further benefits (via the introduction of PIP) and as a result, will no longer be classified as a disabled person with a visual impairment. Despite this, they will continue to experience the impact of living in society with a visual impairment and will continue to experience the difficulties they always have, without the financial support to ease their burden. Where those people are losing one or more of their current benefits due to the change in the new system, it is anticipated that they will require their passported benefits even more than before.

3.4 Whilst RNIB Scotland is pleased about the proposed powers, we are also very concerned about how the new legislation will safeguard passported benefits for those ‘new’ claimants who would normally qualify under the existing benefits, but who would fail to qualify under Universal Credit.
4. Do you have any other comments on the introduction of Universal Credit?

**Personal Independence Payments**

Section 2 of the Bill contains provisions relating to the introduction of Personal Independence Payments. It gives the Scottish Government powers to introduce regulations and amend existing legislations in relation to the introduction of Personal Independence Payments in April 2013.

4.1 RNIB Scotland is not opposed in principle to the introduction of the Universal Credit which could, in principle, simplify and streamline the process of applying for benefits. The Government has proposed that no one will be worse off when Universal Credit is introduced, however, the removal of the current systems of disability premiums and additions for ill and disabled adults, with replacement by the proposed new rates and structure of Universal Credit, will result in the new system being less generous than before and is likely to result in a significant loss of income for many visually impaired people.

4.2 RNIB Scotland welcomes the provision of rules for registered blind children in Universal Credit which will include an extra amount if a child is registered blind or in receipt of DLA high rate mobility. However, it shares the concerns of other organisations that many families with a disabled child will lose out under Universal Credit due to the proposed new rates of the lower and higher amounts. The new rates will be set at a lower level compared to the existing disability additions in the current system.

4.3 We also have concerns that the majority of people will need to communicate with the Department of Work and Pensions and make a claim for Universal credit online. RNIB Scotland believe that applying for Universal Credit will cause problems for those with a visual impairment who are on a low income and do not have access to the internet or the software required to enable them to access the internet.

4.4 Access to grants, equipment and other types of financial support for visually impaired adults and children can be dependent upon entitlement to means tested benefits that will be abolished by the introduction of Universal Credit and it will be essential to make sure that people are accurately assessed for benefits included in the Universal Credit and in particular, for the Contributory Employment Allowance (ESA). The experience of blind and partially sighted people being assessed for ESA raises serious questions about the accuracy of the Work Capability Assessment (WCA) and therefore the whole assessment process. Benefits assessors often underestimate the impact of a visual impairment on a claimant’s wellbeing and care and mobility needs and people with a visual impairment in Scotland have reported very mixed experiences of assessment for ESA.

5. What are your views on the proposed powers in relation to Personal Independence Payments?

5.1 RNIB Scotland recognises the Scottish Government’s difficulty in specifying the form that the regulations may take in relation to PIP. However, the proposed powers in the Bill are essential to ensure that access to various passport benefits will continue with the introduction of PIP and the abolition of DLA.
5.2 A key area for concern is the Blue Badge scheme which is viewed as a lifeline for many visually impaired people and their families. We believe that PIP recipients ought to have passported eligibility to the Blue Badge scheme; however, we would also be concerned about any regulation which sought to limit eligibility for those who did not qualify for PIP. This would seriously reduce the numbers of people with a visual impairment who were eligible for a Blue Badge, particularly as it would result in those older people with a visual impairment (who receive attendance allowance and not DLA/PIP) would be excluded from the scheme.

6. Do you have any other comments on the introduction of Personal Independence Payments?

6.1 The powers in relation to both the Universal Credit and PIP are necessary, since it was in relation to these two elements of the UK Bill, which the Scottish Parliament voted to refuse in the Legislative Consent Motion. These powers must enable the Scottish Government to make secondary legislation which will set out entitlement to passported benefits which will in future, be linked to the entitlement of both Universal Credit and PIP.

6.2 RNIB Scotland has significant concerns about the introduction of PIP and in particular, the Westminster Government’s stated intention to reduce expenditure on this benefit by 20%. In its consultation on the criteria for PIP and associated regulations, the Westminster Government revealed that of the 2.2 million people of working age who currently receive DLA, some 0.5 million people will not be eligible for PIP. We also have serious concerns about the assessment process and how PIP will interact with the current Health and Social Care system in Scotland.

6.3 It is very difficult to determine the numbers of people with a visual impairment who will lose their entitlement to DLA and will be unable to access PIP under the proposed criteria, however it has been suggested that the change in the system is likely to remove tens of millions of pounds from blind and partially sighted people across the UK. The criteria for the new benefit fail to recognise that sight loss is a serious disability and that you face extensive extra costs if you can’t see. We are therefore very concerned about the implications of the proposed eligibility criteria for PIP on visually impaired people.

6.4 Research carried out by Neil Bateman, on behalf of RNIB, in March 2012 into the introduction of PIP identified some key themes and causes for concern when the new benefit is introduced. It noted that there are clearly substantial costs associated with visual impairment and that DLA in its current form is extremely important in enabling people to have a basic acceptable lifestyle. Participants in the research frequently mentioned how the withdrawal of DLA and failure to transfer on to PIP would mean that they would have to greatly reduce going out and participating in the community.

6.5 The UK Government has already determined that the budget for disability benefits will be cut by 20%. The change from DLA to PIP could result in one in three working age claimants no longer being entitled. RNIB Scotland is concerned that a significant number of visually impaired people who are currently in receipt of DLA will fail to qualify for PIP. Inclusion Scotland estimate 75,000 people of the 225,000, to be assessed and migrated from DLA to PIP will no longer be entitled to their
previous benefit. The length of PIP awards will be set and as a result, claimants will have to face the stress and uncertainty of continued assessment and potential loss of entitlement.

**Subordinate Legislation**

Subordinate Legislation is legislation below the level of Parliamentary Bills – often regulations. Section 4 of the Bill contains provisions relating to subordinate legislation. It gives the Scottish Government powers to make regulations that relate to the UK Welfare Reform Act directly or indirectly.

Sections 1-3 of the Bill also include new subordinate legislation powers for the Scottish Government. Under these sections it may make regulations which amend Acts as well as old regulations.

**7. What are your views on the proposed subordinate legislation powers in the Bill?**

No comments.

**8. Do you have any other comments on regulations that would follow this Bill on ‘passported’ benefits and eligibility for them?**

8.1 It is essential that the Scottish Government considers its approach to passported benefits in relation to disability and more specifically, visual impairment. There are various benefits to which visually impaired people receive as a direct or indirect result of their eligibility to DLA which will potentially be lost as a result of a move to PIP.

8.2 Blue Badge and National Concessionary Travel Scheme: Registered blind people or those in receipt of the Higher Rate Mobility component of DLA currently meet the eligibility criteria for both the Blue Badge and National Concessionary Travel scheme including the “+1!” for companion travel as a result of registration.

8.3 Partially sighted people meet the criteria for the National Concessionary Travel scheme including the “+1” companion for travel if they are in receipt of DLA middle or high rate care component.

8.4 At the moment, there is an assumption that the middle rate care component will convert to the standard rate of PIP. However there is currently no formal link between the two benefits to ensure that those currently receiving DLA middle rate care component will continue to receive the same benefits and concessions under PIP. Partially sighted people are at risk of losing this vital concession if they fail to qualify.

8.4 RNIB Scotland believe that current recipients of the Blue Badge and NCT schemes should remain entitled if they received them previously and that the eligibility criteria for blind and partially sighted adults and children should remain under any new system.
Financial Memorandum

The Financial Memorandum accompanying the Bill outlines the costs associated with this Bill and summarises them in a table at the end. However, as the Scottish Government states in the Memorandum ‘the timetable being pursued by the UK Government presents limits to the Scottish Parliament’s ability to assess the financial implications of legislation it considers.’

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

9.1 The current information on financial assumptions and calculations is very limited given the restraints from the Westminster Government therefore RNIB Scotland feels unable to provide comments on the financial implications of this Bill.

Effects on Equal Opportunities, Human Rights, Island Communities and Sustainable Development

The Policy Memorandum accompanying the Bill (para 21-25) outlines the assessments made by the Scottish Government on the potential impact of the Bill on equal opportunities, human rights, island communities and sustainable development. It notes that Equalities Impact Assessments will be published when it introduces subordinate legislation later in the year.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

10.1 RNIB Scotland is aware that many of the details regarding Universal Credit and PIP are still unclear due to the delay in the introduction of regulations from the Westminster Government. Until these have been finalised, it is largely unclear what the true impact of these reforms will mean for Scotland and visually impaired people.

10.2 The Scottish Government will be required to undertake detailed assessment of all secondary legislation and future regulations to ensure that the impact of reforms on the Scottish population of visually impaired people is as minimal as possible.

RNIB Scotland
24 April 2012
The Committee invites views on all aspects of the Bill. Responses should address all or any of the following points in turn:

Views on the Bill as a whole

1. Are you generally in favour of the Bill and its provisions?

Save the Children supports the Welfare Reform (Further Provision) (Scotland) Bill in principle. Following the Scottish Parliament’s rejection of parts of the Legislative Consent Memorandum on the UK Welfare Reform Bill, it is our understanding that the legislation is a technical necessity, to ensure that Scottish Ministers can introduce regulations in order that devolved legislation can take account of changes to the benefits system introduced by the UK Governments Welfare Reform Act 2012.

Save the Children welcomes the Welfare Reform Committee’s commitment to engage with stakeholders on the Bill and the wider implications of the UK Government’s welfare reform. We therefore support the introduction of the Bill to Parliament at this early stage. This, we hope, will allow detailed consideration of and consultation on the regulations that will follow the enabling legislation itself. It is the detail of the regulations that will have a real impact on families in Scotland. As previously set out in evidence to the Committee, Save the Children is concerned that measures within the Welfare Reform Act 2012 will have a number of negative consequences on families with children and tackling child poverty in Scotland. We hope that the opportunity is taken to not only ameliorate these negative impacts, but to consider how the needs of the poorest families with children can best be met.

General Principles Underlying the Bill

The Bill proposes that the Scottish Government be given powers to introduce regulations under the UK Welfare Reform Act and amend other Scottish legislation that relates to it. This would allow the Scottish Government to make the link between the devolved welfare matters for which it has responsibility and the reserved welfare matters which have been amended by the UK Welfare Reform Act. The Bill is necessary because in December 2011 the Scottish Parliament voted to take responsibility for these aspects rather than agreeing that the Westminster Parliament do so.

2. What are your views on this principle?

Save the Children recognises the importance and urgency of taking steps to address access to passported benefits when universal credit is introduced. However, we note that the Bill does not include provision to deal with the newly devolved successor arrangements for Council Tax Benefit and parts of the Social Fund. The elements of the Social Fund that are being devolved play a crucial role in supporting families on the lowest incomes to meet essential costs that may otherwise not be met. The devolution of these areas is a real opportunity to further tackle child poverty and protect and enhance current access and entitlement so that families in Scotland are
supported. Save the Children, alongside a number of other organisations including The Poverty Alliance, Child Poverty Action Group and Shelter Scotland, has called for successor arrangements to these elements to have a clear national framework established in law setting out who is eligible for help. Save the Children cannot comment on how this should be done from a legal point of view but would encourage the Scottish Government to take whatever steps are necessary to ensure that they have the powers to put such a scheme in place. Save the Children would support any opportunity to consider these issues as part of this legislation.

Universal Credit

Section 1 of the Bill contains provisions relating to the introduction of Universal Credit. It gives the Scottish Government powers to introduce regulations and amend existing legislation in relation to the introduction of Universal Credit in April 2013.

3. What are your views on the proposed powers in relation to Universal Credit?

Save the Children’s understanding is that following the rejection of this part of the Legislative Consent Memorandum on the UK Welfare Reform Bill, it is a technical necessity to introduce powers that enable the Scottish Parliament to make secondary legislation that will set out entitlement to passported benefits, which will be linked to universal credit. We are unable to comment from a legal point of view about whether the Bill as introduced does this.

4. Do you have any other comments on the introduction of Universal Credit?

Save the Children would urge the Committee and the Scottish Government to continue to press the Department for Work and Pensions for more detailed information on implementation of universal credit, including a clear timetable for implementation. This would enable robust scrutiny of the impact on devolved areas and arrangements put in place in time for April 2013.

Save the Children supports the stated aims of universal credit - to make work pay and simplify the benefits system. However, we believe that there are some blind spots that could leave some families worse off, pushing some families into poverty and some families further into poverty. Save the Children raised a number of concerns in relation to the introduction of universal credit in oral evidence to the committee earlier this year. Our main concerns are summarised below. These concerns may not have a direct impact in relation to the Bill but are important to consider in relation to the subordinate legislation that will follow the Bill.

In summary, our main concerns in relation to the introduction of universal credit are:

- The expected increase in child poverty to the level recorded in 1999 – reversing all progress made to date. Research from the Institute of Fiscal Studies has shown that low income families with children will be significantly worse off and lose more than other household types due to welfare reform. In order to support families living in poverty and to meet the aims of the Child Poverty Strategy for Scotland it will be necessary to look at how to mitigate some of these impacts by reducing essential living costs for families e.g. childcare, school meals.
• Support with school meal costs must be maintained for families currently receiving free school meals and must not be subject to a ‘benefit cliff edge’, i.e. families should not suddenly lose all support when earnings increase.

• The impact on supporting parents, particularly mothers into work. Insufficient earnings disregards for working mothers, lack of (and reduced) support with the cost of childcare and universal credit payments being withdrawn too quickly will affect parents’ ability to take up work and the number of hours they can work. Save the Children’s research found that single parents working longer hours (16 hours or more) on low pay and some second earners will be substantially worse off under the new system.

• Conditionality placed on parents must take into account whether job offers truly make parents better off. Due regard must be given to the impact of sanctions on children.

• Practical issues in delivering the new system. Save the Children’s research found that parents’ were concerned about what would happen in the event of system (IT) failure or errors being made. It is crucial that elements of the universal credit payment are protected or ‘firewalled’ through a minimum payment guarantee in order to ensure that claimants receive some income if there is a delay or dispute in calculating any element. In addition, we believe that the child element of the universal credit payment should be made to the main carer or second earner in couple families, to better reflect the realities of low income families’ budgeting needs. To meet different budgeting needs, payments should be offered on a weekly as well as monthly basis.

Personal Independence Payments

Section 2 of the Bill contains provisions relating to the introduction of Personal Independence Payments. It gives the Scottish Government powers to introduce regulations and amend existing legislations in relation to the introduction of Personal Independence Payments in April 2013.

5. What are your views on the proposed powers in relation to Personal Independence Payments?

No comment.

6. Do you have any other comments on the introduction of Personal Independence Payments?

No comment.

Subordinate Legislation

Subordinate Legislation is legislation below the level of Parliamentary Bills – often regulations. Section 4 of the Bill contains provisions relating to subordinate legislation. It gives the Scottish Government powers to make regulations that relate to the UK Welfare Reform Act directly or indirectly.
Sections 1-3 of the Bill also include new subordinate legislation powers for the Scottish Government. Under these sections it may make regulations which amend Acts as well as old regulations.

7. What are your views on the proposed subordinate legislation powers in the Bill?

In principle, it would appear appropriate and reasonable to include provision for Scottish Ministers to be able to change primary and subordinate legislation that relates to the consequences of the Welfare Reform Act 2012, for example to amend criteria for passported benefits. We are unable to comment from a legal perspective on whether the powers as they are set out in the Bill will achieve these aims. Save the Children would urge the Committee to ensure that the powers allow for robust and appropriate scrutiny of any future changes to primary or subordinate legislation, given the potential impact these could have on low income families with children and tackling child poverty in Scotland.

8. Do you have any other comments on regulations that would follow this Bill on 'passported' benefits and eligibility for them?

Passported benefits provide essential support to low income families with children. We therefore welcome the Scottish Government’s commitment to take whatever steps are necessary, in the timescale required, to ensure that we protect access to passported benefits when universal credit is introduced.

In designing a new system, there is an opportunity to not only maintain current levels of entitlement but enhance entitlement to ensure more low income families with children can access such benefits. Passported benefits play an important role in enabling the Scottish Government to meet key objectives, particularly in relation to the Child Poverty Strategy for Scotland. In considering how devolved passported benefits fit with the new universal credit such considerations and outcomes need to be given as much, if not more, weight than an arbitrary limit on the amount which such entitlements cost. Designing a new system also provides an opportunity to consider how to maximise take up of passported benefits amongst families with children.

Save the Children believes that any universal credit entitlement should be enough to establish eligibility to devolved and local benefits such as free school meals, school clothing grants and energy assistance package. Universal credit will be claimed by both working and non working families. Half of all children living in poverty in Scotland live in working families, while the other half live in non working households. We urge the Committee to consider this option as a starting point for designing a new system.

The benefits of such an approach would be to avoid creating a series of cliff edges when people suddenly lose their entitlement as they move into work or increase their earnings. It would reduce administration costs and provide a simple, easy to understand system thus reducing complexity for claimants and the potential to increase take up.
In relation to free school meals, Save the Children believes that support with costs must be maintained for families currently receiving free school meals and must not be subject to a benefit cliff edge.

Save the Children is a member of the Scottish Campaign on Welfare Reform (SCOWR). See SCOWR’s response to the Social Security Advisory Committee’s consultation on passported benefits in universal credit for further information.

Financial Memorandum

The Financial Memorandum accompanying the Bill outlines the costs associated with this Bill and summarises them in a table at the end. However, as the Scottish Government states in the Memorandum ‘the timetable being pursued by the UK Government presents limits to the Scottish Parliament’s ability to assess the financial implications of legislation it considers.’

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

The financial memorandum stats that it is expected that provision of passported benefits will be retained at the current level and that the cost will be met from existing budgets. Save the Children welcomes the Scottish Government’s commitment to retain the current level of funding, however we would urge the Scottish Government to go further. Whilst we recognise the challenges in the current financial climate, the new system should be based on need and not on existing budgets. As outlined above, we believe there is an opportunity to further support low income families with children and mitigate against the negative impacts of welfare reforms by helping families to reduce living costs. Committing additional resources to support a new system could support the Scottish Government to meet its aim to maximise household resources and reduce the impact of material deprivation on children.
SUBMISSION FROM SCOTTISH ASSOCIATION FOR MENTAL HEALTH (SAMH)

About SAMH

SAMH is a Scottish charity which campaigns on mental health and related issues and provides around 80 direct services across Scotland. SAMH provides direct line-management to respectme (Scotland’s anti-bullying service) and ‘see me’ (Scotland’s anti-stigma campaign).

Overview

SAMH is a member of the Scottish Campaign on Welfare Reform and the UK wide Disability Benefits Consortium. During the passage of the Welfare Reform Bill, we briefed MPs as part of these coalitions, produced specific mental health briefings with our colleagues in Mind, Rethink etc and gave evidence to the Scottish Parliament Health and Sport Committee. All of these briefing are available to download at http://www.samh.org.uk/our-work/policy-campaigns/welfarebenefits.aspx.

1. What are the biggest concerns / priorities for your organisation in relation to welfare reform?

Although we have many concerns about areas of the Bill including Housing Benefit, qualification for PIP and changes to the Social Fund, we recognise that the Committee will receive a great deal of evidence. We have therefore chosen to focus on the issues that are most pressing in mental health.

Employment and Support Allowance

People with mental health problems represent the largest proportion of people on sickness benefits who will be reassessed for Employment and Support Allowance (ESA) – 43.7% of Incapacity Benefit/Severe Disablement Allowance in the UK, and 46.2% of claimants in Scotland.¹

Clause 51 of the Welfare Reform Bill time-limits contribution based ESA in the Work Related Activity Group (WRAG) to 12 months. Contributory ESA is paid on the basis that a person has made enough National Insurance payments to qualify, and is not means-tested.

This is urgent; other changes to benefits will not take place until 2013/14, but this time limit will come into effect immediately and will apply retrospectively. This means that people who began receiving contributory ESA in the WRAG group before April 2011 will have their benefit stopped in April 2012.

People whose entitlement to contributory ESA has run out can apply for income-based ESA, which is means-tested. However, if they have capital of over £16,000 or their partner works at least 24 hours a week or earns as little as £7,500, they will not

¹ DWP Tabulation Tool, February 2011
be entitled to receive it\textsuperscript{2}. Estimates are that by 2015-16, 700,000 people in the UK will be affected by time-limiting. Forty per cent of these will not qualify for means-tested benefit\textsuperscript{3}. The UK Coalition Government’s own figures show that 94 per cent of people in the WRAG will need ESA for longer than 12 months\textsuperscript{4}.

Clearly, it is wrong that people with mental health problems who are not well enough to work will be forced to look for work or depend on others for support if they do not qualify for income-based ESA. However, this is the current reality, and so the Scottish Government must prepare for the influx of people into the job market in Scotland, and the difficulties that these people will face as they contend with reduced incomes and the additional stress of seeking work before they are well enough to do so.

Given that people with mental health problems are the biggest cohort among ESA claimants, it is clear that they should be a primary concern for the Scottish Government in trying to mitigate the effects of this Bill.

Mental health awareness and support for people with mental health problems must be built into Modern Apprenticeships and other employability initiatives.

The Scottish Government should ensure that health and social services understand what is happening to their clients and how they can assist. Guidance should be issued to ensure that vocational issues are addressed in assessments and consultations, and form part of treatment and support plans, so that people who are able to work can do so. This is an important point as few public sector bodies in Scotland will have historically seen welfare benefits issues as within their remit: the Scottish Government, local authorities and the public, private and voluntary sectors will need to work together to mitigate the effects of the Westminster Bill.

Supporting people with mental health problems to work will require the collaborative efforts of health and social care services and employment support at a national and local level. SAMH is currently piloting an initiative with three health boards called Individual Placement and Support (IPS). IPS entails placing an employability specialist within a Community Mental Health Team. Initiatives such as IPS should be explored and promoted.

The Scottish Government should maintain pressure on the UK Government to ensure that the Harrington Reviews, which seek to improve the introduction of ESA, are implemented in full. A recent Westminster PQ (number 97354, asked by Sheila Gilmore MP) revealed that the “mental health champions” which should have been introduced in every Jobcentre Plus Assessment Centre in the first quarter of 2011 are only operational in two of Scotland’s thirty centres. This means that well-documented problems with the ability of the Work Capability Assessment to assess

\textsuperscript{2} Lord McKenzie of Luton, Lords Committee Stage debate, 8 Nov 2011 : Column GC3
\textsuperscript{3} Lord McKenzie of Luton, Lords Committee Stage debate, 8 Nov 2011 : Column GC3
\textsuperscript{4} Lord Patel, Lords Committee Stage debate, 8 Nov 2011 : Column GC9
entitlement for ESA on the basis of mental health problems have not been addressed, and people may wrongly be disqualified for support.

Organisations such as Citizen’s Advice Bureaux are already seeing increases in enquiries about benefits. The Scottish Government should consider funding an expansion of advice services with the aim of preventing people affected by welfare reform from falling into poverty and debt.

**Disability Living Allowance / Personal Independence Payment**

Disability Living Allowance (DLA) is often used as a passport to other benefits or services. The UK Government has made clear that it expects the number of people who qualify for Personal Independence Payment (PIP), which will replace DLA, to be lower than current DLA claimants. This means that people may not only stop receiving DLA but also cease to qualify for other support.

There is a very long list of services and benefits which a particular rate of DLA (or Attendance Allowance, received by new claimants aged over 65) may qualify a person for, and it varies between local authorities. As a general guide, receiving a particular rate of DLA is likely to qualify a person for energy efficiency grants, motability schemes, discounted use of leisure facilities, exemption from road tax, a Blue Badge, public transport concessions and companion entitlement when travelling.

The Scottish Government must introduce ways of ensuring that people do not lose their DLA and then suffer a domino effect of further loss. We must also prevent a future postcode lottery of entitlement. The Scottish Government must issue instructions to local authorities, health boards and others on new ways of assessing people for entitlement to services. This is especially important for leisure centres: physical activity is an excellent way of improving mental health and it would be a tragedy if people were no longer able to use council facilities in this way.

The Scottish Government should direct the integration of health and social care to include a focus on meeting the transport, nutrition and social inclusion needs for which people would previously have used DLA.

In particular, we are concerned that people in work might lose the support provided by DLA/PIP, and then become so unwell that they can no longer work, requiring out of work benefits and greater social support.

To reduce the likelihood of this, the Scottish Government should undertake a targeted awareness-raising campaign of Access to Work. Access to Work provides financial help to people with disabilities or health problems who want to access work, or are in employment and experiencing difficulties because of their condition. Access to Work is funded by the DWP but grossly underused; at present, only 20,890 people
in the whole of the UK receive Access to Work, and only 340 people get Access to Work on grounds of mental health\(^5\).

The Scottish Government should promote Access to Work through the health, social care and third sectors, and encourage Disability Employment Advisors in Jobcentre Plus to promote Access to Work to both employers and disabled applicants. The Scottish Government should also implement the other recommendations from the Sayce Review on disability employment support\(^6\).

2. \textbf{What would your organisation want the Committee’s focus to be on?}

We would want the focus to be on making practical proposals to the Scottish Government about proposals which could be included in the Scottish Welfare Reform Bill or regulations to mitigate the effects outlined above. The Scottish Government cannot, regrettably, overturn the Westminster Welfare Reform Bill. It should therefore seek ways to reduce its negative impacts in Scotland. Much of this may be more relevant to the regulations that will accompany the Bill rather than the legislation itself. We would therefore urge the Scottish Government to publish the regulations at a sufficiently early stage that this Committee can scrutinise them and make recommendations.

3. \textbf{If you could question the Government about their implementation of the UK Bill what would you be asking?}

How will the Scottish Government use all of the resources and systems at its disposal to address the concerns and implement the suggestions above?

4. \textbf{What information would you suggest should be collected on how to monitor the implementation of the UK Bill?}

- How many people no longer qualify for benefits and services previously accessed via “passporting” from DLA or other benefits?
- What is the impact on advice and information services of people seeking advice on financial, housing and employment issues caused by the Bill?
- What impact on hospital admissions and social care referrals has the Bill had?
- Has sickness absence gone up and does this reflect people having to seek work before they are ready?
- What has happened to crime levels and the prison population?
- For each of these points above, is the impact different depending on gender, ethnicity and other protected characteristics under the Equality Act?

\textbf{CAROLYN ROBERTS}
\textbf{HEAD OF POLICY AND CAMPAIGNS}
\textbf{SAMH}

\(^5\) Access to Work statistics, DWP \url{http://statistics.dwp.gov.uk/asd/workingage/atw/atw1011.pdf}
\(^6\) Getting in, Staying in and Getting on, June 2011 \url{http://www.dwp.gov.uk/docs/sayce-report.pdf}
SUBMISSION FROM SCOTTISH ASSOCIATION FOR MENTAL HEALTH (SAMH)

Views on the Bill as a whole

1. Are you generally in favour of the Bill and its provisions?

SAMH recognises that the need for this legislation has been driven by the UK Government’s reforms of the welfare system. Given the far reaching implications of UK welfare reform for Scotland, it is appropriate that the Scottish Parliament should seek to establish more time to consider these implications and formulate an appropriate response. As such, we are generally in favour of the Bill, which gives powers to the Scottish Ministers to make provision in consequence of the UK Act for devolved purposes. However, it is ultimately the regulatory detail, as opposed to this enabling Bill, which will determine whether the Scottish Parliament has been successful in this regard.

General Principles Underlying the Bill

2. What are your views on this principle?

In our previous evidence to the Health and Sport Committee, we stated that we would only support opposition of legislative consent if it would mean that the Scottish Government could pass its own legislation to mitigate the impact on disabled people1. This remains our position; SAMH supports the principles underlying the Bill in so far as they will enable the Scottish Government to mitigate the impact of the UK welfare reforms on disabled people in Scotland.

Universal Credit

3. What are your views on the proposed powers in relation to Universal Credit?

SAMH agrees that Scottish Ministers require the power to make such provision (for devolved purposes) as they consider appropriate in consequence of the provisions in the UK Act which create Universal Credit.

4. Do you have any other comments on the introduction of Universal Credit?

SAMH has concerns about various aspects of Universal Credit and the way it may impact upon people experiencing mental ill-health. In particular, we have raised concerns in relation to sanctions, as Universal Credit will bring increased conditionality. This raises the prospect that people with mental health problems may face sanctions when their condition has meant that they are unable to understand or comply with the various demands placed on them.

Changes to housing benefit – especially in terms of sanctions for ‘over-housing’ – could also have serious implications for people experiencing mental ill-health, who may be forced to move or spend more money that they do not have supplementing

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1 Scottish Parliament Health and Sport Committee, 4th Report, 2011 (Session 4): Report on the Legislative Consent Memorandum on the Welfare Reform Bill (UK Parliament legislation) - LCM (S4) 5.1 paragraph 204
their housing benefit. Furthermore, the changes do not necessarily take into account the lack of available single bedroom housing stock in parts of Scotland, especially in rural areas.

**Personal Independence Payments**

5. What are your views on the proposed powers in relation to Personal Independence Payments?

SAMH agrees that Scottish Ministers require the power to make such provision (for devolved purposes) as they consider appropriate in consequence of parts of the UK Act which create Personal Independence Payments (PIP).

6. Do you have any other comments on the introduction of Personal Independence Payments?

The UK has an objective to achieve an overall reduction of 20% in the Disability Living Allowance (DLA) budget, which has formed the basis of DLA reform. SAMH believes that this reform should be based on supporting disabled people to lead fulfilling lives and not primarily concerned with reducing costs. People with mental health problems, particularly those with long-term problems, are among the most socially excluded groups of people in Scotland and should not be further disadvantaged by the effects of welfare reform.

We are concerned about the focus on those with ‘greatest need’ – this may be counterproductive and significantly disadvantage those eligible to lower rates of benefit, who may still have high disability costs. People with high levels of disability do not necessarily have the greatest disability costs. Furthermore, significant numbers of people currently receiving financial support to meet disability related costs may find that they are no longer eligible for support under the new welfare arrangements.

SAMH, in partnership with other leading mental health organisations, undertook a survey to identify how people currently receiving DLA will fare under the new arrangements. The survey asked people to choose the PIP descriptors that reflected their experience of carrying out the relevant activities which will be assessed for the new benefit. 520 people responded to the survey and the results show that, while some people will see an increase in their entitlement, a significant number will lose out. For Daily Living, about 23% of current claimants claiming solely for mental health will see a reduction in entitlement. For 14% of respondents this means receiving no daily living component at all, where they currently receive the care component.

SAMH believes that the PIP assessment is at serious risk of repeating the mistakes of the current Work Capability Assessment (WCA), which helps decide whether people are entitled to receive Employment and Support Allowance (ESA). Many people have raised concerns that the WCA is not sensitive to mental health needs, and can inaccurately reflect the impact that mental health problems can have on the ability to work. These concerns were also supported by Professor Harrington’s
Independent Review of the Work Capability Assessment,\textsuperscript{2} which found that mental health conditions were not being properly assessed by the WCA.

Subordinate Legislation

7. What are your views on the proposed subordinate legislation powers in the Bill?

The Joint Committee on Human Rights published a critical report\textsuperscript{3} on the UK Welfare Reform Bill which stated:

“The traditional approach to welfare reform—which focuses on a framework in primary legislation accompanied by multiple regulation-making powers—can undermine parliamentary scrutiny.”

The Scottish Parliament has an opportunity to learn lessons from the passing of the UK Welfare Reform Bill, but is in danger of replicating some of the same mistakes. The Scottish Bill states that regulations will only be subject to the affirmative procedure if they add to, replace or omit any part of the text of an existing Act, otherwise they will be subject to the negative procedure. Given the far reaching implications of these regulations, SAMH does not regard such an approach as satisfactory.

Ideally, we would like to see the regulations being subject to the super-affirmative procedure. This procedure provides for a greater degree of parliamentary scrutiny than is the case with instruments subject to ordinary affirmative resolution procedures; giving the Parliament the opportunity to comment on the proposals for a draft instrument before the instrument is formally laid. If time constraints do not allow for this approach then, at the very least, the first regulations made under the new powers should be subject to the affirmative procedure, whether they amend other primary legislation or not.

It is fundamentally important that the regulations are subject to adequate scrutiny, otherwise the proposals may be implemented in a way which could lead to a risk of incompatibility with international human rights standards.

8. Do you have any other comments on regulations that would follow this Bill on ‘passported’ benefits and eligibility for them?

Disability Living Allowance (DLA) is often used as a passport to other benefits or services. As such, the Scottish Government must introduce ways of ensuring that people who lose their DLA entitlement under the new arrangements do not then suffer a domino effect of further loss. We must also prevent a future postcode lottery of entitlement.

\textsuperscript{2} Professor Malcolm Harrington: An Independent Review of the Work Capability Assessment, November 2010

\textsuperscript{3} Human Rights Joint Committee - Twenty-First Report. Legislative Scrutiny: Welfare Reform Bill, 12 December 2011
This will be particularly important for people currently receiving DLA on mental health grounds, especially given our findings that a substantial number will not qualify for PIP. The Scottish Government must issue instructions to local authorities, health boards and others on new ways of assessing people for entitlement to services.

**Effects on Equal Opportunities, Human Rights, Island Communities and Sustainable Development**

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

Given that this is an enabling Bill, SAMH is satisfied that the Scottish Government will publish Equalities Impact Assessments as appropriate when it brings forward subordinate legislation under the Bill later in the year.

In relation to human rights, we would refer to our previous point at question 7. It must be ensured that the forthcoming regulations are subject to adequate scrutiny to lay the foundations for a human rights compliant approach. The Joint Committee on Human Rights expressed regret the UK Bill was not accompanied by a full human rights memorandum. The provision of such information strengthens the principle of subsidiarity: as the case-law of the European Court of Human Rights clearly shows, laws which are passed following detailed and informed parliamentary scrutiny of their human rights compatibility are more likely to withstand subsequent judicial scrutiny.

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WRITTEN SUBMISSION FROM SCOTTISH CAMPAIGN FOR A FAIR SOCIETY

Please find attached our submission on Scottish Government’s Welfare Reform (Further Provision) (Scotland) Bill. We wish to be considered to appear before the Committee to share our views.

The following submission is based on the UK manifesto of Campaign for a Fair Society which was launched at the House of Lords on 12th March 2012.

The Manifesto:

- says that the UK government’s cuts are unfair – they target disabled people and those living in poverty
- explains how the cuts are inefficient – they will create more crises and new costs
- shows how the UK and Scottish Government could do things differently
- makes eight proposals for a fairer society

Having reviewed the Scottish Government’s Welfare Reform (Further Provision) (Scotland) Bill, we believe that the eight proposals below can help frame discussion about how the Bill could be strengthened and improved.

Human rights

A fair society is built on a foundation of human rights. The law and welfare systems should be judged by their success in upholding these rights.

There are already important agreements about welfare - The European Convention on Human Rights and the UN Convention on the Rights of Disabled People, These international standards for decency should be built into our own law.

The current Human Rights Act should be strengthened, not weakened, and it should become easier for citizens to hold the system to account.

Clear entitlements

It is difficult to know what money, care and support we can get because the system is confusing.

A system with clear entitlements is needed. It must be easy for people to know what money care and support they can get. They must have enough money to live on and be active citizens.

Early Support

If help is needed from services, it is often impossible to get until crisis point is reached. This is a bad way of spending money It causes problems like family breakdown and health crises.
People must get help as soon as possible. It is a better use of money because people can deal with problems when they are smaller. People can be more independent. Families are more likely to stay together. More people can get help for the same money.

**Equal access**

Services for older and disabled people are often not the ones everyone else needs. Separate and institutional services cut people off from ordinary life, friends and neighbours.

All people should have the same opportunities - in housing, work, education, leisure and relationships. Then people will be part of their community. They will get the chance to put something in as well as get support.

**Choice and control**

Often, people can only get help if they give up their independence.

A system is needed which helps people to keep control - to make their own choices and control their own life.

**Fair incomes**

Many people who are entitled to benefits can be trapped in poverty. It can be difficult to break out and get a job or get involved in the community - especially if you are disabled.

A system is needed which gives everyone a reasonable income. We need a system that makes it worth getting a job, saving money and getting involved in community life.

**Fair taxes**

The tax system falls hardest on people who need social care. Complicated rules hide this fact. Local authorities, and the Independent Living Fund, often charge for services and if you have modest savings, you will be penalised and you won't get help. The benefit system also disguises a series of unfair taxes.

A fair system is needed which doesn't have hidden taxes that fall on older and disabled people and people in poverty. Services must be free to people who use them. Taxes would fund these services paid for by everyone equitably.

**Financial reform**

The banking and finance systems have not worked in favour of the whole of society.

A new system must change how banks and financial institutions work. They must offer value and benefit to everyone and bear responsibility for the common good. We need a system based on fairness one that is sustainable for all.
SUBMISSION FROM SCOTTISH CAMPAIGN ON WELFARE REFORM

The Scottish Campaign on Welfare Reform welcomes the establishment of the Welfare Reform Committee. We recognise that the first priority for the Committee is to scrutinise the Welfare Reform (Scotland) Bill and also the secondary legislation that will follow this bill.

SCoWR also welcomes the recent announcement by the First Minister that the 10% cut in funding for successor arrangements for the replacement for council tax benefit in Scotland will not be passed on to claimants for 1 year. This has been a key SCoWR call and it will benefit many of the poorest individuals and families in Scotland and is therefore very welcome indeed.

Having now had time to consider the submissions made by various organisations to the Bill – many by our own members – and in light of the session you will hold with the Cabinet Secretary for Health, Wellbeing and Cities Strategy, we would like to make some additional comments and highlight areas of concern.

The first relates to modelling the impact of welfare changes on Scotland. SCoWR would very much like to know what stage the Scottish Government are at in this process and what can be shared with the Committee and the third sector at this point. The Committee has asked organisations what impact assessments they have been making but they will of course realise it is not always possible due to resourcing or staffing issues for organisations to carry out such assessment. However as the Scottish Government has committed to sharing modelling and analysis, this would help many organisations in their policy formulation.

SCoWR recognises there is still a lack of detail about much of the welfare reform changes that are to be implemented, and that the Scottish Government has begun analysis of the reforms on different household types. But we also note that the other devolved administrations have taken steps to look at the wider impact of the changes ahead and we would like to see a similar approach taken in Scotland.

In January 2012, the Welsh Government’s Minister for Education and Skills announced he had established a ministerial task and finish group for welfare to assess and monitor the impact of the UK Government’s welfare reform on the Welsh Government’s policies and services. This Group then commissioned a programme of work to analyse the impact. The first stage of this analysis¹ was published in February and was drawn in large part from the Institute for Fiscal Studies reports which have assessed the combined impact of the coming tax and benefit changes. The main aim of this early analysis was to analyse the existing evidence on the broad cumulative impact of the welfare reforms on individuals and households in Wales. Equally in 2010, the Institute of Fiscal Studies was commissioned by the Law Centre of Northern Ireland and the ESRC Centre for the Microeconomic Analysis of

Public Policy at IFS to carry out an impact of tax and benefit reforms in Northern Ireland which was subsequently published in December 2010\(^2\).

Similar analysis and modelling for Scotland would help the Scottish Government, councils, the third sector and also the public understand further the impact on Scotland’s people that the changes ahead will bring; and again as stated above, provide much needed information for policy development. To be able to develop the secondary legislation and regulations on passporting benefits, to develop policy on mitigating the damaging impact of the Welfare Reform Act and for organisations to play a part in this, such modelling is required to be carried out and shared as soon as possible.

Second, as SCoWR has stated previously, we believe that in designing new eligibility criteria for passported benefits, the Scottish Government must ensure that there is a simple structure without too many complicated rules. Such a system must also ensure that all claimants can access clear and timely information. The Scottish Government’s approach should avoid introducing a whole raft of new disincentives to moving into employment. It should also play an important role in mitigating some of the wider impacts of the Welfare Reform Act. It should also ensure that these benefits, which can be an important part of a household’s budget, remain available to those who need them.

We are also keen to ensure that the Scottish Government is aware of the wide range of passported benefits which exist – some of which were not detailed in the information provided to the Committee. These include local authority provided benefits such as free school milk, clothing grants, support for participation in extra-curricular activities and leisure services. They also include health benefits such as healthy start vouchers and free vitamins

What we would also like the Committee to consider however, is that during this process, a big picture view is taken and the development of eligibility criteria is not done without taking into consideration wider policy areas. As Scotland now has free prescriptions, there will be no need to establish the criteria for eligibility for prescriptions; therefore also no need to see if anyone would be disenfranchised through new eligibility rules under the new Universal Credit as will have to be done in England. It is therefore important that work is done to take into account other Scottish Government policy commitments that may impact on passported benefits. For example, if local authorities were to roll out free school meals for P1-3 as a minimum, then what is currently a passported benefit for those children with parents who meet the current criteria, would be an entitlement for all. Equally providing accessible and affordable childcare in early years and wraparound care in school years, would help lone parents and parents on low incomes in the workplace – including entering the workforce.

Third, SCoWR is concerned that the Scottish Government’s Spending Review and Scottish Budget 2012-13 did not fully consider the impact of UK welfare reform.

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changes. Given the impact on individuals and families experiencing poverty and exclusion, public and voluntary sector services, and the Scottish economy as a whole, we believe that this needs to be urgently considered. Notwithstanding the recent announcement in on council tax benefit which, as noted above, is very welcome indeed, in general there is a need for decisions relating to welfare impacts to be better embedded within wider policy, including the child poverty strategy and the government’s anti-poverty strategy, so that both individuals in poverty and those agencies who will be supporting them over the coming period are prioritised, and that this is reflected in budgetary decisions.

Fourth, we would like to know what work is going on to ‘future-proof’ the eligibility criteria that will be developed. Although we can see what the impact of the changes so far announced will be, we would like the Committee to consider what would happen if the Coalition Government introduce further welfare changes over the next three years that could further reduce who is eligible for benefits, and therefore reduce those who access passported benefits. The Chancellor has already stated he believes a further £10 billion worth of cuts are needed to the welfare budget which means a further cut of approximately £1 billion for Scotland on top of the £2.5 billion cuts we can already expect, so we could well see further changes in the lifetime of the current UK Parliament.

Finally, the evidence submitted by Prof Paul Spicker which raises questions about whether or not Scottish Government have the power and competence to deliver benefits and the replacement Social Fund under current legislation is also of concern. He raises serious points in relation to a lack of clarity about the scope and impact of the UK Welfare Reform Act and we are keen to be assured that the Scottish Government is satisfied that it has the legislative competence it needs to deliver adequate social fund replacement and passported benefit arrangements.

MAGGIE KELLY,
SCOWR CO-ORDINATOR
APRIL 2012
AUTHORSHIP OF SUBMISSION:
My name is Pauline Topham and I am writing on behalf of the Committee of the Scottish Central Branch of the National Federation of the Blind of which I am secretary. We are all either blind or partially sighted and live in various parts of Scotland, Aberdeen, Moray, Dundee, Angus, Lanarkshire, so we have a range of relevant experience. This submission has been circulated and agreed.

Are you generally in favour of the Bill and its provisions?
A bill is necessary, but I am not sufficiently acquainted with the legislation to comment; We welcome the involvement of the Scottish Parliament and Government because both have consistently shown themselves to be better aware of practicalities of implementation and of the impact of legislation on the people involved.

ASSESSMENT CONCERNS
have comments on the DLA/PIP assessments currently being carried out in Scotland by a company employed by the British Government. These are causing high stress levels and are giving GPs a great deal of work in treating people involved for anxiety and depression. The assessments often show little realism and a high proportion of reversal on appeal (40% we understand), which is a tremendous waste of public money from several agencies.

We also believe that these assessments generally under-estimate the corrosive effects of sight loss on people's ability to perform the simplest of tasks in every aspect of life.

BARRIERS TO EMPLOYMENT
Among the barriers to increased employment of visually impaired people are: the inadequate level of rehabilitation available for adults of working age; the lack of training and equipment for literacy using assistive technology available to unemployed visually impaired adults; employers are expected to assess and claim for assistive technology add the paperwork and effort involved are a disincentive. We believe that maybe visually impaired people of working age cannot afford the assistive computer equipment that would enable them to acquire and maintain secretarial skills and thus be capable of employment, and that if local authorities or NHS boards were encouraged to provide such equipment under the partnership equipment and adaptations schemes, this would make visually impaired people much more employable. We note that there is a promise of support for those on jobseekers allowance, but there is no indication that it will meet the particular needs of visually impaired people, given that the existing framework falls so far short of requirements.

PASSPORTING:
We believe that there are levels of visual impairment that fully merit passsporting of certain benefits, and that this would save time and money in repeated assessments
of capability. Severe eye conditions are most unlikely to improve. There are other permanent disabilities that could be identified.

SUBSIDIARY LEGISLATION: IMPLEMENTATION AND LOCAL AUTHORITIES:
We note and are grateful for the enlightened attitude of the Scottish Parliament and Government towards disability issues, including those affecting visually impaired people. However the implementation of these intentions is dependent on the competence and the resources available to the local authorities responsible for implementing. There are 2 aspects of the care provisions for people with a sensory impairment: disability specific care and the non-specific social support.

Problems are as follows:
1) Local authorities have unrestricted right to interpret any guidelines according to local conditions, so there is neither accountability nor transparency and provision is and no two councils offer the same range or level of service
2) There are no agreed standards for the care and rehabilitation of visually impaired people
3) Local Authority budgets have already been held at steady levels in spite of inflation, so that services have been reduced in various ways, either by making assessments more stringent or by restricting services to higher levels of need.
4) Additionally some councils have used generic staff with no real knowledge of sensory impairment ( e.g. a member, registered blind for over 20 years who was informed by a “re-empowerment officer” that she would be able to drive once her broken ankle was healed.
5) By the nature of their disability, visually impaired people have difficulty in getting and transmitting information so that few realize that a service is incomplete or are able to complain if they do realize.

These problems mean that most of us do not fulfil our potential and make heavier demands on non-specific social care, but they impact most heavily on those of working age, since you are unlikely to get or hold down a job if you have problems in basic existence.

PAT’S PETITION:
Finally we would like you to consider the English e-petition organised by one of our members, Pat Onions and signed by over 35,000 people so far,( in spite of the web site being difficult of access for visually impaired people): Text as follows:

Stop and review the cuts to benefits and services which are falling disproportionately on disabled people, their carers and families
Responsible department: Department for Work and Pensions

The government were embarking on wholesale reform of the benefit system when the economic crisis struck. These welfare reforms had not been piloted and the plan was to monitor and assess the impact of the new untried approach as it was introduced in a buoyant economy. Unfortunately since then the economy has gone in to crisis and the government has simultaneously embarked on a massive programme of cuts. This has created a perfect storm and left disabled people/those with ill health, and their carers reeling, confused and afraid.
We ask the government to stop this massive programme of piecemeal change until they can review the impact of all these changes, taken together, on disabled people and their carers. We ask the government to stand by its duty of care to disabled people and their carers. At the moment the covenant seems to be broken and they do not feel safe.

Illness or disability could affect any one of us at any time, while many more of us are potential carers.
Introduction

SCVO welcomes the opportunity to submit evidence to the Welfare Reform Committee on the general principles of the Welfare Reform (Further Provision) (Scotland) Bill.

SCVO recognises the need for the Bill following the outcome of the legislative consent motion voted on in parliament in December 2011; it also acknowledges the timeframes in which the Committee and parliament must work to ensure that there is no disruption to individuals when the introduction of new benefits comes into place in April 2013.

SCVO has given evidence to the Health and Sport Committee and the Welfare Reform Committee previously on Welfare Reform and should the committee wish to discuss the issues in this evidence we would be very happy to attend an oral evidence session.

Key Points

- The proposed Bill in question is an enabling Bill. It is essential that the Bill is passed in the correct timeframe to ensure that there is no delay in the introduction of the new benefit system in Scotland after April 2013.
- SCVO recognises that the main aim is to maintain the legislative basis that underpins devolved, passports benefits in Scotland.
- It is also acknowledged that the Bill, itself, does not make any changes to legislation and this will be done through the regulations to be introduced later this year.

Specific Questions

1. Are you generally in favour of the Bill and its provisions?

SCVO recognises the need for the Bill following the outcome of the legislative consent motion voted on in parliament December 2011. The Bill as enabling legislation is vital to ensure there is no disruption to the introduction of the new benefit system to Scotland in April 2013.

SCVO also acknowledges that the importance of the regulations to be passed later this year is more significant in nature and would require greater scrutiny and consultation. We encouraged the committee previously to engage with the third sector as widely as possible and would echo this at this time. The third sector are widely involved in Welfare and should be utilised by the committee to the benefit of the Scottish people.

2. What are your views on this principle?
SCVO would agree with the general principle proposed.

3. **What are your views on the proposed powers in relation to UC?**
4. **Do you have any other comments on the introduction of UC?**
5. **What are your views on the proposed powers in relation to PIP?**

SCVO would support the proposed powers in relation to UC and PIP and would highlight them as essential to the process.

7. **What are your views on the proposed subordinate legislation powers in the Bill?**

SCVO would agree with the powers and believe them to be correct.

8. **Do you have any other comments on regulations that would follow this Bill on “passported” benefits and eligibility for them?**

SCVO believe that the regulations pertaining to “passported” benefits represent a great opportunity for the Scottish Government to mitigate the impact of the Welfare reforms to the people of Scotland.

Passporting benefits can be used to soften the blow that the UK welfare reforms are predicted to make. It is vital that the Scottish Government and parliament look at ways of using passporting to support those most in need and most at risk from these reforms.

The Committee should also seek to engage as widely as possible on any future regulations and utilise the expertise of the third sector to ensure that the broadest analysis of the regulations is undertaken. Scotland’s third sector has been widely engaged in the welfare reform process and has experience of working in welfare in Scotland and this should not be ignored or by-passed as it is a great resource for the committee in its work.

10. **Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?**

SCVO are aware that many details regarding universal credit and PIP are still unclear due to the delay in the introduction of the regulations from the UK Government.

Until this happens it is largely unclear what the true impact of these reforms will mean.

The Scottish Government will be required to undertake a detailed assessment of all secondary legislation and future regulations to ensure that the impact of reforms have as small an impact on the people of Scotland.
Background

SFHA has been campaigning since October 2010 for a fairer system of Housing Benefit and against the proposed cuts which will do so much damage to Scotland’s housing association sector and to the tenants who live in our homes. We have responded in detail to all of the UK Government’s consultations on welfare reform, taking every opportunity to highlight why we need a welfare system in the UK. SFHA is a member of the Scottish Campaign on Welfare Reform and has also been campaigning jointly with all UK housing association federations throughout the passage of the Welfare Reform Bill.

For us it is simple: in an economy which expects the majority to support themselves through earnings, state intervention is required to provide a safety net for those whose income is threatened. The primary threats to income are: unemployment; relationship breakdown; illness; ageing; pregnancy/childcare responsibilities. Threats to income impact on the quality of people’s daily lives but the first and foremost danger is to the roof over their heads. Every citizen has a basic human right to shelter.

SFHA agrees that the existing welfare system is in need of radical reform. However, successful reform requires extensive debate with all of the key players, careful consideration of the detail and sufficient investment to ensure fairness. We have been astonished by the speed with which the decision was made to introduce the new Universal Credit, by the pace of the passage of the Welfare Reform Bill and by the amount of detail that is being left to secondary legislation.

The Bill is scheduled for Royal Assent on 8th March when it will become law. We therefore welcome the establishment of the Welfare Reform Committee and will be happy to advise, as required, on the impacts of welfare reform and the mitigating measures that we would wish Scottish Government either to take or to seek to influence elsewhere.

Summary of Our Concerns

In addition to those outlined above in respect of pace and inadequate scrutiny, we have specific and very serious concerns about the following housing related aspects of the Welfare Reform Bill:

- the introduction of an under-occupation penalty through both clauses 11 (housing costs element of Universal Credit) and 68 (Housing Benefit) – also referred to as the “bedroom tax”, against which we have lobbied vigorously;
- the potential for the UK Government to break the relationship between housing costs subsidy and actual rents, which could be introduced via secondary legislation related to clauses 11 and/or 68;
- the potential impact of the overall benefits cap on the housing costs element (clauses 93 & 94);
• the impact of Universal Credit, including the housing costs element, being paid direct to the tenant, which would end the tenant’s right to choose to have housing costs paid direct to their landlord;
• the introduction of a new provision in clause 102 (inserted at the Commons Report Stage) permitting deduction of Housing Benefit (and other benefit) overpayments from earnings.

Impacts

We have undertaken and published our own impact assessment report which has been previously circulated to the Health & Sport and to the Infrastructure and Capital Investment Committees, which details the various anticipated impacts of the Welfare Reform Bill upon housing associations and co-operatives and their tenants.

• Across the changes to Housing Benefit, Universal Credit and other benefit reforms, as many as 1 in 5 tenants in our sector may have their incomes adversely affected, with some very substantial income losses for some tenants.
• some case examples illustrating where “suitably sized” alternative accommodation in the private rented sector will actually cost the public purse more than leaving the tenant deemed to be under occupying in the social rented sector.
• The Welfare Reform Bill will undoubtedly increase rent arrears, personal indebtedness and homelessness, all amongst some of the most vulnerable people living in our communities.
• This will in turn increase the operating costs of housing associations and co-operatives as they strive to help people sustain their tenancies.
• The Bill also has the potential to reduce the revenue income of housing associations and co-operatives. This will impact on their ability to maintain existing homes and to repay loans taken out to build much needed new affordable homes – at a time when there are already 335,000 households on Scottish housing association and co-operative housing lists.
• The Bill also threatens to work against many objectives of Scottish Government policy, including the commitment to have every unintentional homeless household in settled accommodation by 2012. The increased pressure on the incomes of both tenants and social landlords could also make meeting the target of eradicating fuel poverty by 2016 even more challenging.

DAVID OGILVIE
POLICY AND STRATEGY MANAGER
SFHA
SUBMISSION FROM SCOTTISH FEDERATION OF HOUSING ASSOCIATIONS

Background

SFHA has been campaigning since October 2010 for a fairer system of Housing Benefit and against the proposed cuts which will do so much damage to Scotland’s housing association sector and to the tenants who live in our homes. We have responded in detail to all of the UK Government’s consultations on welfare reform, taking every opportunity to highlight why we need a fair welfare system in the UK. SFHA is a member of the Scottish Campaign on Welfare Reform and has also been campaigning jointly with all UK housing association federations throughout the passage of the Welfare Reform Act 2012.

For us it is simple: in an economy which expects the majority to support themselves through earnings, state intervention is required to provide a safety net for those whose income is threatened. The primary threats to income are: unemployment; relationship breakdown; illness; ageing; pregnancy/childcare responsibilities. Threats to income impact on the quality of people’s daily lives but the first and foremost danger is to the roof over their heads. Every citizen has a basic human right to shelter.

SFHA agrees that the existing welfare system is in need of radical reform. However, successful reform requires extensive debate with all of the key players, careful consideration of the detail and sufficient investment to ensure fairness. We have been astonished by the speed with which the decision was made to introduce the new Universal Credit, by the pace of the passage of the Welfare Reform Act and by the amount of detail that is being left to secondary legislation.

Views on the Scottish Bill as a whole

At the time of the Legislative Consent Motion debate in December 2012, SFHA lobbied MSPs to withhold consent given that there had been insufficient opportunity for scrutiny of the implications of this legislation for Scotland and for Scottish public and social policy. We were therefore pleased to see the Scottish Parliament take the unprecedented step of withholding consent on parts of the Welfare Reform Act, as it sent a strong message about the need for the work of the Scottish Parliament and the Scottish Government to be properly taken into consideration by the UK Government in the framing of their new welfare policy.

SFHA therefore welcomes the Welfare Reform (Further Provision) (Scotland) Bill – referred to elsewhere in this briefing as “The Scottish Bill” – as the necessary outcome of the Scottish Parliament’s historic decision in December 2011 to partially withhold Legislative Consent on the UK Government’s Welfare Reform Bill. The Scottish Bill has been drafted to enable Scottish Ministers to introduces such regulations as are required in order that devolved legislation can take account of the changes to the benefits system introduced by the Welfare Reform Act 2012. We look forward to the publication of and consultation on the secondary legislation and regulations (including clear guidance for Local Authorities and other public bodies) arising from this Bill, as these will determine whether or not the impact of UK
Government welfare reforms are ameliorated for tenants of Scottish housing association and co-operatives, their families and others reliant on benefits.

**General Principles Underlying the Scottish Bill**

Whilst we are broadly in support of the general principles underlying this Bill, we would be keen to establish the basis upon which future changes to regulations would be made. We feel it is imperative that the Scottish Parliament ensures Bill that any changes to regulations that Scottish Ministers make or wish to make should be subject to affirmative procedure and the full scrutiny of the Scottish Parliament. We are therefore slightly concerned by the proposals under Section 1 of the Scottish Bill which suggest under Section 1 (3)(a) that some changes – if they do not add to, replace or omit any part of the text of an Act – would be subject to negative procedure. However, our concerns here are borne mainly by the desire to see as open, transparent and accountable a process as possible, so it may well be that forthcoming clarification in the form of guidance from the Scottish Government would allay these concerns.

**Universal Credit**

The Committee will be aware from our various recent briefings to MSPs that we are seriously concerned about the impact that the introduction of Universal Credit will have upon the way that tenant households manage their finances and live their lives, as well as the serious business and financial challenges it will present to landlords.

The proposed powers introduced in relation to Universal Credit by the Scottish Bill are therefore of direct interest to SFHA and our member organisations.

As noted above we have some concerns regarding the proposals to deploy negative procedure, although we trust this is something which can be addressed in due course as suggested.

Our main points of concern relating to Universal Credit are as follows:

- the introduction of an under-occupation penalty through both clauses 11 (housing costs element of Universal Credit) and 69 (Housing Benefit) – also referred to as the "bedroom tax", against which we have lobbied vigorously;
- the potential for the UK Government to break the relationship between housing costs subsidy and actual rents, which could be introduced via secondary legislation related to clauses 11 and/or 69;
- the potential impact of the overall benefits cap on the housing costs element (clauses 96 & 97);
- the impact of Universal Credit, including the housing costs element, being paid direct to the tenant, which would end the tenant’s right to choose to have housing costs paid direct to their landlord;
- the introduction of a new provision in clause 106 (inserted at the Commons Report Stage) permitting deduction of Housing Benefit (and other benefit) overpayments from earnings.
In light of these concerns therefore, SFHA is supportive of any measures (be they via subordinate legislation or other regulations) which the Scottish Government can adopt in order to mitigate the outcomes of the Welfare Reform Act upon Scotland.

**Passported Benefits**

However, we recognise that the Welfare Reform Committee has already indicated that their primary focus for action must be on passported benefits – since they are the area of welfare policy where the Parliament feels it can most readily make a positive difference. We support the Committee wholeheartedly in taking steps to ensure that households in Scotland who currently receive essential passported benefits (many of whom will be households living in social rented properties as Council or Housing Association tenants) do not lose access to them as a result of the switchover to Universal Credit. Our concern for the financial wellbeing of the households in our sector is well-recorded and well recognised, and Housing Associations and Co-operatives will continue to support financial inclusion, anti-poverty and tenancy sustainment activities, but much of that work is dependent on continued access to existing government assistance. There will need to be a considerable rethink of qualifying eligibility criteria for devolved passported benefits as a result of the Welfare Reform Act and the introduction of Universal Credit – as being in receipt of Housing Benefit, Income Support or Job Seekers’ Allowance will no longer be viable qualifying criteria.

**Impacts**

We have undertaken and published our own impact assessment report which has been previously circulated to the Health & Sport and to the Infrastructure and Capital Investment Committees, which details the various anticipated impacts of the Welfare Reform Bill upon housing associations and co-operatives and their tenants.

- Across the changes to Housing Benefit, Universal Credit and other benefit reforms, as many as **1 in 5 tenants in our sector** may have their incomes adversely affected, with some very substantial income losses for some tenants.
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- The Welfare Reform Bill will undoubtedly **increase rent arrears, personal indebtedness and homelessness**, all amongst some of the most vulnerable people living in our communities.
- This will in turn **increase the operating costs** of housing associations and co-operatives as they strive to help people sustain their tenancies.
- The Bill also has the potential to **reduce the revenue income of housing associations and co-operatives**. This will impact on their ability to maintain existing homes and to repay loans taken out to build much needed new affordable homes – at a time when there are already 335,000 households on Scottish housing association and co-operative housing lists.
- The Bill also threatens to work against many objectives of Scottish Government policy, including the commitment to have every unintentional homeless household in settled accommodation by 2012.
pressure on the incomes of both tenants and social landlords could also make meeting the target of eradicating fuel poverty by 2016 even more challenging.

DAVID OGILVIE
POLICY & STRATEGY MANAGER
SFHA
12 APRIL 2012
SUBMISSION FROM OWEN KELLY

I am sorry I was unable to answer all of the Committee’s questions when I gave evidence on 1 May. I promised to write in response to 3 questions, one each from Mr Stewart, Ms Ewing and Mr Johnstone.

Question from Mr Stewart on bank charges

The level set for bank charges is a commercial decision taken by an individual bank. Due to requirements under competition law, the banking industry and the British Bankers’ Association would not hold discussions on bank account charges.

Question from Ms Ewing about discussions between banks and housing associations about making some sort of direct payment

I understand that the DWP has spoken separately with both banks and housing associations about their opinions and concerns. The British Bankers’ Association has not, however, been in conversation with housing associations directly.

Question from Mr Johnstone about whether bank staff could volunteer to advise claimants using their bank’s accounts

As I hinted in my evidence, there are likely to be regulatory concerns. The word ‘advice’ has a very specific meaning relating to authorisation of individuals who are accredited by the Financial Services Authority. Branch staff are usually not FSA authorised and therefore can only offer ‘information’ on available products and services. Branch staff are trained thoroughly on providing information to customers on the broad range of a bank’s products and services. Many customers are going to be impacted by Universal Credit and I think it likely that banks will build this information into their regular branch staff training.

I hope this information is helpful to the Committee and please get in touch if there is more we can do.

OWEN KELLY
MAY 2012
Supplementary submission from the Scottish Government

The following information was provided by the Scottish Government following the Committee’s request for an update on the Scottish Governments proposed approach on the Social Fund. and for a breakdown of existing passported benefits including their associated criteria.

Scope and scale of passported benefits

<table>
<thead>
<tr>
<th>Area</th>
<th>Relevant criteria</th>
<th>Client group</th>
<th>Number of people affected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education related benefits</td>
<td>Pupils attending school whose parents are in receipt of any of the following reserved UK benefits:</td>
<td>Children and young people in full time school education</td>
<td>In 2010 118,963 pupils were registered to receive free school lunches. This represented 17.8% of the total pupil population.</td>
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<tr>
<td></td>
<td>- Income support</td>
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<td></td>
<td>- Income-based jobseeker's allowance</td>
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<td></td>
<td>- Any income related element of employment and support allowance</td>
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<td>- Child tax credit (but not working tax credit) with an income less than £15,860</td>
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<td></td>
<td>- Both maximum child tax credit and maximum working tax credit with an income under £6,420</td>
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<td></td>
<td>- Support under Part VI of the Immigration and Asylum Act 1999</td>
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<td>Free school lunches</td>
<td>Young people aged between 16-18 years who receive any of these benefits can also claim free school lunches in</td>
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<tr>
<td>Area</td>
<td>Relevant criteria</td>
<td>Client group</td>
<td>Number of people affected</td>
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| Individual Learning Accounts     | All Scottish residents with an income of £22,000 or less or who are in receipt of any one of the following reserved benefits:  
  - Jobseeker’s allowance (income and contribution based)  
  - Income support  
  - Carer’s allowance  
  - Incapacity benefit  
  - Maximum rate of child tax credit  
  - State pension credit  
  - Employment and support allowance (income and contribution based) | Low paid/low skilled individuals       | Over 110,000 ILA accounts were opened in 2010-11. |
| Education Maintenance Allowance  | Student age, household income (generally based on tax credit award notice) residential status and validity/level of course.  
  There are two threshold limits, £20,351 for households with one dependant child and £22,403 for households with more than one dependant child. | Low income young people (16-19) in non-compulsory education | 2010-11 in which 34,780 young people received an EMA. |
| Student loans Higher Education   | A student loan can be written off/cancelled if a borrower receives a disability related benefit and is considered permanently unfit for work. | Student loan borrowers               | For academic year 2011-12 under 50 borrowers were affected. |
| Legal Aid                        | Applicants qualify financially for legal aid with no contribution if they receive one of the following benefits:  
  - Low income in need of justice | Low income in need of justice       | In 2010-11, there were 271,974 grants for legal aid (both civil and criminal), of which some 52 per cent were made on |
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<td></td>
<td>• Income support</td>
<td>a passported basis.</td>
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<td>• Income-related employment and support allowance</td>
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<td>Income-based jobseeker’s allowance.</td>
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<td>Court exemption fees</td>
<td>Exemptions from court fees are available to those in receipt of:</td>
<td>Low income individuals seeking court action</td>
<td>A total of 33,500 applications were exempt during 2010-11.</td>
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<td></td>
<td>• Income support</td>
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<td>• Income related employment support allowance</td>
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<td></td>
<td>• Income based jobseeker’s allowance</td>
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<td></td>
<td>• Working tax credit and child tax credit (up to gross annual income of £16,642)</td>
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<td>Blue badge parking</td>
<td>Persons receiving higher rate mobility payment of disability living allowance.</td>
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<td>135,000 badges were issued in 2010-11 to those on higher rate mobility component of DLA out of a total of 270,000.</td>
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<tr>
<td>Eligibility criteria for the</td>
<td>Higher rate of the mobility component of disability living allowance or the higher or middle rate of the care component of disability living allowance.</td>
<td>Older and disabled people</td>
<td>Around 16% of those who currently use the scheme are eligible because they are in receipt of a passported benefit.</td>
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<td>National Concessionary Travel</td>
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<td>Scheme for Older and</td>
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<td>Disabled People. (NCT)</td>
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<td>Free NHS dental treatment</td>
<td>Group 1: Everyone receiving the criteria for an income based benefit, and who need NHS dental treatment.</td>
<td>Those meeting the criteria for an income based benefit, and who need NHS dental treatment.</td>
<td>Unknown – count number of treatment claim forms submitted not number of individuals.</td>
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<td>Area</td>
<td>Relevant criteria</td>
<td>Client group</td>
<td>Number of people affected</td>
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<tr>
<td>Optical</td>
<td>allowance</td>
<td>Group 2: people receiving the following tax credits are eligible if their income is below a threshold amount - currently £15,276 gross taxable per year.</td>
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</tr>
<tr>
<td>voucher</td>
<td>• Pensions credit guarantee</td>
<td>• Working tax credit with a disability or severe disability element</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>• Child tax credit with working tax credit</td>
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<td></td>
<td></td>
<td>• Child tax credit</td>
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<td></td>
<td></td>
<td>Group 1: Everyone receiving the following income based benefit in need of glasses or contact lenses.</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>• Income support</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>• Income based jobseeker’s allowance</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Income related employment support allowance</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>• Pensions credit guarantee</td>
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<tr>
<td></td>
<td></td>
<td>Year ending March 2011, there were 322,116 passported claims processed for the provision of glasses/contact lenses.</td>
<td></td>
</tr>
<tr>
<td>Area</td>
<td>Relevant criteria</td>
<td>Client group</td>
<td>Number of people affected</td>
</tr>
<tr>
<td>--------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>Travel costs to NHS premises</td>
<td>Group 1: Everyone receiving • Income support • Income based jobseeker’s allowance • Income related employment support allowance • Pensions credit guarantee</td>
<td>Low income in need of need health treatment, including a routine check up.</td>
<td>Data not collected centrally.</td>
</tr>
<tr>
<td></td>
<td>Group 2: people receiving the following tax credits are eligible if their income is below a threshold amount - currently £15,276 gross taxable per year. • Working tax credit with a disability or severe disability element • Child tax credit with working tax credit • Child tax credit</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Energy Assistance Package</td>
<td>Applicants for stage 3 of the package are entitled to receive free or subsidised insulation from an energy supplier on the basis of their existing entitlement to specific benefits. These reserved benefits are: • Pension credit • Child tax credit or working tax credit (where income is less than the qualifying threshold) • Employment and support allowance (both income related and contribution based) • Attendance allowance</td>
<td>Fuel poor</td>
<td>Not possible to identify claims at stages 3 and 4 that were passported as benefits in kind.</td>
</tr>
</tbody>
</table>
### Social Fund

**Welfare Reform Scrutiny Group – Community Care Grant and Crisis Loans for Living Expenses successor arrangements**

### Introduction

The Department for Work and Pensions (DWP) is transferring responsibility for some discretionary elements of the Social Fund to the Scottish Government from April 2013. The Scottish Government intends to retain the objectives of the current schemes for CCG and CLs, but believes that there is scope to improve the delivery of the successor arrangements. We undertook a consultation last year to seek views on how the delivery of CCGs and CLs could be improved.

### Background

The consultation ran from 5 August until 31 October 2011. There were 50 responses. Forty-seven responses were from organisations, with three individual responses from people with professional experience of the issues. Thirty responses were from third sector agencies, thirteen from local authorities and four from other public sector agencies, including the Social Fund Commissioner. Amongst the third sector respondents, almost two-thirds were agencies with a national remit and a third were more locally focused.

The key messages from the consultation are given below:

- Respondents indicated their qualified support for a single grant fund to replace CCGs and CLs;
- Local delivery is favoured above central delivery, with some qualifications e.g. a nationally agreed set of criteria;
- Local Government (LG) is the most widely suggested local delivery agent;
- The successor scheme should offer a mixture of goods and grants; and
- The appeals process should include an independent element.

The full analysis report and the individual responses to the consultation can be found on the Scottish Government website at:

[http://www.scotland.gov.uk/Publications/2012/02/5070](http://www.scotland.gov.uk/Publications/2012/02/5070)
http://www.scotland.gov.uk/Publications/2012/02/1585

Latest position

Since the public consultation at the end of last year we have been undertaking desk research and engaging with relevant SG policy areas and stakeholders including Citizens Advice Scotland, the Poverty Alliance, Child Poverty Action Group, Shelter, DWP and COSLA to generate options for delivery.

Drawing on the outcome of the consultation, we are proceeding on the basis that the new arrangements will be based on local delivery, with a nationally agreed set of criteria. We are exploring how the new scheme might provide a mixture of goods and grants, to take advantage of bulk purchasing and local initiative such as furniture re-cycling, to ensure we use the available budget to help as many people as possible. We are also proceeding on the basis that the new scheme will not offer loans.

In keeping with the Scottish Government’s commitment to retain the core purpose of the current scheme, the broad objective of the successor scheme will be to support individuals on low incomes to:

- enable independent living or continued independent living
- take remedial action in a crisis in order to prevent a worse outcome in the longer term.

Funding

The Department for Work and Pensions (DWP) has yet to confirm the amount of funding which will be transferred to Scottish Ministers in respect of assistance to replace CCGs and CLs. The funding allocation will be based on the equivalent Social Fund spend for 2012-13 i.e. Scotland will receive the amount that is being spent on CCGs and CLs at the time of transfer.

Spend in Scotland for 2010-11 was £20.8 million on CCGs and £8.5 million for CLs for living expenses. We know that our allocation for CLs will be lower, as DWP is taking steps to manage demand for CLs to their level in 2005-6 (£4.7 million). DWP has also changed its allocation methodology for CCGs, the impact of which is not yet clear.

Scottish Ministers have agreed to allocate in full the funding they receive from DWP for the new Social Fund arrangements.

Next steps

COSLA Leaders agreed on 24 February to take on a delivery role for the successor arrangements for an interim period, subject to assurances. Working with COSLA, we are looking to set up a small design group to develop the detail of the successor scheme and advise on the practicalities of delivery. The first meeting of the group is on 26 April 2012. The timescale for developing the new delivery model is tight, as the new arrangements have to be in place for April 2013. The timescale is likely to constrain what we can put in place for April 2013. Our intention is to have as much
agreed as possible by December 2012 to leave time during 2013 for gearing up and preparations to deliver.

SCOTTISH GOVERNMENT
SUBMISSION FROM SCOTTISH GOVERNMENT

You will recall that, when I appeared before the Welfare Reform Committee on 1 May, I made an undertaking to come back to Committee with further information, with regard to a number of points which were raised during our discussion. The attached submission provides that further information, in the hope that it will be of use to Committee in preparing its Stage 1 report on the Welfare Reform (Further Provision) (Scotland) Bill. I trust this will be the case.

As I said on 1 May, we will share as much information with Committee as we can, as soon as we can. I know my officials maintain regular contact with your clerking team and will continue to do so, with a view to keeping Committee up to date on our emerging thinking and any further information from the UK Government that we are able to share.

I remain grateful to Committee for the time and effort it has expended on considering the Bill, to the challenging timetable required to keep pace with the deadlines set by the UK Government’s implementation programme and I look forward to seeing further progress in due course.

NICOLA STURGEON MSP
DEPUTY FIRST MINISTER AND CABINET SECRETARY FOR HEALTH, WELLBEING AND CITIES STRATEGY
SCOTTISH GOVERNMENT
MAY 2012
Introduction

- At her appearance to give evidence on 1 May, the Cabinet Secretary for Health, Wellbeing and Cities Strategy offered to provide Committee with further information and clarification, as follows:

1. To provide a comprehensive list of engagement between the Scottish Government (SG) and the Department for Work and Pensions (DWP), noting that here has been extensive engagement at ministerial level and between officials, and that is on-going.
2. To double-check if the SG held information on modelling or proposed modelling to which Committee was not privy and to make Committee aware of anything that would be helpful to it.
3. To re-examine the evidence provided in a submission by Professor Paul Spicker and to advise Committee of the SG's position on that submission, with particular reference to the SG's approach to putting in place successor arrangements for those elements of the discretionary Social Fund, for which responsibility will be devolved
4. To confirm that the SG would be undertaking analytical and/or modelling work which would look at the wider economic and social impacts of the UK Government’s welfare reforms and the impacts on devolved services

List of Engagement

- A list of engagement between SG Ministers and their UKG counterparts is set out at Annex A.

It is not possible to provide a list of engagement at official level. This is because official level engagement with DWP goes on across the SG on an extremely frequent basis. No central records are kept of this engagement and, if there were, it would be extremely difficult to filter out engagement that specifically pertained to matters of welfare reform from that which was required as part of the ordinary conduct of SG business. This is reflected by the evidence given by Mr Neil Couling, DWP Director of Benefits, to the Health and Sport Committee on 22 November 2011 when Mr Couling advised that Committee that “We [DWP] are in regular contact and the Scottish Government is engaged in all our major governance structures in and around the big reforms, including the universal credit and DLA/PIP1”.

Information on Modelling

- The SG notes that Committee is aware of the modelling work that has been carried out by organisations such as the Institute for Fiscal Studies and Inclusion Scotland and is grateful to these organisations for carrying out and publishing the results.

• In response to the specific request made to the Cabinet Secretary as to whether the SG knows if “DWP intends to do modelling”, the SG expects that DWP will undertake work along these lines, if it has not done so already, although whether the results will meet Committee’s requirement in setting out the “cumulative impacts of changes to benefits” remains to be seen. The SG has no further information on modelling which it is able to share with Committee at this time.

• The SG notes the letter sent by Committee’s Convener, Michael McMahon MSP to the Minister for Welfare Reform, seeking information on “over-arching modelling on the cumulative impacts of changes to benefits” and the SG supports Committee in making that request.

• The SG also intends to press DWP, at both official and Ministerial level for further assurances that they will undertake and publish modelling work on the impact of their welfare reforms.

Submission from Professor Paul Spicker

• The SG’s position on Professor Spicker’s submission is that his analysis of the power to promote well-being, specifically as enabled by section 20(2)(b) of the Local Government (Scotland) Act 2003 is generally consistent with our own analysis of the operation of this power under the existing devolution settlement.

• As the Cabinet Secretary made clear to Committee on 1 May, the SG intends to work with the UKG to bring forward an order under section 30 of the Scotland Act, to ensure that the desired policy can be delivered using the power to promote well-being and we will notify Committee of progress with this work, in due course.

Analytical Work

• On the question of the whether the SG will be undertaking analytical and/or modelling work which would look at the wider economic and social impacts of the UK Government’s welfare reforms and the impacts on devolved services, the SG refers Committee to the analytical work plan which was provided to the Welfare Committee in March 2012 which set out the work we would be undertaking as follows:

1. Analysis of the impact of the reforms on Scottish individuals and households:
   o Examination of specific reforms as and when further detail becomes available, for example the transition from Disability Living Allowance to Personal Independence Payment.
   o Building a cumulative picture of the impact on the reforms on specific households in Scotland through case study examples

2. Tracking and responding to the roll-out of Universal Credit:
   o Monitoring the impacts on devolved Scottish Government services. In particular the impacts on passported benefits under the remit of the Scottish Government.
3. Providing analytical support in light of the Welfare Reform (Further Provision) (Scotland) Bill
5. Assessing the impact of the reforms on Scottish Government targets and measures:
   ○ Including an examination of the changes to Official Statistics which will be brought about by the introduction of Universal Credit

- In addition to this, it is also the Scottish Government’s intention to assess the analysis produced by the Welsh Assembly Government and, where this points to work which has not already been carried out or which is not reflected in the current analytical work plan, to consider whether it should carry out equivalent analysis. The SG will keep Committee appraised of this work as it develops.

- The committee has also expressed an interest in the use of multipliers to examine the impact of the welfare reforms on incomes and spending. Scottish Government has not considered multipliers in this context as the use of multipliers does not consider the wider economic implications. Reduced public expenditure might be offset by reduced taxes or public sector debt repayment which will also have benefits to the wider economy. To consider just the impact of the reduced income, together with the multiplier effects of the reduction in associated spending, only represents part of the economic picture.

- In the hope that Committee will find it helpful, a further analytical paper is also attached to this submission, at Annex B
<table>
<thead>
<tr>
<th>Date (2010)</th>
<th>Activity</th>
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<tbody>
<tr>
<td>October 2010</td>
<td>Mr Neil and Cllr McGuigan met Mr Grayling on housing benefit reform issues</td>
</tr>
<tr>
<td>20 December</td>
<td>Mr Neil and Cllr McGuigan from COSLA jointly wrote to Lord Freud on the issues of the threat to the 2012 homelessness target as a result of the reforms, specifically mentioning under occupation, shared accommodation rate changes, and LHA rates moving to 30\textsuperscript{th} percentile. A Scottish Impact assessment was forwarded on shortly after the letter.</td>
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<tr>
<th>Date (2011)</th>
<th>Activity</th>
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<tbody>
<tr>
<td>14 January</td>
<td>Letter from Chris Grayling MP advising that UKG will be taking the Welfare Reform Bill forward and seeking support for required LCM.</td>
</tr>
</tbody>
</table>
| 27 January  | • Telephone call between Lord Freud, DFM and Ms Constance  
• DFM pressed for greater DWP engagement |
| 9 February  | Letter from Ms Sturgeon to Chris Grayling MP confirming that officials will work to progress LCM and expressing concerns around the lack of detail |
| 2 February  | Ms Hyslop and FM attended JMC(D), where Lord Freud presented an agenda item on the WRB |
| 16 February | Letter from the SoS, enclosing an "in confidence" version of the Bill |
| 3 March     | Scottish Government lodge initial Legislative Consent Memorandum (without a draft Motion) with Parliament |
| 15 March    | Letter to the SoS, confirming that SG have lodged the Memorandum, seeking agreement for continued official-level engagement and inviting the SoS to visit Scotland after the elections |
| 13 April    | Letter from the SoS confirming commitment to official-level engagement and accepting the invitation to visit |
| 24 May      | Letter from the SoS extending congratulations on re-election and advising that Lord Freud would be in touch to discuss progressing matters on the Bill in more detail |
| 24 May      | Letter from Lord Freud confirming areas of the Bill requiring legislative consent and seeking support for a Motion |
| June        | • Welfare Reform Bill initially assigned to the Health and Sport Committee  
• The Committee did not discuss the Bill before dissolution |
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<tr>
<th>Date</th>
<th>Event Description</th>
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<tbody>
<tr>
<td>4 June</td>
<td>Letter from the DFM to Lord Freud advising SG position on the LCM remains as stated previously and seeking greater commitment to substantive engagement at official-level</td>
</tr>
<tr>
<td>16 June</td>
<td>1st Reading in HoL</td>
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<tr>
<td>16 June</td>
<td>Very brief teleconference between DFM and Lord Freud. No specific discussions or actions arising.</td>
</tr>
<tr>
<td>7 July</td>
<td>Letter from Lord Freud seeking views on the work needed to progress the LCM</td>
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<tr>
<td>11 July</td>
<td>Joint letter with CoSLA to the SoS advising concerns with regard to the Bill</td>
</tr>
<tr>
<td>27 July</td>
<td>Mr Neil wrote jointly with Cllr McGuigan to Lord Freud on Housing Benefit reform impacts – including under occupation and work incentive issues.</td>
</tr>
<tr>
<td>11 August</td>
<td>Letter from the SoS seeking to address concerns and confirming commitment to continued engagement</td>
</tr>
<tr>
<td>6 September</td>
<td>Mr Brown met with Grant Shapps (UK Minister for Housing and Local Government) on a range of housing issues including housing benefit reform.</td>
</tr>
<tr>
<td>7 September</td>
<td>Mr Matheson letter to Sarah Teather (Minister for Children and Families) outlining SG concerns regarding nature and extent of scrutiny that proposed reformulated Social Mobility and Child Poverty Commission (SMCPC) would have in respect of Scottish child poverty strategy.</td>
</tr>
</tbody>
</table>
| 13 September| • 2nd Reading and debate in HoL  
• Committee Stage expected to start after conference recess (House returns on 10th October) with 3rd Reading and Report in December |
| 14 September| IDS to Michael Matheson re child SMCPC – letter did not address substantive concerns regarding legislation, but did suggest adopting a cooperative approach to appointment to the SMCPC. |
| 15 September| • Iain Duncan Smith visits Scotland and meets with DFM and Mr Swinney                                                                          |
| 22 September| • Follow up letter from DFM to IDS                                                                                                              |
| 4 October  | Letter from Mr Brown to Grant Shapps on a range of housing benefit issues following up on September meeting.                                         |
| 5 October  | • Welfare Reform debate in the Scottish Parliament. Scottish Government support Labour amendment, to the effect that, “and is
otherwise minded, subject to consideration by the appropriate committees, to oppose the forthcoming legislative consent motion pertaining to the Welfare Reform Bill”

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<tr>
<th>Date</th>
<th>Event Description</th>
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<tr>
<td>5 October</td>
<td>Letter from DFM to IDS advising him that, as things stand, she is not able to support legislative consent</td>
</tr>
<tr>
<td>11 October</td>
<td>Mr Brown wrote to Lord Freud on housing benefit changes in respect of supported housing proposals</td>
</tr>
<tr>
<td>25 October</td>
<td>Michael Matheson response to IDS letter of 14 September – restating concerns that were not addressed from letter of 7 September. Stating that not able to support legislative consent for these amendments.</td>
</tr>
<tr>
<td>1 November</td>
<td>SG lodges Supplementary Legislative Consent Memorandum with Scottish Parliament. The Supplementary Memorandum would set out the SG’s asks with supporting evidence and provide the text for a draft Legislative Consent Motion.</td>
</tr>
<tr>
<td>10 November</td>
<td>Michael Matheson phone call with Maria Miller (Minister for Disabled People) where UK Government agreed to amend the Bill so that the SMCPC “describes measures taken” by SG rather than offering “views on implementation”.</td>
</tr>
<tr>
<td>14 November</td>
<td>IDS response to DFM letter of 22 September advising that he does not consider request for legislative concession appropriate due to reserved nature of the Bill. Reconfirms offer to update Concordat to strengthen communication and consultation and include additional section on Welfare Reform and Universal Credit. Seeks response by 18 November and includes Annex detailing implications of removing relevant provisions from the Bill.</td>
</tr>
<tr>
<td>14 November</td>
<td>Maria Miller follow up letter to phone call of 10 November, confirming willingness to amend legislation, reiterating non legislative suggestions that Scottish and UK Ministers should consult each other on appointments to the SMCPC and stating that UK Government intends to consult Devolved Administrations on the SMCPC terms of reference. Seeks response by 18 November indicating that SG will support legislative consent for the legislation with establishes the SMCPC.</td>
</tr>
<tr>
<td>22 November</td>
<td>Deputy First Minister gives evidence to the Health and Sport Committee on the Bill</td>
</tr>
</tbody>
</table>
| 14 December| DFM telephone call with IDS. DFM advised Scottish Government will be inviting Parliament to support legislative consent for certain provisions in the Bill but to decline consent in those areas which give rise to the greatest concern. IDS already aware SG would not be supporting a ‘full’ Legislative Consent Motion for the Welfare Reform Bill so it did not come as a
<table>
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<tr>
<th>Date</th>
<th>Event Description</th>
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<tbody>
<tr>
<td>15 December</td>
<td>Letter received from Lord Freud outlining the deduction rates for under-occupation in the Social Rented Sector and additional money to the Discretionary Housing Payments budget. Propose that</td>
</tr>
<tr>
<td>16 December</td>
<td>Michael Mundell regularly scheduled telephone call with Bruce Crawford.</td>
</tr>
<tr>
<td>22 December</td>
<td>Scottish Parliament debate on the Legislative Consent Motion Enable Parliament to fulfil its Sewell obligations (deadline final amending stage at Westminster)</td>
</tr>
<tr>
<td>29 December</td>
<td>Mr Brown reply to Lord Freud letter 15 December seeking reassurances that vulnerable people will be protected and raising points put to NS at Health Committee Scrutiny of Welfare Reform.</td>
</tr>
<tr>
<td>Date (2012)</td>
<td></td>
</tr>
<tr>
<td>5 January</td>
<td>IDS letter re data sharing arrangements</td>
</tr>
<tr>
<td>11 January</td>
<td>DFM reply to IDS letter 14 November, conversation on 14 December and data sharing letter 5 January. Confirmed outcome of Legislative Consent Motion and suggested alternative wording in relation to data sharing provision in the Bill.</td>
</tr>
<tr>
<td>16 January</td>
<td>2 letters received from Lord Freud in response to Mr Brown letter of 29 December – under-occupancy and Housing Demonstration.</td>
</tr>
<tr>
<td>31 January</td>
<td>Joint letter from Mr Brown and COSLA sent on under occupancy measures in WRB as amended by Lords.</td>
</tr>
<tr>
<td>February</td>
<td>HoL 3rd Reading and Report debate 3rd Reading is the final amending stage and therefore the deadline for the Bill to secure legislative consent from the Scottish Parliament</td>
</tr>
<tr>
<td>3 February</td>
<td>DFM letter to IDS – further to letter 11 January. Suggested meeting to discuss next phase of work re implementation and roll-out of Universal Credit</td>
</tr>
<tr>
<td>23 February</td>
<td>1st Meeting of Scottish Parliament Welfare Reform Committee.</td>
</tr>
<tr>
<td>8 March</td>
<td>UK Welfare Reform Bill gains Royal Assent</td>
</tr>
<tr>
<td>13 March</td>
<td>2nd Meeting of Scottish Parliament Welfare Reform Committee – Stakeholder Evidence session</td>
</tr>
<tr>
<td>15 March</td>
<td>DFM telephone call with Leighton Andrews, Welsh Minister for Education and Skills. Discussion on recent Remploy announcement and DFM agreed to work together and share</td>
</tr>
<tr>
<td>Date</td>
<td>Event Description</td>
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</tr>
<tr>
<td>15 March</td>
<td>DFM meets IDS to discuss next phase of work re implementation and roll out of UC.</td>
</tr>
<tr>
<td>29 March</td>
<td>3&lt;sup&gt;rd&lt;/sup&gt; Meeting of Scottish Parliament Welfare Reform Committee – Officials Evidence session.</td>
</tr>
<tr>
<td>9 April</td>
<td>Letter from DFM to Maria Miller MP responding to letter 26 February 2012 about the impact on related entitlements to Blue Badge and Concessionary Travel schemes in Scotland of the proposed introduction of Personal Independence Payment and for your letter of 26 March about a further consultation on the detailed design of this new benefit. Suggested meeting after closure of the consultation.</td>
</tr>
<tr>
<td>16 April</td>
<td>Letter from IDS to John Swinney concerning funding arrangements following the abolition of CTB.</td>
</tr>
<tr>
<td>17 April</td>
<td>4&lt;sup&gt;th&lt;/sup&gt; Meeting of 3&lt;sup&gt;rd&lt;/sup&gt; Meeting of Scottish Parliament Welfare Reform Committee</td>
</tr>
<tr>
<td>24 April</td>
<td>5&lt;sup&gt;th&lt;/sup&gt; Meeting of Scottish Parliament Welfare Reform Committee</td>
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<tr>
<td>01 May</td>
<td>6&lt;sup&gt;th&lt;/sup&gt; Meeting of Scottish Parliament Welfare Reform Committee – DFM Evidence session</td>
</tr>
<tr>
<td>2 May</td>
<td>Letter from Welfare Reform Committee to Lord Freud requesting provision of a deadline by which all necessary information from the DWP will have been provided to the Scottish Government</td>
</tr>
<tr>
<td>8 May</td>
<td>Letter from Maria Miller advising the SG of the UKG response to the 7&lt;sup&gt;th&lt;/sup&gt; Report of the Work and Pensions Select Committee</td>
</tr>
</tbody>
</table>
1. Introduction

The purpose of this paper is to summarise the main messages from the analysis produced by the Institute for Fiscal Studies (IFS); and to identify IFS analysis around how Scotland compares to the other regions of Great Britain.

The paper is structured as follows: firstly, the main messages from each of the IFS reports are identified:

- Universal Credit: A preliminary analysis
- Tax and Benefits reforms due in 2012-13 and the outlook for household incomes
- Impact of tax and benefit reforms by sex
- Impact of tax and benefit reforms in Northern Ireland
- Impact of welfare reforms in Wales

Secondly, the IFS reports listed are used to highlight analyses for Scotland, where this exists.

2. Main Messages from IFS Analysis

The main messages from each IFS report are summarised below.

(a) Universal Credit: a preliminary analysis (Brewer et al, 2011)

This report presents analysis by the IFS that examines how Universal Credit will affect household incomes and financial work incentives in Great Britain. It compares a 2014-15 tax and benefit system with Universal Credit against a situation where Universal Credit was not introduced.

The main messages from Brewer et al (2011) are:

- Universal credit will be introduced in Great Britain from 2013 and will integrate all means-tested benefits and tax credits for working-age adults. It replaces income support, income-based Jobseeker’s Allowance and Employment and Support Allowance, Housing Benefit, Child Tax Credit and Working Tax Credit; and will be administered by the Department for Work and Pensions on a monthly basis.
The objective of Universal Credit is to “strengthen the incentives to work for those who currently have the very weakest incentives to work”.

Universal Credit will result in “winners” and “losers”. Overall, 2.5 million working-age families will gain; 1.4 million will lose out in the long run; and 2.5 million will stay the same. The total gain of the “winners” is £3.6 billion per year; while the total loss of the “losers” is £1.9 billion per year.

There are also winners and losers by family type. In the long run, lone parents are the group that will suffer most. On average, couples with children will benefit more than couples without children, who in turn benefit more than single adults. Single-earner couples (with or without children) will benefit substantially from the reform.

Universal Credit is anticipated to affect participation in the labour market. While it strengthens the incentive for single adults to do low-paid work, it weakens the incentive for both members of a couple to work. It does, however, strengthen the incentive for couples to have one person in work rather than none. Overall, IFS suggest that the tax and benefit changes, including Universal Credit, to be introduced by 2014, will, on average, strengthen the incentive for the population as a whole to undertake paid work.

(b) Tax and Benefits reforms due in 2012-13 and the outlook for household incomes (Joyce, 2012)

This IFS briefing note discusses tax and benefit reforms due in 2012-13 and estimates their likely impact on households. IFS’s calculations are based on their tax and benefit model, TAXBEN, which is run on data from the 2009-10 Family Resources Survey and the 2009 Living Costs and Food Survey.

The main messages from Joyce (2012) are:

- There is estimated to be a net ‘takeaway’ of around £4.1 billion from tax and benefit reforms to be introduced in 2012-13.
- Households at the lower end of the income distribution are the most likely to lose out from tax and benefit reforms to be introduced in 2012-13. They will lose out primarily because of lower benefit rates that arise from using the CPI rather than the RPI, and from cash freezes to Child Benefit and Working Tax Credit.
- The impact of the reforms also varies by household type and work status. On average, the gainers are pensioner households. Among working-age households, it is households with children that will tend to lose the most.
- IFS estimate that, on average, households with children will lose about 1.4% of their net income (about £530 a year) as a result of the modelled reforms; working age households without children will, on average, lose about 0.5% of their net income (about £150 per year); while pensioner households will, on average, gain about 0.5% of their net income (about £110 per year).

(c) Impact of tax and benefit reforms by sex (Browne, 2011)

This report presents the results of analysis undertaken by IFS that looks at the impact of tax and benefit reforms on men and women. Analysis is performed for all tax and benefit changes to be introduced between 2010-11 and 2014-15 excluding Universal Credit, using the IFS tax and benefit model on data from the Family Resources Survey and the Expenditure and Food Survey.
The main messages from Browne (2011) are:
- Tax and benefit reforms to be introduced between 2010-11 and 2014-15 will cause a larger loss for households with a single woman than a single man. This is largely driven by losses for lone parents, over 90% of whom are women.
- There is relatively little difference by sex when looking at the impact of tax and benefit reforms on couples, both in terms of single earner couple households according to whether the man or the woman is the earner, or between two-earner couples households according to whether the man or the woman is the higher earner on average.

(d) Impact of tax and benefit reforms in Northern Ireland (Browne, 2010)
This paper examines how the average loss from tax and benefit reform to be introduced between 2010-11 and 2014-15 (excluding Universal Credit) is different in Northern Ireland to the UK average. IFS calculations are made using the TAXBEN model using data from the 2008-09 Family Resources Survey and the 2008 Expenditure and Food Survey.

The main messages from Browne (2010) are:
- Overall, there is little variation across regions when looking at the average impact of tax and benefit reforms to be introduced between 2010-11 and 2012-13.
- However, when analysis is extended to include measures to be introduced in 2013-14 or 2014-15, Northern Ireland loses more on average than most other regions and constituent nations of the UK, including Scotland.

(e) Impact of welfare reforms in Wales (Welsh Government, 2012)
This report examines the combined impact of tax and benefit changes in Wales. Although produced by the Welsh Government, it primarily uses analysis by the IFS, comparing the estimated impact of welfare reforms in Wales to the UK as a whole and to the other regions and nations of the UK. The Welsh Government draw on the previous analysis by IFS presented in this paper.

The main messages from the Welsh Government (2012) are:
- Variations in the impact of tax and benefit reforms across the nations and regions of the UK are due to differences in the characteristics of households.
- Wales has a greater dependence on welfare benefits than the UK as a whole. Analysis by the IFS suggests that as a consequence of the tax and benefit changes to be implemented by 2014-15, on average, households in Wales can expect to lose 4.1% of their income (or £1,100 per year). This is compared to a UK average loss of 3.8% (or £1,170 per year).

3. Implications for Scotland
Analysis produced by the IFS includes some findings on how Scotland compares to the other regions (and nations) of Great Britain (and Northern Ireland). This section presents any analysis by the IFS that is specific to Scotland. Two caveats should be noted when considering the results of this analysis: (1) IFS assume that there is 100% take-up of benefits pre and post introduction of welfare reforms; and (2) any

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2 Scotland-specific analysis from Browne (2010) is identified in the ‘Implications for Scotland’ section below.
changes to household behaviour as a consequence of tax and benefit reforms are not included in their model. That is, IFS assume that individuals do not change their behaviour in response to welfare reforms.

Taking these limitations into account, IFS analysis for Scotland is presented below. This is grouped under: (1) benefit claimants in Great Britain, England, Scotland and Wales; (2) the impact of Universal Credit; (3) the effect of tax and benefit changes by UK region; and (4) the effect of tax and benefit changes by UK region and income quintile.

Benefit claimants, Great Britain:
Table 1 shows the rate and number of working age (16-64) benefit claimants for Great Britain, England, Scotland and Wales by statistical group and is an update version of the table presented in the paper by the Welsh Government. Presenting the claimant numbers by statistical group according to a hierarchy avoids double counting of claimants. The hierarchical order is as shown in the table (ie Jobseeker followed by incapacity benefits etc). This means that a person claiming both incapacity benefits and Lone Parent benefits will be recorded only under incapacity benefits.

<table>
<thead>
<tr>
<th>Statistical Group</th>
<th>Great Britain</th>
<th>England</th>
<th>Scotland</th>
<th>Wales</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Caseload</td>
<td>Rate</td>
<td>Caseload</td>
<td>Rate</td>
</tr>
<tr>
<td>Job Seeker</td>
<td>1,482,600</td>
<td>3.8%</td>
<td>1,266,790</td>
<td>3.7%</td>
</tr>
<tr>
<td>ESA &amp; incapacity benefits</td>
<td>2,572,540</td>
<td>6.6%</td>
<td>2,113,730</td>
<td>6.2%</td>
</tr>
<tr>
<td>Lone Parent</td>
<td>595,250</td>
<td>1.5%</td>
<td>516,590</td>
<td>1.5%</td>
</tr>
<tr>
<td>Carer</td>
<td>465,750</td>
<td>1.2%</td>
<td>394,590</td>
<td>1.2%</td>
</tr>
<tr>
<td>Others on income related benefit</td>
<td>180,060</td>
<td>0.5%</td>
<td>154,860</td>
<td>0.5%</td>
</tr>
<tr>
<td>Disabled</td>
<td>412,620</td>
<td>1.1%</td>
<td>347,530</td>
<td>1.0%</td>
</tr>
<tr>
<td>Bereaved</td>
<td>78,180</td>
<td>0.2%</td>
<td>66,090</td>
<td>0.2%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>5,787,000</strong></td>
<td><strong>14.8%</strong></td>
<td><strong>4,860,180</strong></td>
<td><strong>14.4%</strong></td>
</tr>
</tbody>
</table>

Source: DWP Benefits, Nomis
Note: Totals may not sum due to rounding
Table 1 shows that:
- Scotland has a higher dependence on welfare benefits than Great Britain as a whole. In August 2011, 16.7% of the working-age population in Scotland were claiming benefits compared to the Great Britain average of 14.8%. The main reason for the higher benefit claimant rate in Scotland is the higher proportion of people claiming Employment and Support Allowance (ESA) and incapacity benefits, and Jobseeker Allowance.

Impact of Universal Credit:
- IFS estimate that around 1.4 million working-age families will lose out in the long-run. It is expected that the effects by income group and household type identified by the IFS will be largely the same in Scotland as in Great Britain, with approximately 140,000 households in Scotland losing out (assuming 10% of the Great Britain figure) (Employability, Skills and Lifelong Learning Analysis Internal Paper, 2011).
- IFS find that Universal Credit strengthens the incentive for couples to have one person in work rather than none. Scotland has a higher rate of workless households (where no adults in the household are working) than Great Britain, with data for April to June 2011 showing that in Scotland the workless household rate was 19.8% (359,000 workless households), compared to 18.8% (3,756,000 workless households) in Great Britain (Employability, Skills and Lifelong Learning Internal Paper, 2011). It can be assumed, therefore, that Universal Credit may impact on improving Scotland’s workless household rate, by increasing the number of households that have at least one person in work.

The effect of tax and benefit changes to be introduced between 2010-11 and 2014-15 by UK region:
Figure 1 illustrates the effect of tax and benefit changes to be introduced between 2010-11 and 2014-15 by UK region.
Figure 1 shows that, by 2014-15:

- Households in Scotland are expected to lose around 3.7% of their income on average as a result of tax and benefit changes. This compares to a UK average loss of 3.8%, a loss in Wales of 4.1% and a loss in Northern Ireland of 4.2%. Therefore, households in Scotland will lose slightly less of their income than Wales, Northern Ireland and the UK average as a consequence of the tax and benefit changes.

The effect of tax and benefit changes to be introduced between 2010-11 and 2014-15 by UK region and income quintile:

Table 2 shows the expected impact of tax and benefit changes by income quartile for the regions of England and the devolved UK nations.

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3 Income quintiles are derived by dividing all households into five equal-sized groups according to income adjusted for household size using the McClements equivalence scale. Quintile group 1 contains the poorest fifth of the population, quintile 2 contains the second poorest and so on up to quintile group 5, which contains the richest fifth (Welsh Government, 2012: 16).
Table 2 shows that, by 2014-15:

- The poorest households in Scotland lose more on average from the benefit reforms than richer households. That is, households in the poorest quintile in Scotland are expected, on average, to lose 4.8% of their income as a result of tax and benefit changes, while households in the richest quintile are expected to lose 3.9% of their income. Scottish households in the fourth richest quintile are expected to lose the least at 2.8% of their income.

- However, poorer households in Scotland lose less on average than poorer households in both Wales and Northern Ireland.

- Poorer households in Scotland also lose less on average than poorer households in the UK as a whole.

- Income loss for the poorest four quintiles is lower for those in Scotland than the average for the UK as a whole and the same for the richest quintile.

4 Reasons for this are not explored in the IFS analysis.

4. Conclusions

This paper has summarised the main messages from analysis reports produced by the IFS; and identified where there is IFS analysis around how Scotland compares to the other regions of Great Britain.

The main messages of relevance for Scotland are:
• The impact of welfare reforms are complex and vary by household type, including whether households have children and where they sit on the income distribution, and work status.
• Scotland has a higher dependence on welfare benefits than Great Britain as a whole.
• Households in Scotland are expected to lose slightly less of their income on average than the UK, Wales and Northern Ireland as a result of tax and benefit changes by 2014-15.
• In terms of loss of income across the income distribution, it is the poorest households in Scotland that will lose more on average from the benefit reforms than richer households.
• However, IFS analysis indicates that poorer households in Scotland will lose less on average than poorer households in both Wales and Northern Ireland. Poorer households in Scotland also lose less on average than poorer households in the UK as a whole.

Welfare Analysis
19 April 2012
References


Browne, J. (2011) *The impact of tax and benefit reforms by sex: some simple analysis*. IFS Briefing Note 118, ESRC.

Browne, J. (2010) *The Impact of Tax and Benefit Reforms to be Introduced between 2010-11 and 2014-15 in Northern Ireland*. IFS Briefing Note 114, ESRC.


SUBMISSION FROM SCOTTISH INDEPENDENT ADVOCACY ALLIANCE

About the Scottish Independent Advocacy Alliance

The Scottish Independent Advocacy Alliance (SIAA) is a membership organisation which promotes, supports and defends Independent Advocacy in Scotland. It aims to ensure that Independent Advocacy is available to any vulnerable person in Scotland.

Independent Advocacy organisations do not provide any services other than advocacy. They are separate organisations in their own right, are financially independent, and all those employed in an Independent Advocacy organisation know that they are only limited in what they do by the principles of advocacy, resources and the law. This ensures they are able to assist vulnerable individuals whilst being as free as possible from any conflicts of interest.

1. Are you generally in favour of the Bill and its provisions?

The SIAA shares concerns about the impact of welfare reform in Scotland. Independent Advocates have provided evidence of the problems that reform has already caused with regards to the Work Capability Assessment and the concerns that individuals have expressed about the introduction of further welfare reform. We are therefore in favour of measures to address these concerns including the introduction of this Bill and its provisions. We look forward to seeing further detail about the secondary legislation to this Bill and have made suggestions for what they should include within this evidence to the committee.

2. What are your views on this principle?

Due to concerns about the impact of the Welfare Reform Act on vulnerable people in Scotland, we welcome this principle and are pleased that the Scottish Parliament and Government have taken steps by refusing full legislative consent and by introducing this enabling Bill to address some of the concerns raised around the impact of welfare reform, particularly its impact on passported benefits.

To ensure that any secondary legislation will help address the worst effects of the reforms, we believe more research and modelling is needed to gain a full understanding of the impact that the Welfare Reform Act will have. In addition, we believe that any secondary legislation should be subject to public consultation before it is laid before the Scottish Parliament. This will ensure that all those who will be affected by the changes, including Independent Advocacy organisations and the individuals that advocates support, are given the opportunity to consider and comment on them.

3. What are your views on the proposed powers in relation to Universal Credit?

We welcome the proposed powers to make Secondary Scottish Regulations in relation to Universal Credit. We believe that the secondary legislation for both the Universal Credit and Personal Independence Payment should give all those going through welfare reform a right of access to Independent Advocacy. According to the
SIAA research report, ‘More for Less?’1, 95% of Independent Advocacy organisations have experienced increased demand for their services over the past two years and many organisations referenced benefit changes as a reason for the increase and expect this trend to continue.

‘There was an increase in demand from people who were attending interviews to decide whether or not their benefits should be withdrawn – this caused many people a great deal of alarm.’
- An Independent Advocacy Organisation

‘We anticipate more people will come to us in relation to benefit appeals. The changes to benefits including medical assessments relating to disability, coupled with increased demand on other organisations such as CAB, mean we will be picking up more cases. We also expect changes to housing benefit to result in increased demand.’
- An Independent Advocacy Organisation

Independent Advocacy is an important source of support for many going through the benefits system. Independent advocates support individuals to understand their rights and empower them to take control over their lives. Independent advocates might, where needed, help people to access welfare and benefits advice and might support people through appeals. We believe that a right to Independent Advocacy will help support individuals through the introduction of welfare reform in Scotland.

The regulations must also include measures to safeguard passported benefits for both new and existing claimants. This is particularly true for those who qualify for benefits under existing arrangements but will lose them under Universal Credit and the Personal Independence Payment and the impact this will have on their access to passported benefits. Appropriate legislation must be in place to ensure that a person who loses their status as a disabled person along with its accompanying benefits and who may be living with a health condition or impairment which impacts on their ability to live as independently as possible will still receive support to allow them to achieve a quality standard of living.

4. Do you have any other comments on the introduction of Universal Credit?

We believe that when the final details of the operation of Universal Credit are available the Scottish Government should consult further on what other measures should be introduced in Scotland to ensure that all individuals are given access to the support they need, including the revision of eligibility criteria for existing Scottish benefits. This should include local consultation to take into account the variations between local authorities and the potential impact on the provision of local services. Local and national consultations should engage with existing service user and equality groups and those with an expertise in the needs of the local area including Independent Advocacy organisations. Independent advocacy will also support people who may struggle to have their voices heard to take part in consultations, ensuring that any consultation will take into account the views of all those who will be affected by the changes.

1 http://www.siaa.org.uk/images/books/1112sia08_moreforless.pdf
5. What are your views on the proposed powers in relation to Personal Independence Payments?

As with our response to question 3, we welcome the powers in relation to Personal Independence Payments and believe that the secondary legislation should provide a right of access to Independent Advocacy. We also believe this legislation should include safeguards for those who risk losing passported benefits under welfare reform.

6. Do you have any other comments on the introduction of Personal Independence Payments?

At present it is unclear what the full impact of the replacement of the DLA with PIP will be as the criteria, thresholds and other details are still being consulted on. Once the exact nature of the PIP has been finalised the Scottish Government should undertake additional modelling, research and consultation to fully assess the impact of the new benefit and ensure that any secondary regulations established under the Welfare Reform (Further Provision) (Scotland) Bill are appropriate.

7. What are your views on the proposed subordinate legislation powers in the Bill?

See our comments on subordinate legislation in response to previous questions.

8. Do you have any other comments on regulations that would follow this Bill on ‘passported’ benefits and eligibility for them?

No. See comments on passported benefits and eligibility in previous questions.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?

We are unable to comment in detail until further information is available about the operation of the PIP and Universal Credit and therefore who and how many will lose access to passported benefits including the Blue Badge Scheme, legal aid, and other essential benefits. It is only when this information is available that we will be able to accurately identify what the resulting financial and social costs of these changes will be.

When this information is available the Scottish Government should assess the impact of the reforms not only on individuals and public authorities, but also on third sector organisations including Independent Advocacy organisations that will be supporting individuals throughout the changes. The introduction of welfare reform in Scotland will place increased pressure on organisations that are already facing funding and capacity issues. The SIAA research, More for Less\(^2\), found that 85% of Independent Advocacy organisations did not agree that the organisation’s current level of funding was sufficient to meet demand for their services. As part of this

\(^2\) [http://www.siaa.org.uk/images/books/1112sia08_moreforless.pdf](http://www.siaa.org.uk/images/books/1112sia08_moreforless.pdf)
assessment the Government should consider what funding will be needed to support these organisations.

10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?

The Equalities Impact Assessments and consideration of wider human rights issues must have regard to the Convention on the Rights of Persons with Disabilities and be informed by the views of those who will be affected by the changes (see our comments in response to question 4 on the role of Independent Advocacy in supporting effective consultation).

ERIN TOWNHILL
POLICY AND PARLIAMENTARY OFFICER
SCOTTISH INDEPENDENT ADVOCACY ALLIANCE
APRIL 2012
WRITTEN SUBMISSION FROM THE SCOTTISH WOMEN’S CONVENTION

The Committee invites views on all aspects of the Bill. Responses should address all or any of the following points in turn:

Views on the Bill as a whole

1. Are you generally in favour of the Bill and its provisions?

The Scottish Women’s Convention (SWC) is in favour of the Welfare Reform (Further Provision) (Scotland) Bill. The Scottish Parliament is to be commended for its recognition of the impact of UK Coalition Government Welfare Reform and how this will affect the people of Scotland. Creating primary legislation to mitigate the changes put in place by Westminster is a positive step.

The Welfare Reform Act (the UK Act) will hit women hard.

“Women are being singled out both as economic targets and casualties in the reform of the welfare system. It is all too radical.”

The introduction of one Universal Credit to replace a range of benefits including Income Support, Income Based Job-Seekers Allowance and Employment and Support Allowance, Working and Child Tax Credits and Housing and Council Tax Benefits will have a substantial impact on women throughout Scotland. Many rely on the availability of a number of these benefits, as well as passported benefits, such as free school meals, Educational Maintenance Allowance (EMA) and the Concessionary Travel Card scheme, in order to ensure their families have an adequate weekly income. There is a real danger that a new combined benefit, particularly with new application processes, will result in a number of women falling into severe financial difficulty.

It is therefore vital that the provisions contained in the Welfare Reform (Further Provision) (Scotland) Bill are implemented in order to protect women against economic hardship.

General Principles Underlying the Bill

The Bill proposes that the Scottish Government be given powers to introduce regulations under the UK Welfare Reform Act and amend other Scottish legislation that relates to it. This would allow the Scottish Government to make the link between the devolved welfare matters for which it has responsibility and the reserved welfare matters which have been amended by the UK Welfare Reform Act. The Bill is necessary because, in December 2011, the Scottish Parliament voted to take responsibility for these aspects rather than agreeing that the Westminster Parliament do so.
2. What are your views on this principle?

The SWC fully supports the general principle underlying the Bill.

**Universal Credit**

Section 1 of the Bill contains provisions relating to the introduction of Universal Credit. It gives the Scottish Government powers to introduce regulations and amend existing legislation in relation to the introduction of Universal Credit in April 2013.

3. What are your views on the proposed powers in relation to Universal Credit?

It is vital that Scottish Ministers have the power to make provision related to the impact of Universal Credit in Scotland. The UK Act will remove a number of existing social security benefits and as a result, associated ‘eligibility hooks’ for passported benefits. Without the powers proposed in the Bill, these ‘hooks’ would be abolished. Passported benefits assist, in the main, low income families and they are relied upon to ‘top-up’ incomes and support. With women accounting for over 90% of lone parents, the dependence on benefits to support and ‘top-up’ weekly income ensures that those in need receive additional finance on a regular basis.

The importance of creating a degree of guarantee for passported benefits cannot be underestimated. The UK act sets out what benefits will be replaced by Universal Credit, timescales for the introduction of the new benefits, conditions for entitlement etc. No information is given, however, about the amounts of money claimants will be entitled to. As a result there is a great deal of uncertainty amongst women in Scotland.

“There is so much anxiety in families concerned about the support they require, at a practical and financial level, just evaporating at the stroke of a pen.”

Protecting access to passported benefits such as free NHS dental treatment, optical vouchers and Concessionary Travel through this Bill will go some way towards alleviating the stress and anxiety faced by women at the prospect of losing these entitlements.

4. Do you have any other comments on the introduction of Universal Credit?

Women throughout Scotland have made clear their concerns around the introduction of Universal Credit. While the simplification of the benefits system is welcomed, the “radical changes” being brought about through the Welfare Reform Act will have a number of negative consequences.

Criticism has been levelled at the lack of information regarding the ‘real term’ effect of changes. The legislation has been described as “skeletal” and having to wait for further regulations to determine how much money will be lost or gained is causing a great deal of anxiety to individuals and their families.
Many women rely on small amounts of money from different benefits – e.g. some housing and council tax benefits and tax credits with childcare element – to ‘top up’ their income. Women who require this assistance often work part time or in low wage jobs. This additional support is vital to ensure they are able to work, access childcare and not be entirely reliant on benefits. There is a real danger that Universal Credit and its repercussions will mean that women are no longer able to work. The increased costs of childcare and transport will prohibit women from sustaining low paid, part-time work if welfare benefits are not available to support their family income.

Women are already experiencing a decline in their income due to the reductions in the childcare element of tax credits (from up to 80% of costs to up to 70% of costs) and the removal of the baby element of child tax credit. These adjustments, through the introduction of Universal Credit, happened with little information. There is a fear that more cuts, without prior warning, will have a detrimental effect on the physical and mental wellbeing of women.

The availability of affordable, safe and secure housing is further under threat by the removal of council tax benefit and reduction in housing benefit brought about by the introduction of Universal Credit. Women comment that social Housing is limited in many areas throughout Scotland. As a result there is an extreme reliance on high-cost private lets. Changes may see more women turn towards high interest loans or credit cards in order to afford the increased costs of housing. Homelessness is also a genuine possibility for many. Local Authorities will be forced to bear the brunt of these reforms at a time when their budgets are also being cut. The potential impact on lone parents, the majority of whom are women, is a “fundamental gender-based financial assault.”

The introduction of Universal Credit creates new sanctions for those who do not comply with the ‘work-related requirements’ set out in the Act. Those who fail “for no good reason” to undertake work preparation requirements will see a reduction in their benefit. The Welfare Reform Act does not, however, define what will be considered a “good reason” and this information will not come to light until further regulations are made.

There is a danger that, for example, being unable to access childcare on the day of an interview will not be considered a “good reason” resulting in women experiencing a reduction in benefit. This could create a ‘vicious circle’ whereby women continue to be punished for being unable to seek work because no provision or support is put in place to assist them to do so.

Women in rural Scotland have raised concerns about the lack of transport to enable them to source employment or attend interviews on time. In some areas, roads can be closed due to bad weather and public transport is at best minimal and at worse non-existent. There are no guarantees that consideration will be given for
nonattendance at interviews, resulting in women from these areas facing financial detriment through no fault of their own.

**Personal Independence Payments**

Section 2 of the Bill contains provisions relating to the introduction of Personal Independence Payments. It gives the Scottish Government powers to introduce regulations and amend existing legislations in relation to the introduction of Personal Independence Payments in April 2013.

**5. What are your views on the proposed powers in relation to Personal Independence Payments?**

Disabled women face “double discrimination” and as a result will be some of the worst impacted by the introduction of Personal Independence Payments. It is vital to ensure safeguards are put in place to mitigate the impact of sweeping cuts made in the Welfare Reform Act that affect them.

The SWC therefore welcomes powers proposed in the Bill in relation to Personal Independence Payments. The retention of passported benefits such as the Blue Badge parking permit is important to ensure that disabled women can contribute to and be actively involved in society.

**6. Do you have any other comments on the introduction of Personal Independence Payments?**

The introduction of Personal Independence Payments will undoubtedly impact on disabled people. A reduction in benefit has the potential to leave them increasingly unable to cope and in turn more reliant on their carers, the majority of whom are women. This could lead to a detrimental impact on the physical and mental wellbeing of many women. Changes to the benefit could also lead to significant job losses for carers. Set against a backdrop of constant redundancies across all job sectors, the impact of this on women could be far-reaching.

**Subordinate Legislation**

Subordinate Legislation is legislation below the level of Parliamentary Bills – often regulations. Section 4 of the Bill contains provisions relating to subordinate legislation. It gives the Scottish Government powers to make regulations that relate to the UK Welfare Reform Act directly or indirectly.

Sections 1-3 of the Bill also include new subordinate legislation powers for the Scottish Government. Under these sections it may make regulations which amend Acts as well as old regulations.

**7. What are your views on the proposed subordinate legislation powers in the Bill?**
The SWC welcomes the proposed subordinate legislation powers outlined in the Bill. It is clear that the Scottish Government are aware how the introduction of the Welfare Reform Act will impact on the people of Scotland. Provision such as this which alleviates potential financial consequences and assists women in Scotland is to be commended.

8. Do you have any other comments on regulations that would follow this Bill on ‘passported’ benefits and eligibility for them?

Financial Memorandum

The Financial Memorandum accompanying the Bill outlines the costs associated with this Bill and summarises them in a table at the end. However, as the Scottish Government states in the Memorandum ‘the timetable being pursued by the UK Government presents limits to the Scottish Parliament’s ability to assess the financial implications of legislation it considers.’

Effects on Equal Opportunities, Human Rights, Island Communities and Sustainable Development

The Policy Memorandum accompanying the Bill (para 21-25) outlines the assessments made by the Scottish Government on the potential impact of the Bill on equal opportunities, human rights, island communities and sustainable development. It notes that Equalities Impact Assessments will be published when it introduces subordinate legislation later in the year.
SUBMISSION FROM SCOTTISH WOMEN’S CONVENTION

The Scottish Women’s Convention (SWC) is funded to engage with women throughout Scotland in order that their views might influence public policy. This is achieved in a number of different ways – through roadshow, round table, conference and celebratory events. Following each event a report is compiled and issued to women who attend and relevant policy and decision makers. The SWC uses the views of women to respond to Scottish and UK Government consultation papers.

‘Satellite’ groups of women in geographical areas throughout Scotland meet on a regular basis to discuss gender specific issues. These groups are facilitated by the organisation and provide vital input into the consultation process.

The SWC has discussed Welfare Reform at length with women in all areas of Scotland. There is acknowledgment that women will be adversely affected by proposals outlined in the Welfare Reform Act.

“This is a financial assault on women. All of the cuts are impacting on women more than men due to the economic inequalities we are exposed to in the first place”

“Women are being singled out both as economic targets and casualties in the focus of Coalition Government budget cutbacks.”

Throughout the country assurances have been sought that the Scottish Government will take action to minimise the impact of Westminster policy decisions.

“The Scottish Government must reduce the impact of UK Coalition Government cuts to Housing Benefit and Welfare Payments.”

In proposing the Welfare Reform (Further Provision) (Scotland) Bill, there is real recognition of a need to mitigate the impact of changes to welfare provision.

The Introduction of Universal Credit

Women in Scotland have specific concerns about the introduction of Universal Credit.

Changes to housing benefit are opposed. The SWC have already submitted evidence outlining concerns of women in receipt of housing and council tax benefit.

However, many older members of society are worried about a reduction in housing benefit if they are deemed to be ‘under-occupying’ their homes. Older women are faced with a great deal of stress at either the prospect of having to move from houses they have raised their families in, or an increased outlay in the cost of remaining in their homes. This is particularly the case for women who live in more remote parts of Scotland, where locally available affordable housing is in critically short supply. This anxiety has the potential to seriously impact on physical and mental health. Women need assurances that the Scottish Government will put
safeguards in place to ensure that the effects of this are mitigated as far as possible. It is hoped that the proposed Bill will provide these assurances.

Women in rural areas are faced with what can be described as ‘double discrimination’. The lack of employment in rural Scotland could have a detrimental effect on women forced to work in order to continue receiving their benefits, who may have to travel great distances in order to do this. This is already a problem.

“Poor transport links and the cost of travelling prevent women sourcing work outwith local communities.”

The added expense of travelling using “extremely limited” public transport coupled with the severe lack of accessible, affordable childcare in remote areas of Scotland means that women face the real possibility of being worse off through the introduction of Universal Credit than they are at the moment.

There is also a danger that the prohibitive costs of attempting to access work will create further barriers for women in the form of sanctions. The SWC has voiced our concerns about the potential impact of sanctions on women in previous evidence.
Shelter Scotland welcomes this opportunity to submit evidence on the Welfare Reform (Further Provision) (Scotland) Bill to the Welfare Reform Committee. We welcome the setting up of the committee to monitor the UK Welfare Reform Act’s implementation. Shelter Scotland believes it is vital that the most vulnerable households who will face increasing hardship and the risk of homelessness as the cumulative impact of all of the welfare reform changes comes into force are fully supported.

The Welfare Reform (Further Provision) (Scotland) Bill is an enabling Bill which is focussed primarily but not exclusively on devolved pass-ported benefits in Scotland. Shelter Scotland recognises the importance of these benefits for households on lower incomes.

At Shelter Scotland we work primarily with families to prevent homelessness having a long term impact on their children’s life chances. We know how important benefits in kind such as free school meals and cash entitlements such as educational maintenance allowances are to parents and children rebuilding their lives. Any interruption to these critical programmes would have a deeply debilitating impact on the household budgets of the most vulnerable households in Scotland and longer term could lead to a financial burden for local authorities greater than the existing cost of these schemes.

It is therefore essential that Scottish Ministers have the necessary powers set out in the Welfare Reform (Further Provision) (Scotland) Bill to ensure continuity of these critical entitlements. Shelter Scotland supports the principles of the Bill as proposed.

Other organisations in Scotland are better placed to comment directly on the implications for benefits such as blue badge parking permits and the introduction of Personal Independent Payments.

We would encourage the committee to consider this Bill along with the other welfare reform changes brought in by the introduction of universal credit. In particular the changes to housing benefit and Local Housing Allowance should be considered, as they will have such far reaching and serious consequences for households throughout Scotland.
Impact on Scotland’s 2012 homelessness commitment
The combined impact of the measures in the Welfare Reform Act 2012 will add to the challenge of meeting the 2012 commitment which says that all unintentionally homeless households will be entitled to a permanent home. Scottish government analysis of the impact of the welfare reform cuts in Scotland point to rising levels of homelessness and hardship. These cuts not only undermine the recent progress local authorities have made in preventing homelessness, but crucially will also threaten their ability to remedy homelessness.

Wider impact of the Welfare Reform Act on housing in Scotland
Shelter Scotland supports the principle of a universal credit, especially measures to tackle work disincentives and to simplify the system. The employment barriers for claimants and the excessive complexity of the housing benefit system are common issues for our clients.

However, the first and second wave of cuts brought in by the Welfare Reform Act will seriously undermine the housing safety net. We will see the cuts impact on people who lose their jobs and need temporary financial help to keep their homes, as well as affecting those who are in work but on very low income, or who are unable to work due to old age or disability.

We believe that the following cuts will have a disproportionately detrimental effect on vulnerable families in Scotland.

- Each successive restriction in housing benefit levels will reduce the availability of affordable accommodation to low income households. Particularly in remote or rural areas of Scotland where the private rented market is sparse, or where there is a limited supply of social rented properties. Households could be left with the choice of moving far away from jobs, family and friends to find affordable housing, or accepting higher rents leading to hardship, rent arrears and homelessness.

- Measures such as the under occupation cut and the extension of the shared room rate will undermine the ability of local authorities to provide all unintentionally homeless households with settled accommodation.

- The interconnectedness of the housing system will make it inevitable that cuts felt in one area such as private renting, will result in increased homelessness presentations to local authorities. Scottish government estimates that there will be 3000 more homeless presentations during the period of transition taking into account only the first 2 cuts - the move to basing Local Housing Allowance on the
30% percentile of rents and the removal of the £15 excess. With the impact of the further cuts still to be calculated we can only assume that the number of homeless presentations will rise in line.

This enabling bill is set within the context of a complex and significant set of reforms at the UK level with more to follow in light of the Chancellor’s intention to cut a further £10 billion from the welfare budget.

Shelter Scotland is keen to work with the Welfare Reform committee to look at the impact of the reforms and how local authorities are supported to mitigate the impact of the reforms on vulnerable households.
SUBMISSION FROM PROFESSOR PAUL SPICKER

Introduction

I am grateful for the opportunity to submit evidence to the Welfare Reform Committee on the general principles of the Welfare Reform (Further Provision) (Scotland) Bill.

I am Grampian Chair of Public Policy at the Robert Gordon University, Aberdeen, Scotland. My field of activity is social policy, with a particular focus on poverty and social security. My published work on social security includes Poverty and Social Security (Routledge, 1993), Poverty and the welfare state (Catalyst 2002) and How Social Security Works (Policy Press, 2011). In 2007 I served as a special adviser to the House of Commons Work and Pensions Committee for their report on the simplification of social security benefits.

Comments

I wish to confine my remarks to question 10:

"Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government?"

In the explanatory notes to the bill, the Cabinet Secretary for Health, Wellbeing and Cities Strategy and the Presiding Office state that in their view, the provisions of the Welfare Reform (Further Provision) (Scotland) Bill would be within the legislative competence of the Scottish Parliament. I think they are correct in that view, but the proposed legislation has had to be framed within limits prescribed by the 1998 Scotland Act. The restrictions on the powers of the Scottish Parliament are severe, and I am concerned that the powers defined by the Bill may be unduly restricted.

Schedule 5, section F1 of the Scotland Act 1998 reserves to Westminster:

"Schemes supported from central or local funds which provide assistance for social security purposes to or in respect of individuals by way of benefits. Requiring persons to—
(a) establish and administer schemes providing assistance for social security purposes to or in respect of individuals, or
(b) make payments to or in respect of such schemes, and to keep records and supply information in connection with such schemes."

Those items which are exempt, and consequently in the competence of the Scottish Parliament, are identified in a list of "exceptions" to section F1. The main exemptions relate to:

- social work services
- welfare services for people with disabilities
- promotion of welfare for children in need, and
- assistance for looked after children and young people.
The Welfare Reform Act 2012 makes one significant amendment to this schedule, further exempting "administration and funding of housing benefit and council tax" (schedule 14, repeals).

Any Act of the Scottish Parliament must be read as relating only to those areas where the Scottish Parliament has competence. S.101(2) of the 1998 Scotland Act reads:

"Such a provision is to be read as narrowly as is required for it to be within competence, if such a reading is possible, and is to have effect accordingly."

However general the powers in this Bill appear to be, then, they can only relate to those areas over which the Scottish Parliament has competence.

With the exceptions noted, no Scottish authority is permitted to give assistance given to individuals "by way of benefits". This restriction necessarily depends on the interpretation of what a "benefit" might be and the status of the legislation by which provision has been developed. The Delegated Powers Memorandum gives examples of "benefits in kind such as free school lunches and cash benefits such as the education maintenance allowance." The proposal to deal with such issues is necessary and appropriate. However, both these examples might reasonably be justified as provision related to education; some other provisions, like fares to hospital, might be represented as part of expenditure on health. That interpretation depends heavily on convention and established practice, and it falls short of general competence to provide support. It is debatable whether local authorities will have any power to deliver benefits formerly developed and delivered at local level, such as assistance with transport, leisure, food vouchers or assistance in job search.

The abolition of crisis and budgeting loans also prompts an immediate concern. The Social Fund is explicitly identified in the Scotland Act (Schedule 5, F1) as an illustration of activity where powers are reserved to Westminster, and it has remained in the illustrations after the passage of the 2012 Welfare Reform Act. The 2012 Act gives the Secretary of State the power to wind up the fund and distribute the money to devolved administrations; it does not give the devolved administrations the right to use the money for the same purpose as it was used for before. Neither the Scottish Parliament nor Scottish local government appear to have the competence to take measures to replace the Social Fund.

In England, local authorities have a general power to make residual or supplementary provision. In Scotland, they do not. This anomalous situation has come about because of the terms of the Scotland Act. In 2000 the UK Parliament devolved additional powers to English and Welsh local government, including a general power to promote well-being (Local Government Act 2000, s 2). The promotion of well-being includes a power to “give financial assistance to any person” (s 2 (4)). In 2003 the Scottish Parliament followed suit (Local Government Scotland Act 2003), using much the same wording as the Act for England and Wales - the power to “give financial assistance to any person” is contained in s.20(2)b. However, if the Scottish Parliament did not itself have the power to give financial assistance to individuals by way of benefits, it could not have directly have granted...
such a power to local authorities in 2003. The authority for local authorities to deliver financial assistance had to come from the UK Parliament, and has not yet done so.

The Welfare Reform (Further Provision) Bill cannot create new vires, or extend the scope of action for Scottish government. The Bill refers only to the consequences of Universal Credit and Personal Independence Payment, contained in parts 1 and 4 of the Welfare Reform Act 2012. The terminology in which the Bill is couched is perhaps confusing: the need to make amendments to existing benefits does not arise mainly from the introduction of the benefits named, but from the abolition of others, such as JSA and DLA. The Bill does not establish powers to deal with the removal of crisis and budgeting loans or restrictions placed on housing support.

Parliament has however, the option to include more general provisions based on its established competences, as recently amended. It should be possible, for example, to regulate the new powers relating to Council Tax or the administration of housing benefits to distribute financial assistance, and to use them in part as the basis for passporting benefits.

This will not resolve all the issues arising from the 2012 Act. The situation that the Scottish Government and Parliament need to deal with suffers from continuing lack of clarity about the scope and impact of the UK reforms, ambiguity and anomalies in the construction of existing powers, and restrictions on the Parliament’s scope of action – all in the context of the exposure to risk and vulnerability of some of the poorest people in Scotland.

There needs in particular to be a residual power to promote welfare and to give financial assistance to any person – the same power currently possessed by English local authorities. As things stand, the promotion of welfare, and payments of financial assistance to individuals by way of benefits, are ultra vires. This can be rectified only through primary legislation in Westminster. Nothing in the Scotland Bill, currently under consideration, addresses the issues.

Paul Spicker
Professor of Public Policy
Centre for Public Policy and Management
Aberdeen Business School
I would like to add my comments on the changes to the welfare benefit.

I am physically disabled. I have Cerebral Palsy. I walk with sticks. I currently receive LRC and HRM of DLA. This benefit helps me a great deal. The lower rate care component helps me pay for a cleaner to tidy and clean my house, and also help me with things like ironing.

The HRM helps me get around. I use the money in exchange for a car on Motability. I work and having a car helps me a great deal. Not only does it give me independence, it also helps me keep me in a job. I work 30 miles away, so having a car is essential for me. Having Motability is also important, as it is a all in one trouble free package. Having DLA also passports me into other benefits like Blue Badge scheme, Free bus pass, Free Road tax.

However, I am concerned with the Government's plans to replace DLA with a new benefit, PIP. Having done the practice 2nd draft assessment questionnaire, I may not qualify for the standard rate of the care component of PIP. This would be bad news for me, as having it enables me to get help for things in the house. I also fear that I wouldn't qualify for the enhanced rate of PIP, only standard rate. If this were to happen, then I risk losing my Motability car. This would be devastating for me. I could then lose my job as I would have no form of transport to get to work. I also worry I would lose he other passporting benefits i.e. Blue Badge, Free bus pass, Free Road tax. I would also lose my independence.

I think the Scottish Government need to be aware of the implications of the UK Government's plans to change DLA. Thousands of disabled people are going to lose some or all of their benefits. Without essential support, disabled people risk being housebound, losing their independence, and their quality of life.

I am aware that the Scottish Government's hands are tied when it comes down to the UK Government's legalisation, however, the Scottish Government have to make sure that some of the passporting benefits remain for people who only get standard Mobility PIP i.e. Blue Badge, Free Bus pass, Free Road tax. If this does not happen, then it will make disabled people's lives even more difficult in Scotland.

I hope my views are listened to.

Thanks

Craig Tucker
SUBMISSION FROM UNISON SCOTLAND

Introduction
UNISON Scotland welcomes the opportunity to respond to the call for written evidence from the Scottish Parliament’s Welfare Reform Committee regarding the above Bill.

UNISON is Scotland’s largest trade union representing over 162,000 members working in the public sector in Scotland.

UNISON Scotland’s Response

1. Are you generally in favour of the Bill and its provisions?
UNISON Scotland shares the concerns of many other organisations regarding the provisions contained within the Welfare Reform Act and the impact it will have on those reliant on a range of benefits. We are also concerned about the lack of detail on how the changes in the Act will be implemented and the consequent delivery mechanisms, including the potential loss of jobs within local government.

However, in relation to the Welfare Reform (Further Provision) (Scotland) Bill, UNISON Scotland is generally in favour of this bill and its attempts to mitigate some of the changes proposed within the UK Act – not least the impact on passported benefits in Scotland.

2. What are your views on this principle?
UNISON Scotland supports the general principles underlying the Scottish Bill.

3. What are your views on the proposed powers in relation to Universal Credit?
UNISON Scotland believes that the proposed powers are essential to ensure that access to various passported benefits which rely on current social security benefits can continue after the introduction of Universal Credit.

4. Do you have any other comments on the introduction of Universal Credit?
UNISON Scotland is concerned about the impact that Universal Credit will have on those who rely on and those who provide access to various social security benefits. The arguments against Universal Credit have been raised by a number of organisations but one key issue which is often overlooked is the how the new Universal Credit will be delivered and the impact this will have on staff who currently deliver aspects of various benefits – for instance council staff who deal with housing benefit. There is a concern that the drive to a primarily web based system for applying for Universal Credit will cause problems for those currently on benefit who have limited or no access to the internet. There are also concerns regarding claimants having to submit documents in support of UC claims, currently this can be
done locally, for instance in the case of housing benefit. There is no clear decision on who will provide support to claimants and whether this will be delivered locally or by whom, and whether any staff transfers to/ from local government and the Department of Works and Pensions would need to take place.

5. What are your views on the proposed powers in relation to Personal Independence Payments?
As highlighted in question 3, UNISON Scotland believes that the proposed powers are essential to ensure that access to various passported benefits which rely on Disability Living Allowance payments can continue after the introduction of Universal Credit.

6. Do you have any other comments on the introduction of Personal Independence Payments?
As highlighted above in question 4, UNISON Scotland is concerned that the introduction of Personal Independence Payments has not taken into account claimants’ access to the internet or the issue of handing over supporting documentation.

7. What are your views on the proposed subordinate legislation powers in the Bill?
When the new welfare regime is introduced in April 2013 the old one will disappear. At present eligibility for a number of other ancillary ‘passported’ benefits (such as free school meals, blue badge parking permits etc) is linked to eligibility for existing benefits such as Income Support, Disability Living Allowance etc. When the existing benefits disappear in April 2013 so will the link to ‘passported’ benefits. This will require the Scottish Government to remake these links through new regulations. However, as the UK Government has not finalised its own regulations with regard to the Welfare Reform Act, this Bill must allow some leeway for the Scottish Government to introduce regulations as required, to ensure continued access to passported benefits.

8. Do you have any other comments on regulations that would follow this Bill on ‘passported’ benefits and eligibility for them?
UNISON Scotland believes that regulations which set out the eligibility for ‘passported benefits’ should be open and transparent, ensuring that those who need support receive it.

9. Do you have any views on the assumptions and calculations contained in the Financial Memorandum?
As highlighted in the Financial Memorandum, it is difficult to assess the cost implications of this Bill due to the lack of detailed information from the UK Government on how the Welfare Reform Act will operate.
10. Are you satisfied in the assessments that have taken place in regard to these matters and in the conclusions reached by the Scottish Government? UNISON Scotland is concerned that some of the assessments will be delayed until the publication of the subordinate legislation.
Dear Lord Freud,

I am writing in my capacity as Deputy Convener of the recently established Scottish Parliament Welfare Reform Committee. The Committee has been established with the sole purpose of monitoring the implementation of your Government’s reforms in Scotland. The Committee has already established good lines of communication with key stakeholders, including in the third sector, and also with the Scottish Government.

The first substantive piece of work required of the Committee is to scrutinise the Scottish Government’s welfare reform legislation, the Welfare Reform (Further Provision) (Scotland) Bill. As you will be aware, the Scottish Parliament did not grant consent for the UK Government to legislate on, amongst other things, the provision of ‘passported benefits’. As a result this Parliament is required to pass legislation to enable secondary legislation on Personal Independence Payments and Universal Credits. The Committee had its initial evidence taking session on the Bill from Scottish Government officials on 29 March, which I convened.

The Committee was well aware, in advance of this session, of the tight timescales for the passage of primary legislation, in order to ensure the required secondary legislation is in place in time for 1 April 2013 when the old benefits system lapses. Clearly it is imperative that this timescale is adhered to, to ensure that the most vulnerable do not go without what can be lifeline payments. The Committee was also aware that the Scottish Government is making early preparations for interim arrangements, in case the new system is not finalised by this date. This would seem to be prudent risk management.

What the Committee had not fully appreciated before the evidence session, was the
uncertainty as to when the Scottish Government will receive information from the Department of Work and Pensions that it requires in developing criteria and a system for the delivery of passported benefits.

During the evidence session, Scottish Government officials stated that:

[the lack of information currently available] will cause problems with…the setting of income thresholds to decide entitlement to specific passported benefits. The income of many of the people involved will be determined by the amount of benefit that they receive. At the moment, we do not have the entitlement criteria for universal credits, so we do not know who exactly will receive it or the amount of money that the system will provide, it is hard to set an income threshold that will accurately describe the group we wish to receive those benefits…

Universal credit will have a very significant taper…we have no information on the final taper, the income disregards, the treatment of savings and so on. Although the Department of Work and Pensions is gradually making such decisions, the totality is not yet known in full, and without those final details it is very difficult for us to design successor systems for passporting and other things.

As far as income from capital and other types of income are concerned…we are still slightly in the dark about what the detail of the universal credit will be. However, it is clear from some of the information that is available to us that there will be minimum and maximum capital thresholds for universal credit.

It is clear to the Committee from this evidence session, and the very limited level of information accompanying the Scottish Bill on the potential costs and policy within subordinate legislation, that the Scottish Government is grappling with a wide information gap. This leaves the Scottish Government with an incomplete picture and presents the Committee with problems in seeking to effectively scrutinise legislation. In the absence of information from the DWP the Scottish Government is not able to make best use of its time leading up to April 2013. It was clear in evidence that, ideally, it would wish to produce more detailed research on the anticipated impacts of reforms at this time and also make as early a start as possible drafting the subordinate legislation.

As also stated in evidence, the timetable that the Scottish Government must abide by, is of course not of the Scottish Government’s making, but rather is driven by the UK Government’s reforms. I attach the full Official Report of the evidence session for your reference. I do not doubt that a large amount of work is currently underway in your department on the implementation of reforms, and that providing the necessary information to the Scottish Government is amongst your priorities. However the Committee is very keen, in order to facilitate its own scrutiny, that the Scottish Government receives the required information as quickly as possible and, in advance of this, it receives a clear indication as to when it will receive all of this information for planning purposes. On behalf of the Committee, I would therefore ask that you respond providing a deadline by which all necessary information from the DWP will have been provided to the Scottish Government. I would very much appreciate a response from you at your earliest opportunity.
I am copying this letter to Nicola Sturgeon MSP, Cabinet Secretary for Health, Wellbeing and Cities Strategy, for the Scottish Government’s reference.

As context on the Committee’s wider work, I attach for your information a link to the Committee’s website where details of its work on the Bill are outlined. Over time the site will also be populated with information we are receiving from service providers and advocacy organisations preparing for reform, and individuals wishing to share their personal experiences.

http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/46339.aspx

As you will see from the Committee’s work programme, assuming the Scottish Bill passes in advance of the Summer Recess, the Committee will be in a position to instigate its own work in the autumn. It is likely that we will be in touch with you at that stage to inform you of the Committee’s intentions and to request any further information required from you and your colleagues.

In the meantime, if there is any information that the Committee could usefully provide to you, please do not hesitate to contact me or the Convener, Michael McMahon MSP.

Yours sincerely

Jamie Hepburn MSP
Deputy Convener
Welfare Reform Committee
Dear Lord Freud,

I am the Convener of the Scottish Parliament Welfare Reform Committee. As detailed in the recent letter from Jamie Hepburn MSP, Deputy Convener, the Committee is currently taking evidence on the Welfare Reform (Further Provision) (Scotland) Bill.

As is to be expected given the subject matter, the Committee is hearing a lot of evidence that relates to the approach being taken to implementation of reforms overall by the Department of Work and Pensions. Members have agreed that I should write to you highlighting two issues in particular which have been raised by witnesses at our last two meetings.

The first was explored at the Committee meeting on 17 April and relates to modelling the cumulative impact of changes to benefits. We heard that Inclusion Scotland, amongst others, have undertaken some valuable work assessing the impacts of changes to benefits on their client base in order to identify which individuals will be most impacted upon when changes are made. The Official Report of the meeting is available in full via the following link—


The work being undertaken by service providers and advocacy groups is doubtless going to be valuable in anticipating where support resources can be most effectively targeted. However this modelling is being undertaken on a piecemeal basis by relatively small organisations, which often represent one particular vulnerable group.
The Committee considers that it would be very valuable for those implementing reforms, including ourselves, to have at their disposal over-arching modelling on the cumulative impacts of changes to benefits. The Committee would invite you to consider initiating such a piece of work.

If there is no such piece of work underway, and no intention to undertake such work in the near future, the Committee would appreciate an indication of the rationale for this course of action. In addition, any information on other work being undertaken by the DWP to measure the likely impacts on individuals and families dependant on their circumstances, condition and age would be very much appreciated.

The second issue that I wish to raise with you is that of online applications by those seeking to claim benefits. This was raised at our meeting on 24 April and the Official Report is available by the following link—


As you will note, the Committee has heard from a number of witnesses how stressful and confusing the benefits system can be for those seeking eligibility. The intention to increase the number of people completing applications online is therefore an area of concern. Many of the individuals in need of benefits may not have access to a computer, or their impairments or circumstances may mean they are physically not able to, or have had no support to learn how to, use a computer. There is a concern that individuals who would be eligible, and very much in need of benefits, will not apply for them as the process for application will prove too daunting.

The Committee would very much appreciate it if you could provide assurances as to any work being undertaken to support individuals in making online applications or whether any thought is being given to exempting certain groups from targets for online applications. Any information on other work undertaken by the DWP to explain the new benefits system and ensure it is accessible to those in need would also be very much appreciated. The Committee is well aware of the crucial role that advice services such as the Citizens Advice Bureaux will have in supporting individuals, but considers that this should be a second port of call for individuals, the first being advice and support from the DWP.

In addition to your response to Jamie Hepburn MSP, Deputy Convener to the Committee, I should be grateful for a response to the issues raised in this letter at your earliest opportunity. I am copying this letter to Nicola Sturgeon MSP, Cabinet Secretary for Health, Wellbeing and Cities Strategy, for reference.

The Committee concludes its evidence on the Bill next week and will seek to publish its report on the general principles of the Bill by mid-May. I will ensure you receive a copy of this report as soon as it is published.

Yours sincerely

Michael McMahon MSP
Convener
Welfare Reform Committee
Dear Jamie,

Thank you for your letter of 16 April requesting more detailed information about welfare reform and in particular Universal Credit.

As you know, the provisions of the Welfare Reform Act 2012 are reserved. However, there will need to be consequent amendments to secondary legislation and some of these will relate to matters that are devolved. The Welfare Reform Bill originally included a proposal to grant powers to Scottish Ministers to enact simple consequent amendments to secondary legislation in Scotland. As you say, this proposal was not agreed and the Scottish Government decided to take powers of its own. However, I would emphasise that it was never our intention that the UK Parliament would legislate for matters that are devolved to the Scottish Parliament.

The Welfare Reform Act 2012 received Royal Assent on 8 March 2012 and the Department has since been developing Regulations containing detailed provisions. This legislation provides for the most fundamental reforms to the social security system for 60 years. It will deliver a system that is simpler, fairer and ensures that work always pays. As you say, a very large amount of work is underway to develop these Regulations along with the required delivery systems.

You refer to uncertainty about when the Scottish Government will receive information from the Department of Work and Pensions that it requires in developing criteria and a system for the delivery of passported benefits. The Department has been working with the Scottish Government and has shared...
information that is available. This includes a breakdown of income levels, which should enable the Scottish Government to determine eligibility criteria for passported benefits.

You also specifically referred to the following details:

- The entitlement criteria for universal credit and who will receive it.
- The amount of money that the system will provide.
- Details of the taper and income disregards.
- The treatment of savings.
- Income from capital and other types of income.

The Welfare Reform Act 2012 sets legislative framework for Universal Credit. Much of the detail you refer to will be included in the Regulations. We expect to publish draft Regulations in mid-June and we will then engage separately with the Scottish Government. We expect Regulations to be laid before Parliament in the Autumn.

I am copying this letter to the Cabinet Secretary for Health, Wellbeing and Cities Strategy, for the reference of the Scottish Government and the Secretary of State for Scotland.

Yours sincerely,

David

Lord Freud

Minister for Welfare Reform
Dear Michael,

Thank you for your letter of 24 April about the evidence heard by the Welfare Reform Committee of the Scottish Parliament.

The “Welfare Reform 2011: assessment of impacts” cover note was published on 16 June 2011 and is available on the Department of Work and Pensions website at www.dwp.gov.uk. This cover note explains our approach to impact assessments and in particular why a single overall cumulative impact assessment has not been produced.

The Welfare Reform Act 2012, makes the most fundamental reforms to the social security system for 60 years. The scale and variety of these reforms along with long timescales involved would make a single assessment analytically complex. Individual impact assessments for distinct areas of reform provide the most robust and accurate assessment possible.

You stated that the Committee has heard evidence about how stressful and confusing the benefits system can be. I agree with that assessment. Whilst the current system provides targeted support to meet specific needs, the net effect is an array of benefits, each with its own rules and criteria which interact in complicated ways.

The current benefit system is also characterised by overlaps and duplication. Benefits and tax credits are administered by different national and local agencies. Claimants are required to submit claims and to communicate changes in their personal and financial circumstances separately to each agency. The same information is often provided several times.
The complexity of the current system makes it difficult and expensive to administer. It increases error by administrators and claimants alike and reduces benefit take-up as people do not understand their entitlements.

Universal Credit will provide a new single system of means-tested support for working-age people who are in or out of work. Support for housing costs, children and childcare costs will be integrated in the new benefit. Existing means-tested benefits that will no longer be needed include income-based Jobseeker’s Allowance, Income-related Employment and Support Allowance, Income Support, Working Tax Credit, Child Tax Credit and Housing Benefit.

Universal Credit will be a much simpler system. It will reduce the number of benefits and number of agencies that people have to interact with. This will make it easier for customers to understand their entitlements and easier to administer the system.

You also stated that the Committee was concerned about the use of digital online channels for claiming benefits and sought assurances about work being undertaken to support individuals who may not be able to use a computer.

The main route to access Universal Credit will indeed be through digital online channels. Claimants will be able to use the online service to: make a claim; report a change in their circumstances; and check the progress of their benefit claim. They will also be able to search for jobs or conduct a ‘better off calculation’ to help them understand how much support they would receive if they start a job. Claimants will still receive face-to-face support in helping them get back to work but digital services will support and improve this service.

Recent research for the Department for Work and Pensions found 78% of claimants currently use the internet and that the majority of our customers would prefer to conduct their interaction through online channels. The Department for Work and Pensions already receives online claims for Jobseekers Allowance. Our online jobsearch service is established and popular, with around 6m job searches per week. Digital online services will therefore be suitable for most people.

We realise that not everyone is a confident or capable digital user. We are therefore exploring how we could assist people to use digital technology and will be consulting with partner and representative groups as part of this work.

We also recognise that there will continue to be a minority of claimants who cannot use digital online services. For those claimants who really need it we will offer alternative access routes. We expect these alternative access routes to be reserved for the minority who can not use, or be helped to use, online services. Alternatives will therefore be kept to a minimum.
In comparison to the current system, delivered by four different agencies, across a range of online, in person and telephone based entry points, access to Universal Credit will be significantly simpler and easier for both those who find it easy to access services online, and for those who do not.

We are committed to involving users in the development of Universal Credit. We do this through ongoing, fortnightly, user-centred design sessions, where claimants are invited to test and comment on the design of Universal Credit. This allows us to test and change the new online interface during its development, with the goal of making it simple to use and understand.

I am copying this letter to the Cabinet Secretary for Health, Wellbeing and Cities Strategy, for the reference of the Scottish Government and the Secretary of State for Scotland.

Yours sincerely,

[Signature]

Lord Freud
Minister for Welfare Reform
Present:

Chic Brodie
James Dornan (Deputy Convener)
Michael McMahon
John Scott

Nigel Don (Convener)
Mike Mackenzie
John Pentland

1. Decision on taking business in private: The Committee agreed to take item 7 in private.

2. Welfare Reform (Further Provision) (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

   Chris Boyland, Bill Manager, Ann McVie, Team Leader, Welfare Division and John Paterson, Scottish Government Legal Directorate, Scottish Government.

7. Welfare Reform (Further Provision) (Scotland) Bill (in private): The Committee considered the evidence it heard earlier in the meeting.
Welfare Reform (Further Provision) (Scotland) Bill: Stage 1

The Convener: Agenda item 2 is evidence on the Welfare Reform (Further Provision) (Scotland) Bill.

I welcome our visitors from the Scottish Government—namely, Chris Boyland, who is the bill manager, Ann McVie, who is a team leader in the welfare division, and John Paterson, who is from the legal directorate. Chris Boyland will make an opening statement.

Chris Boyland (Scottish Government): Thank you for inviting us to come and give evidence.

The committee will be aware that the bill has its genesis in the legislative consent process for the United Kingdom Welfare Reform Act 2012 and the Scottish Parliament’s partial refusal of legislative consent for that act. The bill that is now before you makes a provision to confer powers on the Scottish ministers in respect of the introduction of universal credit and the personal independence payment that would have been made by the UK act, had the Scottish Parliament granted full legislative consent.

The bill’s policy intent is to do nothing more and nothing less than the relevant clauses of the UK act; the bill provides a practical means to a necessary end. It will give the Scottish ministers powers to make changes to devolved legislation in consequence of the UK act. The powers are needed mostly—albeit not exclusively—to ensure that the legislative basis for access to devolved passported benefits, such as free school lunches and blue-badge disabled persons parking permits, can be properly adjusted to take account of the new UK system, and to ensure that there will be no unfortunate consequences in respect of the provision of such important benefits in Scotland.

The committee will have questions about the extent of the powers that the bill will delegate to ministers, how wide ranging they are, and whether there are existing powers that could make some of the necessary provisions. We would be happy to take questions on those points and others in due course. However, I would like to remind the committee that the bill will not confer powers generally in relation to social security, but that it will confer powers specifically in consequence of the UK act and that there are links to that act throughout the bill.

In so far as the powers that are to be conferred on ministers can be described as being wide ranging, that is entirely because the work that we
need them to do is also wide ranging. I will clarify that point. Although the primary policy intent of the bill is to ensure continued access to passported benefits, we also need the bill to make a number of technical changes to primary and secondary legislation in relation to other devolved matters. Examples of the changes are provided in the delegated powers memorandum.

The committee may have concerns about the timetable and the pace at which the changes need to be made. It is worth putting on the record that the timetable is not of our making, but is driven by the pace of the UK Government’s welfare reforms. The committee will be keenly aware that the greater part of the work that the bill enables will come at the subordinate legislation stage, which is when the practical operational adjustments will be made. The tight timetable for the bill has been set in order to allow as much time as possible for that practical work to be carried out.

The committee may have concerns about the amount of available detail. The detail—or perhaps the lack thereof—will be one of the main themes of the legislative process of the bill.

The bill is the shape that it is because the vital operational detail on the new UK system, which we need in order to make the necessary adjustments to our subordinate legislation, is simply not yet available. According to the UK Government, that detail is unlikely to available before June at the earliest. That is why the bill is essentially a piece of enabling legislation. The detail of the adjustments that we will make will have to be set out later, once we have the information that we need on the UK system. We do appreciate the committee’s desire for the detail, and we will do our best to provide whatever we can as soon as we can.

By way of assurance on that point, the committee will be aware that the Cabinet Secretary for Health, Wellbeing and Cities Strategy gave an undertaking by letter to the convener of the Welfare Reform Committee that we will make available the material on the relevant subordinate legislation that is at our disposal to that committee. As I have said, we will provide what we can as soon as we can, but we remain grateful for the forbearance and willingness of all of the committees involved in the process to proceed on that basis.

That is all that I have to say by way of introduction. We would be more than happy to take any questions that members may have.

**The Convener:** Thank you very much, Mr Boyland. That is much appreciated. We have a range of questions, some of which you have preempted to an extent, but there are still issues that we want to cover.

**James Dornan (Glasgow Cathcart) (SNP):** You went some way towards answering the first question that I would have asked, which was about the width of the delegated powers and the fact that the bill does not contain much detail. Can you tell us more about the reasons for the lack of detail, or is the situation pretty much as you described it?

**Chris Boyland:** The essential reason for the lack of detail is the unavailability of information from the UK Government—as we have touched on. We could perhaps say something about the range of things that we need powers to make changes to under the subordinate legislation process.

**Ann McVie (Scottish Government):** I will step back a little. One primary purpose of the bill is to enable us to protect access to passported benefits from April 2013, when the UK Government will introduce universal credit and personal independence payments. Our goal is to have in place adequate arrangements to protect that access from April 2013—that is the end point from which we are working back.

The timescale is tight and our focus has been on quantifying existing passported benefits. That might sound like a simple task, but nobody has looked at passported benefits in the round before, so collating all that information in one place in the Scottish Government has been challenging. We now have a table that shows the list of passported benefits, a rough idea of the number of recipients who benefit from them and the eligibility criteria against which people are assessed. That is one piece of policy work that we have done.

In parallel, we have tried to scope the number of acts and instruments that refer to the six benefits that are being withdrawn and replaced with universal credit. That has been an even larger piece of work. Some of the benefits that are being withdrawn have been in place for quite a number of years. The current estimate is that something like 20 acts and more than 100 pieces of subordinate legislation either refer to the benefits that are being withdrawn because of the introduction of universal credit or will be affected by the removal of disability living allowance and its replacement by the PIP. The scale of the operation to map out what we need to change means that the task remains challenging.

We have not finished; we are still scoping what we need to consider. We will then need to work out what we will change and how we will do that. That takes us back to the approach to the bill, which gives us the flexibility to do what we need to do for April 2013.

**James Dornan:** That was a full answer to my first question.
As was noted in the debate on the legislative consent motion on the UK Government's bill, the Westminster Joint Committee on Human Rights criticised that bill and said that an approach

“which focuses on a framework in primary legislation accompanied by multiple regulation-making powers ... can undermine parliamentary scrutiny.”

The JCHR also expressed concern that reliance on subordinate legislation could risk incompatibility with rights under the European convention on human rights. Has any thought been given to those points?

John Paterson (Scottish Government): On parliamentary scrutiny, I understand that the debate in December on the legislative consent motion made reference to a study, by the Strathclyde centre for disability research, on the potential human rights implications of the UK Government's plans to disqualify people who live in residential care homes from receiving the mobility element of the DLA. Those plans were dropped, and Maria Miller announced on 1 December 2011 that care-home residents will continue to receive the mobility component. The Scottish Government had expressed concerns about that proposal right through the process, so it welcomed that change.

By virtue of its including regulation-making powers that will be subject to parliamentary scrutiny, the Welfare Reform (Further Provision) (Scotland) Bill will ensure that appropriate levels of scrutiny that the Parliament has approved will be given to secondary legislation.

As for concerns about incompatibility with rights under the European convention on human rights because of relying on subordinate legislation, I say first that it is beyond the Scottish ministers' powers to make any secondary legislation that is incompatible with convention rights. That is the first protection.

14:45

I would also say that the JCHR's concern was raised in the context of changes to the social security system that are being made by the United Kingdom Parliament, as opposed to the types of change that will be made by secondary legislation under the bill, which is about putting in place a mechanism to allow changes to be made so that where, for example, the disability living allowance no longer applies and has been replaced by the personal independence payment, that change can be reflected in legislation, so that the passported benefit can continue to be paid.

Mike MacKenzie (Highlands and Islands) (SNP): Given that the primary legislative objective is limited to ensuring continued access to passported benefits—we have just heard that you have done a lot of work to identify them—why is it necessary for the powers to be framed so broadly? It seems to me that you are beginning to get an understanding that might allow them to be framed more narrowly.

Ann McVie: I think that, by saying that we are beginning to understand what needs to be done, you have answered your own question. We are not at the end of that process yet. I cannot say today that we have identified every piece of legislation that might need to be amended as a consequence of the changes that are happening as a result of the UK act.

The ways in which the benefits have been used or referred to in Scottish legislation are quite diverse. There are a few examples in the delegated powers memorandum. Others include the Bankruptcy (Scotland) Act 1985, which refers to benefits that are being withdrawn as things that are not treated as income for the purposes of assessing eligibility to repay debt. That might not immediately strike you as being something to take into account in thinking about welfare reform changes.

Another example is in the Representation of the People (Electoral Registration Data Schemes) Regulations 2011, which deal with people who cannot vote on their own part because of disability. The range and scale of the things that we are trying to grapple with at the moment are diverse and broad. We certainly have not come to a firm view about everything that needs to be changed, and we definitely have not yet come to a view about how we might want to change the references in legislation.

Mike MacKenzie: As well as your undoubted other talents, you also seem to be something of a mind reader, because you have answered the question that I was going to ask next. I will just pass on that question, as you have given a good explanation of the situation.

John Pentland (Motherwell and Wishaw) (Lab): Some of the passported benefits to which the Scottish Government refers are regulated using the existing powers to make subordinate legislation, so why are the current powers not considered sufficient to make changes to those regimes?

John Paterson: It is true that some of the powers will be sufficient to make the changes that will ultimately be made. However, at the moment, it is not possible to say exactly what the changes will be to a particular provision, which means that we cannot say whether the power that is available under subordinate legislation will be apt to make the change that we ultimately want to make. Against that background, we are looking to take a general power to allow us to make the changes
that we need to make in order to ensure that passported benefits are available.

If we were to make a guess, we might say that 50 or 70 per cent of the changes that ultimately need to be made could currently be made under existing secondary legislation, but we cannot say exactly what changes those are. If we came back to you in 12 months and said that we had been able to make 70 per cent of the changes that are needed to ensure that passported benefits are available from 1 April 2013, but we had not been able to make the remaining 30 per cent because we did not take wide enough powers, the committee might want to criticise us for that.

**Chris Boyland:** We also need to keep options open for ministers in order to ensure that, when we come to the subordinate legislation process, we are able to advise ministers that they can make the changes through either an existing power or through powers that have been delegated through the bill. They will then be able to choose the appropriate option. By framing the bill in this way, we are seeking not to close things off but to keep options open.

**John Pentland:** You have probably answered this question, but I will ask it all the same. If the existing regimes require a higher level of scrutiny or other preconditions, such as consultation of interested groups, to be satisfied, should the same preconditions apply to the exercise of those powers? How would the Government ensure that that happened? If more stringent conditions apply to powers that are already available, will those existing powers be used in place of the new powers?

**John Paterson:** We have not ruled out keeping the same level of scrutiny or the same preconditions if ministers decide that there are sound policy reasons for doing so. However, the amount of effort that would be required to meet existing preconditions in relation to, for example, a very minor change might not be justified in terms of Government resources and parliamentary time. If a major change was going to be made and a power already existed in secondary legislation that required consultation, it might be thought appropriate to use that power, have the consultation and then make the change.

However, given the very short timescale—we expect to have more information by June and must have measures in place by next April—the duty to consult might take so long that it might not be practicable. Indeed, consultation might not be particularly appropriate or useful, because we might be talking about only a very minor change, such as changing references to DLA to references to the PIP. In such cases, consultation would only delay the implementation of the change that would be necessary to allow the passported benefit to flow from 1 April, and we would seek to use the new power to ensure that it was available. Other proposed changes might be very substantial, so it would be appropriate to proceed with consultation under the existing legislation.

**The Convener:** In his opening statement, Mr Boyland said that everything in the bill refers to the UK act. I suspect that you know this very short bill by heart, but I refer you to section 3(2)(b), which says:

“The regulations may ... contain provision not by itself in consequence of ... that Act”.

That is not something that we see in most pieces of devolved legislation. Why does the provision need to be so wide ranging?

**Chris Boyland:** First and foremost, I point out that when I said that the bill will do nothing more and nothing less than the UK act, I prefaced that with a reference to policy intent. The bill gives ministers powers to make adjustments that are necessary as a consequence of the UK act—which, indeed, was the intention behind the relevant clauses in the original UK act.

We have had a little more time to think about the bill’s content than our Westminster colleagues might have had when they were drafting the respective clauses in their bill and, as a result, we have been able to consider the mechanism that might need to exist in the future as well as the immediate need to make these changes by 2013.

Let us take as an example the use of a means or income threshold to replace entitlement to certain benefits as the trigger for passported benefits. We might assume that people who receive £16,000 or less—I am talking purely hypothetically—will receive some passported benefits. In the future, £16,000 might no longer be an appropriate threshold if we are to deliver benefits to the people who need them, because the cost of living will have changed and inflation will be such that £16,000 is no longer a valid trigger. We want to provide a mechanism that will allow the figure to be changed—it is most likely to be increased—so that it continues to identify the recipient group that we want it to identify, without our having to have recourse to primary legislation every time we want to make a change.

**Ann McVie:** May I pick up on that point from a policy perspective?

**The Convener:** Please do so.

**Ann McVie:** Universal credit will be a different type of benefit from income support and jobseekers allowance, in that it will cover people who are in work as well as people who are out of work. We do not yet know what the level of universal credit will be, but the minimum award will be 10p. From a policy perspective, the issue is not
as simple as replacing all references to the benefits that are vanishing with “universal credit”, because we are not talking about like-for-like change.

The provision offers a way of future proofing how we might choose to identify a separate hook for passported benefits. It gives us a mechanism for changing a threshold in line with inflation, if we choose to do that, without going back to primary legislation, as Chris Boyland said.

The Convener: In essence, we are looking at a provision that will enable the Scottish ministers to bring forward pretty much anything that might relate to social security in Scotland. We need appropriate mechanisms for scrutinising such a provision, which is what this committee is all about. It appears that the provision has been drafted to be about as wide as it could be. I am not suggesting that you are making a bad job of defending such an approach, but can you tell me what limits it will have?

Chris Boyland: Reference to the UK act is present throughout the bill. Every substantive section contains the words “the UK Act”. Section 3, on ancillary provision, will allow provision even in “indirect consequence of a relevant portion of the UK Act”.

John Paterson: What can be done under the bill is action in consequence of the UK Welfare Reform Act 2012. Section 3 will ensure that in the future, when the Scottish ministers can no longer rely on a direct link between what they want to do and something that was done under the Welfare Reform Act, they will be able to rely on an indirect link. Ministers will be able to say, “On the introduction of universal credit, we changed a reference to ‘income support’ to ‘income of £12,000 a year’” and then use section 3 to change the figure to £13,000 or to make some other change. It will always be about matters that are within devolved competence and that in a general sense are not just directly but indirectly consequential to the UK Welfare Reform Act 2012.

The Convener: Could the Scottish ministers regulate on a matter that the 2012 act does not cover, because it had not been thought of? Let me offer a hypothetical situation, which might be wrong. You talked about benefits being predicated on a certain level of income. Let us suppose that a benefit is predicated on the number of children that a person happens to have—I do not know whether that is relevant. Would it be possible for such a criterion to be introduced by regulation if it had not previously applied?

John Paterson: Yes—if the change could be traced back to a change that had been made by the UK Welfare Reform Act. However, if it could not be traced back to the UK act, the answer is no.

The Convener: Would that be possible if the criterion in question was one that related to a benefit that was covered by the UK act, but which had not previously been thought of?

John Paterson: That would be possible if it were covered by the UK act but, if it were not, that would not be possible.

15:00

The Convener: I think that that takes us far enough.

I want to pick up on one other issue. Has any thought been given to the inclusion of a sunset clause or some other way of recognising that what we are talking about might be a temporary piece of work and of ensuring that we revisit the issue at some point?

John Paterson: I do not think that this is a temporary piece of work. We propose to make changes through subordinate legislation to a fairly wide body of legislation that relates mainly to passported benefits. We expect that those passported benefits will continue to be made available in five, 10 and 20 years’ time. It would not be appropriate to have, say, a five-year sunset clause, because the ability to pay the passported benefits would go in five years’ time.

The Convener: I think that, in that case, the Parliament would have to consolidate what it had previously done and establish it in statute rather than in regulations. That is the answer, although I am not necessarily advocating that that is a good thing to do. I just wanted to clarify the Government’s thinking on the subject.

John Paterson: That would be possible; it would be possible to make primary legislation that consolidated all the changes that had been made under the powers in question.

The Convener: Thank you very much. We now come to the meat of the issue, which is scrutiny.

Chic Brodie (South Scotland) (SNP): Good afternoon. In the course of the discussion, comments have been made on the state of the legislation in the UK and the fact that as much time as possible is needed and that the changes could be substantial. Can you share with us the details of the implementation timetable, given that the endgame date is 1 April 2013? What is the timetable for the Scottish Government, as you see it?

Ann McVie: We are working towards having everything in place for April 2013. We know for sure that the first lot of regulations that the Department for Work and Pensions will produce on universal credit will appear no earlier than June of this year, but—
Chic Brodie: Do you believe that the DWP is on target?

Ann McVie: As far as I understand it; I was just about to say that there will be the first detailed regulations that we will see, but we know for a fact that the DWP intends to introduce further regulations at Westminster, and that that will not happen until the autumn. Understanding the detail of what will happen with universal credit and PIPs will be a gradual process. It will be towards the end of this calendar year before we are clear on the full detail of how the new benefits will operate.

Chic Brodie: What would the implications be if we missed that date—1 April 2013?

Ann McVie: Universal credit and PIPs both come into force across the UK on 1 April 2013. The PIP system will begin to be rolled out across the UK from that date, so if we do not have alternatives in place by then, we will lose the hook for any PIP-related passported benefit for which the Scottish Government is responsible.

The main roll-out of universal credit across the UK will not start until October 2013, but the DWP is planning to launch a pathfinder from April 2013. If anyone in the pathfinder area were to leave it and come to Scotland, we would lose the ability to pay them a passported benefit for which the Scottish Government is responsible.

The Convener: For all those reasons put together, I certainly think that the cabinet secretary was correct to say that, because the bill is Scottish legislation, the level of scrutiny that will apply to the provisions under it will be greater than it would have been if the provisions had just stayed in the UK bill.

Chic Brodie: The expectation is that the full 40 days’ scrutiny will be available as a minimum. When will drafts of instruments be available and will they be shared with the Parliament?

Chris Boyland: We touched on that to an extent when we described our work programme. Our firm commitment is to provide what we can as soon as we can. Drafts are unlikely to be available within what we see as the timetable for the bill; they are more likely to come forward in the subordinate legislation process that will start afterwards.

John Paterson: Drafts are unlikely to be available while the bill is being considered, because it will be June before anything starts to flow through from Westminster and Whitehall.

The Convener: I take your point that drafts are unlikely to be available while the bill is being considered, so I will move ahead to the point when delegated legislation is introduced and comes to the committee. I need not rehearse with you the timetables that will apply then. Are you confident that you will be able to meet those timetables, so that instruments get proper scrutiny not just in this committee but in subject committees?

John Paterson: We certainly intend to comply with statutory requirements and to lay instruments as soon as is practicable. We cannot rule out circumstances in which legislation must be made on a shorter timescale, although that is very much to be avoided. We look to comply fully with requirements.

The Convener: Forgive me—I do not know how such things work. Are you having discussions with the folk down in Westminster—the officials—so that there is a reasonable expectation that they will complete their process in time for us to go through our process? If they need to have measures in place only for April 2013, they could in principle leave us with a day in which to do our process, although I do not suggest that they want to do that.

Ann McVie: We are in fairly close contact with our counterparts in the DWP about the issue and they are alert to the timetable. Similarly, they are anxious to ensure that we make the changes in our legislation that we need to make, so that things operate properly across the UK. DWP officials know the timescales to which we are
working, and it is in their interests to help us to meet the timetables.

Chic Brodie: Why is that in those officials’ interests?

Ann McVie: They know that lots of references are made to benefits that are being withdrawn. They are concerned about a risk arising if the Scottish Government and the Welsh Government do not play their part, in the same way as Government departments at Westminster need to review their legislation that has hooks to benefits that are being withdrawn. Officials are aware of the need to make a raft of changes to legislation in the different parts of the UK. That is something that they have in their sights. It is not that they regard the matter as their responsibility but that they know that changes must be made and, as part of their broader implementation plan, they want to ensure that we are alert to the changes that we need to make.

Chic Brodie: Given that the start date is 1 April, we are talking about the beginning of financial year 2013-14, so there are financial considerations. The powers in this bill are broad and could be used not only to maintain the status quo but to deliver significant changes to the devolved benefits regime. What is the potential financial impact of the proposed powers?

Chris Boyland: The financial memorandum that was lodged with the bill provides details of the envelope within which the changes will take effect. Officials currently have no basis on which to proceed other than on the assumption that entitlement will continue for roughly the same recipient group as currently receives the benefits—or as close as we can make it. If that is the case, the financial implications should not be proportionately terribly significant, because the cost of providing the benefits will be roughly equivalent.

There will be cost changes as part of year-on-year inflation and what have you. Where possible, we have identified such costs in the financial memorandum. Some budgets for benefits have already been allocated, and that has also been identified in the financial memorandum. However, broadly speaking, until a policy decision is made—

Chic Brodie: Did you say that budgets have already been allocated?

Chris Boyland: Some of them have been.

Chic Brodie: Are they predicated on the existing situation, notwithstanding the changes that are coming through in the legislation?

Chris Boyland: As things stand, that is the case in some instances. Off the top of my head I cannot tell you which ones.

Until there is a policy decision to vary entitlement one way or the other, the information that we provided on the financial implications is as close as we can get to the financial picture.

John Scott (Ayr) (Con): The full scrutiny process takes about the same amount of time, whether an instrument is subject to the affirmative or the negative procedure. What difficulty would be caused if the Parliament required the affirmative procedure in all cases?

John Paterson: It is fair to say that the affirmative procedure would not be appropriate in all cases. Very minor changes simply do not merit the affirmative procedure. Members are aware of the demands that the affirmative procedure makes on the time of committees and the Parliament.

John Scott: Okay. It says in the delegated powers memorandum that the affirmative procedure will apply to instruments that make textual changes to primary legislation, and that the negative procedure is regarded as appropriate in other cases. To what extent is it considered that amendment to primary legislation will be required, as opposed to amendment to secondary legislation? To what extent will such changes differ in their content, effect and financial impact?

John Paterson: Our current figures show that, in relation to secondary legislation, roughly 120 instruments fall to be amended and, in relation to primary legislation, roughly 21 acts fall to be amended. Members should bear in mind that those are not definitive figures. However, the figures give an idea of what will happen; we are talking about six times as many pieces of secondary legislation as pieces of primary legislation.

It is difficult to answer your question about the content, effect and financial implications of instruments, because instruments will vary from case to case. Some will have significant effect, in that they will broadly continue to make a passported benefit available to the group that currently receives it; others might have an effect that varies in some way, depending on the policy. At the moment, however, I am unable to draw a distinction between the content, effect and financial implications of changes to primary and secondary legislation.

15:15

John Scott: It is possible for amending subordinate legislation and stand-alone provision to have the same impact as changes to primary legislation. Given the bill’s wide powers, it seems that the Government cannot predict at this point when the higher level of scrutiny will be appropriate. Would it therefore be reasonable for instruments made under the bill to be subject to
affirmative procedure when they change primary legislation and to be subject to the open procedure in other cases? Would that not enable the Government to choose either the affirmative or negative procedure and to explain its approach to Parliament when it introduces such subordinate legislation?

**John Paterson:** I feel that the current approach, in which the affirmative procedure is used for amendments to primary legislation and the negative procedure for amendments to secondary legislation, has some logic. For example, with regard to amendments to primary legislation, the Parliament has already voted on the actual wording of that legislation and, instead of allowing certain provisions to be made in secondary legislation, has determined that particular terms are sufficiently important to be used in primary legislation. As a result, when you come to make amendments, there is a qualitative difference between that kind of amendment and an amendment to secondary legislation. The logical thing would be to maintain such a differentiation for amendments made using the powers in this bill. In other words, amendments to primary legislation would use affirmative procedure and amendments to secondary legislation negative procedure.

**Michael McMahon (Uddingston and Bellshill) (Lab):** I want to return to Ms McVie’s comment about hooks. One of the hooks for passported benefits that have been identified in evidence to the Welfare Reform Committee is council tax benefit, and it was acknowledged that some hook or legislative vehicle had to be found to allow the Scottish Government to take those powers. Has that matter been examined further and is subordinate legislation one of the vehicles that are being considered?

**Chris Boyland:** As I understand it, it is not an existing hook.

**Michael McMahon:** But the benefit itself is going to be devolved to the Scottish Government. As a result, it will be a hook for the passported benefits that will be distributed by local authorities.

**Chris Boyland:** It is possible to use council tax benefit in the way that you have described—if I have understood you correctly. However, we have not developed our policy thinking in that regard enough to be able to make much comment on the matter right now. Perhaps, in light of our continuing engagement with the Welfare Reform Committee, we can take it away, give it some more consideration and report back on it.

**Michael McMahon:** Is council tax benefit referred to in the UK act? If so, might this bill be the vehicle for it?

**Chris Boyland:** The UK act makes little mention of council tax benefit, other than to abolish it; almost everything to do with the benefit happens outwith that act. The devolution of council tax benefit—if that is what you want to call it—amounts to the transfer of funding from the UK Government to the Scottish Government through existing funding mechanisms and, as things stand, the successor arrangements for council tax benefit in Scotland very much fall outside the bill’s scope. We are happy to consider and discuss the possibility of using it as a hook for some passported benefits, but we will need to go away, consider the matter and report back on it.

**The Convener:** You have talked a lot about passported benefits, which are the bill’s primary task. Does the Government intend to use the bill to deal with other—clearly ancillary—matters?

**Chris Boyland:** As I said in my opening remarks, the bill’s policy intention is to mirror the intention behind the clauses that were taken out of the UK bill as a consequence of the Parliament’s vote on the legislative consent motion. Personally, I would say that, given the timescale, we have quite enough to do on passported benefits without seeking to add to our work.

**The Convener:** I am grateful for that reassurance. Do members have anything to add?

**Chic Brodie:** I do wish the Government would change the date from 1 April to 2 April.

**The Convener:** I take the point, but I suspect that is outwith our control. I should also add that, in my previous remarks about officials’ relationship with the British Government, I did not in any way intend to suggest that officials down there would not want to help or co-operate with you. I know far better than to suggest such a thing as far as officialdom is concerned and I am sure that you are having a very good time trying to make all this work.

I thank our witnesses for attending the meeting and their comprehensive responses. I suspend the meeting briefly to allow them to leave.

15:21

*Meeting suspended.*
Present:

Gavin Brown
John Mason (Deputy Convener)
Michael McMahon
Paul Wheelhouse

Kenneth Gibson (Convener)
Mark McDonald
Elaine Murray

1. **Decision on taking business in private**: The Committee agreed to take item 4 in private.

3. **Welfare Reform (Further Provision) (Scotland) Bill**: The Committee took evidence on the Financial Memorandum of the Welfare Reform (Further Provision) (Scotland) Bill from—


4. **Welfare Reform (Further Provision) (Scotland) Bill (in private)**: The Committee considered the evidence taken on the Financial Memorandum of the Welfare Reform (Further Provision) (Scotland) Bill and agreed to write to the lead committee
Welfare Reform (Further Provision) (Scotland) Bill: Financial Memorandum

The Convener: Item 3 is an evidence-taking session on the financial memorandum to the Welfare Reform (Further Provision) (Scotland) Bill. I welcome to the meeting a number of Scottish Government officials—Chris Boyland, bill manager, welfare division; Scott Mackay; Ann McVie; and Susan Anton—and invite one of them to make a short opening statement.

Chris Boyland (Scottish Government): Thank you, convener. First of all, I thank the committee for inviting us to speak to you.

From a policy perspective, the bill does nothing more and nothing less than reflect the relevant sections in the UK Welfare Reform Bill—or what is now the Welfare Reform Act 2012—to which the Scottish Parliament refused legislative consent last December. Scottish ministers intend to use the powers enabled by this bill to make changes to the primary and secondary legislation that currently links eligibility for devolved passported benefits to UK benefits such as income-based jobseekers allowance that the 2012 act will abolish.

Passported benefits can be loosely divided into continuing benefits such as free school lunches or free NHS dental care and one-off benefits such as legal aid. They can be paid in cash, as is the case with the education maintenance allowance, or in kind through, say, optical vouchers. When the existing UK benefits are abolished, so, too, will be the associated eligibility hooks and the Scottish Government now has to amend devolved legislation in order to replace them.

That cannot be a simple, like-for-like replacement; we cannot, for example, just replace the phrase “jobseekers allowance” with “universal credit”. Given that universal credit incorporates in-work and out-of-work support, it will have a much broader recipient group than the benefits that it will replace. Crucially, receipt of universal credit will not, in and of itself, provide the same evidence of low income as the existing benefits and will not, in and of itself, serve as a means of determining entitlement to passported benefits as it will be awarded to a much larger group of people.

By April 2013, we need to complete a process that takes in primary legislation, followed by operational adjustments to be made by subordinate legislation. The timetable is not of our making; instead, it is being driven by the pace of the UK Government's changes and the fact that many of the practical details about how the new UK welfare reforms will operate—for example,
conditions for entitlement to universal credit and the personal independence payment—remain to be set out in UK subordinate legislation. At the moment, the Scottish Government does not expect the UK Government to be in a position to convey that essential detail to us before June.

As we are here to talk about the financial implications of the process, we would like to frame the discussion under four key headings: the current spending context; smoothing transition and ensuring continuing access; the information that is currently available; and the further information that we expect to provide.

On the current spending context, the financial memorandum sets out the costs of devolved passported benefits based on current provision and the existing associated costs, on the basis that provision of those benefits will be retained at the current level and that the on-going costs will be met from within existing budgets—although I stress that that is still subject to a final decision by ministers. Existing provision should also be seen in the overall context of the spending review, which has set the budget envelope within which we expect these changes to be considered.

With regard to smoothing transition, the bill’s intention is to ensure a safe transition for passported benefits into the new UK welfare structure. It is not intended to materially reconfigure any of those benefits and, at this time, we are not aware of any plans in that respect. As things stand, we expect that, if they are made, any such plans will be made separately as part of the normal policy development process.

As for the information that is currently available, I am afraid to say that there are necessarily some limits to the information that we are able to produce on the financial implications of some of the changes. For example, although we are able to specify the number of people receiving legal aid as a result of their entitlement to an existing UK benefit, we have not been able to disaggregate fully the cost of that provision from the overall cost of legal aid because the individual cost varies significantly from case to case.

We appreciate the committee’s desire to have as much detail as possible and we will do our best to provide what we can as early as we can. Just to assure members, I point out that, as the committee will be aware, the Cabinet Secretary for Health, Wellbeing and Cities Strategy has given an undertaking to the convener of the Welfare Reform Committee that we will make available to that committee all material on the relevant subordinate legislation at our disposal.

Finally, with regard to further information that we expect to be able to provide, when the necessary subordinate legislation is introduced later this year we will set out details of how passported benefits will be modified to operate under the new UK system and provide an assessment of the financial impact of the changes. That assessment is likely to be based on modelling that we will undertake to identify the optimum eligibility trigger or triggers that will ensure that our existing recipient base has a smooth transition into the new regime. We will also provide information on expected transition costs.

That is all I have to say by way of introduction. We are happy to take committee members’ questions.

The Convener: Thank you, Mr Boyland. I find it interesting that, as you suggested in your opening statement and as the financial memorandum makes clear, there are many questions that you are probably unable to respond to at this time. Indeed, paragraph 32 of the financial memorandum says, “The Scottish Government does not expect the UK Government to be in a position to convey the essential detail of its new benefits to it before June of this year”, and paragraph 33 says, “It is not possible to set out the detail of the likely financial impact of future plans to modify entitlement to passported benefits until the operational detail of the UK Government’s welfare reforms is available.”

How much is the fact that you are operating almost in a vacuum hampering your work?

Ann McVie (Scottish Government): The simple answer to that is quite significantly. At the moment, our focus is on trying to map all the passported benefits for which the Scottish Government is responsible and, as you can see from the list, they are not a homogeneous group. We have never tried to look at these things in the round and, given that they are specific policy interventions that have been developed independently for a specific purpose, it has been quite a task to pull them all together into one place and to start to understand in a bit more detail the various eligibility criteria for individual passported benefits.

We are pretty much clear about the passported benefits and the current eligibility criteria, but in order to take things to the next stage we need a much better understanding of what the levels of universal credit will be and the detailed assessment criteria for personal independence payments. As members know, universal credit will be a much broader benefit and will cover people in and out of work. We understand, for example, that the minimum universal credit payment will be 10p, so it is quite different from the benefits that it is replacing such as income support and jobseekers allowance. However, we are very much working in a vacuum with regard to what the levels will be.
We do not know how detailed the award notification notice for universal credit will be and whether it will show, for example, that people are receiving the benefit because they have children, what the housing element is and so on. Given that we do not have a substantial amount of detail, it is difficult for us to develop new eligibility criteria for the passported benefits for which the Scottish Government is responsible.

The Convener: Is it your understanding that the delegated powers could in theory be used to extend eligibility? I have another question, but whether I ask it depends on what your answer to that question is.

Ann McVie: I do not quite understand what you mean by extending eligibility. It will be up to Scottish ministers to determine the new eligibility criteria for passported benefits, whether against universal credit or something else. For example, we could set our own income threshold for receipt of individual passported benefits.

The Convener: Yes; I was asking whether you could make such changes. Perhaps I did not put my question quite as succinctly as I should have done.

Is the list of benefits in table 1 of the financial memorandum exhaustive or are there any others that have not been included?

Ann McVie: I would not like to say that nothing else will come forward but, at this stage, we are as sure as we can be that that is the list of all the passported benefits that have—

Scott Mackay (Scottish Government): Costs.

Ann McVie: Thank you—that is the word that I was looking for. Those are the passported benefits that have costs associated with them. Blue badge parking discs are missing from the list. In addition, someone who is in receipt of a certain disability benefit and who has been treated as being incapable of work is not obliged to repay a student loan. Those benefits are not listed in the table in the financial memorandum because they are passported benefits that do not have costs directly associated with them.

Chris Boyland: It is worth noting that, although the bill’s primary policy objective is to ensure a smooth transition for passported benefits, we expect that Scottish ministers will use the powers that the bill delegates to them to make changes to Scottish primary and secondary legislation, which are required because they amend references to existing UK benefits. However, those references do not necessarily underpin a passported benefit. An example that is given in the delegated powers memorandum relates to a landlord’s requirement to have regard to a tenant’s eligibility for housing benefit before beginning proceedings to put them out of their flat. I am sorry, but I have forgotten the word for that.

Ann McVie: Eviction.

Chris Boyland: Yes. That is not a benefit per se; it is something in legislation that will need to be changed.

The Convener: We have received a number of submissions. One of the questions that we asked was:

“Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?”

Clackmannanshire Council’s answer was no. The additional costs that it thought it would face as a result of all the proposed changes included increased staff and transaction costs. How would you respond to what the local authorities perceive to be difficulties with the way in which the financial memorandum has been put together?

Scott Mackay: The difficulty relates to our inability to frame the successor arrangements precisely until we have the necessary detail. When that detail is available, we will attempt to estimate more accurately the transition costs and what the impact on administration will be. If we pre-empt our receiving the detail from the UK Government, any estimates of costs will be speculative. Therefore, we will refrain from making such estimates until we have the detail.

The Convener: Yes. Some of the other organisations that sent in submissions gave exactly the opposite answer. It is as if the committee is asking questions in a vacuum.

I open up the discussion to other members of the committee.

John Mason: The submissions that we have received include one from the Convention of Scottish Local Authorities, which talks about the need to have parallel systems of entitlement. That is because, as I understand it, the change that we are talking about will not take place overnight—it will take place over the period 2013 to 2017. It sounds as if the local authorities will have to run two systems, which will be quite expensive. Have you looked at that? Is it possible to estimate what the cost will be?

Ann McVie: No. We cannot estimate those things until we know what the successor arrangements will be, as my colleague said. We are alert to the fact that one of the advantages of a passported benefits system is that it reduces the need to set up an independent assessment process. We will have very much in our sights the need to come up with a system that is as efficient as possible for both the Scottish Government and local authorities and which avoids the need for
overly complex assessments for such benefits in the future.

11:30  
**John Mason:** Are there bound to be extra costs in the interim or changeover period whatever the system is, because there will need to be two systems?  

**Ann McVie:** It depends, but yes, that would follow. We will have to look at that.  

**John Mason:** I think that Glasgow City Council raised the issue of data sharing. Are we clear, for example, that the Department for Work and Pensions will be willing to share data with the Scottish Government or local authorities? What stage are we at in knowing that?  

**Ann McVie:** That is very much a live issue, which we are having discussions with the DWP about at the moment.  

**John Mason:** So we do not know where we are.  

**Ann McVie:** We are at the early stages of the process, and we have quite a long list of things to do. Data sharing is definitely quite high up the list of things on which we need to engage with the DWP.  

**John Mason:** I would think that data sharing is crucial. If local authorities do not have to do that or the Scottish Government does not have access to data and has to start again, that will inevitably make the costs higher.  

**Ann McVie:** Absolutely.  

**The Convener:** NHS Lanarkshire has said:  
“if additional costs are incurred, it would seem reasonable to expect that these costs are met by the Scottish Government”, although, of course, the bill is based on United Kingdom Government legislation and is the result of UK Government changes. What is your view on that?  

**Scott Mackay:** The Treasury’s “Funding the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly: Statement of Funding Policy” is clear that where decisions of United Kingdom departments or agencies lead to additional costs for any of the devolved administrations, where other arrangements do not exist automatically to adjust for such extra costs, the body whose decision leads to the additional cost will meet that cost”.  

We would expect to pursue the budget cover for additional costs.  

**The Convener:** Indeed, but would the DWP pursue that right through the process, or do you believe that it will provide only limited support? Does it accept that argument?  

**Scott Mackay:** We have made clear our expectation that we will pursue the funding under the arrangements in the statement of funding policy. Obviously, there will be some negotiation on the extent of budget cover that will be provided, but our starting point will be that we will expect full cover for all the additional costs that arise from the legislation.  

**The Convener:** A local authority might say to you that the additional costs are £300,000 and a similar-sized local authority might say that they are £1 million. Who would say, “Hold on a second. Why is a local authority saying that”? The situation is horrendous. Who would decide which authority was incurring the costs that it said that it was and how they were being incurred? What is the likelihood that the DWP would basically say, “Well, yeah, you’ve said it’s going to cost £8 million or £22 million”—whatever the cost ultimately is—and that it would then be paid? Would they be long-term costs or one-off DWP payments?  

**Scott Mackay:** The committee has already referred to two elements of that. There will be transition costs.  

**The Convener:** Yes.  

**Scott Mackay:** As more detail becomes available, the question for us to assess is the extent to which additional costs will arise as a result of the legislative changes. We would seek to negotiate an appropriate settlement on the basis of both of those elements once we have a sufficiently robust analysis of the financial impact.  

Obviously, there would be a negotiation with the DWP on guarantees on what the final level of any budget transfer would be. We would start from the position that we would expect full cover for the robust analysis that we will develop when sufficient information is available to us to do so.  

**The Convener:** You would expect the organisations on which there will be an impact, such as the NHS and local authorities, to tell you what they expect the costs to be, and you would then advise the DWP appropriately.  

**Scott Mackay:** We would work with them to ensure that we had a robust assessment of the costs that will arise from the changes.  

**The Convener:** Yes. Okay.  

**Elaine Murray:** As the convener said, everyone here seems to be struggling in the dark, as we simply do not have enough information. To be honest, it strikes me that the UK Government has not really considered some of the effects on other organisations. What consultation was there with the devolved Administrations and local government, for example, on how this major change in benefits legislation would affect others?
Chris Boyland: That consultation would have been rolled up with consultation on the UK Welfare Reform Bill. The committee will be aware that that bill was brought forward at a considerable pace, given the widespread, sweeping and systemic change to the UK welfare system that it represents.

The issue of passported benefits is clearly not unique to Scotland—England and Wales have the same job as we have in making adjustments to the passported benefits for which they have responsibility. They are in the same position as we are, in that those adjustments must necessarily follow the full working-out of the regulatory framework that the legislation will put in place, which is complex and is being battered through at considerable speed.

The consultation on the bill as it was going through the Westminster parliamentary process involved the normal Westminster public bill committee stages and so on. The Scottish Government contributed to that process in a number of different ways, at ministerial and official level. We ensured that our views and concerns were known. There is a question about the extent to which the UK Government heard those views and acted on what it heard. However, we took whatever opportunities were available to us to make our concerns known.

Elaine Murray: With regard to the 10 per cent reduction in council tax benefit, we have heard evidence from Children 1st and others that people are not taking up their current entitlement, yet we are likely to see a 10 per cent reduction in the budget that is devolved to us. It has been suggested that, if we had a campaign in the next 12 months to encourage uptake, we might get a bit more devolved to us. I do not know whether that is the case, but there is concern that, as a considerable number of the passported benefits are not being taken up anyway, the budget will not be available to support them, even if we were to be able to translate the entitlement to the new system.

Chris Boyland: You have to look at it on a benefit-by-benefit basis. Different passported benefits are awarded in different ways. As we said, some of them are continuing. For example, a family would expect their child to receive free school meals for the whole time that their child is at school. On the other hand, a person might never apply for or receive legal aid, but they would hope that it would be available to them if they needed it and qualified for it.

I imagine that the question about money running out is not unique to the provision of these benefits. We would have to go back and consider it in the context of the spending review, which is what all such matters are framed by. That has set the budget envelope with regard to our consideration of the entitlement changes that we need to make.

Elaine Murray: So it will be difficult to promise that we could keep the entitlements the same. That is almost a promise that we cannot make.

Chris Boyland: We are proceeding on the basis that we will consider the changes to entitlement with a view to maintaining provision to roughly the recipient group that exists at the moment. As things stand, we have no reason to consider the matter in any other way—either increasing or decreasing. Until there is a final ministerial decision, we will continue to consider what we need to do in order to maintain provision to the people who are currently receiving those benefits.

Paul Wheelhouse: Dr Murray mentioned the issue of council tax benefits, so I will not ask about that—I had a list of four issues, so that has narrowed it down for me.

Children 1st raised the fact that the Welfare Reform Act 2012 has effectively abolished aspects of the social fund and it is making recommendations that there might be a need for primary or secondary legislation at some point in the future to recreate those aspects that have been lost. I know a family who needed urgent help with funeral expenses because they unexpectedly lost their teenage son in a tragedy. What steps might be taken to provide crisis loans in that sort of situation?

Ann McVie: Successor arrangements for the social fund are being dealt with as a completely separate strand of work. We are still at quite an early stage of developing them. Ministers have agreed that we should work with local authorities to put in place a successor scheme from April 2013. To help us with that, we have set up a joint COSLA and Scottish Government design group with representatives from local authorities and Scottish Government policy interests to discuss the mechanics of how that will happen. The first meeting of the group will take place next week on 26 April.

Paul Wheelhouse: I will trust that you have that one in hand.

The evidence that was provided by Highland Council asked whether there would be any coverage for school clothing grants. A free school meal entitlement is being looked at, and I wondered whether school clothing grants should be addressed.

Ann McVie: We are not treating school clothing grants as a passported benefit per se. Local authorities have the discretion to offer those grants, but there is no automatic entitlement with eligibility hooked into a current benefit. Provision
of such grants is very much a matter for local authorities rather than the Scottish Government.

Paul Wheelhouse: Hopefully the Scottish Government has noted that evidence.

Table 1 in the financial memorandum, which sets out the detail of the projected spend on each of the passported benefits, is helpful. Earlier you mentioned that there was a change in the criteria for the universal credit and that the existing passported benefits might be impacted upon by that change. Is that likely to have any geographical effect that we need to take into account? We might assume that the spend will happen in the same pattern around the country as it is happening now, but perhaps the change in universal credit will impact on the spread of benefit spend across the country.

Chris Boyland: I cannot imagine that there will be a geographical impact. Beyond existing demographic factors, I cannot see that the changes to entitlement will have a geographical bias one way or another.

Paul Wheelhouse: This is my final question, convener. I have just asked a series of quick ones this time.

John Mason: Hear, hear.

Paul Wheelhouse: Thank you, Mr Mason.

A different set of criteria will apply here than will apply in the rest of the UK, and there will not be the benefit of having standardised materials to train people in what to use as eligibility criteria. Do you have any view about the representations that have been made in the written evidence about the costs to train staff of different organisations at a local level to advise individuals about their eligibility? Do you have a good handle on the likely costs?

Ann McVie: Not yet, but I refer to comments that were made about developing new eligibility criteria for the passported benefits. Taking account of efficiency in a broader sense will be part of that decision-making process, so factors such as training and guidance materials will be part of working up the most effective model.

Chris Boyland: Some of that will come under the consideration of transitional costs.

Scott Mackay: Absolutely. We will be looking to include that factor in the calculation of transition costs.

Paul Wheelhouse: Thank you.

Michael McMahon: You have partly preempted my question by telling us about the group that has been set up with COSLA. I did not get the impression from the COSLA representatives who were at the Welfare Reform Committee yesterday that things are very far advanced—maybe we just did not get into that area and we will have to look a bit deeper into it. Are you entering into discussions with COSLA on the basis that there is an expectation that the Scottish Government will be meeting the costs 50:50 or 60:40? Is there any sort of prediction about how responsibility for dealing with the impact of the changes will be shared?

11:45

Ann McVie: Do you mean in relation to the success of the arrangements for the social fund?

Michael McMahon: Yes.

Ann McVie: The DWP has been clear that it will transfer to the Scottish Government the money that is spent on community care grants and crisis loans for living expenses in Scotland at the point of transfer, and our ministers have agreed that that money will be used for the same purposes. It will be put to supporting the successor arrangements. The funding for the successor arrangements will come from the DWP to Scottish ministers and then to local authorities.

The DWP has also accepted that there will be transitional arrangements with what it calls the new burdens agenda. Parallel discussions are happening in England, where the DWP is transferring responsibility for elements of the social fund to local authorities. It is expecting the Scottish Government, the Welsh Government and local authorities in England to present information about how much it will cost to operate the new scheme, so that it can take a view on how much it is going to give us to help us to run the successor arrangements. Again, that money will be transferred from the Scottish Government to local authorities.

Michael McMahon: I will be curious to see how the discussions on the share of that pan out.

I dropped a question on Mr Boyland at the Subordinate Legislation Committee about the vehicle that will be used for any legislation that is required to address changes to the council tax benefit system. Have you had an opportunity to consider that? Is it likely that the bill will be the vehicle, or is it more likely to come through in subordinate legislation or a separate bill?

Chris Boyland: As I recall from our conversation yesterday, we were talking about the possibility that council tax benefit could be used as an eligibility hook.

Michael McMahon: Exactly.

Chris Boyland: So your question is continuing on that point.

Michael McMahon: Yes.
Chris Boyland: We discussed the issue briefly on the way back up the hill from the Parliament yesterday. I certainly think that we will look at that as one of the possible mechanisms for replacing the eligibility links to the benefits that are being abolished. The question that we will have to answer is whether it would deliver the benefits to the recipient group that we wish to receive them.

Modelling will need to be done on whatever final mechanism is chosen to demonstrate that the people whom we want to get the benefits will get them. It might well be that we will want to put the use of council tax benefit as a hook through that modelling process to see what we end up with and whether it would do the job that we want it to do. If it does, we might well come back to the Parliament and say that we believe that it is an appropriate mechanism to replace the links to the existing benefits. If it does not, I do not see that we would have any reason not to say that it does not and that the mechanism that we have chosen serves our purpose better. However, that work will need to be done with the policy design work and the continuing analysis and modelling between now and, at the earliest, the end of the year.

Michael McMahon: That is helpful. Thank you.

Mark McDonald: Dr Murray stole my phrase to describe the issue. We are essentially fumbling around in the dark on it. I hasten to add that I do not consider that to be your fault. You are obviously being given limited, if any, information by the UK Government.

You talked about the speed at which the legislation is being put through, but it does not seem to be matched by the speed at which information is being trickled down to the devolved Administrations. What recent discussions have you had with the UK Government? Has it given you any indication as to when you might get some concrete financial data?

Ann McVie: I am trying to remember the date when the Cabinet Secretary for Health, Wellbeing and Cities Strategy last met Iain Duncan Smith. It was definitely in the past month. I am sorry—I was there at the meeting, which was at 6.30 at night in the Parliament, but I cannot remember which day it was. There are on-going discussions between ministers and there are certainly on-going discussions at official level to try to get the information. The DWP has been willing to share information as soon as it has it, but it does not have much to share with us yet. As the financial memorandum and other accompanying documents set out, we expect the first set of regulations by June and further regulations in the autumn that lay out the detail of universal credit. However, as you rightly point out, we have not got those yet.

Chris Boyland: To be fair, one consequence of the pace at which the UK legislative process is moving is that the UK Government does not necessarily always have the information to provide. The UK Government has a series of complicated jobs to do, and the information that we are talking about will come out as a result of that. Therefore, we certainly would not want to suggest that anything is being withheld. The pace of change does not aid the early availability of that information.

Mark McDonald: I was not suggesting that the UK Government is withholding information—I would not make that accusation. However, it strikes me as odd that scenario planning is not being done to show what we might expect to receive, although I guess that, as you say, the detail needs to be fleshed out. In the written responses that we have had, some people say that they can afford the changes, which strikes me as rather bizarre when we do not know what the changes will be; some people say that they just do not know, which is the most likely scenario; and others say that they definitely cannot afford it, which again strikes me as odd when we do not know what the implications will be. I note that you are having discussions with COSLA, but are you having discussions with other organisations, such as the NHS and third sector bodies? What discussions are you having with those organisations and what are they feeding into you?

Chris Boyland: We have on-going engagement with COSLA and a variety of stakeholder organisations. We have two external reference groups: the welfare reform scrutiny group, which we co-chair with COSLA; and the housing benefit stakeholder advisory group, whose interest in the issue might be slightly tangential, although it is an example of the net that we are casting. The welfare reform scrutiny group, which has discussed the issue of passported benefits previously and which I expect will continue to do so, has been meeting since the beginning of last year. We expect it to continue to meet throughout the process.

Gavin Brown: Michael McMahon asked whether council tax benefit could be tackled in the bill. I have a similar question in relation to the social fund. If I heard correctly, the social fund is being treated as a separate stream of work and has no part in the bill as it stands. Given that the bill will be enabling legislation, could the framework of the social fund be tackled in the bill and dealt with in regulations thereafter, or will that require a separate piece of legislation?

Chris Boyland: The bill will be a piece of enabling legislation. My understanding is that the social fund might be within the scope of the bill but, at present, the clear ministerial decision is that
the bill does not include provisions in relation to the social fund and council tax benefit. The ministerial decision is that those provisions will be progressed separately.

**Gavin Brown**: I have a second question, which is a follow-up to the question about data sharing. I think that that was described as a “live issue”, so you obviously cannot say too much about it but, given that there must be protocols in place under the current set-up, do you have concerns about that live issue or is it something that has just not been thrashed out yet?

**Ann McVie**: It is the latter. Everyone recognises that there will be a need for data sharing. The issue that has not as yet been sorted out is about the mechanics and the nitty-gritty of how we do that.

**Chris Boyland**: System requirements sit beneath any protocols to share data. That is where the complexities come in. The issue is not just about the agreement that we will share; it is about how we get potentially individual systems to speak together in a timely manner and in a way that delivers the service and support that we need.

**Gavin Brown**: I have a final question, which is just for clarity. I think that you are working under the assumption that, in relation to passported benefits, we will as far as possible end up with the same provision as at present, or thereabouts. However, you stressed that that is subject to final approval by ministers. Is that issue under active discussion, or did you simply stress the point to make it clear that ministers will take the ultimate decision? Are discussions taking place about whether we might not end up with the same provision?

**Chris Boyland**: As Ann McVie pointed out near the top of the session, nobody has ever considered the range of benefits holistically. I honestly could not say whether consideration is being given in individual policy areas to the possible future of individual benefits as part of a particular policy picture. However, we have not advised ministers on whether they should make material changes to the benefits, and I certainly do not expect us to do so.

**Ann McVie**: As we said, we are still in the early days of the process. We are still a little in the dark about what universal credit will look like and what the eligibility hooks or criteria might be. We are just being naturally cautious civil servants and saying that those issues are subject to final discussion with ministers once we are a bit clearer about the options for the eligibility criteria.

**Paul Wheelhouse**: I have a quick question on the principle, leaving aside the mechanics of the legislative process that we are having to go through. To pick up on a point to which Gavin Brown alluded, because we have to do something different we have an opportunity to reflect on Scotland’s particular needs and to amend where necessary. Obviously that would be up to ministers, rather than you. However, do we not have an opportunity to tailor benefit entitlements to better suit Scotland’s needs, rather than taking the one-size-fits-all approach that has been taken until now?

**Chris Boyland**: Yes, we do. I do not think that there is any intention to default to a one-size-fits-all approach. It is worth pointing out that, for example, free prescriptions are a passported benefit in England but are offered universally in Scotland, so variations already exist between the two systems.

**Paul Wheelhouse**: So there might be scope in the process to tackle the needs of specific groups, such as armed forces veterans—I am a member of the cross-party group on them. The current opportunity might allow us to take a different approach in Scotland to issues for particular target groups.

**Ann McVie**: Potentially, yes.

**The Convener**: That appears to have exhausted our questions, given the fairly limited information that we have on which to base our questions and the limited answers that the witnesses can give. Do you have any further points to raise with the committee?

**Chris Boyland**: I do not believe so.

**The Convener**: In that case, I thank you for your attendance.
EXTRACT FROM THE MINUTES OF PROCEEDINGS

Vol. 2, No. 3       Session 4

Meeting of the Parliament

Wednesday 23 May 2012

Note: (DT) signifies a decision taken at Decision Time.

**Business Motion:** Paul Martin, on behalf of the Parliamentary Bureau, moved S4M-2994—that the Parliament agrees the following revision to the programme of business for Wednesday 23 May 2012—

after

followed by  Stage 1 Debate: Welfare Reform (Further Provision) (Scotland) Bill

insert

followed by  Financial Resolution: Welfare Reform (Further Provision) (Scotland) Bill

The motion was agreed to.

**Welfare Reform (Further Provision) (Scotland) Bill:** The Cabinet Secretary for Health, Wellbeing and Cities Strategy (Nicola Sturgeon) moved S4M-02966—that the Parliament agrees to the general principles of the Welfare Reform (Further Provision) (Scotland) Bill.

After debate, the motion was agreed to (DT).

**Welfare Reform (Further Provision) (Scotland) Bill: Financial Resolution:** The Cabinet Secretary for Health, Wellbeing and Cities Strategy (Nicola Sturgeon) moved S4M-02778—that the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Welfare Reform (Further Provision) (Scotland) Bill, agrees to any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament’s Standing Orders arising in consequence of the Act.

The motion was agreed to (DT).
Business Motion

14:35

The Presiding Officer (Tricia Marwick): The next item of business is consideration of business motion S4M-02994, in the name of Bruce Crawford, on behalf of the Parliamentary Bureau, setting out a revision to today’s business programme.

Motion moved,

That the Parliament agrees the following revision to the programme of business for Wednesday 23 May 2012—

after

followed by Stage 1 Debate: Welfare Reform (Further Provision) (Scotland) Bill

insert

followed by Financial Resolution: Welfare Reform (Further Provision) (Scotland) Bill—[Paul Martin.]

Motion agreed to.

Welfare Reform (Further Provision) (Scotland) Bill: Stage 1

The Presiding Officer (Tricia Marwick): The next item of business is a debate on motion S4M-02966, in the name of Nicola Sturgeon, on the Welfare Reform (Further Provision) (Scotland) Bill.

14:35

The Deputy First Minister and Cabinet Secretary for Health, Wellbeing and Cities Strategy (Nicola Sturgeon): I offer my sincere thanks to members of the Welfare Reform Committee and the many individuals and stakeholder groups who contributed to what has been an intelligent and well-informed discussion during stage 1 scrutiny of the bill. The committee has not had an awful lot of time, due to the Westminster-imposed deadlines to which we had to work in introducing the bill, but it has done a great deal in the time that it has had. I am grateful to the committee and to everyone who has been involved for their efforts up to this point and for the considerable amount of work that is still to be done, about which I will say more later.

It is five months, almost to the day, since we were in the chamber debating whether the Parliament should give its legislative consent to the United Kingdom Welfare Reform Bill, which of course is now the Welfare Reform Act 2012. Members do not need me to remind them of the unprecedented result of that debate, which was our first partial refusal of legislative consent for a UK bill since this Parliament was established.

We took that step for good and serious reasons. First and foremost, there is considerable and continuing concern about the impact of the welfare changes on some of the most vulnerable people in our society. It is worth reminding ourselves that the cumulative effect of the changes will be to take some £2.5 billion out of the pockets of some of the most vulnerable people in our society. I put on record, again, the Scottish Government’s opposition, not to the principles of helping people into work and making work pay but to the detail of these damaging reforms, which will hurt people whom we should be protecting in Scotland.

The other reason why the Parliament could not give legislative consent across the board for the UK bill was that we were without adequate detail on a package of reforms that will affect hundreds of thousands of Scots. I have to say that five months on we still do not have much of that detail. By way of emphasising the point, I remind members that paragraph 47 of the committee’s report highlights the fact that the committee wrote
to Lord Freud to ask for further detail and received a response that

“The Committee considers ... lacks substance”.

I said in the debate five months ago that

“Welfare is, unfortunately, a reserved matter”—

I stress “unfortunately”—and that it has serious

“implications for devolved services and responsibilities.”—

[Official Report, 22 December 2011; c 4946, 4943.]

The UK Government’s silence on some of the most basic facts, such as the levels of universal credit to be paid, has big implications for our ability to plan the changes that we need to make to our devolved services. The reluctance of the Department for Work and Pensions to engage fully with stakeholder concerns around changes to disability benefit has implications for our health services, our social care services and our advice networks. The reticence on the likely cumulative impact of the reforms has serious implications for our work to better understand the social and economic impact that the reforms will have on Scotland.

I recall that, during that previous debate, Murdo Fraser was keen to tell us all that Iain Duncan Smith had given an assurance that no one will be worse off as a result of the introduction of the universal credit. I am sorry to quote Murdo Fraser when he is not in the chamber, but when he was challenged on that point, he said:

“The UK Government will make that clear.”—[Official Report, 22 December 2011; c 4991.]

I am sorry, but it is five months on and the UK Government has not made that clear; in fact, quite the opposite—George Osborne has signalled that he believes that another £10 billion of welfare cuts will be necessary by 2016, on top of the £18 billion-worth of cuts that he is already making. That does nothing whatsoever to assuage people’s concerns; it does nothing to help third sector organisations to maintain the support and services that many vulnerable people depend on; and it does nothing to help us to plan the changes that we need to make to what the committee rightly referred to as “lifeline benefits”.

I have said a lot—for a purpose—about the things that have not happened since our previous debate, but the Scottish Government is, of course, making progress where we can. When we previously debated the issues, a number of legitimate questions were asked about the potential for mitigating the worst impacts of the UK Government’s reforms and our intentions for passported benefits, the social fund and council tax benefit. In the intervening period, many of those questions have been or are in the process of being answered.

On mitigation, we first need to understand what the impacts will be, of course. As well as carrying out our own analysis, we have provided funding to the Child Poverty Action Group and Citizens Advice Direct to help us to understand the details of the changes. However, it is also important to acknowledge the work that is already going on. At its most basic level, mitigating those impacts is about protecting the pounds in people’s pockets, and the Scottish Government has a range of policies in place that are designed to do just that. Universal free prescriptions mitigate the cost of ill health; the freeze on the council tax ensures that vulnerable people have more to spend on the goods and services that they need; and free nursery places ease the cost of childcare. None of those things is a magic bullet, of course, but they all will go some way towards softening the blow of the UK Government’s cuts.

On passported benefits, the committee has rightly been very clear that the considerable expertise of the wider policy community will be crucial. I absolutely agree with that. Indeed, as I said when I appeared before the committee:

“the involvement of stakeholders lies at the very heart of the bill process”.—[Official Report, Welfare Reform Committee, 1 May 2012; c 191.]

I told the committee then and repeat today that we intend to have a full public consultation on passported benefits, and we want as much input into that as possible. We want to protect entitlement to passported benefits and, as far as we possibly can, but we also want to take the opportunity to look at the system of passported benefits and ask whether we can do things better. We have a system in place that has developed in a rather ad hoc way, and it is right to take the opportunity to look at ways in which it might be improved. The views of stakeholders will be crucial in that regard.

Let me be quite clear on that point. Any suggestion during the debate that we might be trying to limit proper scrutiny would be a serious misrepresentation of the Government’s position. Our intention is absolutely to engage with civic Scotland and to listen to what it has to say. I will be very happy to work with the committee on that on an on-going basis. There are interesting ideas in its report about interactive events that we will take on board. That is something that we can collaborate on. As I said at the start, the committee has already been successful with the people that it has brought together and the discussions that it has held. We want to build on that constructively to ensure that people have the fullest possible chance to be heard.

I turn to the social fund. I am very pleased that the Convention of Scottish Local Authorities has agreed to work with us to ensure that we have
interim successor arrangements in place for April next year. We have set up a joint Scottish Government and local government design and implementation group, and we are funding a post in COSLA to liaise with local authorities.

We are working with the UK Government to bring forward a section 30 order under the Scotland Act 1998 to ensure that our new arrangements can operate within the existing devolution settlement.

Many members raised concerns in the previous debate about the cut to council tax benefit that the UK Government is imposing, and asked what the Scottish Government could and would do to mitigate that. I think that all members would accept that they have the clear answer to that question now.

I am very pleased and proud—because I think that it says something about Scotland and the values that we hold dear—that, due to this Government’s decisive action, 558,000 people will be protected from UK Government cuts through the Scottish Government and local government working together. We should all be extremely proud of that.

All that illustrates the work that we have been doing. I am pleased that much of that work is reflected in the committee’s report, and that the committee has recognised stakeholders’ unanimous support for the bill’s general principles and the need for its swift passage so that the secondary legislation can be in place by April 2013.

If we want to ensure—as I am sure all members do—that we are able to maintain the provision of those important passported benefits, we must conclude the parliamentary process for the bill before the summer recess. After that—as I have said—we will hold a public consultation on the changes that we will need to make, and I want and fully expect the committee to play a role in that.

Once the UK Government has finally given us sight of its regulations, we will be in a position to draft instruments of our own. I will say something at this stage about the level of scrutiny that will apply when we bring those instruments forward.

First, I repeat what I said to the committee when I gave evidence: I will pay close attention to the Subordinate Legislation Committee’s comments. I make clear—and I hope that members and those listening in the chamber or outside who have an interest in the bill will take this as an open invitation—that anyone who wants to propose ideas for how we can best deliver a sensible and proportionate approach to scrutinising the subordinate legislation in a way that recognises the clear wish of stakeholders to be consulted while still meeting the need to complete the process on time can be assured that their views and ideas will be listened to, because I am open to hearing them.

As I said, we have a real opportunity—one that we perhaps did not ask for, but which we nevertheless now have—to ensure that we put in place a system for passported benefits that is right and which works for our circumstances. I stress that if we want—as we all do—to ensure that we can continue to provide protection for vulnerable people, we must meet the deadlines that are imposed on us. It is incumbent on us all to recognise the importance of that.

The issue of welfare reform is of growing concern across the chamber and the entire country. I have no doubt that all members know that from their correspondence with constituents: the letters, e-mails and surgery visits that tell of the anxiety, concern and potential hardship that is being visited on disabled people and other vulnerable groups by these UK Government cuts.

The reforms are not of our making: we would not have chosen to implement some of the changes that are being implemented at this time. However, I believe passionately that one of the reasons behind the establishment of the Parliament was to empower politicians in Scotland to protect the most vulnerable. Our duty in this Parliament is to protect the most vulnerable, and this Government will do everything in its power to do that.

More importantly, as we begin to lay out our vision for welfare in an independent Scotland—a welfare system that will have fairness and compassion at its very heart—I believe that people throughout Scotland will come to realise that there is a much better way to help to support the most vulnerable members of society while supporting those who can work into work.

The concept of state benefits goes to the heart of the question of where the ultimate responsibility for the wellbeing of our people should sit. This Government believes that it should sit here, and not with the Parliament in Westminster.

We might not have the levers that we would like to have, but we will do everything in our power to tackle the impacts that I have mentioned as best we can, and we will argue that it is much better for this Parliament to make such decisions in future.

I am grateful to the committee for its positive report and for its support as we prepare to make the changes that the bill will enable.

I move,

That the Parliament agrees to the general principles of the Welfare Reform (Further Provision) (Scotland) Bill.
The Presiding Officer: I call Michael McMahon to speak on behalf of the Welfare Reform Committee. You have 10 minutes.

14:50

Michael McMahon (Uddingston and Bellshill) (Lab): I point out that, as the Welfare Reform (Further Provision) (Scotland) Bill is a relatively simple bill, I am unlikely to require my full speaking allocation. I hope that that will aid the management of the debate and earn me some brownie points.

The bill is set in the context of its Westminster parent, the Welfare Reform Act 2012. Much of the evidence that the committee heard related to that act or to other welfare reform changes that are already under way. Some of that evidence was harrowing, but I will leave it to others to speak about those issues, if they wish to. I will restrict my remarks to what the committee’s report says about the bill.

First, there was much in the bill and in the report on which the committee agreed. Fundamentally, we agreed—given the decision on the legislative consent motion on the Welfare Reform Bill—that, as a Parliament, we must make good on our commitment to take responsibility for these matters.

That was very much the view of stakeholders. Citizens Advice Scotland spoke for many when it said in its submission:

“As the Scottish Parliament rejected aspects of the UK Welfare Reform Bill Legislative Consent Motion, this bill is absolutely necessary to ensure that the citizens of Scotland still have access to passported benefits on 1 April 2013 when a raft of current benefits are effectively abolished and replaced by the new Universal Credit”.

Speaking at the start of our first evidence session with stakeholders, Jeanette Campbell of CAS said:

“We all agree that the bill is absolutely necessary”.

[Official Report, Welfare Reform Committee, 17 April 2012; c 93.]

The Welfare Reform Committee concurs with stakeholders and agrees with the general principles of the bill. We agreed on the powers that the Scottish Government wishes to take on universal credit and on those that it wishes to take on personal independence payments.

We went further than that—we also agreed some important principles to do with how we felt that those powers should be used, and it is those points that I most want to draw to the cabinet secretary’s attention.

We agreed that the powers should be used, in so far as it is possible, to mitigate some of the problems that the Welfare Reform Act 2012 will create. With that aim in mind, we also agreed that the regulations should be designed—for the transitional period at least—to preserve passported benefits for those who presently qualify for them.

In short, we look to the Scottish Government to protect the most vulnerable of our citizens who will be affected by the changes. We appreciate that it can do that only within the powers that it possesses and we acknowledge that there are no easy answers or, as we put it in the report, that “there is no magic bullet”.

On all that we agreed, but I would be doing the Parliament a disservice if I did not mention, as the report does, that there were some areas on which we did not completely agree. It would be fair to say that Alex Johnstone, as the sole representative of the UK coalition parties on the committee, was not entirely appreciative of our critique of the parent UK legislation or of our “grave concerns” about its impact. He dissented from those findings.

In addition, Jackie Baillie and I did not agree with the committee’s view on the process for agreeing the regulations under the bill—we dissented on that. We wanted a more open process for the development of the regulations. First, we wanted a consultation to be held on draft regulations. Secondly, we wanted the affirmative procedure to be used for regulations that would have a significant impact, as the Subordinate Legislation Committee suggested. Thirdly, we wanted an overall policy statement to be produced on the regulations as a whole. It would be fair to say that the committee as a whole was not comfortable with that view or with the prospect of tying the cabinet secretary’s hands in what we all accept is a difficult situation and one that is not of her own making.

I think that all members of the committee recognise how important and potentially controversial the regulations will be, in that they will involve deciding who gets free school meals, concessionary travel, blue badges for parking and so on. I know that the cabinet secretary has offered to respond to the Subordinate Legislation Committee’s concerns, and we welcome that.

Anything that the cabinet secretary can do to help to overcome the outstanding difference of view on regulations among members of the Welfare Reform Committee would be welcome. Perhaps she could come back to the committee in September, when the picture on the regulations is clearer. We are open to offers.

I close by making it clear that the committee was unanimous on some key issues. We unanimously agreed that the legislation is not just welcome, but essential; we unanimously agreed
that we should speed its passage so that everything is in place in Scotland for the start of the new welfare regime in April 2013; and we unanimously supported the general principles of the bill.

I hope that that gives members a clear starting point for debating the bill. I look forward to the debate.

The Presiding Officer: Mr McMahon, you have five minutes' worth of brownie points.

I call Jackie Baillie to speak for the Labour Party. You have 10 minutes, Ms Baillie.

14:56

Jackie Baillie (Dumbarton) (Lab): I fear that I will not be earning any brownie points from you today, Presiding Officer.

There was much that I could agree with in the cabinet secretary's opening speech. When we last debated welfare reform in this chamber, I said that we were witnessing “the single most significant attack on the welfare state in my generation”.—[Official Report, 5 October 2011; c 2451.]

I also said that it had little to do with fairness and even less to do with social justice, and that the so-called reform was simply a cover for cuts. I have seen nothing to change that view. A total of £18 billion has been stripped from out-of-work benefits and tax credits, and the Fraser of Allander institute estimates that the cuts will amount to £2 billion in Scotland alone.

We well remember David Cameron’s words that “it’s fair that those with the broadest shoulders should bear a greater load”.

What utter nonsense that was—just a few months later, he was presiding over a swingeing package of public sector cuts totalling £81 billion, including the £18 billion cuts to benefits.

Further, all that happened while the most affluent avoid paying £120 billion in taxes and bankers continue to award themselves huge bonuses. Disabled people are indeed facing the biggest attack on their rights in my lifetime. The reality of the new Tory-Liberal Britain is that those with the broadest shoulders are the poor, the disabled, the sick and the elderly.

Mary Scanlon (Highlands and Islands) (Con): Jackie Baillie has acknowledged how much she is opposed to welfare reform. I inform her that James Purnell, Labour’s former Secretary of State for Work and Pensions, is in favour of welfare reform; that Frank Field has said that Labour’s flagship welfare policy was an expensive failure; and that John Hutton, an ex-Labour minister, is at the heart of the reforms.

Jackie Baillie: I thank the member for the information, which contained points that she made in the previous debate, so there is nothing new coming from the Tory party. Nobody is rejecting a simplification of the system; we are absolutely rejecting its being used as a cover for the imposition of cuts on the most vulnerable people in our society.

Today, we must focus on the position in Scotland and think about what the changes will mean for people here claiming benefits and what impact they will have on a wide range of passported benefits such as free school meals, free national health service dental treatment, legal aid and the education maintenance allowance. If we do nothing, some people will fall through the net because they will no longer qualify for the new universal credit or the personal independence payment. Their need has not gone away, but that does not matter to the UK coalition. It must, however, matter to us.

Labour’s strong belief, which is shared by the committee, is that those who will receive universal credit or a PIP should be eligible for passported benefits. We also believe that those who are currently eligible for benefits under the existing system should remain eligible to receive passported benefits, which will address current need. There would be no real budget increase as the budgeted amounts include an allowance for that wider group already. I will illustrate that point with reference to concessionary travel.

Somebody with a learning disability currently qualifies for free concessionary travel. Given that many will no longer qualify for the disability living allowance or the new personal independence payment, their eligibility for concessionary travel would cease if we did nothing. However, the budget for concessionary travel still contains all the resources that are necessary to cover the continuing eligibility of that group of people. I welcome what the cabinet secretary said about eligibility.

Of course, the challenge arises with new claimants in the future. If we are to address the real need of a new cohort of claimants, we must consider the principles of the type of welfare system that we want. It is not good enough simply to pass on the Tory cuts; our responsibility is to mitigate the damage and protect vulnerable Scots and I expect the Scottish Government to set out that direction of travel, to be clear about its policy intentions and to explain how its regulations add up to a comprehensive whole. The stakeholders involved want that from the Government and, after reflecting on the evidence, the two Labour committee members were clear that they wanted...
the same. Unfortunately, that move was blocked by a most interesting grand coalition between Scottish National Party members and the committee’s lone Tory—but more of that later.

Labour members support the bill’s general principles; as principal movers in rejecting the legislative consent memorandum—a move without precedent in this Parliament—we recognise the need for this enabling legislation. I am very glad that the SNP supported our position to oppose the need for this enabling legislation. I am very glad that the SNP supported our position to oppose the changes and afford greater scrutiny to the Parliament.

Indeed, scrutiny is the issue that I want to turn to next. I have no doubt that the real interest lies in the regulations, which can make substantial changes to the system of passported benefits. The committee heard that the UK Government had provided insufficient information for regulations to be drafted—although it should be noted that the UK Government appears to contradict that. Whichever is the case, the UK Government will publish its regulations in mid-June, and we will then have all the information that we need to make progress.

The oral and written evidence that the committee received was overwhelmingly of the view that the regulations should be considered under the affirmative procedure. I do not want to earn a reputation as an anorak, but I will run that risk in order to explain to the outside world the difference between affirmative and negative procedure. Essentially, affirmative procedure gives committee members and those outside Parliament with an interest in the subject the opportunity to scrutinise regulations more fully. As it takes 40 days—the same length of time as the negative procedure—there will be no delay. To suggest that there will be a delay and that it will mean that the regulations will not proceed is, in fact, a red herring; indeed, the very stakeholders who are calling for more scrutiny do not want that to happen.

However, evidence in that respect was swept aside as the SNP—together, again, with the lone Tory—decided that it knew best. It ignored the evidence of witnesses and the Subordinate Legislation Committee and I believe that, in so doing, it has diminished itself and the Parliament.

Annabelle Ewing (Mid Scotland and Fife) (SNP): On the member’s last point, we clearly noted the Subordinate Legislation Committee’s position on the matter. As for the general thrust of the member’s arguments, I have said repeatedly in committee that the overriding, overarching concern of everyone the committee spoke to and took evidence from was to ensure that the legislation was in place by April 2013 and that there would be no gaps in order to protect the most vulnerable people in our society.

The Presiding Officer: I will compensate you for that speech, Ms Baillie.

Jackie Baillie: Thank you very much, Presiding Officer.

I thank the member for her intervention, but I recall distinctly what happened in committee, including the way in which the Subordinate Legislation Committee’s view was rejected.

I well remember Alex Salmond’s statement in this chamber that despite the SNP’s majority it would govern as a minority. How disappointing it is that his back benchers did not pay attention to that and instead have used their majority on the committee to block scrutiny with no regard either to the overwhelming evidence presented to the committee during stage 1 or to briefings issued today that they might care to look at.

I used to think that the best committees hunted as a pack; indeed, we need look only at the previous Health and Sport Committee to see the truth of that. Witnesses could not distinguish between members’ political allegiances, because the committee cared about the issues and worked together to resolve them. I am genuinely depressed at the way in which the powerhouse of the committee system has been dumbed down.

Political differences are one thing, but a deliberate distortion of the evidence is another entirely and we run the risk of the committee system becoming discredited.

That said, I am encouraged by the cabinet secretary’s more positive response, which stands in stark contrast to the attitude of her committee members. In that light, I urge her to prove me wrong and agree that all the regulations should be considered under the affirmative procedure to enable greater scrutiny.

Another area that was blocked by the SNP in committee related to looking at the economic and social impact of welfare reform in Scotland. The Government has looked at modelling for the impact on individuals and households, and that is very welcome indeed, but it has not gone far enough. Many of the witnesses acknowledged that the impact on services in Scotland could be huge. I and others have spoken in this chamber many times about the impact on social care services and how charging for services is dependent upon receipt of some of the benefits that are being cut. People will no longer be able to pay for their services and local authorities cannot afford to provide them for nothing. Who will pick up the tab?

Those are the areas that we must understand better but, again, the SNP committee members knew better and blocked that.

Looking to the future, there is much that I hope the Scottish Government will do. I urge the cabinet secretary to adopt a national framework that sets
out clear eligibility criteria so that we do not end up with a postcode lottery for support. I recognise that the Scottish Government does not in and of itself have the legislative power to make benefit payments, so we rely on local authorities to do that. They might well be better placed to do that because they are more local, but we need to achieve consistency. Whatever we do, we need to ensure that the system is easy to administer and understand so that we avoid cliff edges and work disincentives when someone makes a return to employment.

One issue that is emerging is the need to ensure that there is sufficient capacity in the advice sector to manage the changes. The uncertainty is already driving people into citizens advice bureau offices across the country, which cannot cope with the ever-increasing workload. As a consequence of the UK Government's decision to provide extra funding for advice agencies in England, we had additional resources of almost £1.7 million each year for this year and the next two years. Those resources have yet to be allocated. I urge the Scottish Government to allocate that funding to the voluntary sector to allow it to provide the advice and support that are so badly needed now.

There is, without a doubt, a need for a much wider debate about the kind of society we want to live in and the kind of support that we want to be in place for some of the most vulnerable people in our communities. We have a real opportunity to have that debate, to rethink how we do things, and to develop a system that works well and is underpinned by fairness and equality and focused on people's needs. It is not a debate to be delayed. With all due respect to the cabinet secretary, people cannot afford to wait until some vague point in the future because everything will be all right if we are independent. That is nonsense; people need help now. I urge the Scottish Government to work with us to ensure that vulnerable people in Scotland are protected now.

15:07

Alex Johnstone (North East Scotland) (Con): Welfare reform is one of the issues of our time. In recent decades, Governments of differing political persuasions have looked at reform of the benefits system and shied away from the challenge. The job of simplifying and streamlining the system should have been tackled long ago but, unfortunately, it was not.

The abiding message that I have taken from the stage 1 inquiry is that everyone believes that welfare reform is needed, but no one is willing to say how it might be achieved other than to look at the UK Welfare Reform Bill and say, "Not that way." However necessary the change might be, it seems that the time is never right.

For too long, millions of people have been consigned to welfare dependency, and written off with no real support to get back into sustained employment. The changes that are about to be made to the benefits system will ensure that those who are in genuine need get more support and those who could be and should be working are given the opportunity to do so.

Today, we are here to debate the general principles of the Welfare Reform (Further Provision) (Scotland) Bill. The Scottish Parliament decided to reject elements of the legislative consent memorandum on the UK Welfare Reform Bill so Scottish legislation became necessary to allow the Scottish Government the powers that it needs to implement its responsibilities under welfare reform. Although it remains my firmly held belief that the decision to refuse those powers to the UK Government was wrong, I fully accept that, that decision having been made, the provisions that are contained within the Scottish bill are now necessary. That is why, although the committee report is peppered with footnotes to indicate where I objected to specific conclusions, I join the other committee members in supporting the general principles of the bill.

In truth, it would be hard to find anything to object to in the bill, since the entire provisions fail to take up two sides of an A4 sheet of paper. The bill simply grants the powers to the Scottish Government that it would otherwise have had if it, along with its Labour allies, had not set out on an exercise of petty point scoring by denying the Westminster Government a minor part of its powers to act in Scotland. As such, the bill is no more than a fig leaf to cover the Government's embarrassment.

In reality, however, there is a real problem, which was created by the Scottish Government but which nonetheless needs to be solved quickly—that is, the issue of passported benefits. Those include free school meals, blue badges, legal aid, the energy assistance package and a series of other important support measures that are provided by the Scottish Government or local authorities but for which entitlement is based on the claimant's eligibility for one or more of the benefits that are about to be replaced.

One major change that will occur to the benefits system is the introduction of the universal credit from 2013, which will combine into a single payment jobseekers allowance, housing benefit, child credit, working tax credit, income support and employment support allowance. Then there is the personal independence payment, which will replace disability living allowance. A new assessment will be introduced that is intended to
assess people more accurately and consistently to determine who will benefit most from additional support.

The purpose of the bill is to paper over that crack. It does not contain any direct measures; it simply empowers the Scottish Government to make orders to ensure that no one falls through the net. The details will appear in subordinate legislation, which will be introduced at a later date. As of today, neither I nor the Scottish Government have much idea of what that might contain.

Nevertheless, stage 1 consideration of the bill has provided an opportunity for stakeholders to express their concerns about the potential impacts of the changes. Representatives of housing associations have expressed their serious concern that the presumption against direct payments of housing benefit to landlords might result in financial difficulties for housing associations and anyone else who provides homes for benefit claimants. If payments are made directly to claimants, they might not use the money to pay the rent. However, how can we ever expect people to behave responsibly if we do not trust them to take responsibility for themselves and their families?

Another concern is about the assessments of claimants of the personal independence payment. There is ample evidence that attempts to focus the existing support on those who require it the most have resulted in an increase in the number of assessments, which has led to a series of complaints, as individuals feel that they have been called in for the same assessment more than once. The work capability assessment was introduced by the previous Labour Government and was always felt to be too mechanistic. That is why the current minister, Chris Grayling, invited Professor Malcolm Harrington, a leading occupational therapist, to review that assessment. His report, which was produced last October, flagged up several improvements that need to be made, all of which will be implemented in time for the first assessments to take place under the new arrangements.

There is a requirement for increased advice and assistance. On that, I agree fully with Jackie Baillie. Assistance must be made available to those who find themselves in difficulty during this period of change. I have visited citizens advice bureaux that are already experiencing elevated levels of demand. I am aware that local authorities and housing associations are bracing themselves for an increased demand on staff time. Additional resources have been allocated for that purpose in England and Wales, but we need to ensure that something happens in Scotland.

Our benefits system is supposed to be a safety net, yet it has fallen some of the least well-off, who have fallen through it, while others have become entangled in the red tape. Few disagree that welfare reform is necessary. Today, we need the Scottish Government to give us not a prelude to a long stand-off, but a commitment to work together with the Westminster Government to make the process a success.

15:14

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): The debate is welcome across the chamber, perhaps with the notable exception of the Liberal Democrats, who have not bothered to show up. The party started the process with its welfare reforms but it is not represented in the chamber. At least the Conservatives had the grace to come and contribute to the debate.

I am not speaking on behalf of the Welfare Reform Committee, but as I am its deputy convener it would be remiss of me not to thank fellow committee members, the clerks to the committee for their support and advice, and those who gave evidence to the committee. We received a huge amount of very useful information that served to inform not only the report but our work going forward. As has been said, those who gave evidence are uniformly in favour of the bill.

The committee has, by and large, worked very well together to produce a good report. Based on the speeches so far, members might not feel that we worked well together but I think that, by and large, we did so. Indeed, the report urges the Parliament to back the principles of the Scottish Government’s Welfare Reform (Further Provision) (Scotland) Bill. We had to do our work in a condensed timescale due to circumstances that were outwith the control of either the Scottish Government or the Scottish Parliament.

Members might not believe it from what we have heard thus far but, as the convener said, only a small number of paragraphs in the report were not agreed unanimously. That shows that, by and large, there is a strong level of agreement across the committee on the way forward. It was somewhat disappointing that Jackie Baillie suggested last week, by way of a press release, that the report had been “butchered”. She repeated the point today—I see that she concurs—so that is still her position. Although she did not use quite such trenchant terms as she did in last week’s press release, she repeated the point to some extent.

As far as I can recall, only four paragraphs out of 118 were not agreed unanimously, and Jackie Baillie herself dissented from only two of those. Even if I do not have the figures quite correct, members will get the message that not a lot of paragraphs were not unanimously agreed. That
hardly strikes me as a report that has had the proverbial meat cleaver taken to it.

**Jackie Baillie:** The member knows, of course, the tenor and the length of the debate that we had in committee on some of those key points. It is surely not the number of paragraphs that were dissented from but their substance that is important. We feel that the paragraphs have particular import to the witnesses who provided evidence and the member has dismissed that evidence.

**Jamie Hepburn:** Not at all. I, and I hope all committee members, have reflected on the evidence before us.

Let me come to some of the areas of contention. Jackie Baillie suggested clearly in the debate—I do not know whether she deliberately tried to mislead Parliament; I am sure that that is not the case—that SNP members of the committee backed away from the suggestion that the Scottish Government should undertake modelling along the lines of that which the Welsh Government has undertaken. I note that she continues to make that suggestion from a sedentary position. Let me read paragraph 49 for Jackie Baillie. It states:

“The Committee believes that it would be useful for the Scottish Government to continue its analytical work on welfare reform, to also look at the wider economic and social impacts of welfare reform, as the Welsh Government has been doing.”

That is a fairly clear and concise statement that the committee is in favour of the position that Ms Baillie espoused. It may not have been Jackie Baillie’s preferred wording, but perhaps she needs to reflect on the fact that, although she is a substitute member of the committee, she is not the committee.

**Jackie Baillie:** I found that last point quite pathetic, to be frank. The reality is that the entirety of the discussion—it took place in private, so I regret breaching that privacy—was about refusing to include those words in the report. Perhaps in future we should discuss reports in public, so that people outside will know the truth.

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potential to inflict extensive damage. As such, it is attuned to the general tenor of UK Government policies. To me, the debate represents what this Parliament and devolution stand for: the ability to do what is right by the people of Scotland. I feel a sense of fellowship with people in England, and because I recognise that we are strongest when we stand together and not apart, I deeply regret that they do not have similar recourse.

A recent report from the Institute for Fiscal Studies states that the reforms that are planned for the next few years will “cost households an average of £160 in 2012-13, rising to £370 a year thereafter. Households with children and those in the lower part of the income distribution” will feel

“the biggest impacts as a proportion of income.”

Overall, tax and benefit changes enacted by the UK Government will “unwind the large increases in the generosity of the tax and benefit system towards low-income families with children under the previous Labour Government”.

Perhaps a more appropriate word would be “rewind”, so intent is the coalition Government on taking us back in time.

All that is before we consider the following: the impact on disabled people of the 20 per cent cut to the newly introduced personal independence payment, which will lead to thousands of disabled people losing their entitlement; the purely arbitrary cap on housing benefit, which will lead to many individuals and families not being able to secure suitable housing; and the countless complexities the act has created by transforming eligibility to passported benefits, which is likely to cause chaos and confusion on an unprecedented level and to trigger a wholesale run on advisory services.

Mary Scanlon: Does Siobhan McMahon agree that there should be a benefits cap of £26,000, or a housing benefit cap? Should benefits be limitless?

Siobhan McMahon: The key words that I used were “arbitrary cap”, which means that the cap is being applied across the board, regardless of anyone’s circumstances. What is wrong is that the individual is not being taken into consideration.

When I read through the potential consequences of the act, I find the mad rush to rip up the welfare statute book only to replace it with this sorry selection of ramshackle reforms truly astounding. We are therefore extremely fortunate that we have an opportunity to launch a counter-measure that will help us to evade, if not to avoid entirely, a portion of the damage that the act will inflict upon deprived and vulnerable people across Scotland. We cannot let this opportunity go to waste. We must seize it—indeed, we owe it to those who have no such option to do so. We must establish the extent of the damage and, in so doing, determine what we can do to offset it.

Speaking in the welfare reform debate in December, I argued that devolution of the community care grant presented us with an opportunity to improve on what we have. I read the consultation responses, and they are generally in accordance with what I suggested. The community care grant and the crisis loan should be combined to create a single fund for housing provision. The eligibility criteria should be clear and concise, the application process should be transparent, there should be a rigorous appeals process, and applicants for grants should be able to apply prior to receiving notice of housing. I hope that the Government will continue to note those proposals.

The bill primarily addresses the powers that are to be adopted by the Scottish Parliament as a result of the UK act, but the real detail will be in the subordinate legislation, which is yet to come. As the Welfare Reform Committee noted, the UK Government in general and the Department for Work and Pensions in particular have provided scant information on the practicalities of the act.

That lack of detail has proved to be obstructive because it is difficult to plan for legislation or to seek to mitigate its effects without having full knowledge of those effects.

The committee correctly stated that it is for the DWP to undertake a thorough and comprehensive review of the impact of the act on all UK regions and to make that information available to devolved and local governments. However, the continued absence of such a review—not, it must be said, for the want of asking—means that we must take matters into our own hands. As well as conducting its own modelling, the Scottish Government must co-ordinate with local authorities, independent think tanks and the third sector. That will help to establish the scale and nature of the act’s financial implications, and it will inform the work of the Welfare Reform Committee and the Scottish Government, as they attempt to find the appropriate legislative response.

We must ensure that there is the widest possible scrutiny. That seems obvious to me, but when we read the evidence that was provided to the committee and the briefings that numerous charities and external organisations have provided for today’s debate, it quickly becomes apparent that the transparency of the legislative process is a matter of general concern. It is crucial that as many organisations as possible be invited to contribute to the legislative process and that all relevant legislation is presented for scrutiny by the Welfare Reform Committee.

So far, this difficult process has been relatively consensual, and it should remain that way. I am
therefore worried by the prospect of any aspect of the subordinate legislation from the bill being passed under the negative procedure, which allows for no parliamentary scrutiny and allows subordinate legislation to be progressed during recesses. Given the bill’s likely impact on the people of Scotland, I find it odd that the Government would ever consider such action. Along with some members of the committee and most of those who gave evidence, I believe that the provisions of the bill that will come through subordinate legislation, the majority of which are likely to be significant, should be subject to affirmative procedure. The Scottish Government might say that such a move is unprecedented, but my response would be, “So is this bill.”

The only way we can offset the damage that will be done by the Welfare Reform Act 2012 is by working together. The bill is a vital piece of legislation and it deserves—or, rather, demands—the scrutiny and approval of the whole Parliament, and not just the Executive. Governments are temporary, but Parliament, I hope, will be permanent. As such, any significant subordinate legislation should be placed before it.

15:28

Annabelle Ewing (Mid Scotland and Fife) (SNP): I am pleased to have been called to speak in this stage 1 debate on the Welfare Reform (Further Provision) (Scotland) Bill, which is an enabling bill. It is always a pleasure to follow my colleague Siobhan McMahon, who always speaks up so passionately for the rights of disabled people.

As has already been said, incentivisation of work and simplification of the benefits system are laudable objectives that we can all support. What is unsupportable is the taking away of the safety net from some of the most vulnerable members of society. That is not in keeping with the basic tenets of a civilised society but, regrettably, that is what the UK Welfare Reform Act 2012 does.

I, too, am pleased to sit on the Welfare Reform Committee. As has been said, we owe gratitude to all the third sector organisations that took the time and effort to contribute, and to all the individuals who took the time and trouble to contact us via our special website mechanism, which was set up to facilitate such contact. Some of the case histories that we received illustrate well the intrinsic problems with the benefits system and the poor way in which it is implemented at present—let alone what we are about to see in the years to come. I also thank the clerks, who worked very hard indeed to keep up with the sheer volume of information that we received.

The bill is an enabling bill, and the reasons for introducing it have been set out clearly in the debate. The Scottish Parliament took a historic vote on 22 December last year to partially refuse to grant legislative consent. We, of course, need the legislation in order to ensure that we in Scotland can act on matters that are consequent on the introduction of universal credit and the personal independence payment.

The bill is therefore enabling legislation and should be seen in that context. It has six sections, whose purpose is to ensure that we can take the necessary steps with respect to passported benefits, such that they will remain in place for April 2013, which is the start date of the new UK headline benefits. That is to be secured by way of subsequent subordinate legislation. There has been much debate about process issues this afternoon and in the committee, and I have listened carefully to that debate. However, as I have said repeatedly in committee, the moral imperative is that measures be put in place for April 2013 in respect of passported benefits, and that there is no gap in provision of what is, in effect, a lifeline benefit for so many people in our society. That is the overarching objective that we should all, as parliamentarians, have.

It has been stated that we have no control over the legislative timetable, which is dictated by Westminster. In an ideal world, we could spend the next years considering specific details of what is to follow, but we do not live in an ideal world; we are nearly at the end of May and, as the cabinet secretary said earlier, we are still waiting for key information from the UK Government about the headline benefits.

So—this is where we are and this is the job that we have to do. As I said earlier, I believe that that has been recognised by all the organisations that have taken the time to be involved in the debate.

Kevin Stewart (Aberdeen Central) (SNP): I thank Ms Ewing for giving way.

It is noticeable that the Liberal Democrats are not present in the chamber and yet Willie Rennie has just been on television defending the indefensible as regards welfare reform. Does Ms Ewing think that the Liberals are as culpable as their Tory colleagues, who at least have had the decency to turn up today?

Annabelle Ewing: I thank Kevin Stewart for his intervention. I do not want to intrude on the private grief of the Con-Dem coalition, but it says something that at least my fellow Welfare Reform Committee member, Mr Johnstone, and his Conservative colleague have turned up, while the Liberals have not even bothered to send anybody to listen to the debate.
On the important issue of consultation, the cabinet secretary has made it clear throughout that she wishes to have the fullest practicably possible consultation within the timescales that have been dictated to us by Westminster. This afternoon, the cabinet secretary issued an open invitation to all interested bodies and others to submit their ideas on what they wish to see. We cannot have any greater guidance that that is the clear direction of travel that the cabinet secretary wishes to take on the matter.

In the committee, we have gone further than simply looking at the enabling provisions; we have called on the Scottish Government to proceed as far as possible with further mitigation. Of course, the caveat is that we can act only within the powers of the Scotland Act 1998 and within the fixed budget that is available to us. An interesting feature of the process has been the call for further mitigation by a number of the organisations that gave evidence.

That raises the crucial issue of where the power over welfare reform should lie as, far as the people of Scotland are concerned. An increasing number of voices in Scotland are being raised, publicly disputing the UK Government’s approach to welfare reform—they seek for Scotland something better and something improved. At the same time, there are calls for the Scottish Government to undo the harm that will flow from the Westminster policies—notwithstanding the fact that the powers and the resourcing of the welfare system still lie with the UK Government. My response to that apparent dilemma is to have a social protection system that fits our society’s values and objectives. However, to do that we need the power to set and resource our own policy. In short, we need the normal powers of a normal independent country. Only then will we see real fairness and real social justice in our country.

15:34

George Adam (Paisley) (SNP): I am not a member of the Welfare Reform Committee, but I worked with disability groups and community groups in Renfrewshire in my time as a Renfrewshire councillor and I work with them now. That has mainly involved solving problems and seeing what can be done—within the limited powers at local level or even at devolved Government level—to make things better for people. We can still work with the limited powers under devolution, so I welcome the debate.

Independence can and will make the big difference on the issue, which provides a classic example of how Scotland as an independent nation can be different and can make a difference for our people. Unlike Jackie Baillie, I think that independence is not a faraway galaxy or in the far future; it is in the here and now and will make a difference. If the Presiding Officer excuses me for saying it, independence may offer a new hope for our future. That is my vision for Scotland, as opposed to the negativity of the Westminster Parliament.

I welcome the cabinet secretary’s speech and the bill that the Scottish Government has introduced to mitigate as far as possible the effects of the UK Welfare Reform Act 2012. I have said before in the chamber—as recently as in my members’ business debate on multiple sclerosis—and I repeat, that we need reform, but not the reform that is proposed. We are dealing with the lives of vulnerable people and with families who have enough to deal with daily without having to face the financial problems that the UK Government is going to leave on their doorsteps.

The UK Government has yet again reduced the Scottish budgetary allocation. It is to reduce by £2.5 billion because of welfare reform, which will hit Scotland’s vulnerable people in the pocket. That is a major issue for Scotland and our people.

Earlier today, I met people with acquired brain injury whom Quarriers had brought to Parliament. Those people will have a problem because of welfare reform. It is difficult to diagnose and deal with issues that relate to acquired brain injury and sufferers have problems with short-term memory loss, so when they have an issue with the disability living allowance or the PIP, they might be unable to recall conversations or other things that have happened. Such benefits are to be cut from the top, as 20 per cent is to be cut from their budget.

In other debates, I have mentioned people with multiple sclerosis. Such people can look as if they are healthy, because they are not having an attack and are living their life as normal. However, six months down the line, they might need all the support and help that they can get.

Mary Scanlon: Will the member give way?

George Adam: I know exactly what Mary Scanlon is going to say, but I will give way.

Mary Scanlon: I think that, for once, George Adam does not know what I am going to say. On 17 May, a new appointment was made to the work capability assessment scrutiny group. He is a chap called Simon Gillespie, who is the head of the Multiple Sclerosis Society in the United Kingdom and is a trustee and treasurer of the Neurological Alliance. His appointment will ensure that the voice of people with brain injury or MS—I thank George Adam for all his work on that—is heard.

George Adam: Such an appointment might be okay at strategic level, but the day-to-day running of operations might be difficult. We are dealing
with people who, when they wake up in the morning and have to answer a phone call from the Department for Work and Pensions, have difficulty in remembering what day of the week it is, let alone what they did last week and how they filled in a form. Mary Scanlon has just highlighted the major difference between us and her party.

Welfare reform will have an impact on people in our communities: there has been much talk about the difference that people will experience. When I was a member of Renfrewshire Council, its scrutiny and petitions board investigated the impact on Renfrewshire of the economic downturn. The local chambers of commerce said that welfare reform would cost Renfrewshire and the town of Paisley £1 million a year, because people who are on lower incomes tend to use high streets rather than to go to out-of-town shopping centres. That alone could have a major effect on Scotland’s towns and high streets.

The impact on people worries me most. When I have hosted debates on MS and dealt with people who have MS, I have heard tragic stories. Luckily, my wife, Stacey, does not have some of the problems that others have. Would we as a Parliament put people through such experiences? I am proud that we have a cabinet secretary who will, along with the Government, stand up for such people.

In Scotland, 346,620 people claim disability living allowance. That is 346,620 people whose lives will change dramatically. Of those people, 308,000—89 per cent—receive the mobility component.

The reform could also have a major effect on how we deal with services locally, as its impact will be not just on high street retailers, but on the services that local authorities deliver.

Today, we are debating a major difference between the Scottish Parliament and its Westminster counterpart. I became involved in politics to help my community, but it was only when I married a woman who has a long-term condition that I began to understand the many issues involved. As an elected member—here and previously on Renfrewshire Council—I have worked with many groups that will be affected by the reform. Every time we make a decision, we must measure its success by its impact on the people of Scotland. This is another example, of which I am proud, of the Scottish Government’s having Scotland’s people at its heart. We must continue to protect our vulnerable people.

15:40

Anne McTaggart (Glasgow) (Lab): The Welfare Reform Act 2012 was described by the Prime Minister as a revolutionary piece of legislation that would make work pay and protect the vulnerable. We were also told that the reform would help to clamp down on benefit fraudsters who take from the state what they are not entitled to. Yet, the same coalition Government has made no attempt to tackle the tax-evading companies that fail to pay billions of pounds that they owe. Protection of those companies at the expense of some of our most vulnerable groups leads me to believe that the UK Government protects the rich and lets the vulnerable pay dearly.

We often hear in the chamber that the Scottish Government wants more powers for Scotland. The act provides exactly that. Attention now must be on what will be done with those powers. A huge number of questions need to be asked not for partisan political reasons, but because of what is at stake for some of our most vulnerable people.

Members will be well aware that I am a proud supporter of the credit union movement. There is no doubt that credit unions will be at the front line in dealing with people as welfare reform kicks in. However, the impact and scale of the reform suggest that credit unions will be stretched to the extreme, with some possibly being unable to cope with the demands that will be placed on them by the financially excluded individuals and families who will be hardest hit by the welfare reforms. Some credit unions may not have the necessary range of products to deliver relevant services to those who are most affected by the reforms. The credit unions of Glasgow strategy group has been proactive in bringing 34 of the city’s credit unions together to co-operate and to try to ensure that they can offer the best possible services. However, in other parts of the country that is not happening. It is imperative that the vulnerable groups who turn to credit unions that may not be able to cope with the increased demand are not forced into the arms of legal loan sharks or backstreet lenders.

It is important that we protect our smaller ethical financial service providers from trying to do too much for too many. Therefore, I ask the cabinet secretary what assistance the Government will provide in research and development for appropriate financial products for the people who are set to take the brunt of the reform. I also ask how the Government aims to support provision of financial advice and how it is supporting front-line organisations to work together in developing actions to mitigate the impacts of welfare reform—specifically with regard to financial products for excluded families.

The bill seems to be based on a presumption that benefits will be paid into bank accounts. Therefore, what provision has been made to ensure that individuals have an appropriate bank account that will allow them to receive their
benefits? Further questions also need to be addressed. Given that much of the access to the new system is expected to be online, are the individuals who are likely to be affected computer savvy or do we need to provide more computer courses? On computing, I have previously raised the fact that the Glasgow area has a poor rate of broadband take-up in low-income households, so there may also be issues about access to the internet for many of the people affected.

Another unanswered question, which I have heard from a number of third sector organisations, concerns the advice that is to be given to recipients. The reform means that benefits and tax credit recipients will be looking for comprehensive advice on all forms of benefits, which are currently all quite specialist areas. The changes suggest that individuals and organisations that give advice will have to increase the breadth of topics on which they provide advice. Again, it is important for them and Parliament to know how that will be orchestrated and what support will be given to ensure that it can be done.

We also need to know what the Scottish Government is doing to identify target groups, where they are located and which areas require particular types of support. Perhaps the Scottish Government’s Scottish neighbourhood statistics project could help with that. It is a great tool, which I hope the Government considers promoting.

As I said earlier, there are many unanswered questions that need to be addressed. For the sake of the individuals and families who are supported by benefits contributions, I hope that the Scottish Government listens to all parties who are concerned with providing the answers that are so desperately required.

15:46

Margaret Burgess (Cunninghame South) (SNP): As a member of the Welfare Reform Committee, I, too, thank all the organisations and individuals who gave evidence to the committee. I am encouraged by their support for the bill and by their unanimous agreement that the bill be passed swiftly in order to ensure that the secondary legislation that follows is in place well before April 2013.

The key aim of the committee is to ensure that people continue to have access to the passported benefits that, as we have heard, give a great deal of support to many of our most vulnerable citizens. We must not do anything that would delay that and let those people down. That is our priority and the priority of all the groups that gave evidence.

I was a bit disappointed during Jackie Baillie’s speech; I wondered whether she had been at the same committee, because what she told us was not necessarily what took place. I welcome the cabinet secretary’s commitment to consult widely and her assurance that the views of stakeholders will be encouraged and considered. She has said that at the heart of the process are the views of stakeholders because they are on the front line. It is a bit disingenuous to try to put a wedge between the Government, the Parliament, the SNP group and the voluntary sector, which is what I think Jackie Baillie was trying to do. That is wrong. This is about people and people’s lives.

Siobhan McMahon: Has Margaret Burgess read—as I have—the briefings from organisations that want affirmative procedure to be used? Does she agree with that view?

Margaret Burgess: I read all the briefings and what I read was very clear: the voluntary organisations want to be able to participate and to have an opportunity to scrutinise. The cabinet secretary has said that she will give them that opportunity. The Government’s priority is to ensure that we have legislation in place by April 2013 and that no one misses out. That is certainly my priority.

I will focus on a couple of areas of the report on which I think most of us agree. The report recognised that there is likely to be a significant increase in demand for advice and support services and recommended that the Scottish government examine whether it can provide additional support to organisations to which people are likely to turn for independent advice.

We recognise that the DWP has responsibility to provide advice to help claimants to make adjustments and that it should provide advice on entitlements. However, in my view, independent advice is also essential, because that is where people can get practical assistance and assistance to challenge DWP decisions.

Citizens Advice Scotland tells us that in March this year alone, citizens advice bureaux dealt with 122 new employment and support allowance inquiries every day. In tribunals at which CABx provided representation, in 69 per cent of cases the tribunal found in favour of the claimant.

We have heard about the amount of general practitioners’ time that is being taken up in writing letters in support of appeals. The report of the GPs at the deep end group, which was published in March, tells of the negative impact of benefits cuts and austerity measures on patient health and GP workload in some of our most deprived areas. A GP commented:

“I observe this again and again that I cannot address medical issues as I have to deal with the patient’s agenda first, which is getting money to feed and heat.”

I ask the cabinet secretary to consider whether we should support agencies to provide advice
services in GP surgeries in order to allow GPs to concentrate on medical matters.

Siobhan McMahon mentioned online claims, which are the responsibility of the DWP. The committee’s convener raised the matter in a letter to the DWP. I found Lord Freud’s reply, which we received on 14 May, to be wholly inadequate. Lord Freud said:

“Recent research ... found 78% of claimants currently use the internet”.

However, we know that only 61 per cent of people in Scotland have access to broadband, and that the percentage is much, much lower in deprived areas. Lord Freud also made clear that he expects “alternative access routes to be reserved for the minority” and “kept to a minimum.”

I remember the shambles when the DWP changed from paper to telephone claims. I saw at first hand how alternative access worked for people who did not have a phone. People were turned away from DWP offices; people were refused paper forms; people were not allowed to use phones in job centres and were told to go away and use family members’ phones; and people who had mobile phones could not afford the bills. People were being batted from pillar to post just to make a claim, and it took months of lobbying by front-line organisations before the DWP adopted a more sensible approach.

We cannot allow that to happen again, so I would like the cabinet secretary to ask the DWP about its proposed alternatives to online applications. What are the alternative access routes? Will the DWP assure us that applications can be made in a DWP office? How will the DWP ensure that claimants can use the technology? What assistance will it provide to third sector organisations to help people to make claims? We need the answers, which are the responsibility of the DWP in the Westminster Government—not the Scottish Government.

I look forward to hearing more evidence and to more dialogue with stakeholder groups and individuals who will be affected by the reforms. However, if we want for our people a welfare system that is fair and that looks after the vulnerable, we have to be in charge of our own social security.

15:52

Chic Brodie (South Scotland) (SNP): I welcome the opportunity to speak in this important debate. The Government at Westminster said of its Welfare Reform Bill:

“This Bill reforms ... every part of our welfare system and I look forward to implementing the changes our country badly needs.”

Maybe that country needs it, but it is certainly not what I want for my country. It is right that the Welfare Reform (Further Provision) (Scotland) Bill is a buttress to the pernicious, iniquitous provisions of the rather hurried UK Welfare Reform Act 2012.

A key finding of the Institute for Fiscal Studies is that universal credit will strengthen the incentives to work for those who currently have the weakest incentives to work. That might be acceptable if the London Government’s economic strategy, to which we are unfortunately tied, were to stimulate rather than depress employment. It might be acceptable if that Government had had the foresight to recognise the wider implications—such as the immediate increased demand on and costs for services such as health and social care—of its rather precipitous, unthinking legislation in the name of economic management. However, we have yet another unfortunate example of the Tory-Lib Dem coalition mantra, “Let them eat cake.”

Yesterday, I went to Remploy in Edinburgh with my colleague Gordon MacDonald. We went through some of the issues to see what could be done under the auspices of the Government to save the jobs of those on disability living allowance who also earn incomes. It was sad and concerning to see what might happen if that place closed. I believe that it will not, but it is sad to consider what might happen if the employees were put on the unemployment scrapheap. That will not happen on our watch.

That is why I hope that we show cross-party support to secure the consequences of the bill, which will mitigate the impact of London’s Welfare Reform Act 2012. Whatever that impact is in total—we do not yet know what the total impact will be; apparently, we will not know the full details of the proposed reforms until the middle of June—we have the nonsense of the London Government reducing our budget allocation by £2.5 billion on the basis of an as yet unspelled out programme of reforms. If any policy area highlights the difference between London’s economic management and the Scottish Government’s economic competence, that is it. If anyone has doubts about the Westminster Government’s economic incompetence, they should look at the remarks that were made by the managing director of the International Monetary Fund yesterday. I believe and hope that the Opposition parties—and even Alex Johnstone—will eschew any notion of tribalism to recognise the ill-prepared haste of the Westminster act and proposals, and that they will support the motion.

Change is constant. Of course there must be on-going reform but, instead of a meaningful and developed financial and implementation strategy on welfare changes that would have allowed an
orderly exit from poverty and despair and allowed us to redraw society and the support that it needs, we have a hurried hotchpotch of privilege.

**Kevin Stewart:** Does Mr Brodie agree with Aberdeen Action on Disability, whose view I share, that many politicians and the media are billing many folk who are incapable of working as scroungers, and that that is part of the black propaganda during the welfare reform process?

**Chic Brodie:** Yes, I agree with that. However, given the mantra and soundings that are coming from the Westminster Government, I am not surprised that they are being reflected in that way.

If it is anything, the bill is a bulwark against some of the ravages of the Westminster act. It will allow our Government to adopt the powers that it can and its responsibilities within the welfare reform arena, and it will allow us to anticipate the significant problems to be created by the changes in credits such as housing benefits and other passported benefits. Notwithstanding a particular section of the Scotland Act 1998, it will allow our Government and ministers to make provisions under regulations that affect not only universal credit but personal independence payments. How sad the change in the name of the disability living allowance to PIP is. The usual cry on the playing fields of Eton was “Pip, pip!” and that was the cry from senior members of the London Government who threw bread at each other as members of the Bullingdon club. That is sad and rather sick.

There is not one of us who would not support a welfare system that is based on a principle that lifts people out of poverty and makes work pay, but we should not slash and burn, and neither should the Government in London.

The work of the Welfare Reform Committee has to be welcomed and applauded. It is right that we take action now within our limits and where we can to mitigate the effects of the London Welfare Reform Act 2012 on our poor, vulnerable and disabled. The spirit level of fairness in our society is totally out of balance because of the policies of privilege that are exercised year after year by Westminster Governments. It will be up to us to get it back in balance for Scotland and our people.

15:59

**Margaret McDougall (West Scotland) (Lab):** I welcome the opportunity to speak in the debate at stage 1 of the Welfare Reform (Further Provision) (Scotland) Bill. I share the Welfare Reform Committee’s concerns about the UK Welfare Reform Act 2012, as the reforms hit the poorest and most vulnerable hardest. They are suffering the hidden cost of undue stress and anxiety in worrying about the effects that the reforms will have on their benefits or whether they will still qualify for those benefits. I welcome the fact that the Scottish Government has set up the committee and is trying to alleviate the damage that the act will cause. However, many questions remain, a few of which I will cover today.

The Scottish Government estimates that the bedroom tax could affect up to 39 per cent of working-age households in receipt of housing benefit. However, that is only a rough estimate, as many local authorities are still trying to develop a complete picture. Those affected will have their housing benefit cut by 14 per cent or 25 per cent, depending on the number of bedrooms that they are underoccupying. The Scottish Government and local authorities must address that mismatch in the housing stock so that tenants are not unfairly penalised, and do not fall into debt or get evicted because they are no longer able to afford the bedroom tax.

In addition, there are many issues surrounding the proposed universal credit. The new system is designed to simplify the benefit system by moving towards an online and telephone system, but it could have the opposite effect of making benefits more difficult to access. Many people do not have access to an internet connection, and those who try through the telephone system may find that they are missing out on benefits to which they are entitled. In particular, people with disabilities will find it even harder to claim the benefits that they need to survive.

I note that the Scottish Association for Mental Health and Ecas raised concerns with the committee numerous times that the new system could introduce many new problems and issues in relation to claiming benefits, claiming the correct benefits and even filling out the applications correctly. However, I did not find out from the committee report what will happen to benefits staff in Scottish councils. They are a valuable resource with local expertise and they can deal with complex claims. Will they find a new role in helping customers to move to universal credit using an electronic claim form, or will those posts be lost? Will those staff transfer to the DWP under the Transfer of Undertakings (Protection of Employment) Regulations 2006? We simply do not know.

Unison suggests that, if councils do not provide that support, other services such as Citizens Advice will be overloaded with those seeking help, support and advice. If that advice is not available, many people will lose out on benefits to which they are rightly entitled, which could lead to serious financial implications, the loss of lifeline services or—potentially—homelessness due to people not being able to claim housing benefit. COSLA considers that
"Welfare Reform alone could lead to up to an additional 3000 homeless presentations in Scotland."

The committee report noted that Citizens Advice in England and Wales has been allocated additional resources. Although the report acknowledges that it is the DWP’s responsibility to provide full and proper advice, we cannot just depend on the DWP to do so. This Government must take action to ensure that independent advice is available.

In 2010-11, Citizens Advice Scotland dealt with 203,462 benefits issues for clients. It expects that figure to increase dramatically—and it is already increasing—with the new changes. The Scottish Government should allocate that vital service additional resources. That money could be taken from the £3.2 million gained from the Barnett consequentials for the purpose of investing in support services—or are we leaving the responsibility solely at the door of the DWP?

Where is the provision in the bill for the localisation of the social fund? Community care grants and crisis loans are due to be devolved. Although there is a commitment from the Cabinet Secretary for Health and Wellbeing that there will be a social fund bill in 2013-14, to be introduced in 2015, would it not be more beneficial for such a provision to be included in this bill? It seems unnecessary to create two bills to deal with welfare reform, especially when the community care grants and crisis loans for general living expenses will be abolished from April 2013 and the new social fund bill will not be introduced until 2015—

Nicola Sturgeon: Will the member give way?

Margaret McDougall: In a second.

A series of interim arrangements will be put in place till then.

The Deputy Presiding Officer (Elaine Smith): Cabinet secretary.

Margaret McDougall: I am in my last minute.

Nicola Sturgeon: Ms McDougall came on to the point that I wanted to make anyway.

Margaret McDougall: Already cash-strapped councils will find it very difficult to cope with the costs of administration and new software, particularly if they do not know what the details of the new system will be, and claimants will be worried that vital support will not be there when they need it most.

I urge the Scottish Government to work closely with COSLA—I welcome the cabinet secretary’s announcement that she will create a post in COSLA to work on those critically important areas—and to adjust the bill so that it deals with the social fund, or to provide answers to the Parliament on what provisions will be in place. The Scottish Government did not put us in this position but, although I see the bill as a good start, many questions remain to be answered and many aspects are not covered by the bill. We need to be more forward thinking on those issues so that we can put in place the necessary provisions and support now, instead of trying to implement them when the problem is already on our doorstep.

The Deputy Presiding Officer: We have a little bit of time in hand if members want to take interventions. However, that is entirely a matter for them.

16:06

Colin Beattie (Midlothian North and Musselburgh) (SNP): When one hears the words “welfare” and “reform”, the assumption is normally made that something positive is intended, such as new measures to improve opportunities for our more socially deprived communities or radical new thoughts on how to tackle some of our more intransigent social problems. Alas, in the case of the UK coalition Government’s Welfare Reform Act 2012, there was no such positive intention; there was merely a determination to reduce the cost of providing welfare by £18 billion. There has been no adequate consideration of the direct impact that that will have on those who are dependent on benefits and zero assessment of the broader social impact. In addition, I regret to say, there is little sign of compassion and little indication of caring about the outcome or the consequences for the lives of individuals, families or their communities. It is estimated that some £39 million is to be drained out of my local economy, which will have obvious consequences for businesses and communities.

An immediate example of the coalition Government’s crude grab for cash without logic or consultation is what has happened with housing benefit. I welcome the fact that, in effect, responsibility for housing benefit is being devolved to Scotland. It costs £400 million to provide that important support to the most vulnerable in our society. As someone who has spent the past five years as a councillor dealing with housing benefit issues, I know how important housing benefit is to so many people in my constituency of Midlothian North and Musselburgh, in particular. Despite that, we found that Westminster had arbitrarily lopped 10 per cent off the £400 million, so that Scotland would receive only £360 million. That was done without any adequate discussion or negotiation and with no adequate reason, other than to save cash.

I am pleased that the Scottish Government, working with COSLA, will make up that shortfall. The pensioners and those on low incomes will also be pleased. Without that intervention, they
would have had to shoulder yet another impossible financial burden imposed by Westminster. However, that £40 million had to be found from somewhere, given the cuts that the coalition budget has made to the Scottish budget, and there is no doubt in my mind that the money would have found a good home elsewhere.

Choices are hard in the current financial situation and Westminster seems to excel in making bad situations worse. From April next year, most in-work and out-of-work benefits will be replaced with the universal credit. The intention is supposedly to simplify the whole system—if only that were the intention. The changes that are being made impose penalties on the most vulnerable in our society. Simplification of the welfare system is to be applauded, as is any proposal to make work pay and to lift people out of poverty. The UK Government's proposals will result in deep and damaging cuts to benefits and services that are a lifeline for the most vulnerable in our society.

We know that the Scottish Government has made strenuous representations to the Westminster Government and that it is working hard to mitigate the impact of the Westminster act, but a limited amount can be done because, for the most part, welfare is a reserved matter, over which the people of Scotland exercise little influence. Without the tools being placed in the hands of the Scottish people so that we can make our own decisions and determine our own priorities, we simply have to do as we are told. That is not democratic and it is not acceptable.

The Welfare Reform (Further Provision) (Scotland) Bill is intended to help mitigate the worst effects of the Westminster act. I welcome the fact that the Scottish Parliament is seeking to manage some of the worst aspects of Westminster's legislation. Unfortunately, the Scottish bill will only help the situation, not obviate the consequences.

One of the most serious impacts of the Westminster act is on how we support the most vulnerable people in their homes. Here, the pace of the change and the technical complexity of the change, coupled with a lack of detail, create a considerable challenge.

The intention to uprate the local housing allowance rates by reference to the consumer prices index decouples increases in that allowance from the housing market, which is more accurately reflected in the retail prices index. That means that theoretical rent increases will be linked to general inflation only, which creates the danger that social rents will become increasingly divergent from the market in which they must operate and will perhaps become unsustainable in the long term. The decision makes no economic sense and is clearly simply a money-saving exercise that has been conducted by someone who does not understand economics and is distanced from social reality.

A major assumption in the 2012 act is that claimants will be forced to accept smaller accommodation, which will be cheaper for the Government to pay for. Accordingly, penalties are introduced where the property is deemed larger than the occupant needs. Again, I question the understanding of basic economics of the people who make that assumption. On paper, it appears reasonable. However, it does not take a PhD in mathematics to work out that, between the social landlords and the commercial landlords, the range and type of housing stock that is envisaged simply does not exist.

**Jamie Hepburn:** Does the member agree that not only do we lack the range of housing but, more often than not, the commercial landlords will charge more, which could result in a net increase to the public purse?

**Colin Beattie:** The member is absolutely correct. There are many examples of councils contracting to private landlords at a far higher price simply in order to find housing for homeless people.

In Midlothian, the major part of which forms part of my constituency, there are around 4,500 people on waiting lists for houses. Of those, 40 per cent, or 1,800 people, are single people of all ages. There is virtually no prospect that either studio flats or one-bedroom properties are going to be built on the scale that is needed to alleviate that problem. For many of those people, the only prospect is to be accommodated in current housing stock as it becomes available, which means waiting for many years before they have an opportunity to have a settled home. The Westminster Government is again proving its lack of economic sense by trying to fit a round peg into a square hole.

**Mary Scanlon:** Given the member's expertise in economics and his assertion that the Westminster Government does not have any economic sense, does he think that it is economic sense to pay £2,000 a week—£104,000 a year—in housing benefit? That is a sum that few families in Scotland could ever afford.

**Colin Beattie:** Where the Westminster act falls short is in allowing for the needs of individuals. Newspapers talk a lot about people being paid thousands of pounds in benefits, but they are talking about a tiny number of people. The vast majority of payments are well within limits that are being laid down at the moment. The likelihood of individuals falling into serious debt—perhaps with loan sharks—and the risk of rent arrears due to
the new system for allocating income support and benefit are high and much increased under the Westminster act.

The Deputy Presiding Officer: I must ask you to conclude.

Colin Beattie: I cannot exaggerate the potential consequences or the negative social impact of Westminster’s recklessness. I believe that the bill will help to ameliorate the outcomes and uphold the principles of social justice.

16:14

Elaine Murray (Dumfriesshire) (Lab): Last year, the Parliament took the unprecedented step of deciding that it was not prepared to let the UK Government legislate for us on the devolved issues covered in its welfare reforms. For that reason, I regret that the First Minister has not attended today’s meeting of the joint ministerial committee on welfare reform. His presence at that meeting would have indicated the strength of the Scottish Parliament’s opposition to the UK Government’s reforms, and I am sure that Mr Swinney or Mr Ewing could have attended the energy event in Aberdeen in his place.

Kevin Stewart: As an Aberdonian, I have to recognise that our priority at the moment must be to increase the number of jobs in the country.

Elaine Murray: I am a bit surprised that Mr Stewart does not think that Mr Swinney would have been well able to do that had he attended the conference.

We need to pass the bill to enable work to be carried out on introducing the legislation that will cover the areas of devolved competence, principally with regard to passported benefits. Parliament has debated aspects of the UK act, including the impact of housing benefit reforms, but it was not until the Finance Committee examined the bill’s financial memorandum on 18 April that I really became aware of how little consideration the UK Government appears to have given to the impact of the reforms.

Few people would oppose reforms that made the benefits system fairer, easier to implement and more efficient or ensured that benefits were received by the people who needed them rather than those who might be defrauding the system. However, not only are the UK Government’s reforms driven by ideology and the desire to cut public expenditure, they are being introduced on a very tight timescale, especially in view of the complexity of unravelling their consequences. It almost seems as if Iain Duncan Smith and his colleagues had not thought through the impact on passported benefits and public sector agencies such as local authorities and the national health service. Perhaps they did not much care. When the bill team gave evidence to the Finance Committee, I told them that everyone was struggling in the dark because they did not have enough information. Of course, that is not the bill team’s fault.

The problem of addressing the changes to passported benefits is not unique to Scotland; the same process will have to be undertaken in England, Wales and Northern Ireland. The other devolved Administrations have taken action to model the impacts of tax and benefit reforms with a view to protecting their residents where possible. Like Siobhan McMahon, I am sorry that vulnerable people in England do not have the same protection.

To understand the implications, we need sight of the UK secondary legislation, which will set out the practical details of the operation of the reforms. However, less than 11 months before the reforms are due to take effect, information on the criteria for universal credit or personal independence payments, for example, has still not been made available. Because of that uncertainty, the bill’s financial memorandum is able to set out only the current costs of passported benefits, not the potential cost implications of any reformed system. As a result, the bodies that responded to the Finance Committee’s call for evidence found it very difficult to judge what the financial impact might be on them.

In fact, because of the sparsity of information, the Finance Committee did not submit a formal response but instead agreed that the committee convener write to the convener of the Welfare Reform Committee, who also happens to be a member of the Finance Committee, enclosing the evidence that we received and asking for clarification from the cabinet secretary on the timing, the nature and the level of detail of the financial information that the Scottish Government will provide with its subordinate legislation. We look forward to receiving that clarification. I am sure that I am not speaking out of turn when I say that the members of the Finance Committee are keen to play their part in scrutinising the secondary legislation.

The Subordinate Legislation Committee recommended the use of the affirmative procedure, but some stakeholders have asked for a higher level of scrutiny. For example, Children 1st suggested that the superaffirmative procedure be used for the first regulations produced after the bill is passed and that regulations be published in draft form to enable full consultation with stakeholders. Citizens Advice Scotland believes that
“regulations”
and
“policy on passported benefits”
must
“be scrutinised by the Welfare Reform Committee”
and CPAG urges us
"to ensure that ... urgency, attention and scrutiny is given to the detailed regulations that will follow on from the Bill".
Although the SCVO only notes the dissent of my colleagues Michael McMahon and Jackie Baillie on the need to scrutinise the regulation, its briefing highlights
“a positive opportunity for partners and stakeholders ... to work together to develop these powers for positive effect”.

Jamie Hepburn: Will the member give way?

Elaine Murray: No. I have given way once already.

I appreciate that the UK Government is imposing a tight timescale, but that must not exclude the pressing need to ensure that we get this complex process right. It is those public and third sector organisations that work most closely with people who are in receipt of passported benefits that will be best able to advise on and contribute to regulation. We need to be able to properly examine the financial implications of its implementation. As CPAG states, "Whichever approach is taken it is absolutely vital that draft regulations are made available and adequate opportunity given to scrutinise and suggest amendments before they are laid."

Citizens Advice Scotland also provided a briefing on the welfare changes that have already been introduced, including the changes to working and child tax credits and ESA that were introduced last month. More than 73,000 families in Scotland have already lost child tax credits worth £545 a year, and more than 11,000 have lost working tax credits worth up to £3,870 a year. People are already struggling to cope and, frighteningly, the IFS has advised that 88 per cent of the cuts are still to come. They are certain to impact on other services, and poverty and the requirement for support and advice will increase.

The impact of the changes needs to be thoroughly modelled and scrutinised. I urge Scottish ministers to concentrate on those issues, and work with stakeholders and Parliament rather than yield to the temptation to use the situation to make constitutional points, as some SNP members have done today.

16:21

John Mason (Glasgow Shettleston) (SNP): I could have intervened on that last point. If Elaine Murray and others do not think that the constitution is important, they should think a bit more about history and the future. We are having this debate because the constitution is important and Labour members should welcome the fact that we can have such a debate. I argue that people in England could have the debate as well, because they have their own Parliament, but perhaps it is slightly different for them. Even though they keep saying it, I do not believe that those members really believe that the constitution is unimportant.

The scope of what we can do in the bill is limited, as is the extent to which we can mitigate the effects of the UK act. Anything that we can do to simplify the system is to be welcomed. It has been made clear this afternoon that the first problem that we have all faced has been the timescale. Some members have said that things have been a little bit rushed, but the Government and the Parliament have had very little choice about how quickly to make the legislation. As has been said, we must do all that we can to protect vulnerable people and, sadly, that might sometimes mean that not all the i's are crossed and not all the t's are dotted.

A further problem is the lack of information that we have had from Westminster. It likes to think that it sets the standard for parliaments everywhere, but the standard has been pretty poor in this case.

I specifically want to talk about the social fund and crisis loans, and I welcome Nicola Sturgeon's comments about working with COSLA in that regard. I know that she wanted to intervene earlier and, if she wants to, I am happy to let her intervene on that point.

Nicola Sturgeon: I am always delighted to help my colleague out with a strategically placed intervention. I was going to intervene on Margaret McDougall but she eventually made the point that I was going to make. We need to have the new arrangements in place by April 2013, but we do not intend to introduce a bill until later than that. It is important to stress the fact that we have an agreement with COSLA to put in place from April 2013 interim arrangements with a clear national framework that we can test in practice and use to inform the legislation in due course. I hope that all members, including John Mason, agree that that is the sensible way to proceed.

John Mason: I certainly welcome that intervention.

The question of the social fund and crisis loans underlines our present position. We do not have the powers to do all the things that we would like to do. If we look beyond whether a loan is enough or not, or if the loans are even available, how can we expect people who are on a miserable level of
benefits to pay back a loan? There is something fundamentally wrong with giving people on such a level of income a loan when they should be getting a grant, but it is clearly beyond our budget and ability to do that in the short term. We have inherited that system and we have to do our best with it.

The Finance Committee looked at the financial memorandum of the bill and I will refer to one or two things from what was perhaps one of the more frustrating meetings that the Finance Committee has had. The convener started off the questions by asking:

“How much is the fact that you are operating almost in a vacuum hampering your work?” — [Official Report, Finance Committee, 18 April 2012; c 965.]

That was the theme of the discussion after that. We touched on a number of issues, including COSLA’s point that local authorities will have to work with a double system for some time. COSLA wrote:

“since most claimants will only gradually move on to new benefits between 2013 and 2017, parallel systems of entitlement will need to operate during the transition period”.

That will cause problems for local authorities.

Glasgow City Council raised the question whether the DWP, the Scottish Government and local authorities will be able to share data with one another. We await an answer on that. Elaine Murray touched on the issue of consultation with Westminster. To an extent, things were summed up when Mark McDonald said to the bill team:

“You talked about the speed at which the legislation is being put through, but it does not seem to be matched by the speed at which information is being trickled down to the devolved Administrations.” — [Official Report, Finance Committee, 18 April 2012; c 974.]

I think that all the committee members felt that.

Jamie Hepburn: Does the member therefore share the Welfare Reform Committee’s frustration that, although it wrote to Lord Freud to seek information, he responded very late in the day, just before the stage 1 report was published, and he did not really provide the information?

John Mason: Yes, I share that frustration. We still do not know whether Westminster ministers thought through the legislation or whether they were doing it on the hoof and rushing it.

The Finance Committee concluded that subordinate legislation should be accompanied by information on the likely financial implications of each instrument. The best quote on that is from a letter from our esteemed convener, Kenneth Gibson, which states:

“It would be helpful to our future scrutiny if the lead committee could seek clarification from the Cabinet Secretary on the timing, nature and level of detail of the financial information that will be provided by the Scottish Government alongside its subordinate legislation and the format in which it will be provided.”

We have had a lot of good input from third sector organisations. For example, the Child Poverty Action Group said:

“In the face of damaging UK welfare policies CPAG therefore urges the Scottish Parliament to ensure that devolved powers are used, in the face of UK cuts, to protect, and where possible enhance, the support available to low income families both in and out of work.”

We all agree with that, but the problem is that we are living with limited means. We have to live within the budget that we are given. We would like to expand things, but the budget is being cut. Nicola Sturgeon mentioned fairness and compassion. I could spend longer on the principles, but I do not have time.

Let us remember that the Welfare Reform Act 2012 is the latest harsh welfare reform legislation after the previous harsh Welfare Reform Act 2009, which came in under Labour and James Purnell. I hope that, before too long, we will be able to make the real decisions here, and that we will make better ones.

Mary Scanlon (Highlands and Islands) (Con):

Kevin Stewart and others spoke about the absence of the Lib Dems from the debate. It is not out of grace that I come here today; it is my duty as a parliamentarian and as a member of the Conservative Party, which is also in government in Westminster.

It is always an advantage to be on a committee that is considering a bill and to hear all the evidence and discussion surrounding the committee’s report. As other members have done, I thank the Welfare Reform Committee for its work. As I am not a member of that committee, my starting point was the committee’s stage 1 report. Given all the rhetoric that we have heard in recent months, I started looking for hard-hitting recommendations. I appreciate that the bill is an enabling one but, nonetheless, after reading the report, I found in total 24 paragraphs in bold, which are normally loosely termed as recommendations. Of those, I found one recommendation, in paragraph 61, which relates to stakeholder involvement. We all agree that that is absolutely essential.

Against the background of the rhetoric, there was more support for the general principles and for universal credit than I thought there would be. In various paragraphs, the committee “notes” issues; one paragraph raises “concerns” and another raises “grave concerns”; another asks the Scottish Government to consider analytical trials to
see what works; and one paragraph asks the Government to return to the issue of eligibility, as stakeholders do not have
“a common or articulated view”.

Although I have listened carefully to the debate, I am still not sure, despite all the criticisms of the eligibility criteria from Colin Beattie and others, whether the Scottish Government will bring forward its own eligibility criteria. It would be interesting to know that.

A report’s conclusion is usually where one would find the committee’s overarching concerns. However, the first conclusion “brings the collective concerns from stakeholders … to the attention of the Scottish Government”. Meanwhile, the second and final conclusion “looks forward to engaging further with stakeholders”.

I agree with all that, but I was a bit shocked, because I had expected something stronger.

Jamie Hepburn: I sense that there is disappointment on the Tory benches that the report has not been as critical as it might have been of the UK Government’s welfare reform agenda. I suggest that the member looks forward to the committee’s future reports.

Mary Scanlon: I will certainly keep a close eye on its reports and will respond in as honest and accurate a manner as I always do.

I make no apology for putting it on the record again that Labour’s former Secretary of State for Work and Pensions pointed out that

“Nine out of 10 people who came on to incapacity benefit expect to get back into work. Yet if you have been on incapacity benefit for more than two years, you are more likely to retire or die than ever get another job.”

The removal of bureaucracy and the merging of seven different benefits into one has been widely welcomed. As Jamie Hepburn said—I agree with him on this point—it is the outcomes that are important. Rather than joke about the fact that we might agree on something, I say that I think that there is more that unites than divides politicians on the issue.

Labour’s work programme scheme paid providers 53 per cent of the fee to place a person in a job. The new system will give work providers 5 per cent to get a person in a job and the remaining 95 per cent is paid over two years to ensure that people who need the support get it to help them hold down employment. No money is paid to the provider if the person becomes unemployed.

Mike MacKenzie (Highlands and Islands) (SNP): Will the member give way?

Mary Scanlon: No. The member has not been in the chamber for the whole afternoon, anyway, and I have a short amount of time.

Although George Adam dismissed the strategic changes, they are important. The DWP has already accepted the recommendations made in two reviews that Professor Harrington carried out to improve the assessment. The changes were needed.

I welcome the fact that the chief executive of the Multiple Sclerosis Society has been appointed to the independent scrutiny group that is overseeing improvements to the work capability assessment. He will provide a voice for the charity sector as the scrutiny group oversees Professor Harrington’s third review, which is now out to consultation—the consultation ends on 30 June.

There has also been an outcry from Labour and the SNP about the capping of benefits. That outcry was not shared by the majority of people who took part in a recent YouGov poll that was carried out across Scotland. It found that 72 per cent of people supported the £26,000 benefit cap, which is 3 per cent higher than the figure from the same survey in England.

The benefit cap will have a top limit of £26,000, which is equivalent to a salary of £35,000. The average salary across Scotland is £22,694 and the average salary in the Highlands is £20,000. Members should tell people who are working whether they support the benefit cap. I have not been able to get information out of anyone today about whether it is supported.

Something else that others have not mentioned is that households receiving DLA, PIP, attendance allowance and war widows allowance—and many other benefits—are exempt from the cap. No one has mentioned that.

Another reason for the establishment of the Welfare Reform Committee in the Scottish Parliament was to examine—I support this—the effects of the legislation on benefit claimants in Scotland. Apart from when I had a quick cup of tea, I have listened to every word that has been said in the debate. I would like to know: what have the 40 Scottish Labour MPs been doing at Westminster?

Jackie Baillie: Will the member take an intervention?

Mary Scanlon: I have less than half a minute left.

It is not as if Scotland is not democratically represented at Westminster, so what are they doing?

I have heard members say that the level of appeals upheld is up to 70 or 80 per cent—that is
not true. In fact, both the company running the work capability assessments and the DWP have based the figure on the 39 per cent who were considered fit for work. Of those, 37 per cent appealed, and 39 per cent of those appeals were successful. That results in an overall 14 per cent success rate for appeals, because 39 per cent of 37 per cent is 14 per cent. We need to get that accurate.

I am still not clear about what the Scottish Government will do to mitigate the measures contained in the Welfare Reform Act 2012. I am sure, however, that Labour and the SNP have significantly raised the expectations of the more than half a million people who are on benefits in Scotland. I think that those people deserve to know exactly what is planned and I hope that they will not be disappointed.

16:36

Drew Smith (Glasgow) (Lab): We have had a useful debate. It started off lively, but we have been moving slowly towards consensus. We have made a lot of progress since we first discussed this issue last year and then, most recently, about five months ago. I add my thanks to the committee convener, committee members and the clerking team. I particularly echo the appreciation from the convener, committee members and the clerking team. I particularly echo the appreciation from the Labour seats and around the chamber for the work done by many people in the voluntary sector, who, for a protracted time, have had to prepare information and evidence on the impact that welfare reform will have in Scotland—even if that evidence has been, in the words of the committee, “unrelentingly depressing”.

Earlier this week, I had the privilege of attending the General Assembly of the Church of Scotland. Ian Galloway, convener of the Kirk’s Church and Society Council, addressed the coalition Government when he said:

“Austerity is a word we hear a lot at the moment. It has a sort of moral, stiff upper lip quality about it. It sounds like something that might do us all good. The reality is somewhat different. Food banks are opening across the UK at a rate of one every four days. If austerity means that we all have to tighten our belts, and perhaps especially those who can most afford it, then so be it. However, what is really happening is that the most vulnerable are being punished out of all proportion.”

Tory and Liberal members may not like to hear that—as Kevin Stewart and Jamie Hepburn have pointed out, Liberal members so dislike hearing about it that they will not listen to it—but that view is shared by not just the church, but many, if not all, of the members on the Labour and the Government benches.

The welfare reforms will cut support to some of the most vulnerable people in our society, and the committee is right to highlight its grave concerns about the impact that cutting £2.5 billion worth of benefits will have in Scotland. I am pleased that, as a Scottish Parliament, we have a clear majority for seeking to mitigate the worst effects of some of the most disgraceful changes that the coalition parties are seeking to implement.

Mary Scanlon: Does Drew Smith think that it is right that people on DLA are left for years or decades without reassessment when their condition may have deteriorated and they may need a far higher level of support and help? Does he not agree that reassessment is necessary?

Drew Smith: The member almost makes a reasonable point. We all expect that there is a role for assessment to ensure that people get what they are entitled to and what they require. There is no role for assessment to be used to harass people or to attempt to punish them through bureaucracy.

Labour and the SNP have come together to agree that another way must be found. In rejecting the most offensive parts of the LCM, we agreed to set up a special committee of this Parliament, and the Scottish Government introduced its bill, which we have debated today at stage 1.

Jackie Baillie made it clear that the Labour Party supports the general principles of the bill. However, the test should be whether the bill meets the expectations and intentions that we had when we embarked upon the legislative process.

We should remember that we have been debating a unique piece of legislation this afternoon, as was highlighted by Michael McMahon and most recently by Elaine Murray. This is the first time that this place has rejected UK proposals in an area where a UK solution would, in our view, have been desirable and where the bulk of power and legislative authority resides at the UK level.

At the outset, the Scottish Parliament was clear. We wanted a Scottish welfare reform bill that put in place a framework to ensure that benefits could be provided to those who require them, and a bill that did that in a timescale that met both our needs and, more important, the needs of those people. We wanted a bill that provided new ways of testing eligibility for passported benefits. We wanted clarity to ensure that devolution of the social fund works to assist anyone who needs to rely on it. Most important, we wanted a bill that mitigated the worst effects of the UK Welfare Reform Act 2012 in respect of the devolved aspects.

We also wanted an opportunity for public debate about what assistance and support the Scottish Government and local government should provide. We wanted a workable set of proposals that local government and others would be able to
implement and which provided the appropriate resources to ensure that they could do their jobs.

All in all, that was a lot to expect from a short bill that largely provides enabling powers, and Labour members and others have raised concerns about whether the bill lives up to our expectations of it. We heard concerns from Siobhan McMahon about community care grants, from Anne McTaggart about financial and digital inclusion, from Margaret McDougall about housing benefit, and from both Margaret McDougall and Margaret Burgess about advice services, to which I will return later.

In effect, what we have is enabling legislation that could provide interim measures that are designed to safeguard the entitlements of those who rely on any or several benefits that are provided by devolved or local policies. That is welcome. Furthermore, we appear to have support for the principle that new applicants in groups that are currently eligible for a passported benefit should have access to what they need regardless of what future support they might have under universal credit. That is also welcome, if that is what the cabinet secretary is committing to today.

We now need much more work to be done on how that future eligibility will be assessed. In that regard, the scrutiny role of the Parliament and the committee that it set up for this express purpose will continue to be vital. The committee’s ability to work together and provide the required level of scrutiny has perhaps not been the best example of how that should be done, as we have heard today. However, it should be a clear conclusion of the stage 1 debate and the debate that has taken place in the voluntary sector that the further powers that the Scottish Government is seeking to take require a robust procedure that involves the affirmation of the Scottish Parliament. All of us who are signed up to doing something about this deserve no less, and the cabinet secretary should welcome the challenges to ensure that we are doing all that we can to mitigate, rather than demand acquiescence to the view that the Government always knows best.

Elaine Murray was right to point out that it is regrettable that the First Minister missed the joint ministerial committee meeting today, but I am sure that we are all pleased to see that the Minister for Public Health has hot-footed it back from that meeting. We look forward to hearing what information the UK Government provided. As we heard in the debate, it has been a frustration of the committee that it has not received more information from the UK Government, so I hope that more information was provided today.

We should be clear that the consultation that will follow the bill should be as full and active as possible. As Michael McMahon said, it needs to be based on draft regulations. We need to consult on proposals, because people need to know what they are commenting on and what the options are. I commend the Poverty Alliance for its evidence and its participation in the change model, which was showcased recently at the poverty assembly and which is one way of showing how people who rely on benefits should be involved in shaping what happens next.

The clear conclusion that I believe should be taken from this debate and from the evidence that the committee heard at stage 1 is that we need to do much more on the provision of information and advice as full implementation of the attacks on our welfare state draws nearer. Margaret Burgess was right to raise that point. Last year, our CABx dealt with 203,462 new benefit cases, which represented a third of their total case load, but in the same year funding for their advice services fell by 9 per cent.

All the indications are that demand will explode as benefit cuts are implemented and anxiety about new assessments increases. That could result in advice services in Scotland simply grinding to a halt. In contrast, the Scottish Government is accruing £1.7 million a year in consequentials due to increases in advice service funding in England and Wales. Why are we still waiting for the SNP to pass on that money to the front line?

Understanding what is happening to real lives out there is the Government’s test on welfare reform. Arguing over words and lines in a committee report is not the response that Scotland needs from its Parliament. Pocketing cash that could make a difference to the cash in the pockets of real people is not what is expected of the Scottish Government. Further, any attempt by the Government to obfuscate future parliamentary scrutiny of its actions by seeking to make use of a less onerous scrutiny procedure will not do either the SNP or the people whom we are trying to help any good whatsoever.

We will support the bill at stage 1, but I hope that the cabinet secretary will reflect seriously on the concerns that have been raised in this debate and that will no doubt be raised as we go forward to stage 2, and try to put in place a bill that can do what we all want it to do, which is to mitigate the effects of the welfare reforms.

The Deputy Presiding Officer: Cabinet secretary, you have until 4.58.

16:45

Nicola Sturgeon: Thank you very much, Presiding Officer.

I thank all members who have taken part in the debate. It has been a good and well-informed debate that has done the Parliament great credit.
I begin my closing speech as I started my opening speech, by thanking the Welfare Reform Committee. During the debate, we heard of the breadth and depth of committee members’ experience. Their insight into and knowledge of the issue contributed greatly to the debate.

I thank Michael McMahon for his opening speech on behalf of the committee. I was struck by a comment that he made in an interview that he gave Holyrood magazine. I will quote it because I think that it sums up the role and importance of the Welfare Reform Committee. He said:

“The greater challenge will be to now demonstrate to those organisations who fear the impact the changes will have on the already vulnerable individuals they work with that”

the creation of the Welfare Reform Committee

“was not an empty gesture.”

I absolutely agree with and support Michael McMahon’s remark.

I acknowledge—as I did in my opening speech—that the committee has already enjoyed a great deal of success in bringing stakeholders together and in ensuring that we have an informed, intelligent debate that can help the Government to formulate the policies and proposals that we need to take forward.

I will not make a habit of quoting Michael McMahon at length in the chamber, but given that I have a little bit of time at my disposal I will quote him just once more. He also said that the issue contributed greatly to the debate.

The first theme is that of scrutiny. Jackie Baillie and others raised the level of Parliamentary scrutiny that will apply to the subordinate legislation that will flow from the bill. I addressed that issue—substantially, I think—in my opening speech. Jamie Hepburn, Margaret Burgess and others also dealt with the point extremely well.

It was telling that most of Jackie Baillie’s speech was about process and not substance. I hope that this can become a point of consensus: I think that that shows that members across the Parliament and people outside the Parliament see that the Government is doing the right thing within the powers and resources that it has to protect the most vulnerable people in Scotland from the worst aspects of the 2012 act. We have done that and will continue to do that, because that is the right thing to do.

I will talk about the process issue. As I said in my opening speech, I remain open to constructive suggestions—indeed, I invite them—about how the consultative process can be made as expansive and as meaningful as possible. I repeat that the Scottish Government will make every effort to ensure that stakeholder views are listened to.

It is important for members across the chamber to reflect on the fact that, if we as a Parliament had not partially rejected the legislative consent memorandum at the end of last year, we would have had no opportunity to scrutinise the legislation. The powers would have been passed in March as part of the UK bill and this Parliament would have been bypassed until the regulations were laid, which will happen later this year. I want what we do to be meaningful and expansive, but anything that we do in the Parliament as a result of partially rejecting the legislative consent memorandum provides greater scrutiny than would otherwise have been possible.

Another point on which members must reflect is that, although the deadline of April 2013 is not of our making, it absolutely must be met. We would fail and let down the vulnerable people whom we are trying to protect if we allowed a gap to open between that date and when we put provisions in place. I say on the Government’s behalf that I am not prepared to see that happen.

A lot of work has to be done on the front line to change the administrative systems and processes that deliver passported benefits. I listen carefully to stakeholders, who have acknowledged that an additional parliamentary process might not necessarily achieve greater engagement than we can achieve through guidance and partnership
working. We must and will always balance the need for additional layers of parliamentary process and scrutiny against our absolute priority, which is to ensure no interruption in the provision of such lifeline benefits.

I say in response to Michael McMahon that I would be happy to return to the Welfare Reform Committee in the autumn to discuss the stakeholder responses to our consultation over the summer and to consider any ideas that have been proposed. I would then return early in 2013 to discuss the detail of the changes that we will make. That is the right way to proceed, as it will balance consultation with the driving priority of putting the provisions in place timely.

I will touch on the theme of mitigation, which was raised by many—if not all—members, including Jackie Baillie, Jamie Hepburn, Annabelle Ewing, Siobhan McMahon and Chic Brodie. The Scottish Government's position on mitigation is simple and has two aspects.

First, we fundamentally believe that the Department for Work and Pensions should pick up the cost of its reforms. We have made that case to the department on a number of occasions. Michael Matheson is just back from London, where he made that case again today, although he tells me that he did not have much success. That is because the UK Government is—disgracefully—still withholding the detail that we need to make progress. Margaret Burgess and others raised important questions about issues such as advice services and digital inclusion that the DWP requires to answer. We will continue to press it on those matters.

Secondly, we in the Parliament have a duty to mitigate as far as we can. We will continue to do that through the actions that the finance secretary has taken on council tax benefit and the proposals that we will make on passported benefits and the social fund successor arrangements.

Some members mentioned the particular impact of the reforms on disabled people, about which I will make a couple of points. Siobhan McMahon made several points very well, and George Adam and Anne McTaggart also addressed the matter. I take a lot of issue with many aspects of the reforms, but I absolutely deplore what the UK Government is doing to the budget for disabled people’s support, which will see current spending fall by something like £250 million a year. The only way in which the DWP can achieve that saving is by giving existing claimants less, by cutting the number of claimants or by doing a combination of those things. However, the DWP has not yet told us how it will effect the cuts. Mary Scanlon complained that the SNP and Labour are raising expectations, but I would rather do that than raise the level of uncertainty among vulnerable people in a climate that has been created by the Tories and the Liberals.

Mary Scanlon also said that she did not find the committee report hard hitting enough. Craig Tucker, an ordinary member of the public, wrote to the committee. He said that if losing entitlement to the enhanced rate of PIP “were to happen, then I risk losing my Motability car. This would be devastating for me. I could then lose my job ... I would also lose my independence.”

I do not know whether that is hard hitting enough for Mary Scanlon, but that brought the issue home to me. As everybody in the chamber knows, I am a politician who likes to find consensus where she can. However, I say to Mary Scanlon that, on this issue, there is more that divides the Government and the Tories than will ever unite us.

Mary Scanlon: There have been criticisms of the Westminster Government: that it has introduced a benefits cap of £26,000 a year—equivalent to a £35,000 salary—and a cap on housing benefit, which the SNP Government does not accept. Will the Government not accept any cap at all on those benefits?

Nicola Sturgeon: Yet again, it suits the Tories to talk about the easy cases, the people who misuse the system or the very few people in Scotland to whom a housing benefit cap would apply. Time and time again, they ignore the impact of the reforms on the most vulnerable in our society, who depend on the benefits system as a safety net. That is the reality, and we will take no lessons from the Tories on those issues.

It has been a good debate that will help the Government, in progressing proposals, to ensure that we do what we can to mitigate the worst effects of the changes. I hope that members who are concerned about the level of scrutiny reflect on the fact that the Welfare Reform Committee was brought about only as a direct result of the vote last year on legislative consent. Without that, there would have been no opportunity at all for Parliament to scrutinise the bill.

It is my strong and passionate belief that we would be much better off taking these decisions ourselves, here in this Parliament. Jackie Baillie said that we cannot just wait for independence. I agree with that. We cannot just wait for independence, and we will not. That is why the Government is taking so much action right now.

Jackie Baillie: Will the cabinet secretary give way?

Nicola Sturgeon: I am in my last minute.

Jackie Baillie’s position that it is better to live with Tory cuts than to take responsibility into our own hands in this Parliament is illogical and a
counsel of despair. That is not a position that the Scottish Government will take. We believe that there is an alternative to Tory cuts—it is called independence.

Welfare Reform (Further Provision) (Scotland) Bill: Financial Resolution

16:59

The Presiding Officer (Tricia Marwick): The next item of business is consideration of motion S4M-02778, in the name of John Swinney, on the financial resolution on the Welfare Reform (Further Provision) (Scotland) Bill.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Welfare Reform (Further Provision) (Scotland) Bill, agrees to any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament’s Standing Orders arising in consequence of the Act.—[Nicola Sturgeon.]

The Presiding Officer: The question on the motion will be put at decision time.
Background

2. The Cabinet Secretary for Health, Wellbeing and Cities Strategy responded to the report in a letter on 1 June 2012. The response is reproduced in the appendix to this paper.

3. The Bill is due to be considered at Stage 2 on Wednesday 13 June. The Committee will only have a formal role after Stage 2 if any amendments are agreed to which amend the delegated powers provisions in the Bill.

4. However, the Committee is invited to consider the Cabinet Secretary’s response in advance of Stage 2. This paper summarises the response and sets out suggested action.

Committee report
5. In its report at Stage 1, the Committee made six substantive points. These covered both the scope of the delegated powers in the Bill and the parliamentary procedure that should apply to the exercise of those powers.

6. First, the Committee accepted that it is appropriate in principle to delegate the powers in the Bill, but it considered that those powers could have a significant impact in practice (paragraph 13). Secondly, the Committee noted that it was reassured that the Scottish Government had committed to fulfilling existing consultation requirements, when appropriate, even when it exercises powers under the Bill rather than the existing ones (paragraph 19).

7. The Committee was content with the scope of the powers so far as they are necessary to enable the UK Act to be fully embedded with devolved matters (paragraph 21). However, the Committee asked that, given the breadth of the general delegated powers, serious consideration should be given to whether they should continue to be available indefinitely, and it recommended that the Parliament be required to review the justification for the continued availability of those powers after the initial implementation period (paragraph 27).

8. In considering the parliamentary procedure under which the powers should be exercised, the Committee concluded that a pragmatic and collaborative approach involving the Scottish Government, stakeholders and the Welfare Reform Committee is likely to deliver a better solution than a formal requirement for consultation or additional procedure (paragraph 42).
9. The Committee also agreed that, as provided for in the Bill, regulations that amend primary legislation should be subject to the affirmative procedure. However, it recommended that regulations which do not amend primary legislation should be capable of being made under the affirmative or negative procedure (which is sometimes referred to as “open procedure”). It also stated its expectation that Ministers would elect to use the affirmative procedure when the subject matter of the regulations is considered to be significant (paragraph 45).

Scottish Government response

10. In the Scottish Government’s response, the Cabinet Secretary welcomes the Committee’s report as considered and thought provoking. She also states that she supports the points made in paragraphs 13, 19, 21 and 42.

Review of justification for delegated powers

11. On the first of the other two points, the Cabinet Secretary states that she believes that the recommendation in paragraph 27 – for the justification of the continued availability of the general powers – is inappropriate for three reasons. First, she states that the Scottish Government needs to retain the powers in order to make any adjustments to devolved matters that are consequential to changes made by the United Kingdom Government, and thereby minimise the risk of disruption to provision.

12. Secondly, the Cabinet Secretary states that the Scottish Government requires the powers in order to make adjustments to passported benefits. In particular, it is the Scottish Government’s intention to put in place a system of passported benefits using these powers that will operate for the foreseeable future without the need for primary further legislation, and the Cabinet Secretary believes that the review mechanism would interfere with that intention.

13. Finally, the Cabinet Secretary points out that the Parliament will be informed as to the use of the powers via the subordinate legislation process, under which any Member may challenge the subordinate legislation brought forward.

Parliamentary procedure

14. The Cabinet Secretary states that she will consider further the Committee’s final recommendation, which was that regulations under the Bill that do not amend primary legislation should be capable of being made under either affirmative or negative procedure. She states that her sense is that stakeholders are more focused on maximising the value and impact of benefits rather than technical matters of parliamentary procedure, but she commits to reflecting further on the issue.

Proposed action

15. It is proposed that the Committee write to the Cabinet Secretary to clarify the Committee’s approach to the substantive points in paragraphs 27 and 45 of its report and to seek confirmation of the Scottish Government’s plans, particularly considering the tight timescales involved.

Review of justification for delegated powers

16. On the Committee’s recommendation for a review of delegated powers, it may be worth re-emphasising to the Scottish Government the reasoning behind the approach in the report, as outlined below.
17. The Committee accepted that it is appropriate in principle to delegate the powers in the Bill in order to achieve the primary objective of ensuring the continued delivery of passported benefits from 1 April 2013. However, it also commented on the breadth of the powers, which go further than those in the original UK Bill, and noted that it is largely the urgency of the current UK welfare reform project and the unknown scope of the current passported benefits that justify the conferral of these broad powers.

18. The Committee considered that the delegation of general powers to permit significant variations once the welfare reform project is completed, without any parameters, was not justified. It therefore called for serious consideration to be given to whether the delegated powers should continue to be available indefinitely. In particular, it recommended that the Parliament should review the justification for the continued availability of the general powers after the implementation of the welfare reform project.

19. As noted at Stage 1, as a result of this process the issue of passported benefits is undergoing a structured review for the first time since devolution. The Parliament is not yet aware of the Government’s policy as regards these benefits or what the review’s outcomes may be. This is of necessity, since the Scottish Government awaits the detail of the UK Welfare reforms. In these circumstances, the Committee was prepared to accept powers framed more broadly than it would normally consider acceptable.

20. Separately, the Government is seeking authority to regulate passported benefits using delegated powers once the welfare reforms are in place and settled. The circumstances in which the powers to regulate would be available are quite different. The Parliament may wish to scrutinise such a regulatory framework once it has seen the outcome of the welfare reforms, and it may wish to do so over a longer and considered timeframe. It could do so once a position of stability as regards the new UK welfare reforms and their devolved counterparts has been reached.

21. It is with the continued availability of powers which have been framed in a particular way to deal with the immediate legislative imperative that the Committee raised its concerns. Once the circumstances which gave rise to these broad powers no longer exist, the Parliament may wish to give more extensive consideration as to how devolved benefits will be regulated going forward.

Parliamentary procedure

22. As noted in the response, the Cabinet Secretary will reflect further on the Committee’s recommendation on the adoption of the open procedure for regulations that do not amend primary legislation. The Committee may therefore wish to reiterate in its response the reasoning for its recommendation, as outlined below.

23. As noted in the Committee’s report, stakeholders gave evidence to the lead Committee that, given the importance of the subject matter, the negative procedure is not a sufficient level of scrutiny for instruments that do not make amendments to primary legislation. Indeed, some suggested that a requirement for consultation on draft instruments would be merited in addition to the affirmative procedure (a “super-affirmative” procedure).

24. In its report, the Committee accepted that, given the short timetable for implementation of changes by 1 April 2013, a pragmatic and collaborative approach
is likely to deliver a better solution than a formal requirement for consultation. However, given the fact that regulations that do not amend primary legislation could have significant effects – a fact accepted by Government officials in evidence – the Committee recommended that such regulations should be capable of being made under either affirmative or negative procedure. The choice of procedure would be for Ministers to make, and they would be accountable to the Parliament for that decision.

25. As well as reiterating its thinking, the Committee may also wish to seek from the Cabinet Secretary a response to the recommendation in advance of Stage 3. Stage 3 is expected to be in the last week before summer recess, which would mean that the deadline for Stage 3 amendments is Friday 22 June.

26. In order for the Committee to consider the Scottish Government’s response and for the Government to have time to include the Committee’s views in its consideration on the Bill in advance of the deadline, the Committee is invited to seek a response from the Cabinet Secretary by Friday 15 June.

Recommendation

27. Members are invited to note the Cabinet Secretary’s response on this matter and agree that a letter be sent by the Convener, on behalf of the Committee, to—

- reiterate the reasoning behind the Committee’s recommendations on the review of delegated powers in the Bill and on adopting the open procedure for regulations that do not amend primary legislation; and

- seek a response from the Cabinet Secretary to allow the Committee to consider it in advance of the Stage 3 amendment deadline on Friday 22 June.
Dear Nigel,

I write in response to the Report of the Subordinate Legislation Committee on the Scottish Government’s Welfare Reform (Further Provision) (Scotland) Bill. I am grateful to you and your members for the time and effort you have put in to producing this report, which I found considered and thought-provoking. I’m particularly grateful to the Committee for working within tight timescales due to the need to have effective and robust secondary legislation in place by next April, that supports some of the poorest and most vulnerable members of society.

I am aware that my officials met with Committee on 17 April and that some additional, written evidence was provided by letter on 19 April. I trust this was helpful to Committee, in your consideration and drafting of your report.

As I said to the Welfare Reform Committee, when I appeared before them on 1 May, I am pleased that the evidence given to the three committees involved in the Stage One scrutiny of this Bill has provided a good consensual basis on which to proceed and I am pleased that this is reflected, for the most part, in your report.

Turning to the report itself, I see you make six substantive points. In line with the commitment I made to the Welfare Reform Committee, I have fully considered all of these and am happy to support the four made at paragraphs 13, 19, 21 and 41/42. In particular I am pleased to see at paragraph 41 that the Committee recognises as I do, that the “affirmative scrutiny of more minor changes would use up valuable committee and parliamentary time which could be better spent on other matters”.

Let me turn to your remaining two substantive points: at paragraph 27 you have recommended that, “the justification for the continued availability of general powers should be reviewed by the Parliament after the implementation period is complete and that provision to this effect should be included in the Bill”.

I do not believe that this would be appropriate for several reasons. Firstly, I believe that it is necessary for Scottish Ministers to retain these powers for as long as the UK Government retains their powers to alter aspects of the welfare system, as enabled by the UK Welfare Reform Act 2012. While these UK powers remain in place, it is possible that the UK Government may make adjustments to the UK system which would, in turn, require consequential adjustments to devolved matters – such as those we are currently preparing to make to devolved, passported benefits. For as long as we retain the powers enabled by this Bill, we would be able to make any such adjustments in a timely and efficient manner by way of subordinate legislation and, by so doing, we would be able to minimise any risk of disruption to provision. Without these powers, we would not be able to do this.

Secondly, as I advised the Welfare Reform Committee on 1 May, Scottish Ministers will require the powers delegated in this Bill in the future, to make adjustments to passported benefits. For example, to adjust an income threshold which triggers entitlement to a particular benefit, in order to take account of an inflationary rise in the cost of living. It is our intention, in bringing forward this Bill, to put in place a
system of passported benefits that will operate without the need for further primary legislation. It seems to me that a review mechanism, such as you propose, would interfere with this entirely sensible intent.

Finally, Parliament will be informed as to the use of these powers via the subordinate legislation process by which any changes will be made. There exist appropriate opportunities for any Member to challenge the subordinate legislation brought before Parliament as a result of this Bill. It is not clear to me how the review mechanism you propose would work in practice and how it would add to this. I do not accept therefore, that the need for an additional parliamentary review mechanism exists.

The remaining substantive point is made in your report, at paragraph 45, where you recommend that “regulations which do not amend primary legislation should be capable of being made under either affirmative or negative procedure”. You have also said your expectation is that “affirmative procedure would be adopted where the subject matter of those regulations is considered to be significant.”

I note that, where the Welfare Reform Committee refers to this recommendation in its report, it has welcomed my commitment to fully consider all of your Committee’s recommendations and has invited me to reflect on the evidence from stakeholders heard by that Committee throughout Stage 1.

My sense of stakeholder concerns is that they are possibly more focussed on how they can help us maximise the value and impact of these ‘lifeline’ benefits within our existing, straitened budgets, rather than with more technical matters of parliamentary procedure important though that is, my feeling is that the focus should be on consultation with stakeholders but I will further consider your recommendation in this respect.

I trust this is helpful and remain, as before, very grateful to you and the members of your Committee for their work on this Bill. I am copying this letter to Michael McMahon MSP, in his role as Convener of the Welfare Reform Committee, for his Committee’s information.

Best wishes

Nicola Sturgeon
Present:

Chic Brodie
James Dornan (Deputy Convener)
Michael McMahon
John Scott

Nigel Don (Convener)
Mike Mackenzie
John Pentland

Welfare Reform (Further Provision) (Scotland) Bill: The Committee noted the Scottish Government's response to its Stage 1 report.
Welfare Reform (Further Provision) (Scotland) Bill: After Stage 1

14:50

The Convener: Agenda item 4 is consideration of the Scottish Government’s response to the committee’s report on the bill.

Members will have seen the response to the committee’s recommendations from the Cabinet Secretary for Health, Wellbeing and Cities Strategy. There is a proposal in briefing paper SL/S4/12/16/4 to write to the cabinet secretary to clarify the reasoning behind two of the committee’s recommendations and to seek a specific response in advance of stage 3.

On reflection, I wonder whether we need to respond to the cabinet secretary. To be fair to her, she has given us the Government’s considered response. We would merely be repeating ourselves. Given that the issues are well understood and have been reflected on by the Government, and that the convener of the Welfare Reform Committee, Michael McMahon, is with us and is well aware of the issues, I confess that my instinct is to wonder whether we need to write again. The issue is out there and people know about it.

Michael McMahon (Uddingston and Bellshill) (Lab): That is a fair point, convener.

It appears that the Government is trying to have its cake and eat it. We are in uncharted territory with this bill—it came about because a legislative consent motion was rejected, which we have never done before. We had to forego the normal consultation period. We had to seek a suspension of standing orders to allow the committee to meet outwith our normal meeting times, including Thursday lunch times. We are meeting tomorrow, when we normally meet on a Tuesday, because of the foreshortened timescale for stage 2.

Many precedents are being set that we have accepted and we have worked closely with the Government to try to get the bill in place. However, the Government’s response to the points raised by this committee—and by outside organisations, to be fair—is that it wants to carry on as normal now that the bill has been established.

To get the bill in place we have had to do all sorts of things outside normal procedure, but now we are expected to follow normal procedure. That concerns me. We have not had the bill consultation that we normally have. There will be a consultation over the summer, which is not the normal way we do things. The subordinate legislation will be in the autumn—we do not know what it will be like or how it will be impacted by technical data from the Department for Work and Pensions that is still outstanding.

It concerns me that the Scottish Government is saying on the one hand, “Please treat this differently because we are in difficult circumstances,” but on the other hand is saying, “Thereafter let’s just get back to normal and let us judge things by the normal standards”. I do not think that that was the tenor of the discussion that we had at the outset of the process.

John Scott: To add to Michael McMahon’s point, it appears to me that the Government’s response has also been to take more and broader powers as a result of the uncertainty that the Welfare Reform Committee has had to deal with. There does not appear to be a time limit on those broader powers. Once the legislation is in place, are those powers any longer required? I am not sure that they are.

The Convener: My take on the cabinet secretary’s response is that as long as Westminster has the opportunity to amend what it is doing, we may need to respond. Surely you would not want to have to try to find a place in the legislative programme to be able to respond—whenever that might be needed and whatever the hue of the Government.

James Dornan (Glasgow Cathcart) (SNP): Although I accept what Michael McMahon and John Scott are saying, I am not sure how relevant it is to the issue. We asked the cabinet secretary, and she responded. If we send her the same letter, we will get the same response, so I do not think that there is any benefit in doing so. Given that time seems to be an issue, why would we add another layer to the process?

The Convener: To be fair, the cabinet secretary says:

“I will further consider your recommendation”

on the final points. I think that the Welfare Reform Committee will see that at stage 2, and we will collectively see that at stage 3.

We understand that there is an issue: it is on the record in this committee and in the Welfare Reform Committee. However, I am struggling to see that we will add anything to the process by submitting another piece of paper and asking someone else to reply. I am comfortable about leaving the issue with the subject committee.

Michael McMahon: I agree with your position, convener. I have said what I have said for the record, but I think that the comments from you and James Dornan are absolutely right. I see no purpose in pursuing the issue in this committee any longer. We have the response; it is either accepted or not, but it is the response.
The Convener: I take it that there will be a formal acknowledgement of the letter—the clerk is nodding—but that we will not write again if we are happy that that is the response that we have received. That is probably appropriate on the timescale.

Members indicated agreement.
Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 6 Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

Jackie Baillie
1 In section 1, page 1, line 13, leave out from <if> to end of line 15

Section 2

Jackie Baillie
2 In section 2, page 1, line 23, leave out from <if> to end of line 25

After section 2

Jackie Baillie
3 After section 2, insert—

<Effect of the UK Act on devolved matters: annual report

1 Before laying regulations under section 1 or 2 the Scottish Ministers must—
   (a) prepare and publish, and
   (b) lay before the Scottish Parliament,
   an annual report setting out the likely social, economic and financial effects of the UK Act, or any instrument made under it, on all matters within the responsibility of the Scottish Ministers.
2 As soon as practicable after each period of 12 months beginning on the date a report under subsection (1) is so laid, the Scottish Ministers must—
   (a) prepare and publish, and
   (b) lay before the Scottish Parliament,
   an annual report setting out the social, economic and financial effects of the UK Act, or any instrument made under it, on all matters within the responsibility of the Scottish Ministers.
3 A report under subsection (1) or (2) must include, in particular, the effects or likely effects of the UK Act or any instrument made under it on—
(a) any service or benefit, entitlement to which is based on matters affected by any provision of the UK Act,

(b) demand for other services,

within the responsibility of the Scottish Ministers.

Section 3

Jackie Baillie

4 In section 3, page 2, line 2, at end insert—

<( ) When laying regulations before the Scottish Parliament, the Scottish Ministers must also lay before the Parliament a policy statement explaining the intended effect of the regulations.>
Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. In this case, the information provided consists solely of the list of groupings (that is, the order in which the amendments will be debated). The text of the amendments set out in the order in which they will be debated is not attached on this occasion as the debating order is the same as the order in which the amendments appear in the Marshalled List.

Groupings of amendments

Parliamentary procedure for regulations
1, 2

Effect of the UK Act on devolved matters: annual report
3

Requirement for statement on intended effect of regulations
4
WELFARE REFORM COMMITTEE

EXTRACT FROM THE MINUTES

9th Meeting, 2012 (Session 4)

Wednesday 13 June 2012

Present:
Margaret Burgess    Annabelle Ewing
Jamie Hepburn (Deputy Convener) Alex Johnstone
Michael McMahon (Convener) Drew Smith
Kevin Stewart

Also present: Jackie Baillie and Nicola Sturgeon, Cabinet Secretary for Health, Wellbeing and Cities Strategy

Welfare Reform (Further Provision) (Scotland) Bill: The Committee considered the Bill at Stage 2.

The following amendments were disagreed to (by division)—
1 (For 2, Against 5, 0 Abstentions)
2 (For 2, Against 5, 0 Abstentions)
4 (For 3, Against 4, 0 Abstentions)

Amendment 3 was moved, and no member having objected, was withdrawn.

The following provisions were agreed to without amendment: sections 1, 2, 3, 4,5, 6 and the long title.

The Committee completed Stage 2 consideration of the Bill.
10:00

The Convener: We move to item 2. I apologise, but I have to read some technical information into the Official Report. It will take a wee bit of time, but we must go through this.

Agenda item 2 is stage 2 consideration of the Welfare Reform (Further Provision) (Scotland) Bill. I formally welcome to our meeting Nicola Sturgeon, the cabinet secretary. She will steer us through the Government's perspective at stage 2. I also welcome the officials who are accompanying the cabinet secretary.

Everyone should have a copy of the bill as introduced, the marshalled list of amendments that was published on Monday and the list of groupings of amendments, which sets out the order in which the amendments will be debated. The running order is set by the rules of precedence that govern the marshalled list. I will call the amendments in strict order from the marshalled list, and we cannot move backwards in the list. There will be one debate on each group of amendments.

I will call the member who lodged the first amendment in a group to speak to and move the amendment and speak to all the other amendments in the group. Members who have not lodged amendments in the group but who wish to speak should indicate that by catching my attention in the normal way. I will invite the cabinet secretary to contribute to the debate just before I move to the winding-up speech—the debate on the group will be concluded by my inviting the member who moved the first amendment in the group to wind up.

Following the debate on the group, I will check whether the member who moved the first amendment in the group wishes to press it to a vote or to withdraw it. If they wish to press it, I will put the question on the amendment. If a member wishes to withdraw their amendment after it has been moved, they must seek the committee's agreement to do that. If any committee member objects to that, the committee will immediately move to the vote on the amendment. If any member does not want to move their amendment when called, they should say, "Not moved." Please note that any other member may move the amendment under rule 9.10.14 of the standing orders. If no one moves the amendment, I will immediately call the next amendment on the marshalled list.
Only committee members are allowed to vote. Voting in any division will be by a show of hands, and it is important that members keep their hands clearly raised until the clerks have recorded the vote. The committee is required to indicate formally that it has considered and agreed each section of the bill, so I will put the question on each section at the appropriate point.

Section 1—Universal credit: further provision

The Convener: Amendment 1, in the name of Jackie Baillie, is grouped with amendment 2.

Jackie Baillie (Dumbarton) (Lab): I followed every word of what you said most diligently, convener, but I suspect that I might still get it wrong.

The amendments rehearse arguments that we have dealt with before, so I do not think that the debate will take too long. The purpose of amendments 1 and 2 is to ensure the appropriate level of scrutiny of the regulations by changing the requirement in the legislation from negative to affirmative procedure. As I said, the matter has exercised the committee and there is substantial support among stakeholders for a degree of scrutiny.

It might be worth explaining briefly the three different forms of procedure for subordinate legislation, but I will not do so in detail—I will spare members that. They are negative procedure, affirmative procedure and superaffirmative procedure. The committee discussed the matter, and some of the witnesses at stage 1 preferred the superaffirmative procedure, which would afford the greatest level of scrutiny. However, like the rest of the committee, I am mindful of the need not to prolong the timetable, as it is essential to ensure the continued payment of passported benefits and that we conclude our consideration in order to provide a degree of flexibility.

In essence, the difference between affirmative and negative procedure is that, under affirmative procedure, a vote in Parliament is required. There is no fundamental difference in timescale, because a period of 40 days is required for both procedures; however, the judgment is that the amendments would provide stakeholders with what they desire, which is more time and, certainly, more participation in the scrutiny. The committee has shown that it can work collaboratively with the cabinet secretary—everyone is agreed on the need to ensure that the regulations get through—and the judgment is that we can afford the greater degree of scrutiny.

There is an overwhelming desire for this on the part of stakeholders—it is not what we as parliamentarians want that matters. Those who have written in at stage 2, including Children 1st, Barnardo’s and Citizens Advice Scotland, and at stage 1, including Inclusion Scotland and the Scottish campaign on welfare reform, consider the regulations to be substantial, and when one considers some of the changes that will have consequences for Scotland that the United Kingdom Welfare Reform Act 2012 enacts, one can see that they are substantial issues. The judgment is that there is a requirement for much more emphasis on the negative procedure. The Subordinate Legislation Committee also acknowledged that in its report to the committee.

The Convener: I have been aware from the outset that, in some respects, we are in uncharted territory. Of necessity, this bill has not followed the normal procedures, and the members who have participated in the discussions that we have had have agreed that because of the circumstances in which we find ourselves, we cannot simply do things in the way in which they would normally be done.

There was no consultation period, which we would normally have had for primary legislation. There was an understanding that the legislation would have to encompass as much as possible, because the cabinet secretary could not know all the detail that was coming from the Department of Work and Pensions, and is probably still not as aware of that as she would like to be. However, that also means that those who will be impacted on are not aware of the information either. Therefore, there will have to be a degree of scrutiny of the information that has not yet been made available to us.

Given that that is the case, does the cabinet secretary agree that, although she will consult over the summer, a lot of detail will be missing and there will be a lot of speculation around that consultation, and that, in order to get detailed scrutiny of the legislation, we have to discuss that information as fully as possible? Does she also agree that the only way in which to ensure that that will happen is through the affirmative procedure?

Kevin Stewart (Aberdeen Central) (SNP): If I could answer that, convener, I think that one of the key issues is the level of flexibility that has been included, and I am pleased that the cabinet secretary has said that she will be consulting over the summer.

My fear about using affirmative rather than negative procedure is that there may well be
delay. We must also consider UK deadlines, some of which the cabinet secretary will not yet be aware of. Perhaps the cabinet secretary could address that when she responds.

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): This is a little bit like “Groundhog Day”. We went over the issue a number of times during stage 1 consideration of the bill. I am still not entirely convinced of the necessity of dealing with every procedure under affirmative procedure, which is what the amendments seek to ensure.

I am aware that it has been argued that this is the basis on which some witnesses wanted us to proceed—I do not think that it was the universal view. I do not get the sense that the proposal is something that every organisation was demanding of the Government. We have had, I think, one briefing from three organisations in support of the amendments. I do not think that that is an overwhelming call for the proposal to be adopted. On that basis, I am still concerned that we could be setting up an onerous task not only for the Government but for the Parliament. I do not think that it is necessary to consider every resolution on an affirmative basis, and I would be interested to hear the cabinet secretary’s views on that.

Annabelle Ewing (Mid Scotland and Fife) (SNP): I support what Jamie Hepburn has said. As I have said already in the “Groundhog Day” debates that we have had on the subject, we must ensure that there is no gap—that is our duty as parliamentarians. I fear that, if we are overly prescriptive about the process, we will miss out on the most important thing, which is to ensure that there is no gap in benefits provision.

My question for the cabinet secretary concerns her open invitation, which was made on 23 May in the stage 1 debate, for helpful suggestions from stakeholders on all issues going forward. To what extent has that offer been taken up so far?

Margaret Burgess (Cunninghame South) (SNP): My question follows on from what Annabelle Ewing just said. The Subordinate Legislation Committee does not see the need for affirmative procedure for all regulations made under the bill. Will the cabinet secretary comment on that? Will she elaborate on the type of consultation that she intends to undertake with the third sector throughout the whole process?

The Deputy First Minister and Cabinet Secretary for Health, Wellbeing and Cities Strategy (Nicola Sturgeon): I will be as brief as possible in responding to all the points that have been made.

I begin with the general point that none of the four amendments that we are debating today relates to the fundamental principle of the bill, which is that ministers should be given powers in respect of the UK Welfare Reform Act 2012. On the one hand, we should be pleased about that, because it signals general agreement on and satisfaction with what the bill is trying to do. On the other hand, there is a legitimate question about all the issues that the amendments address—I will return to the specific points in discussing later groups—which is whether any of them are best dealt with in the bill. That will perhaps be a recurring theme in my comments today.

That said, I recognise the level of stakeholder interest in these matters and that there is merit in having a further debate on the record. Everybody must understand that, although this is a debate about parliamentary procedure, it is fundamentally a debate about a real situation—whether the Parliament will be able to ensure continuity of benefit payments to some of the most vulnerable people in our society. That will be central in my mind as we go through the debate.

The convener asked a legitimate question about the fact that the bill has not followed standard, traditional parliamentary procedure and timescales because we are in uncharted territory. I am mindful of that but, as Kevin Stewart said, the fact that we are in uncharted territory will continue after the bill is on the statute book. Although I hope that the situation will change as time passes, to some extent we will still not know all the detail that we require to know. We are also always going to be subject to last-minute changes that are completely outwith our control. What we are dealing with here—perhaps for the first time in the Parliament—is a clash of parliamentary procedures. The Scottish Parliament’s procedures are not being given the respect that they are due, as we are having to operate within a timescale that has been set by the decision making and procedures of another Parliament.

The fact that we will continue to be in uncharted territory means that retaining a degree of flexibility and the ability to move quickly is absolutely paramount if we are to fulfil our primary duty of ensuring that vulnerable people are not exposed to the risk of not having continued access to passported benefits. Therefore, I cannot recommend support for amendments 1 and 2 not only because I believe that the approach that we have set out in the bill is the best, as it strikes a balance between using affirmative procedure where that is merited and having recourse to negative procedure where that is appropriate, but—and this is my fundamental concern about the amendments—because the amendments take us to the dangerously extreme position of ruling out the use of negative procedure altogether, which would expose vulnerable people to an unacceptable level of risk.
10:15

As cabinet secretary, I cannot, in all conscience, advise the committee to do that. It would create a risk that if changes had to be made at the last minute, or at very short notice, we would be left with insufficient time to make them ahead of the UK deadline. It was suggested during the debate in the chamber and again this morning that there is no fundamental difference in the timescales for the affirmative and negative procedures. I want to challenge that, head on, because it is not the case. The length of time that must concern me is the length of time that it takes for regulations to come into force. Under the affirmative procedure, regulations can come into force only after Parliament has approved them, which can take up to 40 days. Although the negative procedure still ensures that 40-day period of scrutiny, it enables regulations to come into force sooner—if necessary, after 28 days, or even sooner than that with the dispensation of the Presiding Officer. It gives the flexibility to bring regulations into force much more quickly, although the 40-day period of scrutiny is retained whether the procedure is affirmative or negative. If we rule out negative procedure, we rule out something that allows that flexibility, should we need it if we face last-minute changes.

Margaret Burgess correctly made the point that amendments 1 and 2 would go further than could be reached by any reasonable interpretation of what the Subordinate Legislation Committee said. The committee said that regulations that do not amend primary legislation should be able to be made under either the affirmative or negative procedure. Amendments 1 and 2 would remove the possibility of using the negative procedure. Applying that one-size-fits-all approach is not the right thing to do. More importantly, that approach would put vulnerable people at an unacceptable level of risk.

A couple of people have mentioned the commitment to consult. Beyond any shadow of a doubt, the commitment to consult is absolute. We will go out of our way to consult stakeholder interests as much as possible. My views on the correct level of parliamentary procedure come from a driving need to get these regulations enforced, not because I want to diminish the level of scrutiny. We will have the consultation over the summer.

Partly in response to Margaret Burgess and partly in response to Jackie Baillie, I say that I understand stakeholder groups’ views on parliamentary procedure. However, my reading of stakeholder groups’ fundamental desire is that they want to ensure that people who access passported benefits are protected. That is their overriding concern, as it is the Government’s.

What we are proposing is proportionate. It recognises the reality of our situation, which is not a reality of our making or choosing but is nevertheless one that we must deal with. It allows us to work to ensure scrutiny and to build in extra parliamentary scrutiny. I have given a very clear offer to the committee to come back at the end of the consultation, to discuss its outcome in detail, and I will continue to work as openly as I possibly can with the committee and stakeholder interests. However, we must be in a position where we can serve the interests of the people who need access to passported benefits. I think that we have struck the right approach in the bill. Amendments 1 and 2 would take us to an extreme position, which would put the people that we are meant to protect in a very exposed position. We should not do that.

Jackie Baillie: I intend to press amendment 1.

The debate was very interesting. I apologise to my colleagues who may feel that it is a bit like “Groundhog Day”, but this is the Parliament’s legislative process. Until the bill is passed, it is absolutely appropriate to test these arguments.

I say to Kevin Stewart and the cabinet secretary that it would indeed be extreme if we were advocating the superaffirmative procedure; we recognise that there is a balance to be struck. In their report to the committee on the differences between legislative processes, the clerks made it clear that a 40-day period applies in relation to affirmative and negative instruments. The cabinet secretary explained the circumstances in which the coming into force of an instrument is triggered earlier.

We expect information from the UK Government by the middle of June, as was confirmed to us in writing. Perhaps the Scottish Government is in receipt of the information. The use of the affirmative procedure would encourage all stakeholders and the Government to ensure that we get the regulations right. I think that we all want to ensure that vulnerable people have continuity of benefit provision.

It strikes me that, as well as the opportunity to consult on options, the sector wants to be consulted on draft regulations. I am not sure whether draft regulations will be available over the summer or whether an alternative approach, in which options are considered, will be taken. The Subordinate Legislation Committee’s intentions vis-à-vis its preference for the affirmative procedure are clear to me and to the convener, who happens to be a member of the Subordinate Legislation Committee.

Stakeholder groups, who work with vulnerable clients who need continuity in the provision of their passported benefits, are calling for the affirmative procedure to be used, to afford the greatest level of scrutiny. Rather than listen to me, perhaps the
committee will consider the views of stakeholder organisations. This Parliament has always been known for its evidence-based approach, both to policy making and in the operation of its committees.

I reviewed the written submissions and oral presentations and found that something like 90 per cent of the organisations that we regard as stakeholders argued for more scrutiny and for the affirmative procedure. It would be difficult for the committee to deny that evidence. Children 1st called for the superaffirmative procedure, as did Citizens Advice Scotland, although CAS acknowledged that the affirmative procedure would be sensible in the circumstances. The Child Poverty Action Group, Ecas, Enable Scotland and the Poverty Alliance all called for the affirmative procedure—and there were many more such calls.

We should have due regard to what the Scottish Association for Mental Health said, so I will quote it in full. SAMH said:

“The Joint Committee on Human Rights published a critical report on the UK Welfare Reform Bill which stated:

‘The traditional approach to welfare reform—which focuses on a framework in primary legislation accompanied by multiple regulation-making powers—can undermine parliamentary scrutiny.’

The Scottish Parliament has an opportunity to learn lessons from the passing of the UK Welfare Reform Bill, but is in danger of replicating some of the same mistakes. The Scottish Bill states that regulations will only be subject to the affirmative procedure if they add to, replace or omit any part of the text of an existing Act, otherwise they will be subject to the negative procedure.”

Members should make no mistake: the majority of regulations will be subject to the negative procedure. SAMH went on to say:

“Given the far reaching implications of these regulations, SAMH does not regard such an approach as satisfactory.”

The committee needs to reflect on the evidence with which we were presented. I press amendment 1.

The Convener: The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
McMahon, Michael (Uddingston and Bellshill) (Lab)
Smith, Drew (Glasgow) (Lab)

Against
Burgess, Margaret (Cunninghame South) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Stewart, Kevin (Aberdeen Central) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 1 disagreed to.

Section 1 agreed to.

Section 2—Personal independence payment: further provision

Amendment 2 moved—[Jackie Baillie.]

The Convener: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
McMahon, Michael (Uddingston and Bellshill) (Lab)
Smith, Drew (Glasgow) (Lab)

Against
Burgess, Margaret (Cunninghame South) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Stewart, Kevin (Aberdeen Central) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 2 disagreed to.

Section 2 agreed to.

After section 2

The Convener: Amendment 3, in the name of Jackie Baillie, is in a group on its own.

Jackie Baillie: Amendment 3 is a fairly straightforward amendment, the purpose of which is to require ministers to publish an annual report setting out the likely social, economic and financial effects of the UK Welfare Reform Act 2012. I recognise that there has been modelling, which is very welcome, but it is focused primarily on individuals and households.

We looked at the evidence that the cabinet secretary’s officials provided of additional modelling, but in my view it does not go far enough. We need to consider wider modelling, particularly of the impact on devolved services. That would reflect the Welsh Assembly Government’s approach, which I commend to the committee.

As I said before, I very much welcome the Scottish Government’s initial work, but we now need more extensive work on the impact of welfare reform on services in Scotland that we can use to inform our policy responses, monitor need and anticipate it, and shape eligibility criteria much better in the future.

I appreciate that the cabinet secretary has indicated to the committee that she is taking a two-stage approach: an interim position that ensures continuity; then a return to the whole area, with the
possibility of legislation in 2013-14, although I can be corrected on that date. If we are to undertake such consideration, we will need robust information to inform it so that we get the right policy responses and address any unforeseen consequences.

Amendment 3 is supported by Children 1st, Barnardo's, CAS and the Scottish Council for Voluntary Organisations, and what it seeks was positively articulated by the Scottish campaign on welfare reform at stage 1.

I move amendment 3.

Jamie Hepburn: I am not unsympathetic to the notion that the Scottish Government should provide as much information as possible. Indeed, it is imperative that the Scottish Government provide all the information that it can to this committee and to stakeholders out there. However, I question whether it is necessary to include in the bill a requirement for the Scottish Government to publish an annual report in that regard.

Jackie Baillie was quite right to raise consistently during stage 1 consideration the interesting point of the Welsh Assembly Government’s modelling work, but I wonder whether there was a legislative requirement for it to do that work—it is not clear to me that there was. In light of that, I question whether we need such a requirement in the bill. I would be interested to hear the cabinet secretary’s perspective on that.

Annabelle Ewing: In preparation for this meeting, I looked again at the stage 1 report. I think it deals with the issue of amendment 3 in paragraph 50, which states:

“The Committee believes that it is necessary to undertake extensive modelling to understand the impacts of welfare reform in Scotland and the policy responses to it, for example in establishing criteria for passported benefits. The Committee considers that it is primarily the responsibility of the DWP to undertake this work and to provide the Scottish Government with full access to this information. The Committee supports the work that the Scottish Government is undertaking and urges it to make the results public.”

That is a fair reflection of what the committee felt during the debate that led to the stage 1 report. In light of that, I do not think that amendment 3 is necessary. The Scottish Government has made it clear that it intends to collate as much information as possible in this regard and to make it publicly available.

We must recall the parameters within which we operate in this debate, which is that powers over welfare are reserved to the Westminster Parliament and that welfare is resourced through that Parliament. We must bear that in mind in every discussion that we have on welfare, otherwise there might be an expectation that the Scottish Government, which has no resources for welfare nor power over it, will do things that cut across what the Westminster Government should do. I hope that all the people who are interested in the debate will call for the Westminster Government to provide as much modelling as possible.

10:30

Drew Smith (Glasgow) (Lab): It seems to me that there were a couple of contradictory arguments there. Irrespective of whether it is the DWP’s responsibility to do the modelling work, if it is not done, will we be satisfied just to leave it at that?

There is an acknowledgment across the sector that the work that the Welsh Government has done on the broader analysis, particularly how it affects the totality of devolved services, suggests that there is more that we could do.

It seems to me that there are two arguments. One is that the modelling is being done anyway and that all the information will be available, in which case, I do not see what the argument is against ensuring that we have a device to pull it all together—that does not seem to be a particularly onerous task for the Government. The other argument is that the work is not being done, or at least is not being done at the same level as it is in Wales, or there is a deficiency on the part of the DWP, in which case the amendment is absolutely necessary.

Kevin Stewart: I agree completely and utterly with my colleague, Annabelle Ewing, about where the responsibility lies. I know that we are not going to debate the constitutional issue to any huge degree today, but members need to take cognisance of where powers lie at this moment in time.

I do not understand why it would be necessary to write the measure into the bill. An annual report is quite restrictive. We should be looking at more flexibility in relation to scrutiny over the next few months and years, as the measures impact. I do not think that scrutiny will be possible to the same degree if we say, in the bill, that there will be only an annual report. Any Government would simply say, “You will get the information when the annual report comes out.” If you have flexibility, which I think that the cabinet secretary has offered previously, you can scrutinise issues throughout the year. That will enable us to scrutinise the actions of not only this Government, with regard to its responsibilities for passported benefits, but the DWP, in relation to its responsibilities for other aspects of the modelling.
I see no need to include in the bill a requirement for an annual report. Further, I think that that is more restrictive than it is beneficial, which the mover of the amendment seems to think that it would be.

**The Convener:** Kevin Stewart raised the issue of where power lies in relation to this legislation. We are dealing with a bill that is before the Scottish Parliament, and the power lies with the Scottish Parliament. As I mentioned earlier, at stage 1 we agreed the principle that, under the circumstances, the cabinet secretary needs to have the widest possible powers so that she is able to take forward the issues that stakeholders want her to address in relation to the Westminster legislation. Given the powers that the cabinet secretary will get from the bill, it is not too much to ask that she deliver one report to ensure that people are informed of what progress is being made. Given the extent of the powers that are available to her, I do not think that that is an onerous task.

**Nicola Sturgeon:** The first thing to say about amendment 3 is that I have no difficulty whatsoever with it in principle. I have already said to the committee and have said previously to the Parliament that this is the kind of information that I have no difficulty in agreeing to provide. I have already given the committee in writing a clear undertaking to assess the available information on economic and social impacts and see whether that points to further work that we should be doing. As envisaged, that would not go as far as an annual report to the Parliament, but that is something that we are happy to consider. I have no difficulty with the principle behind the amendment, which is that we should ensure that the Parliament is kept informed of the economic and social impacts of the UK act.

Like Jamie Hepburn, Annabelle Ewing and Kevin Stewart, I seriously question the need to include the proposal in the bill. Jamie Hepburn asked a legitimate question. We are holding up the Welsh model as the model of what we are trying to achieve, but that does not necessarily need a legislative underpinning to achieve it. What the amendment is trying to achieve can be achieved easily without putting the proposal in statute. Kevin Stewart’s point about the danger that putting something in statute ends up restricting flexibility is also valid. That is my view on the matter.

In the interests of consensus and trying to see whether there is a way forward, I will make a proposal in relation to amendment 3—although not in relation to amendment 4, because, as I will make clear in a minute, I believe that there is absolutely no argument for the inclusion of that amendment in the bill. If there is a way of including something in the bill that gives a commitment of the nature that is called for in amendment 3, I am happy to explore that further. However, I do not think that amendment 3 is the right way in which to do that.

There are two reasons for that. First, there does not appear to be any overwhelming reason why the first annual report should be produced before we lay regulations. The issue is an on-going one. Jackie Baillie mentioned primary legislation that is coming down the track on the social fund. We would clearly want to have the most up-to-date information on that. There is no real grounding in argument for tying ourselves into producing an annual report before we lay regulations.

Secondly, to return to Kevin Stewart’s point, we would have to be clear about what we want the annual report to cover, to avoid casting it so widely that it is potentially meaningless or so narrowly that we run into the restrictions that Kevin Stewart talked about.

I do not see the need for an annual report to the Parliament but, if Jackie Baillie is prepared to withdraw amendment 3, I would be happy to discuss with her or other committee members whether it is possible to frame an amendment for stage 3 that would fit those purposes. I am not saying that we will definitely get to that outcome, but I am certainly willing for my officials to have that discussion.

**Jackie Baillie:** In the spirit of consensus, I will accept that offer and will be happy to seek leave to withdraw amendment 3. In doing so, I observe Jamie Hepburn’s nice turn of phrase in talking about consistency, rather than groundhog day—I much prefer his formulation. The difference between the proposal in the amendment and the Welsh model is that, in Wales, they are actually doing it. Here, we have invited the cabinet secretary to consider the proposal and she has repeated the commitment that she has already given us to assess what has been done and whether there is a requirement to do more. At this stage, there is no indication of whether she agrees that there is a requirement to do more.

A fundamental point is that the issue is not, as Annabelle Ewing suggested, a matter for the DWP. The DWP should absolutely do work to model the impact on individuals and households but, in relation to devolved services, who is better placed to model the impact than the Parliament to which those services are devolved? Although I do not want to fall out with Annabelle Ewing, she failed to quote from a further paragraph in the stage 1 report that noted the need to model the impact on devolved services.

We have all talked consistently about the impact on care services. We know that some local authorities base their charging structures on the
receipt of disability living allowance. A number of people who currently receive DLA will not qualify for the personal independence payment. We are in danger of creating—not at our own hand, but as a consequence of the UK Government’s welfare reform—a perfect storm in which those people will be unable to pay for services and local authorities will not have the resources to deal with them. We cannot afford simply to stick our heads in the sand and say that there is no impact on devolved services or that we are waiting for the UK Government to model that. This Parliament has a responsibility to model the impacts and to do an effective job to protect the most vulnerable.

As I said, in the spirit of consensus, I am prepared to seek leave to withdraw the amendment on the basis that there will be dialogue with the cabinet secretary’s officials.

Amendment 3, by agreement, withdrawn.

Section 3—Regulations under this Act: ancillary provision

The Convener: Amendment 4, in the name of Jackie Baillie, is in a group on its own.

Jackie Baillie: I promise that the discussion on amendment 4 will be the briefest of the lot, but it will certainly, in Jamie Hepburn language, be consistent. The purpose of the amendment is to require the Government to lay a policy statement before the Parliament explaining the intended effect of the regulations. Currently, regulations are accompanied by a technical note, which does not set the policy context or the underpinning approach. There is a story to tell about the policy context and the impact of the UK Welfare Reform Act 2012. Potentially, there is a good story to tell about the Scottish Government’s approach to mitigating that impact. That will not be captured by a plethora of technical notes on regulations.

If we want to be clear about what we are aiming to do, a policy statement is the very least that we can do. It is equally important that the regulations are coherent and consistent with that framework and that we understand what ministers are trying to do. It is a complex area. In lodging amendment 4, my desire is to introduce clarity of intention.

I move amendment 4.

Drew Smith: I have a question for the cabinet secretary. A range of regulations might flow from the bill, which will impinge on a number of Government portfolios. Although the cabinet secretary has set out her policy intention in the debate on the bill, amendment 4 gives her the opportunity to set out the policy direction of the Government as a whole. Other ministers may bring forward regulations at different times in future. Does she recognise that there might be some benefit in having consistency in ministers’ approach across Government?

Nicola Sturgeon: As with amendment 3, I have no difficulty in principle with amendment 4. I am happy to give a commitment to introduce a policy statement. However, I do not think that it is appropriate to make a provision for that in the bill, for all the reasons that we discussed in relation to amendment 3.

Furthermore, amendment 4 does not take the right approach. I shall explain that. There is merit in having a policy statement when regulations are laid—I am happy to give that commitment—but that will be next year, and I argue that the Parliament should see that kind of policy statement earlier than that. We are about to have a consultation. The appropriate time to have an initial indication of an overall policy direction is when that consultation concludes. My intention is to bring a policy statement earlier—before the regulations are laid—and to update it when we get towards the regulations in the new year. That is a far more sensible approach, which sets a clear policy direction while allowing flexibility to ensure that the Parliament is being meaningfully informed of overall policy intent and not boxed in to a procedural approach that might not suit the circumstances that we are dealing with.

I have no problem in principle with a policy statement, but I fundamentally disagree that a requirement for it should be included in the bill. Even if we were persuaded that it should be in the bill, if we wanted to get the most benefit out of that approach, amendment 4 is not drafted in the most sensible way.

Jackie Baillie: It is interesting how debates move on. This is not groundhog day, because in committee a number of members rejected the notion of any policy statement, so this is a welcome move from the cabinet secretary. However, I did not quite hear her suggest that she would be willing to discuss the issue further and consider a redraft to get to where we intended. On the basis that that olive branch was not offered to me, I will press amendment 4.

The Convener: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Johnstone, Alex (North East Scotland) (Con)
McMahon, Michael (Uddingston and Bellshill) (Lab)
Smith, Drew (Glasgow) (Lab)

Against
Burgess, Margaret (Cunninghame South) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
The Convener: The result of the division is: For 3, Against 4, Abstentions 0.
Amendment 4 disagreed to.
Section 3 agreed to.
Sections 4 to 6 agreed to.
Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank the cabinet secretary for her attendance.

The Parliament has not yet determined when stage 3 will take place, but members can lodge stage 3 amendments with the legislation team at any time. Members will be informed of the deadline for amendments once it has been determined.

Meeting closed at 10:44.
Welfare Reform (Further Provision) (Scotland) Bill

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 6

Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

Drew Smith

Supported by: Jackie Baillie

1 In section 1, page 1, line 13, leave out from <if> to end of line 15

Section 2

Drew Smith

Supported by: Jackie Baillie

2 In section 2, page 1, line 23, leave out from <if> to end of line 25

Section 3

Nicola Sturgeon

4 In section 3, page 2, line 4, after first <of> insert—

<(  )>

Nicola Sturgeon

5 In section 3, page 2, line 5, leave out <of> and insert—

<(  )>

Nicola Sturgeon

6 In section 3, page 2, line 5, leave out <it> and insert <that Act>

Nicola Sturgeon

7 In section 3, page 2, line 8, after <portion> insert <or instrument>
After section 3

Nicola Sturgeon

8 After section 3, insert—

<Impact of reform: annual reporting

(1) The Scottish Ministers must prepare an initial report giving such information as they consider appropriate about the impact that the UK Act is likely to have on people in Scotland.

(2) The initial report is to be laid before the Scottish Parliament on or before 30 June 2013.

(3) The Scottish Ministers must prepare an annual report giving such information as they consider appropriate about the impact that the UK Act is having on people in Scotland.

(4) An annual report is—

(a) starting with 2014, required each year until 2017,

(b) to be laid before the Scottish Parliament on or before 30 June in the year concerned.

(5) The initial report or an annual report may include such additional information as the Scottish Ministers consider appropriate.

(6) The references in subsections (1) and (3) to the impact of the UK Act include that arising directly or indirectly from the effect of—

(a) a relevant portion of that Act, or

(b) a relevant instrument made under that Act.

(7) The Scottish Ministers may by order—

(a) modify subsection (2) by substituting a later date for the date specified in it,

(b) modify subsection (4) by—

(i) substituting a later year for the second year specified in paragraph (a),

(ii) substituting a later date for the date specified in paragraph (b).

(8) An order under subsection (7) is subject to the negative procedure.>

Drew Smith
Supported by: Jackie Baillie

3 After section 3, insert—

<Regulations under this Act: policy statement

(1) The Scottish Ministers must prepare a written statement explaining the policy objectives of regulations they are considering making under this Act.

(2) Before preparing the statement under subsection (1), the Scottish Ministers must consult such persons as appear to them to be appropriate on the principles on which such regulations are expected to be based.

(3) The statement prepared under subsection (1) must be laid before the Scottish Parliament—

(a) as soon as practicable after the consultation under subsection (2) has concluded, and
(b) before laying the first regulations under this Act before the Parliament.
Groupings of Amendments for Stage 3

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the day of Stage 3 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

**Groupings of amendments**

**Note:** The time limit indicated is that set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on the groups must be concluded by the time indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings.

**Group 1: Parliamentary procedure for regulations**
1, 2

**Group 2: Minor technical amendments**
4, 5, 6, 7

**Group 3: Impact of UK Act: annual reporting**
8

**Group 4: Requirement for policy statement on intended effect of regulations**
3

Debate to end no later than 55 minutes after proceedings begin
Note: (DT) signifies a decision taken at Decision Time.

**Business Motion: Welfare Reform (Further Provision) (Scotland) Bill:** Bruce Crawford, on behalf of the Parliamentary Bureau, moved S4M-03496—That the Parliament agrees that, during stage 3 of the Welfare Reform (Further Provision) (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

Groups 1 to 4: 55 minutes.

The motion was agreed to.

**Welfare Reform (Further Provision) (Scotland) Bill - Stage 3:** The Bill was considered at Stage 3.

The following amendments were agreed to (without division): 4, 5, 6 and 7.

Amendment 8 was agreed to (by division: For 102, Against 13, Abstentions 0).

The following amendments were disagreed to (by division):

1 (For 35, Against 79, Abstentions 0)
2 (For 35, Against 80, Abstentions 0)
3 (For 51, Against 64, Abstentions 0).

**Welfare Reform (Further Provision) (Scotland) Bill - Stage 3:** The Cabinet Secretary for Health, Welfare and Cities Strategy (Nicola Sturgeon) moved S4M-03406—That the Parliament agrees that the Welfare Reform (Further Provision) (Scotland) Bill be passed.

After debate, the motion was agreed to (DT).
Welfare Reform (Further Provision) (Scotland) Bill: Stage 3

The Deputy Presiding Officer (John Scott): The next item of business is stage 3 proceedings on the Welfare Reform (Further Provision) (Scotland) Bill. In dealing with the amendments, members should have: the bill as amended at stage 2; the marshalled list; and the groupings.

For the first division of the afternoon, the division bell will sound and proceedings will be suspended for five minutes. The period of voting for the first division will be 30 seconds; thereafter, I will allow a voting period of one minute for the first division after a debate. All other divisions will be 30 seconds. Members who wish to speak in the debate on any group of amendments should press their request-to-speak button as soon as possible after I call the group.

Members should now refer to the marshalled list of amendments.

Section 1—Universal credit: further provision

The Deputy Presiding Officer: Amendment 1, in the name of Drew Smith, is grouped with amendment 2.

Drew Smith (Glasgow) (Lab): The purpose of amendments 1 and 2 is to ensure a more appropriate level of scrutiny of the regulations that will emanate from the bill. If agreed to, both amendments would require regulations to be subject to affirmative rather than negative procedure.

The issue of the use of negative or affirmative procedure for subordinate legislation does not usually excite the interest of many members of the Parliament, far less those outside it. However, the matter has been discussed at some length by the Welfare Reform Committee and debated at stage 2, and I have brought the amendments back at stage 3 because there is still substantial support among stakeholders for a greater degree of scrutiny of the regulations than that proposed by the Cabinet Secretary for Health, Wellbeing and Cities Strategy. As this is an enabling bill, the regulations that arise will form the main substance of the interaction between welfare reform and links to passported benefits.

As a former member of the Subordinate Legislation Committee, I understand that there are three types of procedure for dealing with such legislation: negative, affirmative and super-affirmative. Instead of seeking to lecture those more experienced than myself, I will simply trust that members across the chamber understand the differences between each. Suffice it to say, however, that moving from negative to affirmative procedure would mean that the regulations would become subject to a vote in Parliament.

Stakeholders who have made representations to the Welfare Reform Committee and who have lobbied in support of amendments 1 and 2 are concerned that the regulations should be right as well as timely. The timescales for both negative and affirmative procedure are the same—40 days—and many of the charities and others who support the amendments initially preferred the use of super-affirmative procedure to guarantee maximum scrutiny and the widest possible consideration. However, they have come to accept the compromise of affirmative procedure because they are as concerned as the cabinet secretary is that the tight timescales to which the Scottish Government must work are adhered to. I agree with them for the same reason, and because I was concerned that the use of super-affirmative procedure would not provide Scottish ministers with all the flexibility that they may need.

The timetable is essential to ensure the continued provision of passported benefits when the United Kingdom welfare reform changes come into force. It is also necessary that consideration is concluded before the new financial year.

"The traditional approach to welfare reform—which focuses on a framework in primary legislation accompanied by multiple regulation-making powers—can undermine parliamentary scrutiny."

Those are not my words, but those of the Joint Committee on Human Rights, which published a critical report on the United Kingdom Welfare Reform Bill, which should serve as a warning to the Scottish Parliament and the Scottish Government against their repeating the same mistakes.

The cabinet secretary indicated at stage 1 that over the summer she would seek views on the regulations. I, and others, welcomed that at that time, and do so again today. I note that she has published a consultation on the subject. I would be grateful if, when she responds to the points that I have made so far, she would indicate whether she has now ruled out consulting on draft regulations, in favour of asking open-ended questions.

If there is a will to work together on the issue of procedure, I am sure that a way can be found to make the affirmative procedure work, and the debate can then move on to matters of greater political principle.

I move amendment 1.
Margaret Burgess (Cunninghame South) (SNP): Drew Smith is right when he says that his suggestion has been discussed before: it was discussed at stage 1 and again at stage 2. On both occasions it was rejected, and with good reason.

I welcome the support of all stakeholders for the overarching aim of the bill, which is to ensure that vulnerable people continue to get access to passported benefits from April 2013, when the UK Government’s welfare reforms will kick in.

We are operating to a timescale set by another Government that can make changes at any time without consulting the Scottish Government. It is therefore essential that Scottish ministers have the power to act quickly, if required, to ensure that people do not lose out on passported benefits, which are a lifeline to many.

As it stands, the bill will allow affirmative procedure to be used when doing so is merited, and negative procedure to be used otherwise. Amendments 1 and 2 would remove the use of negative procedure entirely, with the risk of the UK deadline being missed if changes were made late in the process. Although the 40-day time limit for scrutiny applies to both types of procedure, the negative procedure allows regulations to come into force sooner—I am sure that people who have more about that than me will explain it in more detail. The approach that the bill sets out is sensible, given that we are in a unique situation. We simply cannot put vulnerable people at risk.

The cabinet secretary has given a clear commitment to consult widely with stakeholders, and the consultation was launched this week—I encourage everyone to take part in it. She has also offered to discuss the outcome of the consultation in detail with the Welfare Reform Committee, so that we can hear the views of people on the front line.

The stakeholders share our primary aim of ensuring that we have the legislation in place by April 2013, which must be our main objective. The legislation needs procedural flexibility so that we can ensure that the required changes are made on time, given the lack of detail from the UK Government and any last-minute changes that it may make. I urge members not to support amendments 1 and 2.

Alex Johnstone (North East Scotland) (Con): I fully understand the issues that have caused many stakeholders to wish there to be as much scrutiny as possible of subordinate legislation, but, unfortunately, some of those stakeholders have misunderstood—or had misrepresented to them—the relative merits of negative and affirmative procedures. For that reason, I am not convinced by the argument that affirmative procedure should be the appropriate route in all cases, which would be the effect of amendments 1 and 2.

My second concern was expressed a moment ago by Margaret Burgess. In this process, it is likely that in some cases ministers will have to react at short notice and with as much flexibility as possible. I believe that it will be necessary, on occasion, for the minister to have negative procedure at her disposal in order to carry out her responsibilities.

Therefore, amendments 1 and 2, which would have the effect of requiring that only affirmative procedure could ever be used, are unfortunately excessive and would tie the minister’s hands unnecessarily, and perhaps dangerously in some cases.

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): At the outset of the Welfare Reform Committee’s consideration of these matters, its number 1 priority—and the priority for all the stakeholders who have given evidence—was the necessity for any regulations under the bill that we hope to pass today to be put in place very quickly so that no individual loses out on their passported benefits.

Much has been made of the 40-day timeframe for both negative and affirmative procedures, which means that there should be no delay. However, that does not tell the entire story. As the process is led by the UK Government and is therefore not entirely in the Scottish Government’s hands, there will be occasions—as Alex Johnstone and Margaret Burgess outlined—on which the Scottish Government must react swiftly and put in place a procedure that is contingent on what the UK Government has done. That can be done only through negative procedure, otherwise there is a danger that people might miss out on their passported benefits. On that basis, I oppose amendments 1 and 2.

On the issue of greater scrutiny, the Scottish Government has already written to the Welfare Reform Committee to set out its process for stakeholder involvement. Stakeholders certainly want to be involved in the process, but I do not get any sense that they have a burning desire for all instruments to be dealt with under affirmative procedure. On that basis, I hope that members will oppose amendments 1 and 2.

Michael McMahon (Uddingston and Bellshill) (Lab): When we returned from the Christmas recess, neither the bill nor the Welfare Reform Committee that scrutinised it existed. Today is the last day before the summer recess, and the committee has been established, a consultation has taken place and the bill has been introduced. We are now in unprecedented territory in progressing the bill as rapidly as we have done.
Jamie Hepburn is right to say that there is a desire among stakeholders for us to get the legislation in place so that we can move forward, and that has been delivered. With regard to amendments 1 and 2, we are discussing what happens with the subordinate legislation after we return from the summer recess to examine the detail of the consultation responses, so that we can ensure not only that we get the legislation in place in time for the changes that will come in next year, but that we get it right.

The only way that we can reassure and have the confidence of stakeholders, who—in spite of what Jamie Hepburn says—have a real desire for scrutiny, is to give the legislation the maximum amount of scrutiny, which can be done through the use of affirmative procedure. The timescale does not change: it is 40 days for both affirmative and negative procedures. The Government should not hide behind technicalities and should give people the confidence that the Parliament is listening to them and will adapt to their requirements by getting the legislation right.

The Deputy First Minister and Cabinet Secretary for Health, Wellbeing and Cities Strategy (Nicola Sturgeon): I am very proud that the Parliament took the unprecedented step of refusing consent for the parts of the Welfare Reform Act 2012 that have given rise to the legislation that is before us today. I am glad that the Government has been able to respond to that decision in a timely way and that, six months later, we stand poised to enact legislation that will allow the Scottish Government to make the necessary changes to secure lifeline passported benefits. That is what the debate and the bill are all about.

However, I believe that the time has come to move on from this part of the process. We now need to go out and speak to stakeholders and to listen to more of what they have to say in order to ensure that we get the detail right. I am pleased that, as Drew Smith indicated, the Government has launched its consultation on passported benefits, and we will continue to consult stakeholders as closely and in as much detail as we can as we go further through the process.

The issue of scrutiny has been raised on a number of occasions, and members have said—at stage 2 and today—that stakeholders have a desire for a substantial degree of scrutiny. I think that that is right, and I have always recognised it to be the case.

However, what I believe that stakeholders and practitioners throughout the country want more than anything is to get down to the detail of what the bill will do. They want to ensure that people who currently rely on passported benefits will continue to have access to those benefits.

The Scottish Council for Voluntary Organisations, in its briefing to members for the debate, said:

“"It is time to move beyond parliamentary process. It is time to prepare for the practical impact on people’s lives”.

Yes—there is a desire among stakeholders to be consulted and to be listened to. However that is not about an additional layer of parliamentary procedure; it is about an assurance that we will get it right.

The Scottish Government does not support amendments 1 and 2. We believe that the approach that is set out in the bill is the best one. I make it clear that we are opposed to the amendments not because we do not want scrutiny, nor because we think that they are unnecessary. I make it abundantly clear that I think that the amendments are potentially dangerous to the interests of vulnerable people. Frankly, I think that, in saying again and again that there is no difference between the timescales for affirmative and negative procedures, Drew Smith and Michael McMahon border on being misleading, because with affirmative procedure it is not possible to bring regulations into force until the 40 day-period has elapsed, whereas with negative procedure, although members have 40 days to annul the regulations, they can take effect earlier than that. Therefore, there is a substantial difference.

If we were to agree to amendments 1 and 2, we would remove completely the ability of the Scottish Government to use negative procedure for subordinate legislation that is made under the bill. Let me spell out what that could mean. It could mean that if the UK Government makes last-minute changes—Margaret Burgess was right to say that we are operating to a timescale that the UK Government has set—we could find ourselves in the position of being unable to bring regulations into effect to protect continued access to the passported benefits that so many people in Scotland rely on. I cannot speak for Labour members, but I think that I can speak for all Scottish National Party members: we will not play fast and loose with the lives of vulnerable people in Scotland.

Let us move on from the procedural debates and get into meaningful discussion about how the welfare changes will operate at the level of everyday experience. Our consultation and our continued discussions with stakeholders will support that approach; amendments 1 and 2 will not. I do not believe that they are appropriate, and I urge members not to support them. Indeed, I ask Drew Smith to withdraw amendment 1 and not to move amendment 2.
Drew Smith: The debate has reflected our previous discussion of the issue at stage 2, but I felt that it was important for the Parliament as a whole to be consulted about this key matter of contention. It would perhaps be excessive to advocate the use of super-affirmative procedure for all regulations that emanate from the bill, which is an approach that many stakeholders originally supported, but a less onerous procedure such as the one that I have suggested is, in my view, a reasonable proposition.

In their report to the committee on the differences between the legislative processes, the clerks made it clear that a 40-day period applies in relation to affirmative and negative instruments. The cabinet secretary explained the circumstances in which the coming into force of an instrument earlier than that is triggered.

I continue to believe that the use of affirmative procedure would encourage the Scottish Government and all stakeholders to ensure that we get the regulations right and that vulnerable people have continuity of benefit provision.

Jamie Hepburn: Will the member give way?

Drew Smith: I would rather not, if Mr Hepburn will excuse me.

Stakeholder groups that work with vulnerable clients who need continuity in the provision of their passported benefits are calling for affirmative procedure to be used to afford the greatest level of parliamentary scrutiny. The Parliament should follow an evidence-based approach to policy making and in the scrutiny of legislation.

In the debate on the matter at stage 2, Jackie Baillie suggested that we should listen to those front-line organisations than I do by what we have heard today. Therefore, I intend to press amendment 1.

The Deputy Presiding Officer: The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division. As this is the first division, I suspend the meeting for five minutes.

15:14

Meeting suspended.

15:19

On resuming—

The Deputy Presiding Officer: We move to the division on amendment 1.

For

Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Edie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfries and Galloway) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (Lothian) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Cumbernauld and Kilsyth) (Lab)

Against

Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alan (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Amendment 2 moved—[Drew Smith].

The Deputy Presiding Officer: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfrieshire) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)

Against
Adam, Brian (Aberdeen Donside) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Gunnigham South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)

The Deputy Presiding Officer: The result of the division is: For 35, Against 79, Abstentions 0.

Amendment 1 disagreed to.
The Deputy Presiding Officer: The result of the division is: For 35, Against 80, Abstentions 0.

Amendment 2 disagreed to.

Section 3—Regulations under this Act: ancillary provision

The Deputy Presiding Officer: Group 2 comprises minor technical amendments. Amendment 4, in the name of the cabinet secretary, is grouped with amendments 5 to 7. [Interruption.] I ask for Ms Sturgeon’s microphone to be switched on, please.

Nicola Sturgeon: I can shout.

The Deputy Presiding Officer: I would prefer it if you did not shout.

Nicola Sturgeon: After all that, members will be delighted to hear that I will—possibly—be as brief as I have ever been in the chamber in speaking to these four amendments. I believe—although we never know in the Parliament—that the amendments are entirely uncontroversial. They were lodged to ensure an overall consistency of narrative and they will improve the bill’s readability. I urge members to support amendments 4 to 7.

I move amendment 4.

The Deputy Presiding Officer: I take it that you do not wish to wind up—that will do.

Amendment 4 agreed to.

Amendments 5 to 7 moved—[Nicola Sturgeon]—and agreed to.

After section 3

The Deputy Presiding Officer: Amendment 8 is in a group on its own.

Nicola Sturgeon: As members will be aware, amendment 8 is the result of a discussion that we had in the Welfare Reform Committee at stage 2. It replaces a similar amendment that Jackie Baillie lodged. The Government had a couple of issues with the drafting of that amendment, so we made changes that are in keeping with the original amendment’s intent. I am happy to bring the issue back to the Parliament.

Amendment 8 will create a duty on the Scottish ministers to lay before the Parliament an annual report on the impact of the UK Government’s welfare reforms. We have widened the scope of what can go in that report. Jackie Baillie’s amendment focused on the “social, economic and financial effects”.

I understand her reasons for that, but we might want to look at other things, such as the health impacts.

Members will be aware of the Oxfam briefing paper that has been published this month, which refers to the negative health impacts that have been experienced by people whom it describes as

The Deputy Presiding Officer: The result of the division is: For 35, Against 80, Abstentions 0.

Amendment 2 disagreed to.
living at the bottom of UK society. NHS Highland gave evidence to the Finance Committee last week on similar issues. That is one example of things that we might want to look at, and it is right that amendment 8 gives us the scope to consider that.

We have put a time limit on the requirement to produce the reports, although I stress that that is more about reviewing the need than about necessarily ending it. The important thing is that, during the period specified by the amendment—2012 to 2017—the UK Government will roll out its welfare changes, giving rise to what Oxfam has described as a “perfect storm” for millions who are already struggling to make ends meet. It is right that we keep on top of those changes and provide Parliament with as much meaningful information as we can during that implementation period.

After that period, once the UK Government has migrated working-age benefit claimants across to the universal credit and once it has gone through what I expect will be a painful process of reassessing everyone who is currently claiming the disability living allowance, we will be in a different place. Indeed, some of us hope that Scotland will be in a very different place by that time. In any event, the universal credit will become the overall landscape rather than the event, and it is right that we give ourselves the option at that stage to reassess the reports in the light of the overall circumstances that we face at that time.

Returning to my earlier theme of moving on, I am pleased that, as far as amendment 8 is concerned, we have been able to make some progress from the debate at stage 2. We have had positive discussions and I hope that we have come up with something that members agree will serve a useful and meaningful purpose. I said at stage 2 that I did not think that it was strictly necessary to have the amendment written into legislation. Notwithstanding that, I will be happy to provide Parliament with regular updates on the impact of the welfare reforms.

I move amendment 8.

Annabelle Ewing (Mid Scotland and Fife) (SNP): As a member of the Welfare Reform Committee, I speak in support of the amendment. It represents a good example of the consensual working that has taken place between the Scottish Government and the Labour member Jackie Baillie. The amendment that Jackie Baillie lodged at stage 2 has been significantly improved further to a commitment that the cabinet secretary made at stage 2 to work together to frame a workable amendment. That has been achieved through, in particular, the removal of the rather onerous requirement in the earlier amendment to report on something before it had happened. The amendment has also been improved with respect to the issue of scope.

I and some of my colleagues on the committee expressed some doubts about the necessity for the amendment. However, I am happy to support it as it is reworded. I repeat the point that I made in committee at stage 2: welfare is reserved to Westminster, although the resources for welfare come from this country and are channelled through the London Government instead of being made available to the Scottish Parliament. I hope that that will change in the years to come, but it raises the key question in the debate: why would Labour prefer Tory rule on welfare rather than home rule?

Alex Johnstone: I did not like the amendment when it was lodged at stage 2, in the name of Jackie Baillie, and I like it even less now that it has the minister’s name on it—for no other reason than what it says in the first few lines. The amendment states:

“The Scottish Ministers must prepare an initial report giving such information as they consider appropriate about the impact that the UK Act is likely to have on people in Scotland.”

It invites the Scottish Government to speculate on its own policy terms. It is, I believe, an agenda for grievance and has no place in the bill or, in my view, in any act of this or any other Parliament.

Drew Smith: I add my support for amendment 8 and thank the cabinet secretary for making her officials available to discuss the amendment with the Scottish Labour Party. As the cabinet secretary said, it moves on from a previous amendment that Labour members lodged and supported at stage 2. I congratulate the cabinet secretary on the consensual way in which she has handled the issue and faced down the opposition at stage 2 of the SNP back benches on the Welfare Reform Committee, who were utterly opposed to the amendment.

15:30

Nicola Sturgeon: I am struck by the physical gulf that appears to have opened up between the Tory front and back benches. I am not sure whether the seats are being reserved for their new friends in the Labour Party.

Before I stood up this afternoon, I was convinced that the amendment was worthy of support, and hearing that the Tories oppose it has made me all the more convinced. I say in all seriousness to Alex Johnstone that the only speculation about the impact of the UK welfare reforms on the most vulnerable people in our society is how bad that impact will be. That is why it is right that this Government takes seriously its duty to do what it can to mitigate the impact and to
keep Parliament informed of the impact as it becomes ever clearer.

Amendment 8 is sensible; it is the result of good discussions at stage 2, and I ask all members to support it.

The Deputy Presiding Officer: The question is, that amendment 8 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Dey, Graeme (Edinburgh Eastern) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

Against
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Browne, Gemma (Mid Scotland and Fife) (SNP)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)

The Deputy Presiding Officer: The result of the division is: For 102, Against 13, Abstentions 0. Amendment 8 agreed to.
The Deputy Presiding Officer: Amendment 3, in the name of Drew Smith, is in a group on its own.

Drew Smith: The purpose of amendment 3 is to require the Government to lay a policy statement before the Parliament to explain the intended effect of the regulations that will emanate from the bill. Capability Scotland said of my amendment that it is vital that the Scottish Government prepares a statement that spells out its overall intention on welfare reform and its approach to passported benefits, among other things.

Many of the groups that have been lobbying Parliament about the bill are deeply concerned about the potential for regulations to make matters worse for vulnerable people in Scotland, rather than better. Barnardo’s Scotland, Children 1st, Citizens Advice Scotland, and One Parent Families Scotland signed up to a joint statement about the potential for regulations to make matters worse for vulnerable people in Scotland, rather than better. Barnardo’s Scotland, Children 1st, Citizens Advice Scotland, and One Parent Families Scotland signed up to a joint statement that was circulated to all members this week. It stated:

“It is unusual for any bill to be laid before the Parliament without the context provided by a policy statement, telling us the purpose and the objective of ministers’ legislative intentions and where the bill sits within the ministers’ overall policy context. Given that this legislation takes on responsibilities that flow from a UK Government law, understanding the policy context within which the bill sits is arguably even more important than usual.”

Amendment 3 is a redrafted version of a previous amendment that was defeated by SNP members at stage 2. It has been redrafted to make it as palatable as possible to the cabinet secretary, and to take account of the few issues that she raised against its passage at stage 2. Like my previous amendments, amendment 3 has wide support among the people who are most concerned with the impact of the bill, and I have yet to hear any good argument against the proposal, which is modest and reasonable.

I move amendment 3.

Kevin Stewart (Aberdeen Central) (SNP): I will be as brief as I possibly can.

I draw members’ attention to subsection (1) and subsection (3)(b) of the proposed new section in Mr Smith’s amendment. I do not know whether he did this inadvertently, but if those two subsections are put together the effect is to require ministers to prepare a statement that explains the policy objectives of all the regulations that they will ever make under the act, and to lay that statement before the first regulations are laid. That seems to me to be rather illogical, to say the least. It also makes it very difficult because, as we are all aware, ministers are still unaware of Westminster’s intentions on some of those issues. I ask Mr Smith to say when he sums up whether that was done inadvertently, or whether it was just lack of common sense.

Alex Johnstone: I will support the amendment, as I did at stage 2, because it asks Scottish ministers to do all the things that they should be doing, not simply to carp and complain as amendment 8 invited them to do. Scottish ministers should be delivering a written statement to explain their policy objectives, plans and approaches. It is such a disappointment that ministers have not taken the opportunity to do as they did with the other amendments and work with the proposer to ensure that the amendment comes together in such a way as to fit into the bill. The principles behind amendment 3 are correct. It is the antithesis of amendment 8 and it will have my support.

Jamie Hepburn: After the brief interlude of the previous amendment, it is good to see the Labour-Tory coalition once again. I oppose amendment 3. The issue was the focus of extensive discussion at the Welfare Reform Committee during consideration of its stage 1 report, and when a similar amendment was presented and rejected at stage 2. I recognise that there has been some movement in the drafting of amendment 3, but I am still concerned that including any such requirement for a policy statement on the face of the bill is overly prescriptive.

The Welfare Reform Committee, of which I am a member, is well capable of assessing the Scottish Government’s policy intentions without any need for a policy statement, and that takes care of any concern that regulations might make matters worse, although I have heard no such concern expressed. If that were to happen, the Welfare Reform Committee would be well able to assess any such concern. That has been the majority position of the committee at stage 1 and stage 2.

Drew Smith said that he had not heard any coherent argument against the amendment; frankly, I have not heard a coherent argument for it, and so we should reject it.

Nicola Sturgeon: Others have made the point, but it is worth repeating that it is a bit ironic that the Labour and Tory better-together chums want to place a statutory responsibility on the Scottish Government to produce a policy statement on welfare, given that they want welfare policy to remain in the hands of a right-wing Tory Government in Westminster. That seems a rather odd position to take.

I will be relatively brief in speaking to amendment 3, because there is no need for the amendment. At stage 2, I said that I would be happy to give a commitment to produce a policy statement. I put that on the record at stage 2 and I put it on the record here in the chamber again today. At stage 2, I indicated that the right time to make such a statement would be after we had concluded the consultation exercise that we
started this afternoon. I accept that Drew Smith has changed the amendment to that effect; that is fine, but I also said at stage 2 that I fundamentally disagreed that a statement required to be included in the bill and nothing in amendment 3 makes me feel any differently about that.

Furthermore, Kevin Stewart has set out extremely well how amendment 3 is fundamentally technically flawed. It would create a duty on Scottish ministers to provide a single written statement explaining the policy objectives of any regulations that they are considering ever making under the act. The practical effect of that would be to require us to explain all the regulations that we will ever make before we lay the first set of regulations before Parliament. That was not the intention from the Scottish Government that sets out any of the regulations that we make.

Jackie Baillie said during stage 2 that her desire in lodging the amendment was to introduce clarity of intention. The Government has always been perfectly clear that our intent in introducing the bill was to update legislation in devolved areas and, in particular, the provisions that support entitlement to devolved passported benefits, so that there are no unforeseen negative impacts as a result of the UK Government changes, where we have the ability to mitigate those impacts.

That is what we are trying to do, and that is what a general policy statement would say. I am happy to give that commitment here, but there is no need for amendment 3; indeed, because of the technical flaws in the amendment, agreeing to it would lead to an absurd situation. I urge members to vote against the amendment.

Drew Smith: The cabinet secretary refers to the attitude of parties in this chamber to the continued reservation of welfare matters. However, as the bill is geared around devolved benefits, that analysis does not stand up.

It is important that we have a clear statement of intent from the Scottish Government that sets out its vision for how the bill, and the regulations that will emanate from it, will mitigate the effects of welfare reform, if that is its intention. That applies to all regulations coming from the Government. I always have confidence in the cabinet secretary’s intentions, but we must be clear that all ministers are bound to introduce regulations that seek to mitigate where possible.

At stage 2, the cabinet secretary had the opportunity to offer an olive branch on the issue, which she did not take, and no attempt was made to work with us on that. On that basis, I press the amendment.
The Deputy Presiding Officer (John Scott): The next item of business is a debate on motion S4M-03406, in the name of Nicola Sturgeon, on the Welfare Reform (Further Provision) (Scotland) Bill. I call the cabinet secretary to speak to and move the motion. You have a generous 10 minutes. I am sure that interventions will be welcome.

The Deputy First Minister and Cabinet Secretary for Health, Wellbeing and Cities Strategy (Nicola Sturgeon): I welcome all interventions. I think that I welcome all interventions. [Laughter.] There may be one or two exceptions to that general rule.

Thank you, Presiding Officer, for your generosity in telling me that I have a flexible 10 minutes.

As we reach the final stage of the bill, it is worth reflecting that it has been an unusual bill. Although I did not agree with him about amendments 1 and 2, Michael McMahon was right to talk about the unique nature of the bill. It came about as a result of an unprecedented partial refusal of legislative consent by the Parliament, it has had to be progressed to a United Kingdom Government timetable that is not of our making, and of course it concerns welfare—a matter that, under the current constitutional arrangement, is almost entirely reserved to Westminster.

The bill has presented the Government and the Parliament with some unusual challenges. We have had to struggle to articulate the financial impacts of the bill because its effects are so dependent on the impact of a set of United Kingdom Government regulations, the details of which were not clear or fully known during the course of the bill process. I am grateful to the convener and members of the Finance Committee for their understanding and forbearance in deferring the more detailed consideration of the financial implications until the subordinate legislation stage.

It is also fair to say that this Parliament has traditionally and rightly been suspicious of legislation that is entirely enabling and hands sweeping powers to ministers without properly explaining how they will be used. I understand those concerns, which were well articulated by the Subordinate Legislation Committee. However, as I have said all along, I remain of the opinion that we have simply had to take account of the reality of the situation that we face. The approach that we
have adopted to the bill has been appropriate and proportionate in those unusual circumstances.

I want to offer my sincere thanks to the members of the Welfare Reform Committee and to the many individuals and stakeholder groups who have contributed to the progress of the bill. I am sure that nobody in the chamber would underestimate the task that the members of the Welfare Reform Committee took on when they agreed to join the committee. I hope that they do not think that I am being in any way condescending when I say that all of them would acknowledge that they had a steep learning curve, as did I, in coming to grips with the subject matter. That had to be done in a short time, and I think that the members of the Welfare Reform Committee are to be commended for their enthusiasm and the sense of commitment that they brought to the task.

I think that the work has been interesting, and I hope that the members of the Welfare Reform Committee will agree. The committee has shown a desire to get under the skin of the impacts of the UK Government’s reforms, to the extent that we have the detail that would enable it to do so, and has been successful in that regard. It was particularly good that the committee brought together representatives of the banking sector and credit unions to talk about some of the difficulties that people might experience in managing income and household bills. That is particularly important in light of the UK Government’s proposals to pay monthly in arrears and directly to tenants—something that, as I have said previously, I have considerable concerns about.

Kezia Dugdale (Lothian) (Lab): I agree with the cabinet secretary about the potential damage that that could do to families. It might also encourage people to go to payday lenders. She will know that the Scottish Parliament cannot regulate that area, but I have put forward a proposal for the Government to use its advertising budget better to warn against the dangers of payday loans—a sort of wealth warning rather than a health warning.

Nicola Sturgeon: I hope that there is widespread consensus in the Parliament on that issue. I am happy to consider Kezia Dugdale’s proposals and ensure that she gets a Government response. We would all take the opportunity to condemn some of the worst practices of the payday loan operations.

The committee also heard from the British Medical Association about some of their concerns about the implications of the reforms for the mental and physical health of patients and the ability of the profession more generally to continue to maintain the high standard of care that its members expect to be able to provide.

I have mentioned those impacts because they are examples of some of the less obvious impacts and they demonstrate the intelligent approach that the committee took to its work to shine a light into some of the darker corners of what we are dealing with and get to the bottom of what the reforms will mean in practical terms.

I am sure that the members of the committee will agree with me when I say that, in making the headway that they have made, they have been entirely dependent on the experience and knowledge of the stakeholders who have spoken to them and submitted evidence, and I want to put on record our heartfelt thanks for the work that they have done and will continue to do on behalf of the people they represent.

The work and involvement of stakeholders is at the heart of the bill process. Going back to the earlier debate on one of the amendments, I want to put on record the fact that it is the intention of the Government to ensure that stakeholders continue to be involved and consulted and come with us every step of the way. That is a sincere commitment.

Drew Smith (Glasgow) (Lab): Does the cabinet secretary believe that there might still be a place for draft regulations as part of that consultation?

Nicola Sturgeon: We will look at every way in which we can consult, but we must be mindful of the timescales. It has been said before, and I say it again, that we have no control over the timescales on when we have to make regulations or over what information will or will not be available to us. It would be wrong of me to commit to things that cannot be delivered consistent with our commitment to ensuring continuity of payment of passported benefits. With that caveat, we will do everything in our power to consult stakeholders in an open and meaningful way in order that we get things right. That is in all our interests, and that is what we all want to achieve.

I will move on to some things that came out of the bill process. In the evidence that the committee took, we started to see some of the human stories that perhaps get lost when we talk in overall terms about cuts and reforms of such a scale. We are all aware, for example, that disabled people who live in Scotland will see the budget for their support cut by £250 million as a result of the United Kingdom Government’s changes, but the Lothian Centre for Inclusive Living told us about a young lady who has been confined to a wheelchair for most of her adult life and stands to lose her entitlement to the higher rate mobility component of £51.40 per week if she fails the reassessment because she can self-propel her wheelchair for more than 50m. That is a possible impact of the reforms that really brings the human impact to bear.
We are all aware that it has been estimated that there will be a £100 million annual reduction in the level of housing benefit that is paid out. Thanks to Citizens Advice Scotland, we are also aware that the changes mean that a 30-year-old woman who claims local housing allowance for a one-bedroom private tenancy in Edinburgh might have to choose between moving into a shared tenancy or losing around £47 every week in local housing allowance payments. Again, that is a real example of the potential impact of the reforms.

Siobhan McMahon (Central Scotland) (Lab): There was a commitment in the Scottish National Party’s 2011 manifesto to try to devolve housing benefit to Scotland. What progress has been made on that? Is that still a commitment, given that a recent discussion paper that has been issued says that that is no longer one of the Government’s six main priorities?

Nicola Sturgeon: I have a great deal of respect for Siobhan McMahon’s genuine and heartfelt contributions to these debates. However, SNP and Labour members in particular should not look to divide on welfare reform issues. We have an obligation to stand up for the people of Scotland and ensure that we are doing everything in our power.

It may have escaped Siobhan McMahon’s notice that the SNP wants all such powers to be devolved to the Scottish Parliament because we want Scotland to be independent. One of the real reasons why I will so enthusiastically and passionately campaign for independence over the next couple of years is that I do not want welfare and our welfare system to be in the hands of the Tory Government that is currently in office in London. I cannot understand why people such as Siobhan McMahon would prefer the Tories to run welfare rather than the Scottish Parliament. She will have to explain that.

We know that 170,000 households in Scotland could lose out as a result of the introduction of the universal credit. Save the Children shared the example of a single parent with two kids who currently works for 25 hours a week. It explained that she will be £52 a week worse off, which will push her and her children below the poverty line.

Those are just some of the stories behind the numbers. It is important that we remember the human stories behind the big numbers and the big arguments, as we represent those people and have a duty to protect them to the best of our ability. The Government will do everything that we can to protect people in Scotland from the worst impacts of the welfare reforms.

I make no apology for saying that the only way in which we can protect Scotland from not only the reforms that are going through Westminster but those that David Cameron set out earlier this week, is to ensure that powers over welfare pass to the Scottish Parliament so that we can design a welfare system that reflects the values of this Parliament and the Scottish people.

It is with pleasure that I move,

That the Parliament agrees that the Welfare Reform (Further Provision) (Scotland) Bill be passed.

15:55

Drew Smith (Glasgow) (Lab): In its stage 1 report on the bill, the Welfare Reform Committee referred to the evidence that it had considered as “unrelentingly depressing”. As we come to the conclusion of the Parliament’s consideration of the bill, we start to look towards the future and, as the Scottish Council for Voluntary Organisations has said, we begin to think about moving from process to principle.

In the three debates that we have had on the subject of welfare reform in this session so far, beginning with the issue of the legislative consent motion and then consideration of the Scottish Government’s legislative proposals, Labour and Scottish National Party members have been largely united in our opposition to many aspects of the reforms to our welfare state that the coalition Government has embarked on.

At each stage, however, we have been at pains to point out that elements of the changes could have been an opportunity to make the welfare system fairer rather than more draconian. People across the United Kingdom and here in Scotland want a system of benefits that ensures that support is provided to those who need it when they are unable to work or unable to find work. At the heart of our welfare state should be a contributory principle that makes clear our duties to pay in when and if we can in order that we receive assistance when it is needed. Too many of the changes seem to be based solely on a desire to bring down the benefits bill, rather than seek the right balance between support that is affordable and support that is there when anyone needs it.

In the stage 1 debate, I quoted Ian Galloway of the Church of Scotland church and society council, who said at the General Assembly of the Church of Scotland this year:

“If austerity means that we all have to tighten our belts, and perhaps especially those who can most afford it, then so be it. But what is really happening is that the most vulnerable are being punished out of all proportion.”

That concern, which has been highlighted by groups representing disabled people, social landlords, children’s charities and many others, was one of the major influences on Scottish Labour when we argued that the LCM on welfare reform should not be nodded through and that
distinct Scottish legislation should be brought forward if required. The resulting bill is, of course, as the cabinet secretary said, enabling legislation that is concerned with putting in place a framework for how regulations will be brought forward that connect both devolved and reserved benefits.

So-called passported benefits are rightly at the heart of the issue. Capability Scotland, for example, has pointed to the blue badge parking permits, bus passes, leisure cards and energy assistance programmes, because eligibility for each is assessed through receipt of a UK welfare benefit. However, the truth is that the impact of welfare reform could be so large that even at this point we still do not know the true extent of the problems or the opportunities that it may create for the Scottish Government, local councils and others. The Welfare Reform Committee suggested that some £2.5 billion could be taken out of the pockets of poorer people in Scotland. In Glasgow, which the cabinet secretary and I represent, as well as in many other areas, it will also mean that money will be taken from shop tills and from social housing providers.

Labour supported the general principles of the bill at stage 1. Throughout stage 2 and in our amendments today we sought to improve it by advocating the concerns of those most closely involved with the delivery of services and the representation of those groups most affected. It has been a good process and the Government has engaged with the issues. We did not seek to lodge amendments that did not have the support of people in the sector. For example, there were concerns about the wide-ranging nature of the regulatory powers that ministers were taking without there being any sunset clause. However, we decided not to lodge amendments on that or on other possibly contentious issues.

Sandra White (Glasgow Kelvin) (SNP): The member referred to powers for ministers. Does he agree with me and many others that, rather than just muck about, it would be best for the Scottish Parliament to have full powers over the benefits system in order to protect vulnerable people, particularly given that the Tories have said that they will bring in regional benefits, which in fact means the Conservative government will be making 5.2 billion pounds in cuts to the pockets of poorer people in Scotland. In Glasgow, which the cabinet secretary and I represent, as well as in many other areas, it will also mean that money will be taken from shop tills and from social housing providers.

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Drew Smith: I am grateful to Sandra White for that intervention. Of course, the Prime Minister removed a reference to regional benefits from a speech this week. It seems that the SNP is the primary proponent of regional benefits and, indeed, regional pay across Britain.

Notwithstanding my disappointment that the cabinet secretary did not accept my amendments earlier, I am grateful to her for the work that we have done together to ensure that the choices that will be made are based on evidence, modelling and reporting on the impact—despite the objections of SNP members of the committee at stage 2. For the avoidance of doubt I should make it clear that the Scottish Labour Party will support the bill at decision time.

In the earlier debate I said that we should remember that this will be a unique piece of legislation and the cabinet secretary has outlined that is her view too. The legislation began life with a partial—but unprecedented—rejection of an LCM, which Labour pushed for. It resulted in the establishment of a special committee, which was pushed for by the voluntary sector. There has been a wide-ranging and vital engagement in the issues—despite the sense of urgency hanging over us to get the legislation right and to get it in place quickly.

The work of the Welfare Reform Committee will no doubt go on. In many respects the detail of what will happen next will have to be worked out over the summer and considered when the Parliament returns. Indeed the cabinet secretary indicated that there will be further consultation into the autumn.

For their part, many of the charities with a close interest in the bill have turned their attention towards implementation. There has already been some debate about what that might mean, including in the pages of Third Force News.

Labour considers that receipt of universal credit or personal independent—sorry, independence—payments should become a passport to devolved benefits. I have obviously been listening to the psychologist too much and I cannot say that word now either. We also believe that all those who are currently eligible for a devolved benefit should remain so.

In the stage 1 debate I asked the cabinet secretary to consider the position of advice services and to right the wrong that the Scottish Government has been involved in by pocketing the money for advice services that arises from the UK welfare reform changes. I pointed to the example of the Welsh Assembly Government, which has invested considerably in its citizens advice bureaux to help them to cope with the huge increase in demand that welfare reform will no doubt create.

There will be difficult choices ahead in this process and the test, in my view and in the view of Labour, will be whether those choices are made fairly and not arbitrarily.

The bill is not one that either the Government or the Opposition would wish to be necessary, but it is necessary. When passed, it will mark the beginning of a new phase of considerations when we should look for opportunities to improve what we do, rather than just shore up our own parts of
the system in the face of cuts coming from elsewhere.

16:03

**Alex Johnstone (North East Scotland) (Con):** I begin with a few words to my fellow committee members. Thank you for putting up with me. As the only member representing a party from the Westminster Government sitting on the committee, I suspect that I was chosen not for my background in welfare issues, but for being the person least likely to go native.

It has been my responsibility to ensure that an alternative view has been put. I thank my fellow committee members for their forbearance. It has been done with good humour and with a degree of understanding on both sides.

The Conservative Party will vote in favour of the bill. However, we do so feeling disappointed that it has become necessary. It has become necessary only because the Parliament decided partially to reject the legislative consent motion on the UK bill. As a result, we have no alternative but to plough our own furrow here in Scotland and find alternative ways to deal with a number of issues—particularly that of passported benefits, which has been discussed at some length already. For those reasons, we will support the bill, but we will continue to take the same position on welfare reform as we have taken for a number of years.

The welfare reform process is absolutely essential to the long-term welfare of many people in this country. When a bill was first mooted and we began to discuss the issue, everybody took the view that welfare reform was necessary yet, as the process has gone on, I have begun to doubt whether many members of the Parliament see reform as necessary. As we have discussed the issues, I have begun to believe that many members think that welfare reform should be resisted at all costs. That is unacceptable to me and it should be unacceptable to the huge number of people who currently depend on welfare in Scotland.

Welfare dependency should not be the preferred route to support young men and women in particular, but also disabled people and others. If there is an opportunity to promote employment, we should take it. Scotland’s economy creates more jobs than many of us are willing to admit. When we consider the number of people who have come here from eastern Europe to do jobs that could have been done by our unemployed people, we realise that there is a problem with the dependency culture.

**Mark McDonald (North East Scotland) (SNP):** Will the member take an intervention?

**Alex Johnstone:** No. The member can press his request-to-speak button and speak later if he wants.

**Mark McDonald:** It is already pressed.

**Alex Johnstone:** We need to ensure that we get a few more people working and a few less people claiming in the next few years. The dependency culture is a life sentence to those who are left in it, but there is a balancing effect. There are those in Scotland, including many of those who came before the committee to give evidence, who are on the opposite or balancing side of the dependency culture in that they believe that it is necessary to shout about the need for welfare because that is their responsibility.

**Annabelle Ewing (Mid Scotland and Fife) (SNP):** Will the member take an intervention?

**Alex Johnstone:** No—I will continue.

The expectations for those who live on housing benefit are excessive compared with the expectations for those who make their way without that benefit.

**Annabelle Ewing:** Will the member take an intervention on that specific point?

**Alex Johnstone:** No. The member can push her button and come in later. I will be finished in a moment.

There are people who, through living on benefits, suffer the mental and physical health problems that are traditionally associated with being workless. Getting people back into work is not only an economic priority, but a priority for improving the health of people in Scotland. That is a major part of the welfare reform process that is being initiated in Westminster.

Various people, including the cabinet secretary in this debate, have talked about the dangers of cuts to welfare payments, yet the process has so far not delivered any cuts at all, so that is simply speculation. I believe that much of that speculation will be proved to be inaccurate.

If we are to succeed in the vital process of getting Scotland working again, reducing the cost of welfare and making our economy strong, the key element is that Scotland’s two Governments must work together. We need co-operation and understanding on both sides. If we do not get that, we will have a contest that will be woven round the arguments for and against independence and that will fail to deliver for the victims, who are the people who are on welfare today and who need a better level of support in the long term. We need to get Scotland working again. The answer lies in the welfare reform process, but the Scottish Government is turning its back on that opportunity.
The Deputy Presiding Officer (Elaine Smith): We come to the open debate. We are slightly tighter for time than we were at the beginning of the debate, so we will have speeches of four minutes, with a bit of leeway for interventions.

16:09

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): As a member of the Welfare Reform Committee, I can say that it is no problem to put up with Alex Johnstone, because he is far more consensual when in the committee than he has been in the chamber today. I note that we are losing Drew Smith as a member of the committee, so I wish him well in pastures new.

The cabinet secretary suggested that there has been a steep learning curve for those of us on the committee, which is absolutely true. I thank the stakeholders who have engaged with the committee. I am sure that the steep learning curve will continue and that those stakeholders will assist us in the process.

This process has not been instigated by the Scottish Government or the Scottish Parliament—it was begun by the UK Government—but we can be proud that the Parliament has acted swiftly to put in place a mechanism to ensure that those receiving passported benefits contingent on entitlement criteria through the former welfare system can continue to receive the support to which they are entitled.

The bill is not large; it is enabling legislation. Given that, the debate so far has been technical and procedural in nature. However, I think that we need to move on from that. Yesterday, I met the SCVO and was interested to find that its main request was not that all secondary legislation be subject to affirmative procedure but that we move beyond debating the process to debating the substance of the issues. It is time that we do so.

To begin that process, I will quote from Anne Johnstone’s column in today’s Herald, in which she poses the question “What is the welfare state for?”

and goes on to say:

“For William Beveridge, architect of the British welfare state, it was about eradicating ‘want, disease, ignorance, squalor and idleness’.

That is indeed the founding principle of the modern welfare state and I agree with it, but it is no exaggeration to say that it is now under assault from the UK Government. In recent days, the Prime Minister has suggested the removal of housing support from the under-25s, a move that he called challenging

“the something-for-nothing culture”.

In taking that view, he fundamentally fails to understand the number of people in employment who will be affected by such a policy and the message that is being sent out to them. That is not to mention the effect on housing policy which, although devolved, is already under pressure from some of the changes to the benefits system that have already been announced.

Annabelle Ewing: Will the member give way?

Jamie Hepburn: Very briefly.

Annabelle Ewing: Does the member share my concern that the removal of housing benefit as proposed by the UK Prime Minister could have a devastating impact on armed forces veterans who are under 25?

Jamie Hepburn: Absolutely. It will have a devastating effect on anyone who is entitled to the benefit and certainly on veterans who are under 25.

Although the UK Government uses deficit reduction as a mask, its welfare reforms, which have necessitated the action that has been taken in the bill, are ideologically driven. I do not have much time left, but I wish to point out that, although this Government and Parliament have acted to ensure that people continue to receive their devolved passported benefits, we should be able to act more comprehensively. The Parliament should have more comprehensive powers over welfare.

I will close by quoting again from Anne Johnstone, who says:

“nearly two-thirds of the poorest people in Britain are in work but can’t earn enough to live on. Cutting their housing benefit and tax credits, when rents are rising and nursery costs are astronomical, is more likely to drive them out of work than into it.”

That is the reality of welfare policy in the Tories’ hands and gives the lie to any suggestion that we are better together. I commend the bill but look forward to the day we can act more comprehensively on this matter.

16:13

Michael McMahon (Uddingston and Bellshill) (Lab): First of all, I thank Simon Watkins and the rest of the clerking team for their work in getting us to this point. I know that we will have to rely heavily on them as we begin to scrutinise the impact of the welfare changes.

It is worth remembering what scrutiny of this legislation is all about. We might well criticise the Westminster Welfare Reform Act 2012—and there are very good reasons for doing so—but, as we move forward, we must remember that the job of
the Welfare Reform Committee and the Parliament is to hold the Scottish Government to account.

I also thank the voluntary sector for the work that it has carried out and the abundance of information that it has provided. All of that and the other details that it has supplied have been greatly appreciated by everyone involved in the scrutiny process so far and the sector’s continued involvement and assistance will be invaluable as we move forward.

If we are to be a truly representative Parliament, we must ensure that measures to safeguard entitlements do the job that civic Scotland wants them to do. As a result of contact with the stakeholders who represent the interests of those affected by this legislation, unanimity on the view that the bill was necessary and welcome was easy to reach. Moreover, in spite of arguments that we had over the piece—at stage 1, at stage 2 and today—we should not forget that those stakeholders held a uniform view on the need for scrutiny of the subsequent subordinate legislation. Unfortunately, that unanimity was not shared among committee members. However, we will move on, as others have said. I am confident that today we will rightly unite on the bill, but it remains to be seen whether we will be able to stay unified as we scrutinise the subordinate legislation that will follow. Alex Johnstone has made it clear that, even in good humour, we may not always be able to agree.

It was utterly apparent to me from the feedback received from stakeholders that the transparency of the legislative process is as much a matter for general concern as the detail. Numerous groups strongly advocated the view that the affirmative procedure should be used, among them the Child Poverty Action Group in Scotland, which urged MSPs to ensure that

“the first regulations made under the new powers in the Bill that amend existing regulations”

are

“subject to the affirmative procedure.”

Despite what was said during previous debates, including the earlier debate on amendments, CPAG and others are not naive. They knew exactly what they were asking for, and why. It may be the case that the affirmative procedure will not always be used, but it would be wrong for the cabinet secretary to dismiss the intent behind those requests. We should have the maximum possible scrutiny so that we can ensure that the legislation that we bring forward reflects the concerns that were expressed by stakeholders such as Inclusion Scotland, which said:

“Any small error in the regulations could incur unintended and further damaging consequences to people who will already be suffering cuts to their income. It is crucial that the secondary legislation proceeds with the fullest scrutiny possible to guarantee that it provides positive outcomes for those affected.”

That has been the Labour Party’s motivation in the discussions that we have taken forward.

I am pleased that the cabinet secretary did not follow the lead of her party colleagues on the committee on the subject of reporting and instead lodged a very good amendment today to address that issue. Groups such as Citizen’s Advice Scotland recognised the importance of that issue, as did Children 1st. I agree whole-heartedly that we should ensure that

“everyone with an interest in welfare reform and in particular, the impact of particular measures on individuals, families and households, has access to the fullest possible information about the Scottish Government’s work in this area”.

The Welfare Reform Committee has to ensure that the concerns raised by various organisations are taken forward. Passing the buck and trying to apportion blame will cut no ice with those in Scotland who are damaged by the Westminster coalition legislation. Where this Government has responsibility, it can and will be held to account for any failings that materialise. Let us work together constructively to ensure that there are no such failings, so that the bill helps the people of Scotland whom we wish to serve.

16:18

Margaret Burgess (Cunninghame South) (SNP): I, too, am a member of the Welfare Reform Committee and I thank all the stakeholders who contributed to and informed our discussions. I have been in a stakeholder voluntary organisation, and I know exactly where they are coming from. I also know that we must get the legislation through in time, because the impact on those stakeholders’ work will be worse if we do not get it through. Michael McMahon said that the affirmative procedure would not always have to be used. However, the amendments that Labour lodged would have made the affirmative procedure the only one that could be used, which is where the problem would have lain. The debate on that is over—those amendments have been rejected, so we should move on.

I take issue with some of the things that Alex Johnstone said. I do not think that it was ever said in the Welfare Reform Committee or the chamber that we do not want to have a better welfare state, reformed in a better way. What we do not want is for it to go the way that it is going under the Tory Government. At the moment, we are getting to grips with the current changes in welfare reform, which have not even bedded in yet, but we heard about further changes this week that will be much worse. Those changes are not about getting
people into work; they are about saving money. My concern is that, as we take people off the unemployment books, more will go on them because of the Tories’ policy.

Jamie Hepburn pointed out that the Tories seem to think that everyone who is on welfare is not working or has never worked. A huge proportion of people who get help from the state are in work. They are in low-paid work, and their working tax credits and child support have been cut. Everything has been cut for people in work. People on housing benefit work; they just do not earn enough to be able to pay the full rent, yet we are taking that benefit from them. It is shocking that the Tories have not got to grips with that.

As I have said in the chamber before, I believe that the Tories want to wreck the welfare state. I am concerned that Labour members think that that is better than this Parliament being in charge of its own welfare system—I just do not get that. The Future of Scotland survey that was published this week shows that 67 per cent of people in Scotland want welfare benefits to be devolved, because they know what is happening to them. Labour should reflect on that.

The reforms are driven by the wish to save money, and that is all. A report from Sheffield Hallam University on incapacity benefit reform that might interest Alex Johnstone came out in November last year. It tells us that there are more people on incapacity benefit than there are claiming unemployment benefit. Alex Johnstone might say, “Well, they should be off it and working,” but the reforms mean that all those people—in Scotland, it will be 36,000—will, at the stroke of a pen, be put on to the unemployment register. Those people are in the industrial areas where unemployment is already high.

We should not forget that many of the people on long-term incapacity and invalidity benefit were encouraged on to those benefits by a Tory Government and successive Labour Governments that were trying to hide the true level of unemployment in the industrial areas. That is why so many people in those areas are on sickness benefit and have been left there.

Our problem now is that we cannot take all those people off benefit at once and put them on to jobseekers allowance—that just will not work. I welcome the steps that the Scottish Government has taken to mitigate the reforms as far as it can. Those include the provision of funding—along with local authorities—to cover the 10 per cent cut in council tax benefit; the proposals that are before us today to protect passported benefits; and the social fund successor arrangements that the Government has made. Those measures, along with the council tax freeze, free prescriptions, free eye tests, free childcare and promoting the living wage will help our vulnerable citizens within the existing powers of the Parliament.

The mark of a civilised society and a civilised country is how it cares for its vulnerable citizens. I believe passionately in a welfare system that is fair and compassionate: a system that makes work pay, which supports and encourages people into work, which helps the low paid and which provides a reasonable standard of living for those who are unable to work because of illness, disability or caring responsibilities.

The Deputy Presiding Officer: I am afraid that the member must close.

Margaret Burgess: Like many members in the chamber, I believe that that can be achieved only when we are in charge of our own destiny and Scotland is an independent country.

16:22

Willie Rennie (Mid Scotland and Fife) (LD): We welcome the bill. The Parliament is taking a sensible approach in seeking to adapt the welfare reforms to Scottish circumstances so that they can be made more appropriate to local situations.

This debate is not easy for the Liberal Democrats. The welfare reform changes are substantial, and there is no doubt that some people will lose out. I disagree with Alex Johnstone’s view that there will not be people who will lose out from the changes, because there will.

Our job in government at a UK level is to ensure that the changes are introduced in a sensitive way and that we can adapt them to circumstances as those become clearer over time—

Roderick Campbell (North East Fife) (SNP): Will the member give way?

Willie Rennie: Not just now.

In that way, we can ensure that the vulnerable do not suffer. However, reform is an overriding necessity. If the welfare budget continues to grow as it is doing, it will be £192 billion by 2015. No society, even one as wealthy as the United Kingdom, can afford such a welfare bill.

In recent years, even with the growth in the economy, the welfare budget has gone up by 40 per cent. We now have 5 million people who are trapped on out-of-work benefits. I say “trapped”, as I have met many of those people in my advice surgeries—

Mark McDonald: Will the member take an intervention?

Willie Rennie: Not just now.

Those people tell me that they are not going to take certain jobs because they do not know
whether they will be able to keep them, and they are not confident that they would get their benefits back in time. In many cases, they would face a five-week wait before they could get their benefits back on stream. They tell me that they will not take those jobs. I am not saying that the same is true of everyone, but there are some people who are trapped by the benefits system. We need to make the necessary changes so that those people have an escape from benefits. People who deny that that is the case have not studied the issue.

Mark McDonald: Will the member give way?

Willie Rennie: Not just now.

I have a huge amount of respect for Margaret Burgess, because she has seen many of these issues close at hand through her work with citizens advice bureaux. I fully respect what she says, but it is an exaggeration to claim that we are wrecking the welfare state. We will continue to spend billions of pounds on the welfare state. It will be a genuine safety net, and it will make work pay.

Fiona McLeod (Strathkelvin and Bearsden) (SNP): Will the member take an intervention?

Willie Rennie: Not just now.

The new system will make things simpler. The universal credit is a sensible way to proceed. It will involve one source of payment and receipt, and a tapering system that will ensure that people do not lose all their benefits at the same time. As people go into work, a taper will apply. Those are sensible changes that everyone should welcome. We should not try to scare people into believing that everyone will lose out, because that is not the case. Some people will benefit. About 230,000 people will be about £30 a week up. Those who do not believe me need to check out the facts. More childcare support—£300 million-worth of it—will be available. Those are good changes.

It is uncomfortable for us to make changes to a budget of such a size. That will be difficult, but the Liberal Democrats in the coalition ensure that the changes that are made are as fair as we can make them.

Members: Oh!

Willie Rennie: Those members who groan have not looked at the facts. Substantial changes have been made to the work capability test.

Fiona McLeod: Will the member give way?

Willie Rennie: I do not have much time left.

Changes have been made on the waiting time for the personal independence payment and the mobility element of disability living allowance for those in residential care. The new system is not about punishing people who are on benefits—that is not our motivation. It is about enabling them to get back into work. Those who say that there is an alternative to reform are letting people down. We need to create a welfare system that enables rather than one that punishes.

16:27

Siobhan McMahon (Central Scotland) (Lab): When I spoke in the stage 1 debate, I described the Welfare Reform Act 2012 as “a missile that is aimed at the heart of the welfare state”.—[Official Report, 23 May 2012; c 9240.]

Judging by this week’s announcement, I think that that was putting it mildly. It seems that, when it comes to the poor, the disenfranchised and the voiceless in our society, the malign intent of Messrs Cameron and Osborne knows no bounds.

While the Tories refuse to pass legislation that would close tax avoidance loopholes and are happy to reduce the top rate of tax, the disabled, the unemployed and those on low incomes are viewed as fair game. We should forget about compassionate conservatism; the Tories are the typical playground bullies, who pick on those who cannot defend themselves while cosying up to the big boys who run the tuck shop and scoff all the sweets.

In recent weeks, the Equal Opportunities Committee has been conducting an inquiry into homelessness among young people. During the evidence sessions, the devastating consequences of the Welfare Reform Act 2012 for the prospects of homeless young people have been a recurring theme. A witness from one local authority stated:

“Welfare reform is terrifying because of the impact that it will have on young people’s lives.”

She said that, because of the cuts, “we will no longer be able to deliver some of the projects that have been really successful.”—[Official Report, Equal Opportunities Committee, 19 June 2012; c 557.]

The really pernicious aspect of this legislation, apart from the impact that it will have on people’s lives, is that it caters to people’s worst instincts: it pits the badly off against the really badly off and the vulnerable against the desperate.

Mr Cameron says that there is nothing compassionate about allowing people to live their lives on benefits. What he fails to mention is that, according to research by the Smith Institute, 95 per cent of those who accounted for the recent £1 billion rise in housing benefit are in work.

What can we do in Scotland to offset the worst excesses of the Tory Government? I have already mentioned the inquiry that the Equal Opportunities Committee is conducting. I would like to say a little more about that, with specific reference to the
community care grant, which is being devolved to Holyrood. One witness described the devolution of the grant as one of the rare positive measures in the Welfare Reform Act 2012. Therefore, it is imperative that we take advantage of the opportunity to make the grant more efficient and effective than it currently is.

I have stated previously that crisis loans and care grants should be amalgamated, that the grant should be available to applicants when they receive the keys to their property and not seven weeks later, and that the application process should be clear and transparent.

I have been contacted by a number of organisations with regard to the interim arrangements for the grant, which are being developed by the Scottish Government and the Department for Work and Pensions. Although there is support in principle for the creation of a national grant fund that specifically recognises the needs of young people who leave care, concerns have been raised that the proposed allocation of £25 million is completely insufficient to service demand, especially given the adverse economic climate. That could lead to the fund running dry before the end of the year and applicants being left in crisis. There are fears that, in order to avoid that scenario, the eligibility criteria will be tailored to the budget as opposed to vice versa, thus tightening the criteria rather than making them more flexible. The most important concern is that we ensure that the new scheme prioritises need and does not exclude those in receipt of other benefits.

I would appreciate the cabinet secretary’s reassurance on those points, as would local authorities, charities and potential applicants. It would be immensely sad if we threw away the opportunity to reform the grant and ensure that it is fair, transparent and available to those who most need it.

I close with a brief comment on the debate about subordinate legislation. Given the necessity of ensuring that people retain access to passported benefits, I understand the need to move swiftly. However, I am disappointed that SNP members chose to reject Labour’s stage 2 amendments that favoured the use of the affirmative procedure to allow the appropriate level of parliamentary scrutiny.

Jamie Hepburn: Will the member give way?

Siobhan McMahon: I am just closing. Sorry.

As my colleague Jackie Bailie pointed out in the Welfare Reform Committee, there was an overwhelming desire for that among charities and other external organisations. The amendments were not party political. They were intended to ensure that the opinion of those on the front line was heeded and that the subordinate legislation was presented before Parliament and not slipped in by the back door. It is therefore a pity that the SNP members voted with the sole Tory on the committee to ensure that the amendments were blocked, and that the SNP continued to vote with the Tories today.

Jamie Hepburn: Will the member give way?

The Deputy Presiding Officer: The member is just finishing.

Siobhan McMahon: I hope for their sakes that those whom they represent do not suffer as a result.

16:31

Kevin Stewart (Aberdeen Central) (SNP): I, too, start by thanking all the stakeholders who gave evidence to the Welfare Reform Committee. Beyond them, I thank all the organisations and individuals in Aberdeen who have contacted me on the issue. I have had many meetings to discuss aspects of the impact of the bill.

Today, again, we seem to be concentrating on process rather than on people. Siobhan McMahon’s speech showed clearly that some folk are more interested in that process than in the people. I say to her that, if we had gone with the affirmative procedure, as was suggested, it might have led to unnecessary delays. We should be clear that there is a huge difference between the use of the negative procedure and the use of the affirmative procedure in being able to implement things at an early date. I do not believe that any organisation thought about the process to any huge degree until they were asked leading questions by certain members of the committee. I see Mr Johnstone nodding in agreement, and I am about to turn to him and the reforms that are being put in place by the Conservative and Liberal coalition.

We are about to see £2.5 billion ripped out of Scotland, and George Osborne has said that there will be another £10 billion of welfare cuts before 2016. We might hope that the Liberal Democrats will do something to try to stop that, but I sincerely doubt that they will achieve it. However, it is good to see Mr Rennie in his place here today. He failed to appear at the stage 1 debate, instead choosing to appear on television. I am pleased to see that he is in the chamber to listen to the debate this afternoon.

I turn to the subject of housing. With the housing benefit changes, some 95,000 social tenants in Scotland will be affected by the legislation. As my colleague Margaret Burgess rightly pointed out, many of those people are in work but require that
benefit because they are not paid enough by their employers.

It is far too easy for Tories to say that an attack is being made on workshy folk. Unfortunately, folk who are in work are also being affected, as are folk who cannot work. Let us be honest and tell people out there that the reality is that many folk who are affected by the changes have jobs.

Dr Richard Simpson (Mid Scotland and Fife) (Lab): Will the member take a brief intervention?

Kevin Stewart: I do not have time; I need to plough on.

On the day when the better together campaign was launched, Cameron made a speech that has gone largely unnoticed. I was really scared by the attack on housing benefit for young people and by the fact that under-25s might not qualify for that benefit in the future. That would undermine the Scottish Government’s ability to reduce homelessness, on which we have done well of late.

What can I say? How does Mr Cameron know the circumstances of each person who is under 25? Does he expect an abused child to stay at home with the parents who abused them until they are over 25? Does he expect kids who have been in care homes to get no housing support whatever? Is that right? Does that really show that we are better together?

Maybe we should be completely and utterly honest. The reality is that there is not much disagreement between Labour and SNP members. However, what we could do with the powers of an independent Parliament is so much greater that we would be talking about not mitigation but having a fair welfare state.

16:36

Mark McDonald (North East Scotland) (SNP): Alex Johnstone talks about getting people into work. Most of my colleagues have covered the notion that the changes will affect not just people who are not in work, but even in relation to people who are not in work, perhaps he should consider talking to his Conservative colleagues in London and getting them to put capital investment into the shovel-ready projects that would help to stimulate the economy and create the jobs that are not available. To be frank, strangling our nation’s economic growth while widening the holes in the safety net into which people are expected to fall is nothing short of abhorrent.

I direct Mr Johnstone to the comments of 17-year-old Dylan Munro in tonight’s Evening Express about the impact that the Cameron proposals on housing benefit for the under-25s would have on him. He has been through an employment programme at Station House Media Unit. He states clearly that if he lost his housing subsidy, which helps him as a minimum-wage earner, he would become homeless. That is not the kind of future to which we should aspire for young Scots such as Dylan Munro.

The housing benefit changes in relation to occupancy will have a massive impact on local authorities and housing associations. As a Finance Committee member, I have heard evidence to that effect from local authorities and the Scottish Federation of Housing Associations.

The changes fly in the face of housing policy, because they anticipate that we will somehow start throwing up one-bedroom properties again, when the drive must be to provide more family-sized accommodation. They also take no consideration of individuals who might be separated and who might require additional bedrooms for children who visit them at weekends or for other periods, for example. A ridiculous approach is being taken.

We hear about the notion of £2.2 billion a year; would that we were not spending £3.5 billion a year on a Trident replacement—I am sure that the people of Scotland would be more than happy to see the back of that in order to help the most vulnerable.

We in the Parliament are dealing with mitigation; that is all that we can do. At the Finance Committee’s meeting on Tuesday, John Swinney said that he could not say that he could protect everyone from the impacts of welfare reform. Given the Parliament’s fixed budget, it would be wrong of us to claim that we can protect everyone. Protecting everybody from the impacts of the welfare reform changes at Westminster simply will not be possible.

If the route that David Cameron has described is followed, while the UK Government continues to attack this Parliament’s budgets, the situation will become even more difficult for us to deal with. It is not credible for anyone to look at the wrecking ball that is being taken to the welfare state and claim with any sincerity that a progressive, open and socially just future for Scotland is better served by remaining part of the UK. I heard talk about Scotland as an independent country being an uncertain future for our people. Frankly, I agree with Ian Bell of The Herald, who said clearly that the future is an uncertain place, but it is far more uncertain for our people as part of the United Kingdom than it is as an independent Scotland.

Presiding Officer, the mace that sits in front of you is inscribed with the values that this Parliament and this nation hold true. One of those is compassion, and I see precious little compassion in the Con-Dem welfare reforms that are currently taking place or in those that are being mooted by David Cameron for the future.
Scotland could and will do better for our most vulnerable.

16:40

Mary Scanlon (Highlands and Islands) (Con): When the coalition Government was formed in 2010, it recognised—as did the previous Government—that for many people on benefits the work incentives were poor and the system was too complex. The aims of welfare reform are to help people to move into and progress in work while protecting and supporting the most vulnerable. As Willie Rennie said, the UK’s welfare bill is currently more than £165 billion a year, so scrutiny and reform should be on-going.

We have heard a great deal from the SNP and Labour about opposition to the plans. Not being a member of the Welfare Reform Committee, I have listened carefully to hear of any firm alternatives, but I am struggling to remember any. As Alex Johnstone said in the stage 1 debate last month:

“...every one believes that welfare reform is needed, but no one is willing to say how it might be achieved other than to look at the UK Welfare Reform Bill and say, “Not that way.””—[Official Report, 23 May 2012; c 9235-6.]

I am also disappointed that not a single member has mentioned the fact that 44 per cent of people on benefits in Scotland have a mental health problem. Instead, they have all railed at David Cameron and the UK Government. I would have liked a bit more talk about people being supported to access mental health services instead of being consigned to a lifetime on benefits. Many people with a mental health problem are on benefits not because they want to be and not because they do not want to work, but because they did not receive an early diagnosis or the treatment or drugs that they wanted.

Mark McDonald: Will the member take an intervention?

Mary Scanlon: Mark McDonald had four minutes and no one has mentioned mental health. I am the only one who has mentioned it. I would have thought that if anyone cares about people on benefits, we should start with the 44 per cent who have a mental health issue.

The benefit cap that is proposed in the Welfare Reform Bill is an important aspect. The cap will impose an upper limit of £26,000 a year, which equates to a salary of £35,000 a year. That is 75 per cent higher than the average salary in the Highlands and an even greater percentage higher than the average salary in the Western Isles. However, as I mentioned in the stage 1 debate—it is worth repeating today—many benefits such as war widows allowance, attendance allowance and DLA will remain exempt from the cap.

Another area to highlight is reassessment, which has been portrayed by all SNP and Labour members today as a way of reducing benefit and support. What if someone’s benefit has stayed the same for years while their condition has seriously deteriorated? It cannot be right that people on DLA are left for years or decades—as they are—without reassessment although their condition may have worsened and they may be in need of a far higher level of support and financial assistance? It is immoral not to help those who are most in need.

The cabinet secretary mentioned human stories. In my previous employment as a lecturer in further and higher education, I saw many lives transformed through training and education, some after years in prison, some after drug or alcohol addiction and many after years on benefits—women and men at a crossroads in their lives. Those students were not incapable, but many had lost confidence, had low self-esteem or had been put down by teachers at school. The welfare reform measures will bring better support to many people in work for up to two years. This is absolutely essential and I regret that it has had so little support today.

16:44

Dr Richard Simpson (Mid Scotland and Fife) (Lab): Clearly, we are faced with a difficult set of circumstances and massive change to the welfare system. It is a challenge that the Parliament has risen to and, apart from the amendments about scrutiny and the policy context, the debate was largely consensual, at least between the SNP and Labour. Indeed, as Drew Smith said, we welcome the joint working with the cabinet secretary and her officials in at least one area.

Many members have acknowledged the challenge and the steep learning curve in dealing with welfare reform, and—as was also acknowledged—we have been helped by many stakeholders and the input that they have made. Welfare reform was required—that was agreed—and universal credit might be a valuable simplification.

A UK Government that repeatedly states, “We are all in it together,” has, as Siobhan McMahon made clear, meant tax cuts for the wealthiest, increased VAT, and cuts in benefits for the least well-off. It caters for many of the worst instincts in our society. A Government that is determined to cut the deficit is going of course when it is failing to produce the growth that is necessary to create the work that Alex Johnstone said is vital to allow people to move into jobs.

Making work attractive is important, but much of the growth that has been achieved in the private sector is part-time work. That has to be matched...
by benefits; as Jamie Hepburn, Siobhan McMahon and others have said, the people who are in work with an income that does not provide a living wage without benefit support must also be supported. The Tory Government’s curtailment of the rise in the minimum wage—under Labour, it always rose above the rate of inflation—is also not welcome, because it contrasts with exactly the situation that Alex Johnstone was talking about.

We are agreed that people who do not need support should not get benefits but, as we have heard, the cuts will affect many vulnerable people. As Margaret Burgess outlined in a detailed and passionate speech, the effects of, for example, moving people off DLA into PIP or UC—which in fact is designed to create a saving of 20 per cent—is not being handled at all sensitively. I do not doubt Mary Scanlon’s commitment to people with mental health problems, but I say to her gently that, notwithstanding the reviews of the process that her UK Government colleagues have undertaken, many with mental health problems are being devastated by the current application of the benefits reassessment process that they must go through.

Jamie Hepburn: I support what Dr Simpson is saying, which is exactly what the Scottish Association for Mental Health has told the Welfare Reform Committee.

Dr Simpson: I have been a member of SAMH since 1976, and I am making the point for exactly that reason.

One of my main concerns arises from conversations with a housing association in my constituency. It has already begun to advise tenants of the effects of the rule changes that are about to come in—an issue that Mark McDonald referred to—and it will be particularly difficult to manage the changes in any sensitive way.

The Welfare Reform Act 2012 provides for a wide range of measures that are being introduced at great speed not to modernise the system but to cut the welfare bill. As Kevin Stewart reminded us, £2.5 billion will be, as he put it, “ripped out of Scotland”. I add to and redefine that by saying that that money has been ripped out of our most vulnerable communities, whose economies will become even more fragile as a result.

The only areas of real dispute between us are on the questions of transparency, accountability and affirmative procedures. It is regrettable that, although our amendments were supported by so many different organisations, the cabinet secretary’s one piece of intemperate language was to suggest that we were in some way playing “fast and loose” with the most vulnerable in our society. I say to her that that is not the case. Our duty is to make representations on behalf of groups such as Children 1st and Families First, which are among the six or seven significant front-line players—to be honest, they are far more engaged at the front line than the cabinet secretary is—and therefore required representation.

Jamie Hepburn: Without wishing to question the intent of the Labour Party, I wonder what Dr Simpson would say to the mother who wants to know whether her child will get a free school meal or the pensioner who wants to know whether they will get a bus pass if they had to wait until a Scottish Parliament committee had considered such matters. That is the danger that opens up if every instrument is required to be affirmative.

Dr Simpson: I served on the Subordinate Legislation Committee as well and both procedures would require 40 days. If a move is made to annul a negative instrument, that would delay the whole process. The right to scrutinise is crucial, and all that those organisations were looking for was the time to enter into debate.

We have had some welcome reassurances from the cabinet secretary on the policy context, although another amendment of ours was defeated. We look forward to her fulfilling those promises and giving us as much time for debate and scrutiny as she said she would. We will hold her to that.

The challenge of the bill has been met and it has been supported by all parties, so it will be voted for by all parties later today. The challenge now is to improve on what we can do within the powers that we have. The SNP members have repeatedly said that an independent Scotland will provide us with a glorious situation but, before the referendum, the SNP must be absolutely clear about the benefits system that we will have in an independent Scotland and how it will be funded. That is critical.

16:51

Nicola Sturgeon: In response to Richard Simpson, I say that we are perfectly clear about the kind of welfare that Labour wants—one that is run by the Tories. That is abundantly clear.

In my opening speech, I thanked a number of people. In my closing speech, I take the opportunity to give heartfelt thanks to my officials and the bill team. They, more than anyone, have borne the burden of the tight timescale that we have had to get the bill through. They have done a fantastic job and I thank them for that.

This has been a reasonably good debate. Like Kevin Stewart, I am slightly disappointed that so many members chose to focus on process rather than people. Michael McMahon asked me to give
a commitment that there would be maximum scrutiny. I have given that commitment at every stage of the process and I have no hesitation in doing so again today. However, what I have never been prepared to do at any stage is expose vulnerable people to the risk of not getting their passported benefits, and I am glad that Parliament agrees with that position today.

The obligation on all of us now is to get on with the substance, to work together within the heavy constraints that we face of a policy direction that we do not agree with, and a timetable that has been set by the UK Government. Nevertheless, we need to get on with the work of getting the regulations right. Jamie Hepburn encapsulated the desires of organisations such as the SCVO extremely well. They want to be part of the process from the point of view of protecting the people they care about. Let us get on with working together.

Drew Smith made some legitimate points about what the substance should focus on, as did Jackie Baillie at stage 1 when she talked about addressing the challenge that will arise with new claimants in the future, ensuring that we do not end up with a postcode lottery, and developing a system that works well. That is what we should focus on.

The joint briefing from Children 1st, Barnardo's, Citizens Advice Scotland and One Parent Families Scotland that was issued ahead of today's debate sums it up well when it says that it is vital that, as we head into the almost uncharted waters of the impact of welfare reform, we continue to work together in the interests of some of Scotland's most vulnerable citizens. That should be our absolute priority as we leave the chamber tonight.

My second point is about the substance of the debate. Because it suits their purposes, the Tories continually—and Alex Johnstone and Mary Scanlon were at it again today—present the debate as being all about incentivising work and getting at the feckless workshy. I am sure that we can all agree about the importance of incentivising work but, as Margaret Burgess said when she nailed the point, the fact is that many people who interact with the benefits system are already in work. I mentioned the evidence that Save the Children gave about the single mother who is in work but believes that she will be worse off after the introduction of universal credit.

One Parent Families Scotland has suggested that many single parents who are working more than 16 hours a week could be worse off under the new system. These are people who are working hard, trying to scrape out a living to support their kids and make a better life for their families. The reforms threaten to take the feet from under them. To Willie Rennie, I would say that that is not trying to scare people; it is simply pointing out the reality of the Tory welfare reforms that he and his Liberal Democrat colleagues, to their shame, are prepared to support.

My third substantive point is about the future. We did not ask to have to take a bill through Parliament on this issue, but it was right that we did so. As we pass the bill today, it is important that we look to the future. In the immediate future for the legislation, we will embark on the consultation exercise that launched today and we will hold a series of stakeholder meetings and policy events during the summer.

Over the same period, we will look at the UK Government's regulations, as those are published and made available to us. A lot is said about what detail is available and what is not. However, until the UK Government sets out the rate at which universal credit will be paid, we will have only part of the picture. Once we have the full picture, we will come back to Parliament and lay our own regulations. I expect that all of that work will be carried out in good time to meet the deadlines that we face.

The other sense in which I want to look to the future is about the longer-term future for vulnerable people in Scotland. As Margaret Burgess said, we had a rather frightening insight into that earlier this week in David Cameron's speech. According to him, the Conservative future for anyone under the age of 25, unless they can afford to pay their own rent, could be to live with their parents, because they will no longer receive a penny in housing benefit. In future, families with three kids, on income support, could lose their child-related benefit entitlements for their third child. The future for anyone found guilty—for whatever reason—of being out of work for longer than a fixed period could be full-time community service.

The most staggering thing of all is that that frightening speech about what might lie ahead was given on the same day that Labour linked arms with the Tories and said, "We are better together." Let me say this: on welfare, we are most certainly not better together. I will never understand why Labour members—many of whom, such as Siobhan McMahon, I believe care about vulnerable people—are prepared to argue for a position that leaves the Tories with carte blanche to do their worst to the most vulnerable people in our society.

These changes do not reflect Scottish values. I want to be in a Parliament that has the power to do so much more than to mitigate the worst impact of bad Tory policies. I want to be in a Parliament that has the ability and the powers to design a welfare system that reflects the values that we hold dear in Scotland—a welfare system that lets
us hold our heads high and say that it incentivises people into work but protects the vulnerable. I want to be in a Parliament that has the powers to create the jobs that are needed to get people into work. That is the kind of Scotland that I want to live in. It is the kind of welfare system that I want to have and it is the kind of Scotland that does not come from Labour and the Tories saying that we are better together. It comes from this Parliament and this country being independent and equal, like countries abroad in this world.

The Presiding Officer: That concludes the debate on the Welfare Reform (Further Provisions) (Scotland) Bill.
Welfare Reform (Further Provision) (Scotland) Bill

[AS PASSED]

An Act of the Scottish Parliament to enable the Scottish Ministers to make provision by regulations in consequence of the Welfare Reform Act 2012 (in respect of matters other than reserved matters).

Powers etc.

1 Universal credit: further provision

(1) The Scottish Ministers may by regulations make such provision as they consider appropriate in consequence of any provision of—

(a) Part 1 (universal credit) of the UK Act,
(b) regulations made by the Secretary of State under that Part,
(c) an order made under section 41(5)(a) of that Act.

(2) Regulations under this section may modify any enactment (whenever passed or made).

(3) Regulations under this section—

(a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act,
(b) otherwise, are subject to the negative procedure.

2 Personal independence payment: further provision

(1) The Scottish Ministers may by regulations make such provision as they consider appropriate in consequence of any provision of—

(a) Part 4 (personal independence payment) of the UK Act,
(b) regulations made by the Secretary of State under that Part.

(2) Regulations under this section may modify any enactment (whenever passed or made).

(3) Regulations under this section—

(a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act,
(b) otherwise, are subject to the negative procedure.
3 Regulations under this Act: ancillary provision

(1) This section applies to any regulations under section 1 or 2.

(2) The regulations may—
   (a) make provision in direct or indirect consequence of—
      (i) a relevant portion of the UK Act, or
      (ii) a relevant instrument made under that Act,
   (b) contain provision not by itself in consequence of a relevant portion of that Act or of such an instrument, if the provision concerns any matter arising in direct or indirect consequence of the relevant portion or instrument (including previously so arising).

(3) The regulations may—
   (a) make different provision for different cases or purposes,
   (b) include supplemental, incidental, consequential, transitional, transitory or saving provision.

3A Impact of reform: annual reporting

(1) The Scottish Ministers must prepare an initial report giving such information as they consider appropriate about the impact that the UK Act is likely to have on people in Scotland.

(2) The initial report is to be laid before the Scottish Parliament on or before 30 June 2013.

(3) The Scottish Ministers must prepare an annual report giving such information as they consider appropriate about the impact that the UK Act is having on people in Scotland.

(4) An annual report is—
   (a) starting with 2014, required each year until 2017,
   (b) to be laid before the Scottish Parliament on or before 30 June in the year concerned.

(5) The initial report or an annual report may include such additional information as the Scottish Ministers consider appropriate.

(6) The references in subsections (1) and (3) to the impact of the UK Act include that arising directly or indirectly from the effect of—
   (a) a relevant portion of that Act, or
   (b) a relevant instrument made under that Act.

(7) The Scottish Ministers may by order—
   (a) modify subsection (2) by substituting a later date for the date specified in it,
   (b) modify subsection (4) by—
      (i) substituting a later year for the second year specified in paragraph (a),
      (ii) substituting a later date for the date specified in paragraph (b).

(8) An order under subsection (7) is subject to the negative procedure.
General

4 References to the UK Act
In this Act, “the UK Act” means the Welfare Reform Act 2012.

5 Commencement
This Act comes into force on the day after Royal Assent.

6 Short title
The short title of this Act is the Welfare Reform (Further Provision) (Scotland) Act 2012.
Welfare Reform (Further Provision) (Scotland) Bill
[AS PASSED]

An Act of the Scottish Parliament to enable the Scottish Ministers to make provision by regulations in consequence of the Welfare Reform Act 2012 (in respect of matters other than reserved matters).

Introduced by: Nicola Sturgeon
On: 22 March 2012
Bill type: Executive Bill