

WELFARE REFORM (FURTHER PROVISION) (SCOTLAND) BILL

POLICY MEMORANDUM

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 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
- Housing benefit under section 130 of the Social Security Contributions and Benefits Act 1992.

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:

¹ <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/45099.aspx>

[A]n 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.

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