The Committee will meet at 10.15 am in the Adam Smith Room (CR5).

1. **Subordinate legislation:** The Committee will take evidence on the Discretionary Housing Payments (Limit on Total Expenditure) Revocation (Scotland) Order 2014 from—

   Nicola Sturgeon, Deputy First Minster and Cabinet Secretary for Infrastructure, Investment and Cities, Scottish Government.

2. **Subordinate legislation:** The Committee will consider the following negative instruments—

   Discretionary Housing Payments (Limit on Total Expenditure) Revocation (Scotland) Order 2014

3. **Further devolution of welfare responsibilities:** The Committee will take evidence from—

   Professor David Bell, Professor of Economics, University of Stirling;

   Professor Ken Gibb, Professor in Housing Economics and Director for Public Policy, University of Glasgow;

   Dr Jim McCormick, Scotland advisor, Joseph Rowntree Foundation;

   Professor Nicola McEwen, Professor of Territorial Politics, The University of Edinburgh;

   Professor Paul Spicker, Individual;

   Dr David Webster, Honorary Senior Research Fellow - Urban Studies, University of Glasgow.
Simon Watkins
Clerk to the Welfare Reform Committee
Room T1.01
The Scottish Parliament
Edinburgh
Tel: 0131 348 5228
Email: simon.watkins@scottish.parliament.uk
The papers for this meeting are as follows—

Subordinate legislation cover note & papers  WR/S4/14/17/1
Further devolution of welfare responsibilities cover note & papers  WR/S4/14/17/2
Welfare Reform Committee
Subordinate Legislation
Discretionary Housing Payments (Limit on Total Expenditure) Revocation (Scotland) Order 2014
11 November 2014

Background

1. The Scottish Parliament passed the Budget (Scotland) (No 3) Act 2014 as part of this year’s budget debate. Part of the agreement was the intention to give Scottish local authorities additional funding to spend on Discretionary Housing Payments (DHPs). Currently there is a cap imposed by DWP which limits any additional ‘top ups’ by local authorities to 1.5 times the DWP allocation.

2. On 12th August 2014 the Committee considered the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2014. It enables the Scottish Ministers to determine the limit of local authority DHP expenditure and will apply from 2014/15 onwards. The Order came into force on 5 November 2014 after approval by the Privy Council.

Today’s business

3. Now that the power has been devolved the Scottish Government plans to lay a second order on 10 November 2014 revoking those enactments that impose the cap on DHPs. The letter from the Deputy First Minister gives the Committee advance notice of the order to facilitate its quick progress through Parliament. The Clerks plan to provide copies of the formal order to the Committee on the morning of the meeting. The Scottish Government has provided assurances that there are no substantive changes.

4. The Deputy First Minister will appear in front of the Committee to make a statement and answer any questions. The Order is subject to the negative procedure. It is expected to come into force on 9 December 2014.

Submissions & Briefing

- Annexe A – Letter from Nicola Sturgeon, Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities.
- Annexe B – Letter from David Mundell, Parliamentary Under Secretary of State for Scotland
- Annexe C – Order, Explanatory Note and Policy Note
- Annexe D – SPICe background briefing on DHPs

Heather Lyall
Assistant Clerk
6 November 2014
Dear Michael,

I am writing further to the consideration by your committee, on 12 August, of the draft Section 63 Scotland Act Order, which will transfer to Scottish Ministers the power of the Secretary of State for Work and Pensions in respect of setting the cap on Discretionary Housing Payments (DHPs).

As you may be aware, the draft order has now completed its parliamentary scrutiny in both parliaments and you should have recently received notification to this effect from David Mundell MP, Parliamentary Under Secretary of State for Scotland. I am glad to report that the consideration by the UK Parliament was straightforward and without controversy.

The draft Section 63 Order now goes forward to be made at the Privy Council meeting on 5 November. The intention is that the order will come into effect the following day. I will take this opportunity to repeat my thanks to you and your committee for the role you played in this process.

Assuming that the Order is made at Privy Council, I propose to make the attached Discretionary Housing Payments (Limit on Total Expenditure) Revocation (Scotland) Order 2014 as soon as the power to do so has devolved, on 6 November. You will note that this is a straightforward negative instrument revoking those enactments that impose the cap on Discretionary Housing Payments (DHPs). This Order will be laid in parliament shortly after and I intend that it will come into force on 9 December.

I am grateful for your invitation to discuss this order on 11 November, and look forward to providing evidence to the committee. I trust that this update and early sight of the proposed order will be beneficial for your consideration.

NICOLA STURGEON

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.scotland.gov.uk
Dear Michael,

DISCRETIONARY HOUSING PAYMENTS – SECTION 63 ORDER

I am writing to provide you with an update on the Order being taken through the UK and Scottish Parliaments which will allow the Scottish Government to bring forward legislation to raise, or remove, the cap which currently limits the total amount of expenditure that may be incurred by a local authority in Scotland in making Discretionary Housing Payments (DHPs).

On 25th June, the Minister for Welfare Reform at the Department for Work and Pensions ("the DWP"), Lord Freud, Deputy First Minister in the Scottish Government, Nicola Sturgeon MSP and I wrote to all Scottish Local Authorities to outline the agreement which had been reached between the UK Government and the Scottish Government in relation to DHPs. That letter also explained the process by which the power to set the DHP cap would be transferred to the Scottish Ministers. As previously advised, an Order to be made under section 63 of the Scotland Act 1998 ("a section 63 Order"), was to be agreed by both the UK and Scottish Governments and then laid in both the UK and Scottish Parliaments. Both Parliaments would then scrutinise and approve the section 63 Order. Once all necessary Parliamentary approval was received, the Order would be considered by Her Majesty in Council at the first meeting of the Privy Council following that approval.

I am pleased to advise you that the Order was laid in both the UK and the Scottish Parliaments on 7th July and that the UK Parliament’s scrutiny of this section 63 Order has now been concluded. I wanted to let you know that the approval of both Houses of Parliament has been obtained, as required. I am also pleased to confirm that the approval of the Scottish Parliament has also been received.
Therefore, the section 83 Order will now be considered by Her Majesty in Council at the 6th November meeting of the Privy Council. Once the Order has been considered, and made, at that meeting, the Order will come into force on 6th November 2014. The Scottish Government will then be in a position to make its legislation to raise, or remove, the cap for Discretionary Housing Payments in Scotland for this current financial year and any subsequent years. This will allow Local Authorities in Scotland the flexibility to add extra resources in order to support people who need help with their housing costs, within the DHP framework set out by DWP.

In the joint letter that was issued on the 25th June by the Scotland Office, Department for Work and Pensions and the Scottish Government to all key stakeholders in Scotland, reassurance was given that Local Authorities in Scotland would be able to incur expenditure beyond the current DHP cap ahead of the legislation completing all of its Parliamentary stages. That letter provided reassurance that both the UK and Scottish Governments were committed to delivering this Order within the current financial year (2014 – 2015) to ensure that Scottish Ministers are able to use their new executive power to set the DHP cap level in Scotland.

The Order is being made without prejudice to the ongoing work of the Smith Commission, which you will be aware has been established to consider and make recommendations for further devolution of powers, strengthening the Scottish Parliament within the United Kingdom. The UK Government believes it is right that we should deliver this existing commitment in a timely manner.

I hope this letter offers assurance that this legislation is progressing and that Local Authorities can continue with their planning to spend above the current cap on DHPs in the 2014/2015 financial year if they deem it appropriate.
ANNEXE C

SCOTTISH STATUTORY INSTRUMENTS

2014 No.

SOCIAL SECURITY

Discretionary Housing Payments (Limit on Total Expenditure) Revocation (Scotland) Order 2014

Made - - - 2014
Laid before the Scottish Parliament 2014
Coming into force - 9th December 2014

The Scottish Ministers make the following Order in exercise of the power conferred by section 70(3)(a) of the Child Support, Pensions and Social Security Act 2000(1) and all other powers enabling them in that behalf.

Citation, commencement and extent

1.—(1) This Order may be cited as the Discretionary Housing Payments (Limit on Total Expenditure) Revocation (Scotland) Order 2014 and comes into force on 9th December 2014.

(2) This Order extends to Scotland only.

Revocation

2. The following enactments are revoked—
   (a) article 7(1) of the Discretionary Housing Payments (Grants) Order 2001(2);
   (b) article 2(2)(b) of the Income-related Benefits (Subsidy to Authorities) and Discretionary Housing Payments (Grants) Amendment Order 2014(3).

St Andrew's House,
Edinburgh 2014

A member of the Scottish Government

(1) c.19; section 70 is amended by the Local Government Act 2003 (c.26), Schedule 8, Part 1, and by the Welfare Reform Act 2012 (c.5), Schedule 3, paragraph 12 but the amendments made by that Act are not yet in force. The functions of the Secretary of State under section 70(3)(a) were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2014 (S.I. 2014/xxx), article 2.
(2) S.I. 2001/2340; article 7(1) is amended by S.I. 2014/1667.
(3) S.I. 2014/1667.

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.scotland.gov.uk
EXPLANATORY NOTE
(This note is not part of the Order)

This Order is made by the Scottish Ministers under section 70(3)(a) of the Child Support, Pensions and Social Security Act 2000 (c.19) ("the 2000 Act"), which provides for the power to place a limit on the total amount of expenditure that local authorities can incur in making discretionary housing payments. The power to make discretionary housing payments is conferred on local authorities by regulations made under section 69 of the 2000 Act, the Discretionary Financial Assistance Regulations 2001 (S.I. 2001/1167).

The power to make this Order was transferred from the Secretary of State to the Scottish Ministers by virtue of an Order made under section 63(1) of the Scotland Act 1998 (c.46) (power to transfer functions): the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2014 (S.I. 2014/xxx).

Following on from that transfer, this Order revokes article 7(1) of the Discretionary Housing Payments (Grants) Order 2001 (S.I. 2001/2340) ("the 2001 Order"), which imposed the limit in Great Britain, and article 2(2)(b) of the Income-related Benefits (Subsidy to Authorities) and Discretionary Housing Payments (Grants) Amendment Order 2014 (S.I. 2014/1667), which amended article 7(1) of the 2001 Order. The revocation of these enactments extends only to Scotland and its effect is that there is no limit imposed on the expenditure on discretionary housing payments of local authorities in Scotland from the financial year commencing 1st April 2014.
POLICY NOTE

Discretionary Housing Payments (Limit on Total Expenditure) Revocation (Scotland) Order 2014

SSI

1. The above instrument has been made by the Scottish Ministers under powers conferred upon them by section 70(3)(a) of the Child Support, Pensions and Social Security Act 2000. Devolved competence to make this instrument arises as a result of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2014 (S.I. 2014/xxx).

2. The instrument is, by virtue of section 70(5) of that Act, subject to negative procedure in in the Scottish Parliament.

Background

3. The UK Government has legislated to provide local authorities across Great Britain with the ability to grant Discretionary Housing Payments (DHPs) to claimants in their areas who are entitled to Housing Benefit or the housing element of Universal Credit, and who appear to need further financial assistance to meet housing costs. Local authorities are able to exercise broad discretion to determine how and when DHPs are awarded. Each financial year the UK Government makes a contribution to the cost of DHP awards, and local authorities are able to add to this contribution, subject to a formula-based cap.

4. The power to make DHPs is conferred on local authorities by regulations made under section 69 of the 2000 Act, the Discretionary Financial Assistance Regulations 2001. In addition to the UK Government contribution the Scottish Ministers have made provision for additional funds for local authorities in Scotland to add to their spending on DHPs. The funding is provided to allow local authorities to fully mitigate a measure of the Department for Work and Pensions (DWP) known generally as the bedroom tax and in the DWP guidance and documentation as the Removal of the Spare Room Subsidy. Funding to local authorities has been allocated in order to fully compensate local authorities for the cost in DHPs of mitigating this measure. If spent in full the additional funds would cause some local authorities to exceed the statutory cap, and, therefore, the Scottish Ministers desire the statutory cap on DHPs to be removed.

5. The power to set the cap on the amount local authorities may spend on DHPs in a financial year is found in section 70(3)(a) of the Child Support, Pensions and Social Security Act 2000. Pursuant to this the cap is set out in the Discretionary Housing Payments (Grants) Order 2001. In response to a request for the Secretary of State to remove or lift the cap the Scotland Office offered to transfer powers from the Secretary of State to the Scottish Ministers.

6. The power to make this Order was transferred from the Secretary of State to the Scottish Ministers by virtue of an Order made under section 63(1) of the Scotland Act 1998 (c. 46) (Power to transfer functions): the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2014.

7. This Order revokes article 7(1) of the Discretionary Housing Payments (Grants) Order 2001 (S.I. 2001/2340) ("the 2001 Order"), which imposed the limit in the Great Britain, and article 2(2)(b)
of the Income-related Benefits (Subsidy to Authorities) and Discretionary Housing Payments (Grants) Amendment Order 2014 (S.I. 2014/1667), which amended article 7(1) of the 2001 Order.

8. The revocation of these enactments extends only to Scotland and its effect is that there is no limit imposed on the expenditure on DHPs of local authorities in Scotland from the financial year commencing 1st April 2014.

Consultation

9. No consultation has been carried out specific to this Order.

Financial Effects

10. There will be no additional financial implications/costs as a result of this Order.

Scottish Government
Directorate for Housing, Regeneration and Welfare
November 2014
1. **Discretionary Housing Payments**
This briefing provides background information on Discretionary Housing Payments (DHPs), funding and expenditure.

2. **Background**
Local authorities can make DHPs to help tenants who are entitled to housing benefit or the housing element of Universal Credit who, in their opinion, require “further financial assistance” with “housing costs”. DHPs can be used to support tenants in the private and social rented sectors. Local authorities have discretion to make DHPs, and to decide the amount that is paid (within certain limits) and how long the payments are made for.

The relevant regulations are the *Discretionary Financial Assistance Regulations 2001* [SI 2001/1167] and local authorities must also take DWP guidance (updated in April 2013) into account.

3. **Funding**
The UK Government provides local authorities with funding for DHPs. From 2011, it substantially increased the DHP budget to help tenants cope with various welfare reforms, including the bedroom tax. Local authorities can “top up” their DHP allocation from their own funds. However, legislation has (Article 7 of The Discretionary Housing Payment (Grants) Order 2001) limited this to 1.5 times the DWP allocation.

In September 2013, the Scottish Government announced it would provide £20m funding to local authorities to allow them to top up their DWP allocations. It also made a commitment to provide funding in 2014-15 and later requested that the DWP lift the legislative cap on DHP spending to allow them to provide enough funding to mitigate the impact of the bedroom tax in Scotland.

On 2 May 2014, the UK Government agreed to devolve the power to Scottish Ministers to set the statutory cap on DHPs that is found in section 70(3)(a) of the Child Support, Pensions and Social Security Act 2000. The power has been devolved through a “section 63 Order”¹ which has received Parliamentary approval in both the Scottish and UK Parliament.

The Welfare Reform Committee considered the section 63 Order at their meeting of 12 August 2014. During that meeting, Nicola Sturgeon explained that the Scottish Government would use the order making power to lift the cap on spending completely. This approach will

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¹ A section 63 Order is an order made under section 63 of the Scotland Act 1998 to transfer functions to Scottish Ministers. The particular order is named the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 2014
help the Government ensure that there is enough money overall and also to ensure that sufficient allocations are made to individual local authorities to reflect their need.

2014-15 Funding

The DWP is providing funding of £15.2m this year while the Scottish Government is providing £35m. In advance of the cap on DHPs being lifted, local authorities were allocated £20m of Scottish Government funding and were provided with a letter of comfort\(^2\) confirming that they could plan to spend the full amount needed to mitigate the impact of the bedroom tax.

On 29 August, council leaders met with the Scottish Government about proposals on the distribution of the remaining £15m Scottish Government funding and agreed the following:

- 80% (£12m) is made available to the 20 local authorities who do not yet have sufficient funds to fully mitigate the bedroom tax – this will be allocated as a proportion of the difference between current funding and estimated need (based on bedroom tax losses according to DWP caseload stats); and
- 20% (£3m) is to be available following the publication of DHP statistics in May 2015 to reimburse local authorities against actual DHP expenditure.\(^3\)

The full 2014-15 allocations for local authorities are provided in Annex 1.

2015-16 Funding

The Draft Budget 2015-16 has allocated a provisional £35m for DHPs in 2015-16. The DWP normally makes its announcements about DHP allocations in Jan/Feb of each year.

Table 1 summarises the funding.

<table>
<thead>
<tr>
<th>Source</th>
<th>2013-14</th>
<th>2014-15</th>
<th>2015-16</th>
</tr>
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<td>£15,230,343</td>
<td>Not announced</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>yet</td>
</tr>
<tr>
<td>Scottish Government</td>
<td>£20,000,000</td>
<td>£35,000,000</td>
<td>Provisional</td>
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<tr>
<td></td>
<td></td>
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<td>£35,000,000</td>
</tr>
<tr>
<td>Total</td>
<td>£38,051,443</td>
<td>£50,230,343</td>
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</tr>
</tbody>
</table>

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\(^2\) Letter issued to Scottish local authorities regarding section 63 Order

\(^3\) Scottish Government letter issued to local authorities 16 September 2014
4. Implications for Tenants and Landlords

Around 71,000 tenants have their housing benefit reduced (on average by £11.72 a week)\(^4\) because of the bedroom tax. As the legislation governing the bedroom tax still exists, these tenants are still obliged to pay any rent due because of the bedroom tax. According to the Scottish Government, the £50.2m will be enough to fully mitigate the impact of the bedroom tax in 2014-15. It will allow those affected by the bedroom tax to:

“…claim a DHP to fully fund the housing benefit deduction for a full year – and the clear expectation of Scottish Ministers and the Scottish Parliament is that this funding will be used for that purpose and that everyone affected by the bedroom tax who applies for a DHP will receive assistance.”\(^5\)

Tenants will still need to apply for a DHP from their local authority. Evidence suggests there is a “hard to reach” group of tenants affected by the bedroom tax who, for various reasons, have not submitted claims for a DHP.\(^6\) Some local authorities, Renfrewshire Council for example, are reviewing their application process to make it more streamlined and easier for tenants to complete.

Councils may also have to revise their DHP policies as the Scottish Government expectation is that tenants affected by the bedroom tax who were previously refused a DHP (for example, because they were not considered to be in ‘financial hardship’) should now be awarded a DHP.

Evidence from the CPAG Early Warning Bulletin\(^7\) suggests that despite the Scottish Government mitigation of the bedroom tax, there is some evidence that housing providers are taking the possible future application of the bedroom tax into account when allocating properties. For example,

“The client’s son is currently being looked after by the local authority, but both parties agree the long term aim is to reunite the family. The client is currently homeless and has recently been informed by the local authority that she is only being considered for 1 bedroom properties because otherwise she might be subject to the bedroom tax before she is reunited with her son.”

It is not clear how the announcement of further mitigation funding in 2015-16 may have changed such practices.

The CPAG bulletin also highlights that a recurring problem appears to be that some housing providers are retaining DHPs that contributed to a credit in the rent account, rather than passing them onto tenants affected by the bedroom tax. For example, a client:

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\(^4\) Statistics obtained from DWP Stat-Xplore, latest figures are for May 2014
\(^5\) Letter to COSLA from Depute First Minister, 28 May 2014
\(^7\) The system collects information and anonymous case studies from 84 frontline workers including welfare rights officers, housing advisers and support workers across Scotland. [http://www.cpag.org.uk/sites/default/files/EWS%20Policy%20Bulletin%20Housing.pdf](http://www.cpag.org.uk/sites/default/files/EWS%20Policy%20Bulletin%20Housing.pdf)
“was awarded a discretionary housing payment backdated to April 2013. She was told, however, that the housing provider would not reimburse the money she had paid to cover the bedroom tax herself because they could not be sure the client’s DHP would be renewed in the new financial year. As such there was a possibility that the client might yet fall into arrears. The client was unsatisfied with this, which led to a protracted exchange of letters and calls”.

CPAG recommend that the Scottish Government and/or COSLA should issue a reminder that discretionary housing payment must be passed on to the tenant, regardless of whether the tenant has received a backdated housing benefit payment.

Existing Arrears

Local authorities have discretion how to distribute DHPs to those affected by the bedroom tax. This may include payments made to address arrears built up as a result of the bedroom tax in the current year.8

On 12 August, Nicola Sturgeon explained to the Committee that how local authorities deal with bedroom tax arrears from 2013-14, for example by backdating DHPs, will be a matter for local authorities to decide. This advice was replicated in a recent PQ:

Question S4W-22577: Jackie Baillie, Dumbarton, Scottish Labour, Date Lodged: 24/09/2014

To ask the Scottish Government whether local authorities have been advised that they can cancel arrears of the so-called bedroom tax arising in 2013-14 and when it will issue guidance on the matter.

Answered by Margaret Burgess (03/10/2014):

The management of arrears, including those related to the bedroom tax is a matter for landlords as part of their responsibility to manage their tenants, stock and finances.

The cap for Discretionary Housing Payments (DHPs) will be lifted once the power to do so is transferred to Scottish Ministers. When that happens, local authorities will be able to top up their DHP accounts to make any further payments in line with local priorities.

Tenants not affected by the bedroom tax

DHPs are available to tenants with a range of financial difficulties, not just those who are affected by the bedroom tax. Some concern has been expressed, by Crisis9 for example, that as DHP budgets are under pressure to support people affected by the bedroom tax there will not be that much funding available for people who need other types of support, for example, to pay rent in advance.

During the Committee’s meeting of 12 August, Nicola Sturgeon sought to reassure the Committee that the £50m was sufficient to ensure other DHP claimants would still receive assistance. She stated that the Scottish Government’s latest estimate for mitigating the effects of the bedroom tax was “…in the region of £40m” and that:

8 Personal correspondence from Scottish Government officials, 7 July 2014
“We take the view that the bedroom tax can be mitigated within that £50 million without touching any of the resource for non-bedroom-tax purposes. Resources are in place to deal with other claims in relation to discretionary housing payments. Of course, it is down to individual local authorities to assess those claims in the normal way”. (Col 1639)

5. Spending on DHPs
The Scottish Government has been collating information on how Scottish local authorities are spending their DHPs. The latest statistical publication,10 published in August 2014, before the allocation of the final £15m was made, covers the period 1 April to 30 June 2014.

The publication notes that different local authorities have adopted different approaches to recording DHP awards which span 2013/14 and 2014/15, particularly for those affected by the bedroom tax. For example, some local authorities have treated these as entirely new applications, whereas others have not. The Scottish Government intend to issue guidance to local authorities to ensure consistency of reporting for cases rolled over from 2013/14.

The publication also compares the actual and committed spend of the £35.2m that had been allocated at the time of publication. At 30 June 2014, 81% of the £35.2m (£28,443,465) had been spent or committed.

However, there is wide variation between local authorities. West Lothian, Fife, East Ayrshire and Dundee City have already spent or committed more than 100% of their funding. The analysis suggests that this does not mean that these local authorities are at risk of over spending. Rather, they may have been spending above the existing cash limit ahead of the legislation lifting the cap on DHP spending completing all its Parliamentary stages.

The publication indicated that, “A clearer picture of DHP expenditure for 2014/15 will appear once:
- The legal power to transfer the cash limit for 2014/15 has passed to the Scottish Government;
- The new cash limit for 2014/15 has been set, and;
- The funding for position for 2014/15 has been finalised with the allocation of the remaining £15 million.”

Kate Berry, SPICe Research, 06 November 2014

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10 Scottish Government *Discretionary Housing Payments 1 April to 30 June 2014*
## Annex C.1: DHP Funding for 2014/15

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<th>Local Authority</th>
<th>DWP</th>
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<th>Distribution of £12m from SG</th>
<th>Total</th>
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<td>Midlothian</td>
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<td>West Lothian</td>
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<td>£1,006,210</td>
<td>£699,500</td>
<td>£1,705,710</td>
</tr>
<tr>
<td><strong>SCOTLAND</strong></td>
<td><strong>£15,230,343</strong></td>
<td><strong>£20,000,000</strong></td>
<td><strong>£35,230,343</strong></td>
<td><strong>£12,000,000</strong></td>
<td><strong>£47,230,343</strong></td>
</tr>
</tbody>
</table>

* Received Rural Funding

**Note:** £3m from SG to be made available following the publication of DHP statistics in May 2015 to reimburse local authorities against actual DHP expenditure.
Welfare Reform Committee
Further Devolution of Welfare Responsibilities
11 November 2014

Background

1. The Smith Commission was set up by the Prime Minister on the 19 September 2014 to take forward the devolution commitments on further powers for the Scottish Parliament. This note summarises current responsibilities for welfare and the proposals from the main political parties.

2. At its meeting on 28 October 2014 the Welfare Reform Committee agreed to hold a meeting on Tuesday 11 November on the Smith Commission process, and examine the issues surrounding the extension of welfare powers to the Scottish Parliament.

Today's business

3. The Committee will hear from academics on issues around further devolution of welfare responsibilities to Scotland. Witnesses have made written submissions, or supplied copies of their written submissions to the Smith Commission, and these can be found in the annexes.

Submissions & Briefing

- Annexe A – SPICe summary of current responsibilities for welfare and proposals from the main political parties.
- Annexe B – Submission from Professor David Bell
- Annexe C – Submission from Dr Jim McCormick
- Annexe D – Submission from Professor Nicola McEwen
- Annexe E – Submission from Professor Paul Spicker
- Annexe F – Submission from Dr David Webster
ANNEXE A

Summary of current responsibilities for welfare and proposals

Introduction

The Smith Commission was set up by the Prime Minister on the 19 September 2014 to take forward the devolution commitments on further powers for the Scottish Parliament. This note summarises current responsibilities for welfare and the proposals from the main political parties.

Welfare in Scotland

Social security is largely reserved under Schedule 5 of the Scotland Act 1998. However, the Welfare Reform Act 2012 allowed Scotland to take responsibility for the Scottish Welfare Fund and the Council Tax Reduction Scheme. The Scottish Government also has existing responsibility for a number of ‘passported benefits’, for example, free school meals. The power to set the statutory cap on Discretionary Housing Payment (DHP) spending has also been devolved\(^1\) which will allow the Scottish Government to increase the amount it provides to local authorities, through DHPs, and mitigate the impact of the ‘bedroom tax’.

Welfare spend in Scotland

Social security expenditure in the UK represents around 31% of all UK Government spending. In 2012-13, UK Government spent around £17.7bn on welfare in Scotland, including the state pension (DWP 2014).

**Spend on Welfare: Scotland, 2012/13 £m**

<table>
<thead>
<tr>
<th>Benefit</th>
<th>£m</th>
<th>% of total</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Pension</td>
<td>£6,783</td>
<td>38.3%</td>
</tr>
<tr>
<td>Tax Credits</td>
<td>£2,226</td>
<td>12.6%</td>
</tr>
<tr>
<td><strong>Housing Benefit</strong></td>
<td>£1,789</td>
<td>10.1%</td>
</tr>
<tr>
<td>Disability Living Allowance</td>
<td>£1,450</td>
<td>8.2%</td>
</tr>
<tr>
<td>Child Benefit</td>
<td>£926</td>
<td>5.2%</td>
</tr>
<tr>
<td>Employment and Support Allowance</td>
<td>£752</td>
<td>4.2%</td>
</tr>
<tr>
<td>Pension Credit</td>
<td>£688</td>
<td>3.9%</td>
</tr>
<tr>
<td>Income Support</td>
<td>£496</td>
<td>2.8%</td>
</tr>
<tr>
<td><strong>Attendance Allowance</strong></td>
<td>£489</td>
<td>2.8%</td>
</tr>
<tr>
<td>Jobseeker's Allowance</td>
<td>£478</td>
<td>2.7%</td>
</tr>
<tr>
<td><strong>Council Tax Benefit</strong></td>
<td>£380</td>
<td>2.1%</td>
</tr>
<tr>
<td>Incapacity Benefit</td>
<td>£371</td>
<td>2.1%</td>
</tr>
<tr>
<td>Statutory Maternity Pay</td>
<td>£215</td>
<td>1.2%</td>
</tr>
<tr>
<td>Winter Fuel Payments</td>
<td>£187</td>
<td>1.1%</td>
</tr>
<tr>
<td>Carer's Allowance</td>
<td>£169</td>
<td>1.0%</td>
</tr>
<tr>
<td>Severe Disablement Allowance</td>
<td>£97</td>
<td>0.5%</td>
</tr>
<tr>
<td>Industrial Injuries Benefit</td>
<td>£92</td>
<td>0.5%</td>
</tr>
<tr>
<td>Bereavement Benefits</td>
<td>£59</td>
<td>0.3%</td>
</tr>
<tr>
<td>Over 75 TV Licence</td>
<td>£49</td>
<td>0.3%</td>
</tr>
<tr>
<td>Maternity Allowance</td>
<td>£27</td>
<td>0.2%</td>
</tr>
</tbody>
</table>

\(^1\) This has been achieved through a section 63 Order.
In addition, the Scottish Government increased its spending on mitigating the impacts of welfare reform to £81m in 2015-16 (Scottish Government 2014a). The SPICe Briefing Welfare in Scotland: Current Changes and Future Proposals provides more detailed background information.

Command Paper

The UK Government’s command paper suggests a number of issues to be taken into account when considering welfare devolution proposals. This includes:

- the complexity of the social security system and the impact decisions taken in one area may have on others
- the degree to which welfare benefits and services pool risk across economic regions and varying economic cycles across the UK
- the difficulty in accurately predicting expenditure, which may impose costs elsewhere in the budget
- the degree in which a service or benefit is linked to the local area
- consideration of how a proportionate amount of funding should be transferred to Scotland, both in the long and short term
- the significant financial and time costs of creating any bespoke IT system.

Submissions to the Smith Commission

The following section provides a brief summary of the main political parties submissions to the Smith Commission.

<table>
<thead>
<tr>
<th>Party</th>
<th>General Approach to Welfare</th>
<th>Specific Benefit Proposals</th>
</tr>
</thead>
<tbody>
<tr>
<td>SNP</td>
<td>All welfare policy and administration should be devolved in order to design a system based on early intervention and individual need. There should be greater coherence across social security, equality, and job creation policies.</td>
<td>As a priority, the roll out of Universal Credit and Personal Independence Payments in Scotland should be halted. Any financial consequences would be absorbed by Scottish revenues and policy divergence managed within the Scottish budget.</td>
</tr>
<tr>
<td>Scottish Labour</td>
<td>Social security is a key element of the UK social union. Welfare should remain largely reserved except where there is a close link to devolved policy. The pooling and sharing of resources and risk works to Scotland’s advantage.</td>
<td>Housing Benefit and Attendance Allowance should be devolved</td>
</tr>
<tr>
<td>Scottish Conservatives</td>
<td>Social Security should remain largely reserved except where</td>
<td>There is a case for devolving housing benefit if it can be</td>
</tr>
</tbody>
</table>
there is a close link to devolved policy. “It is a key plank of our social union that social security payments are paid according to need, and not geographical region”

| Scottish Greens | Raises concerns about the fragmentation of the social security system and maintaining a coherent approach to social justice and the fair distribution of wealth. It advocates an approach that seeks clear justification for any aspect of the social security system remaining reserved. | There may be clear justification for pensions remaining reserved. |

| Scottish Liberal Democrats | Support the retention of a single UK welfare and pensions system, with a common set of living standards and entitlements. Strategic decisions should be taken on a partnership basis between the Scottish and UK Governments. | There should be a constitutional duty to tackle poverty through efforts at every level of government. |

Sources


Scottish Conservatives (2014) Scottish Conservatives’ Commission on the Future Governance of Scotland (Strathclyde Commission). Available at:


Scottish Labour (2014) *Scottish Labour’s submission to the Smith Commission*. Available at: http://www.scottishlabour.org.uk/blog/entry/scottish-labours-submission-to-the-smith-commission


**SPICe Research**

4 November 2014
ANNEXE B

WRITTEN SUBMISSION

PROFESSOR DAVID BELL

More Fiscal Powers?
Discussion of principles in respect of new powers is difficult when there are no clear principles underpinning current powers. The Barnett formula is an arrangement of convenience rather than of principle. Even if a principled case can be made for additional powers, the resulting funding arrangements will be exceedingly complex. After the end of the Smith process, Scotland’s future funding streams are likely to comprise:

1. Own revenues (Council tax, Business rates, Landfill tax, Land and Buildings Transactions Tax and the Scottish Rate of Income Tax (SRIT) along with any additional revenue sources stemming from the present Smith Commission process)
2. A residual Block Grant (based on a notional Barnett-determined grant, reduced to reflect the expected revenues raised from the new taxes allocated to Scotland). Its overall size will reflect decisions made by the UK Government about the size of UK Departmental Expenditure Limits (DEL), which in turn will reflect the fiscal stance that it wishes, or is forced, to take.
3. A share of UK Annually Managed Expenditure (AME) to allow Scotland to make payments to those welfare recipients who are eligible under those welfare schemes which are assigned to the Scottish Government as a result of the Smith Commission process.

This complicated structure mean that there will be much more uncertainty associated with the funds that the Scottish Government can apply to public spending than has previously been the case. The uncertainty will not be as great as it would have been had Scotland become independent, but will be considerably increased compared with the present.

The purpose of transferring more fiscal powers to Scotland appears to be to increase the accountability of the Scottish Parliament. However, there is no clear definition of what accountability might mean. One simple approach is to argue that politicians are accountable for their actions when the choices they make can influence the probability that they will be re-elected. This raises the issue of how voters may respond to policy actions, or indeed to policy inaction.

This inaction is likely to be caused by loss-aversion on the part of the Scottish Governments – the notion that it is more likely to be held to account for policy choices that have gone wrong rather than opportunities not taken. The Scotland Act 2012 forces the Scottish Government to choose the Scottish Rate of Income Tax: hence the option of inaction is being removed. Nevertheless, there is a default option - 10p – which should leave Scottish Government spending largely unaffected, at least in the short-run. The 2015-16 Scottish Government Draft Budget sets proposed rates for the Landfill Tax and the Land and Buildings Transaction Tax. These have been selected to ensure, as far as possible,
revenue neutrality. Thus again there will be no major impact on Scottish Government spending.

On risk and reward
Accountability and policy choices always involve a balance between risk and reward: increase the level of risk and the potential for reward (or loss) is also increased. One consistent approach to analysing the process of selecting additional powers over revenue or welfare that might be granted to the Scottish Parliament is to consider the risks that they face (in the case of tax revenues) or the risks for which they compensate (in the case of welfare) and how these risks are balanced between the UK and Scottish Governments as new powers are transferred to Scotland.

Revenue powers
In developed countries, devolved governments are funded in a wide variety of ways. This variation reflects normative judgements on the balance between accountability and risk at the federal and the state level. This balance, often embedded in the constitution, determines how far devolved governments should be held accountable for raising revenue and for allocating spending. This balance in turn determines the risks and incentives that the devolved governments face. Economists have no magic answer to determining this balance: it is a political choice which reflects the solidarity of the social and political union that exists between the component parts of the state. What economists can do is to point out the implications for incentives, risks and accountability that follow from this choice.

It is widely accepted that the gap between the spending and revenue raising responsibilities of the Scottish Parliament creates an accountability deficit. As discussed above, this accountability deficit may be addressed by devolving tax powers to the Scottish Parliament. But devolving tax power brings risks both to the UK and Scottish Parliaments in relation to the stability of revenues.

There is an extensive literature setting out the principles by which taxes might be decentralised within a state. These principles include: yield; stability; visibility to the electorate; links to areas of decentralised spending; mobility of the tax base; ease of collection; and other practical considerations. Very few taxes (with the possible exception of land taxes, which are already devolved to the Scottish Parliament) meet all the criteria of a ‘good’ tax for devolution; income tax probably comes closest of the taxes that are currently reserved.

In order to adequately address the accountability deficit, tax devolution has to enable the Scottish Parliament to have meaningful control over devolved taxes.

The extent to which tax devolution might lead to a ‘race to the bottom’ in tax rates depends on mobility of the tax base, the visibility of the tax to the electorate, inter-governmental relations, and institutional arrangements for tax setting.

Greater accountability over tax inevitably enhances the incentives and rewards faced by the Scottish Parliament, but inevitably brings with it greater risk.
Powers over social security spending

The question of which social security benefits should be devolved to the Scottish Parliament is largely a question of which risks should be insured at UK level, and which at a Scottish level.

Relatively few national governments devolve cash benefits and State Pension spending to their constituent sub-central governments\(^2\). They have an explicit or implicit agreement with their citizens that those affected by adverse events should be treated equally, irrespective of where they live. For some, the agreement to treat the disadvantaged equally, irrespective of location, is one of the key elements of the “social union” that binds the state together.

These benefits are currently paid for by the UK Government through the Department for Work and Pensions (DWP). Each eligible citizen in Great Britain is entitled to the same welfare benefits. However, there is scope to vary the way that funds are transferred to the individual after he or she experiences an adverse event. One possibility is to have a nationwide form of insurance at the individual level – so that the criteria for eligibility and the size of the payout are the same irrespective of location. Payments are made direct to individuals by central government. The other is for the federal authority to transfer funds to the state in which the adverse event has occurred. The state then makes its own decisions about how individuals are compensated.

The UK mostly follows the model where benefits are paid direct to the individual. For example, unemployment benefits (now Job-Seeker’s Allowance) are paid by DWP. But the other approach has recently been used in the UK: council Tax Benefit is no longer paid by DWP. Instead, the UK government provides grants to local authorities in England and to the devolved authorities and asks them to design their own form of Council Tax Benefit.

Clearly there are additional costs associated with having a multiplicity of schemes rather than a single scheme, but there are potential advantages if there are opportunities to learn from the experiences of other schemes. In Scotland, there is a case for using this approach, for example, in relation to Attendance Allowance, a welfare benefit that is closely linked to the social care policies delivered by local authorities.

However, there are some major difficulties with this approach. The first is how to increase the funding coming to Scotland to enable it to fund welfare benefits such as Attendance Allowance. Another difficulty is how the payment to the Scottish Government to cover Attendance Allowance might be adjusted each year. This payment would effectively parallel the Block Grant Adjustment (BGA) which is being used to reduce Scotland’s Barnett grant in the light of the SRIT.

\(^2\) Sub-central governments may be states, provinces, regions, local authorities etc. In this context, the Scottish Government is a sub-central government.
However, a major practical obstacle to devolving benefits is that many benefits are closely linked; changing the conditions or rates attached to one often has implications for work incentives, or eligibility for others.

Minimum Wages
There may well be a case for devolving control over minimum wages to the Scottish Government. Although it carries out regular regional visits and is aware that the relationship between the minimum wage and the general level of wages varies across the UK, the Low Pay Commission has always set the same minimum wage for the UK as a whole. In the USA, minimum wages vary by state. The evidence that higher minimum wages have negative effects on employment is not strong\(^3\). Having different minimum wage rates across UK territories is unlikely to have major distortionary effects, as a large proportion of low-paid workers are employed in service sectors such as retail, care and personal services which rely on face-to-face transactions and thus cannot be transferred away from the customer base. Differential minimum wages may however pose administrative problems for employers.

Summary
In a first best world, the Scottish Parliament’s revenue control would match its spending responsibilities. It would have some borrowing powers to smooth variation in revenues and to fund infrastructure investment, and there would be some element of horizontal equalisation arrangement with the UK government to mitigate differences in tax capacity across the UK.

This first best world is unlikely to be achievable, because many taxes are not appropriate for devolution for practical, legal or institutional reasons. Thus the advantages of tax devolution for Scotland (greater accountability) therefore have to be weighed against the disadvantage for Scotland (the risk of a potentially less generous or more volatile budget in the longer-term) and the risk to the UK and Scotland that tax devolution might lead to tax competition that is in the interests of neither.

Decisions as to whether certain social security benefits should be devolved to the Scottish Parliament should be based on a clear and logical principle as to which level of government is best placed to ensure against which risks. It should not be based on dissatisfaction with aspects of existing policy, nor should specific benefits be devolved purely because they are relatively straightforward to allocate.

Professor David Bell
31/10/14

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ANNEXE C

WRITTEN SUBMISSION

DR JIM MCCORMICK

Further Devolution in Scotland: Five challenges for poverty reduction
The Joseph Rowntree Foundation’s response to The Smith Commission

Poverty in Scotland and the rest of the UK in 2014 is real. It is costly, risky and wasteful in economic as well as social terms. But it is not inevitable. The Joseph Rowntree Foundation’s vision is a UK without poverty. We contribute to that through research and development activities across the UK. And we are pleased to respond to The Smith Commission on the question of how further devolution to Scotland could enable faster, more sustainable progress towards this goal.

1. For JRF, further devolution is part of the story of poverty reduction but it is not the plot. Looked at internationally, the evidence is mixed. Devolution of powers is not intrinsically a surer route to poverty reduction. A great deal depends on the macroeconomic environment, combined with the will, culture and delivery capacity which favours this goal – preferably across all tiers of government. Nor is it only the domain of government, national or local. Employers, housing providers, other local anchor agencies and the media have a distinct role as well. The decisions made by individuals and families, reflecting constraints as well as choices, have a bearing on the risks they face. However, it also appears that where there are important local or regional variations, not least in the labour market and in housing opportunities, moving powers closer to that level might lead to more responsive policy making, provided sufficient policy and delivery capacity is available.

2. If devolution can be shown to aid the pursuit of poverty reduction, it deserves to be supported. By definition, we cannot know if further devolution will actually have this effect. All we can do is offer a view based on what we’ve learned so far and set out our own tests of how we can gauge if anti-poverty objectives are being advanced more effectively than at present.

How has Scotland fared with existing powers?

3. Before we turn to the question of further powers, there’s the important task of gauging how existing powers and budgets have been used so far and how they could be maximised from an anti-poverty perspective. In 2010, JRF explored the impact of the first ten years of devolution for low-income people and places in Scotland, Wales and Northern Ireland. This spanned different administrations by party and majority/coalition/minority status and sought to reflect how devolution in the round had fared.

4. Four themes - housing and homelessness; employment and training; community regeneration; and social care for older people – were used to identify policy approaches and outcomes over this period. Devolution appeared to have made its own dent in improving the lives of people living in poverty in each of these four areas, but some of the most promising ‘home-grown’ policies were either applied on too small a scale or with little consistency between areas, or were time-limited and ended when the protection of ring-fencing was removed.

5. A more recent look at how the devolved governments have approached child poverty\(^5\) found that Scotland has pursued a universal approach of freezing the council tax and ending charges for key services, while extending the coverage of Living Wage. It has mitigated some of the negative impacts of UK welfare reform from within the Scottish Government budget (for example, by negotiating the power to top-up Discretionary Housing Payments), made progress in tackling youth unemployment and offered subsidised job opportunities through the voluntary sector. On the other hand, the opportunity cost of spending decisions may be seen in slower progress on part-time childcare places for 2 year-olds compared to England and Wales, limited focus on reducing the attainment gap in schools (until recently) and in skills training opportunities for adults with few or no qualifications. These are among the long-term drivers of poverty reduction, already devolved in large part. The report concluded that existing powers and budgets have not been maximised from an anti-poverty perspective.

6. A further evidence review on devolution and poverty for JRF by the IPPR\(^6\) updated this analysis. It set out a broad typology of policy approaches taken in Scotland, Wales and Northern Ireland and, through interviews, was able to identify differences in the strategic importance attached to poverty reduction and the relative strengths and weaknesses of their respective policy inputs and progress achieved, before suggesting a basis for further devolution.

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\(^5\) McCormick (2013) *A review of devolved approaches to child poverty*, JRF

\(^6\) IPPR North’s ‘Devolution and Poverty’ in *Reducing Poverty in the UK: A collection of evidence reviews*, JRF
Poverty in Scotland

7. Every two years, JRF publishes *Monitoring Poverty and Social Exclusion in Scotland*. This is an independent look at key indicators of disadvantage, stretching back to the start of devolution. The next report will be available in Spring 2015. In the run-up to the referendum, JRF published three briefing papers by the New Policy Institute offering an update on poverty in Scotland:

- *Child poverty* fell faster in Scotland than in England in the previous decade, partly reflecting a better record on employment.\(^7\)
- Scotland’s relatively lower average *housing costs* also contributed to progress in reducing poverty, but a growing number of younger, poorer households are found the expanding private rented sector.\(^8\)
- Scotland’s *labour market*: although the un/employment rate compares well with the rest of the UK, in-work poverty has grown and is projected to affect one in seven households even if an employment rate of 80% were to be achieved\(^9\).

8. In addition to these broad comparisons between Scotland, England and the UK as a whole, significant variations in the risk of disadvantage are found within Scotland. Indeed, it is a fact of UK geography that social and economic variations within nations and regions are bigger than between them. The tables show the range of local estimates for child poverty, including a small number of authorities where the UK target of less than 10% of children living in poverty has been met. In contrast, eight local authorities (one in four) had rates more than double, with one in three children in Glasgow being in poor households.

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\(^7\) Aldridge and Kenway (2014) *Referendum Briefing: Child Poverty in Scotland*, JRF

\(^8\) Aldridge and Kenway (2014) *Referendum Briefing: Housing & low-income in Scotland*, JRF

Local child poverty estimates (2010)\textsuperscript{10}

<table>
<thead>
<tr>
<th>Local Authority</th>
<th>Poverty Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shetland, Orkney, Aberdeenshire, East Renfrewshire, East Dunbartonshire, Eilean Siar (Western Isles)</td>
<td>7–10%</td>
</tr>
<tr>
<td>Perth &amp; Kinross, Moray, Scottish Borders, Argyll &amp; Bute, Stirling, East Lothian, Angus, Highland</td>
<td>11–14%</td>
</tr>
<tr>
<td>Aberdeen, Dumfries &amp; Galloway, Falkirk, Midlothian, West Lothian, South Lanarkshire, South Ayrshire, Edinburgh</td>
<td>15–18%</td>
</tr>
<tr>
<td>Scotland, Renfrewshire, Fife</td>
<td>19-20%</td>
</tr>
<tr>
<td>North Lanarkshire, East Ayrshire, Clackmannanshire, Inverclyde, North Ayrshire</td>
<td>21–24%</td>
</tr>
<tr>
<td>West Dunbartonshire, Dundee, Glasgow</td>
<td>25–33%</td>
</tr>
</tbody>
</table>

9. At a small-area level, DWP figures are available based on the previous electoral wards. The next table shows claims for out-of-work benefits as a proxy for poverty, with lowest and highest rates for selected local authorities. The gap appears lower in rural and affluent suburban areas than in the cities, but HMRC data on tax credits (not shown) point to higher levels of in-work poverty in rural authorities. More than 40% of households were receiving out-of-work benefits in at least one ward in Edinburgh, Glasgow and Highland.

10. In summary, Scotland is an unequal country with high levels of poverty compared with the best in the OECD. It has made progress in reducing poverty – especially for families with children and older people – to a relatively lower level than the UK as a whole. These gains have been mainly down to economic, social security and taxation factors influenced more by UK rather than Scottish governments. Devolved powers have made a difference, but the long-term impact of investing in nursery education, schools, adult skills and public health in order to improve life-time prospects and reduce the risk of poverty may have been under-estimated. The quality, flexibility and affordability of policies in these areas can have a significant bearing on whether poverty rises or falls over time, as well as its depth and duration. Existing powers and budgets can be used to greater anti-poverty effect. It has relative strengths in employment and housing which could be enhanced. We now turn to the case for further powers in these and related areas.

Small-area variations in out-of-work benefit claims (2010)\textsuperscript{11}

<table>
<thead>
<tr>
<th></th>
<th>Lowest ward rate</th>
<th>Highest ward rate</th>
<th>Range</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cities</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aberdeen</td>
<td>2.9%</td>
<td>29.6%</td>
<td>26.7%</td>
</tr>
<tr>
<td>Edinburgh</td>
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<td>42.3%</td>
<td>39.7%</td>
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<td>43.4%</td>
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<td>39.0%</td>
<td>33.1%</td>
</tr>
<tr>
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<td></td>
<td></td>
<td></td>
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<td>11.9%</td>
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<td>25.3%</td>
</tr>
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<td>Dumfries &amp; Galloway</td>
<td>5.7%</td>
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<tr>
<td>Highland</td>
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</tr>
<tr>
<td><strong>Suburban authorities</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>East Dunbartonshire</td>
<td>3.5%</td>
<td>27.6%</td>
<td>24.1%</td>
</tr>
<tr>
<td>East Renfrewshire</td>
<td>4.3%</td>
<td>26.7%</td>
<td>22.4%</td>
</tr>
</tbody>
</table>

**Testing out further devolution**

11. Any new social security powers need to be matched with appropriate fiscal and economic powers. This is to ensure the Scottish Parliament has the opportunity to use these powers to meet Scottish circumstances and is accountable for the impact of such decisions.

12. Furthermore, addressing the drivers of poverty need to be built into the new devolution settlement as far as possible. These pressures are to be found in the jobs market and in housing, as well as the cost of essentials like childcare and energy and in elements of welfare reform. The next phase of devolution needs to create appropriate incentives to invest in poverty-reducing approaches, with the revenue (AME) savings from improved outcomes retained by the Scottish Government, and the costs of additional spending (or arising from poorer outcomes) met from within the Scottish budget. Social investment approaches are recognised internationally as the most sustainable way to do this\textsuperscript{12}, through better childcare, reducing the attainment gap in schools and active labour market strategies to reduce long-term unemployment and the skills gap.


13. Further devolution can be considered against various principles or tests. We propose four:

- **A poverty-reduction test**: Our priority test is whether further devolution will help to reduce poverty in Scotland in a more sustainable and consistent way. We explore this test through the lens of five policy themes.

- **An alignment test**: will further devolution help to address the ‘jagged edges’ that may have prevented Scotland from doing more on poverty - for example between employability, training and welfare-to-work programmes? If legislative devolution can meet this test to a greater degree in future, appropriate fiscal powers and flexibility will be needed to enable the Scottish government to meet its responsibilities and to deliver this kind of integration.

- **An incentives test**: will Scotland have clear incentives to reduce poverty? Even with more powers to tackle the drivers of poverty, a clear set of budgetary incentives will be needed to ensure Scotland shares in the rewards of achieving the goal through reduced expenditure need and increased revenues resulting in direct benefit. The opposite is also true: higher costs or lower revenues which might arise from choices made by Scottish administrations should be met from within the devolved budget. Designing the correct fiscal arrangements would mean Scotland has both the opportunity and the motive to invest in poverty reduction.

- **A social and economic union test**: reflecting the referendum outcome, does the new settlement maintain key markers of shared citizenship such as maintenance of the single market, and risk sharing for example through the UK-wide national insurance system?

Others’ have also sought to set out tests for further devolutions, see for example those identified by IPPR\(^\text{13}\). While there is much merit in the approach they take, we believe any work carried out prior to the referendum now needs to be revisited in light of the referendum debate and result.

14. As such we would add a further test to those listed above, which might be described as a *democratic test*.

15. Further devolution needs to reflect the democratic will of Scottish voters as expressed in the referendum of September 2014. First, a majority voted to remain in economic and social union with the rest of the UK. Second, a larger majority wishes to see the union now change to better respond to Scottish circumstances. And third, it appears that poorer voters and those living in low-income communities were more likely to vote Yes, expressing a clear desire for change. JRF believes each of these points has to be reflected

\(^{13}\) Lodge and Trench (2014) *Devo More and Welfare: Devolving benefits and policy for a stronger Union*, IPPR
16. JRF supported the Poverty Alliance to run this year’s Poverty Assembly bringing together more than 100 community activists, some with first-hand experience of poverty and others representing them. In addition, JRF will support the next phase of the Poverty Truth Commission’s work in Scotland. Through these discussions, we can discern the basis for deep-rooted concerns among people living in poverty: the spare room subsidy reduction (or “bedroom tax”), the variable impact of tougher benefit sanctions especially for under-25s and lone parents and the expansion of food banks. The lack of affordable housing in some places is an over-arching concern. Whatever people’s experiences, it is clear that some UK policy decisions contributed to increased support for independence and to a wider desire for powers to be exercised closer to home.

Five challenges for poverty reduction

17. JRF proposes five challenges for poverty reduction which we believe the Smith Commission should use as a lens for thinking through whether the devolution of further powers will assist Scotland in meeting the goal of reducing poverty. These are based on our research findings, in particular a collection of evidence reviews on Reducing Poverty in the UK. This is not a comprehensive set of challenges. For example, we have not explored disability and ill health benefits in this submission. But they reflect much of what we know about the main poverty-generating pressures, especially as they relate to powers which aren’t already devolved.
These cover:

- The labour market
- Housing
- Cost of essential services like childcare
- Social security
- And demography, expressed in an ageing society.

18. JRF contributed to the independent Expert Working Group on Welfare which reported to the Scottish Government in June 2014. The analysis of trends underlying welfare expenditure in Scotland is sound, but the recommendations need to be viewed from the standpoint of further devolution rather than independence. Respecting the result of the referendum, we need to add to the Expert Working Group principles a further principle of solidarity with the rest of the UK. This means Scotland should benefit from and contribute to economic and social union, while using new powers to good effect.

The labour market

19. Employment can help to reduce poverty, but only when adequate pay and working hours are available across the household. For too many people, the experience of working is insecure and poverty can be experienced despite living in a household where at least one person works. Just under 10% of working Scots experience poverty and a larger number – estimated at more than 430,000 (17% of the workforce) – earn below the current Living Wage. The first challenge for poverty reduction through further devolution is found in the labour market.

20. There are major labour market variations within Scotland as in all parts of the UK. Looking just at the Scottish cities, the gap in employment rates is significant: Dundee and Glasgow had less than 65% of residents in work in 2013, compared with over 70% in Edinburgh and closer to 80% in Aberdeen. The gap is bigger still between the lowest and highest rates on a local authority basis, fully 23% between Shetland and North Ayrshire. Labour market types vary as well, for example in the balance between public/private sectors, the prevalence of low pay, the amount of temporary work and degree of seasonality.
<table>
<thead>
<tr>
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<th></th>
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</thead>
<tbody>
<tr>
<td>Cities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aberdeen</td>
<td>77.3%</td>
<td>+1.4%</td>
</tr>
<tr>
<td>Edinburgh</td>
<td>71.7%</td>
<td>-0.1%</td>
</tr>
<tr>
<td>Glasgow</td>
<td>63.3%</td>
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</tr>
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<td>Dundee</td>
<td>61.4%</td>
<td>-7.0%</td>
</tr>
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</tr>
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<td>83.2%</td>
<td>+2.9%</td>
</tr>
<tr>
<td>Aberdeenshire</td>
<td>78.6%</td>
<td>-1.0%</td>
</tr>
<tr>
<td>Highland</td>
<td>73.9%</td>
<td>-4.7%</td>
</tr>
<tr>
<td>Dumfries &amp; Galloway</td>
<td>70.1%</td>
<td>+1.1%</td>
</tr>
<tr>
<td>Others</td>
<td></td>
<td></td>
</tr>
<tr>
<td>East Dunbartonshire</td>
<td>77.1%</td>
<td>+3.5%</td>
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<td>East Renfrewshire</td>
<td>74.2%</td>
<td>+1.1%</td>
</tr>
<tr>
<td>Fife</td>
<td>69.3%</td>
<td>-1.3%</td>
</tr>
<tr>
<td>West Dunbartonshire</td>
<td>65.2%</td>
<td>-3.2%</td>
</tr>
<tr>
<td>North Ayrshire</td>
<td>60.1%</td>
<td>-0.9%</td>
</tr>
<tr>
<td><strong>Range: high/low</strong></td>
<td><strong>23.1%</strong></td>
<td><strong>+2.8%</strong></td>
</tr>
</tbody>
</table>

21. While many aspects of employability and training are devolved, the UK Work Programme, which applies to long-term unemployed people, currently is not. The boundary here creates tensions and contrasting costs/incentives for providers. The Work Programme has a patchy record, especially for those who have been out of work the longest and for disabled people. It is more likely to benefit those with more recent work experience, higher skill levels and living in stronger local economies. Devolution of the Work Programme has been proposed, followed by decentralisation of delivery to local authorities. This makes sense as far as it goes on the basis of alignment with existing powers and appears to make sense in the context of devolving powers that are in some way ‘place-based’ – in this case the varying economic geography of labour markets. However, the earlier point applies about development of sufficient delivery capacity.

22. JRF has published evidence on how regional and municipal-level employment programmes can work well (in the Netherlands and Australia for example)\(^\text{14}\) but these involve the flexibility to set outcomes, adapt commissioning models, support people in developing skills and once they are in work, and the power to re-invest savings. Northern

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Ireland offers a precedent for devolving programme powers in this area, although without adequate financial flexibility.

23. There is however a choice that has to be made about whether it is sufficient to devolve the work programme without devolving further additional welfare powers. For example, there may be a clear case for extending skills training before mandatory programmes start or offering additional support with back-to-work costs in order to boost the prospect of success. Accountability for the performance of a devolved welfare-to-work model in Scotland could sit comfortably with the Scottish Parliament, given the connections with health and further education as well as training programmes. So, responsibility for various JobCentre Plus (JCP) functions might best be devolved to Scotland.

24. In addition, there could be a case for devolving the relevant income-based benefit(s) and conditionality rules to match with programme design in this area, as this would transfer the range of incentives and risks to the Scottish budget and the drivers for participation and programme performance arguably would need to reflect this. The question here will be whether this constitutes part of the UK’s shared citizenship or not given their redistributive nature of income based benefits. Furthermore the move to What is perhaps more clear cut is that contributory benefits, including pensions, and the contributory element of JSA, ought to remain UK-wide benefits with receipt based on contribution record not country of residence.

25. JSA accounted for around £500m of DWP spending in Scotland in 2012-13, 2.7% of the total (see Table). The economic strength of Scotland is similar to GB as a whole, suggesting territorial distribution is possible within Scotland and that devolution of JSA would be a manageable fiscal risk across the economic cycle. ESA accounts for more – around £800m (4.2%) – and costs more per adult in Scotland (as well as Wales and much of Northern England) than in GB as a whole. Devolution of ESA arguably represents a bigger risk. However, in common with the housing case below, Universal Credit promises to change everything, and careful consideration needs to be given to how or whether to devolve it. This critical issue is discussed further in paragraphs 35 and 36.
DWP and HMRC benefits expenditure in Scotland (2012-13)

<table>
<thead>
<tr>
<th>Payment</th>
<th>Total</th>
<th>Share</th>
<th>Relative to GB population share*</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Pension</td>
<td>£6.8bn</td>
<td>37.9%</td>
<td>Lower</td>
</tr>
<tr>
<td>Tax Credits</td>
<td>£2.2bn</td>
<td>12.4%</td>
<td>N/A</td>
</tr>
<tr>
<td>Housing Benefit</td>
<td>£1.8bn</td>
<td>10.0%</td>
<td>Lower</td>
</tr>
<tr>
<td>Disability Living Allowance</td>
<td>£1.5bn</td>
<td>8.1%</td>
<td>Higher</td>
</tr>
<tr>
<td>Child Benefit</td>
<td>£0.9bn</td>
<td>5.2%</td>
<td>N/A</td>
</tr>
<tr>
<td>Employment Support Allowance</td>
<td>£0.8bn</td>
<td>4.2%</td>
<td>Higher</td>
</tr>
<tr>
<td>Pension Credit</td>
<td>£0.7bn</td>
<td>3.8%</td>
<td>Higher</td>
</tr>
<tr>
<td>Income Support</td>
<td>£0.5bn</td>
<td>2.8%</td>
<td>Higher</td>
</tr>
<tr>
<td>Attendance Allowance</td>
<td>£0.5bn</td>
<td>2.7%</td>
<td>Same</td>
</tr>
<tr>
<td>Job Seekers Allowance</td>
<td>£0.5bn</td>
<td>2.7%</td>
<td>Same</td>
</tr>
<tr>
<td>Council Tax Benefit (Reduction)</td>
<td>£0.4bn</td>
<td>2.1%</td>
<td>Lower</td>
</tr>
<tr>
<td>Incapacity Benefit</td>
<td>£0.4bn</td>
<td>2.1%</td>
<td>Higher</td>
</tr>
<tr>
<td>Statutory Maternity Payment</td>
<td>£0.2bn</td>
<td>1.2%</td>
<td>Same</td>
</tr>
<tr>
<td>Winter Fuel Payment</td>
<td>£0.2bn</td>
<td>1.0%</td>
<td>Same</td>
</tr>
<tr>
<td>Others (inc. Carer’s Allowance)</td>
<td>£0.7bn</td>
<td>3.8%</td>
<td>Same</td>
</tr>
</tbody>
</table>

*Coloured boxes show where Scotland’s share of GB DWP expenditure is more than 1% above or below Scotland’s share of GB population.

Housing

26. Scotland’s record on poverty among families with children and older people has been driven in part by consistently lower housing costs than in GB as a whole. Housing Benefit accounts for £1.8bn of DWP spending (10.0%) – the second largest item after the state pension. It has grown modestly in the last decade, although costs are projected to increase faster due mainly to the expansion of the private rented sector\(^{15}\). The absolute number of people living in poverty in the PRS has grown over the last decade, while poverty as a whole fell. Rent inflation is high, standards are frequently the poorest and overcrowding is worst. Our next challenge therefore is whether further devolution of housing policy can make a stronger contribution to reducing poverty.

27. Devolution of Housing Benefit has featured among the GB party proposals. One driver to devolve HB was the introduction of the Spare Room Subsidy Reduction (or “Bedroom Tax”), widely viewed as a move designed to address cost-inflation in London/SE England. Had HB been devolved, this could have been avoided. Instead, the Scottish

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\(^{15}\) Aldridge and Kenway (2014) *Referendum Briefing: Housing and low-income in Scotland*, JRF
Government has negotiated with DWP an extension of Discretionary Housing Payments to all affected households as part of its mitigation effort. Given variations in housing costs and market types across Scotland, having greater flexibility in this area makes sense. This might allow for a more effective approach to housing finance in the round: property taxation (Council Tax\textsuperscript{16} and Land & Buildings Transaction Tax), land use planning, housing regulation and licensing are all devolved. Adding HB to the pot appears to offer some advantages.

28. However, some have questioned the superficial attraction of this approach,\textsuperscript{17} expressing concern that it would lock in a model of ex-post subsidising of rental costs rather than moving to a mainstream European model of adding a housing allowance into income support payments. Devolving HB in its current form would not address this concern. And as with JSA/ESA, Universal Credit proposes to subsume these separate benefits into a single payment – see paragraphs 35 and 36 below.

29. Housing Benefit could, in principle, be devolved and run alongside the rest of Universal Credit. That was in effect the position of the Expert Working Group on Welfare, based on a concern to reduce the risk of arrears and offer greater scope to expand housing supply over time. On the other hand, a separate benefit for housing costs would undermine the potential of UC to improve work incentives and create smoother transitions in and out of work. Arguably, for this reason, Council Tax Reduction should also be integrated into Universal Credit in Scotland.

30. Perhaps the most important test of housing powers is the ability of Scotland to expand the supply of affordable housing. Currently, less than 20\% of all housing expenditure goes to capital investment (c. £395m in 2011-12). This, more than any other move, would benefit low-income households becoming stuck long-term in the private rented sector through lack of choice. And we believe this should be the top priority for using new borrowing and bond issuing powers forthcoming in 2015-16 and any further capital spending flexibility. Beneficial employment and training effects, as well as better housing outcomes and longer-term cost controls, would follow. If Housing Benefit were to be devolved to Scotland, the Scottish Government would be able to share in the benefit of more affordable housing through a lower Housing Benefit spending.

**Essential services – the case of childcare**

31. Rising cost pressures which outstrip growth of earnings and benefits/tax credits have resulted in greater emphasis on the role of essential services in tackling poverty. JRF’s

\textsuperscript{16} Council Tax Benefit (now CT Reduction) has already been devolved to Scotland and Wales with a 10\% budget cut. Both countries have chosen to retain a national system of rebating, which costs in Scotland just under £400m (around 2.5\% of DWP spending).

\textsuperscript{17} Kenneth Gibb & Mark Stephens (2012) *Devolving Housing Benefit: A discussion paper*, CIH Scotland and SFHA.
Minimum Income Standard (MIS) programme shows the cost of a basket of essentials rising by 5% each year. Average energy and childcare costs have risen by more than this. And a recent MIS calculation for remote rural Scotland\(^{18}\) shows the higher costs of food, energy and transport.

32. The third challenge involves the role of childcare in reducing poverty. This is primarily a means of improving children’s early development (and their later prospects), with potential benefits for the capacity of parents to work and earn more. The Scottish Parliament has powers to act but successive administrations have not used them fully. Scotland has lagged behind the rest of Britain, with no version of Sure Start and less investment in part-time childcare provision for under-3s, although the Scottish Government plans to expand provision significantly in 2015.

33. Currently, any savings and increased tax revenues from higher employment as a result of Scottish investment in better childcare flow to the Treasury. Furthermore the cost associated with the high price of childcare is borne by the Treasury through the childcare element of the Working Tax Credit. As a result Scotland may lack the fiscal incentive to address this problem. Further devolution can address this in various ways. For example, the current childcare element of Working Tax Credit could be devolved – although again this would mean unpicking Universal Credit - or childcare support could be supplemented from the Scottish budget, so long as there was sufficient fiscal flexibility to allow this. Over time, Scottish administrations might decide to switch the balance of demand and supply side funding. More investment could be made in expanding childcare provision, controlling costs and improving workforce skills, and rather less in subsidising parents to navigate a costly market place.

**Social security – the case of welfare reform**

34. The Expert Working Group on Welfare set out a vision of a reformed social security system, offering a springboard back into training and employment as well as income security for those unable to work or seeking work. Reducing poverty requires action on all fronts, not limited to welfare benefits and tax reforms. Nonetheless, social security has played a major role in UK efforts to reduce poverty and can do so again – even if the primary drivers are found in other policy areas. It provides the next challenge for poverty reduction.

35. As raised in the previous sections, various benefits which might be suitable for devolution are in the process of being combined through Universal Credit. This has been a complex and troubled reform: it is behind schedule, available in only one location in Scotland so far and generates the potential for bigger risks to low-income households – as an ‘all-or-nothing’ reform, delays, errors and waiting days could become magnified relative

\(^{18}\) Donald Hirsch, Amanda Bryan, Abigail Davis and Noel Smith (2013) *A Minimum Income Standard for remote rural Scotland*, Highlands and Islands Enterprise
to single benefit payments currently. As proposed, UC will create winners and losers, improving work incentives for some at the expense of others. Nonetheless, JRF supports many of the aims behind UC, not least smoother transitions for people who make multiple transitions in and out of seasonal, casual and temporary work), ensuring when people do claim they automatically receive almost all the benefits they are entitled to with one application, and creating a smoother rates of benefit withdrawal compared to the current cliff edges in the existing system. We believe its anti-poverty potential can be further improved through various design changes\textsuperscript{19}, but we back the reform as one that is based on important principles.

36. That is why we want to see improvements to Universal Credit, but we also want to see its coherence as a single basket of benefits protected. Broadly, we see three options. The first is to retain UC as a reserved power, but provide Scotland with the power to supplement elements of UC from within its own budget. This could potentially extend to bringing Council Tax Reduction into UC (or a rebating scheme for any future form of local taxation). The second is to form a partnership (service level agreement) with the UK Government over the delivery of UC in Scotland. For example, a budget allocation for JSA could be devolved to improve integration of employability, training and welfare-to-work programmes. Accountability of JobCentre Plus on this element would then be directed towards Scottish Ministers rather than Westminster. Third, in time, UC could be devolved in full. This would give the Scottish Parliament powers to vary the design and offer scope, for example, to switch from income-based subsidies towards increased supply of affordable housing and childcare over time. From a poverty-reduction angle, capacity to deliver a high quality service to claimants is as significant as getting the policy right, which is why this option would likely be a long time in the transition if it was thought desirable.

37. The projected cost of Universal Credit in Scotland appears to be around £5.8bn – about one-third of identifiable DWP spending and around half of DWP spending on working-age households\textsuperscript{20}. If full devolution of UC were to go ahead in future, substantial new fiscal powers would be required. As discussed for treatment of JSA, all benefits based on national insurance contributions should remain UK-wide, with the advantage of equalisation across our lives and across the UK at any point in time.

\textsuperscript{19} Barnard (2014) ‘Cost of childcare for low-income families must be tackled in the Budget’ Blog for JRF, 4 March www.jrf.org.uk/blog/2014/03/budget-must-tackle-childcare

\textsuperscript{20} In practice, the benefits element would be lower since older people claiming HB would instead receive extra support through Pension Credit, but additional administrative costs would be incurred.
Universal Credit: estimate based on DWP spending in Scotland (2011-12)

<table>
<thead>
<tr>
<th>Benefit</th>
<th>£</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax credits</td>
<td>2.2bn</td>
<td>12.4%</td>
</tr>
<tr>
<td>Housing Benefit</td>
<td>1.8bn</td>
<td>10.0%</td>
</tr>
<tr>
<td>ESA</td>
<td>0.8bn</td>
<td>4.2%</td>
</tr>
<tr>
<td>Income Support</td>
<td>0.5bn</td>
<td>2.8%</td>
</tr>
<tr>
<td>JSA (income-based)</td>
<td>0.5bn</td>
<td>2.7%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>5.8bn</strong></td>
<td><strong>32.1%</strong></td>
</tr>
</tbody>
</table>

38. Finally, how to collect revenues and administer benefits in Scotland is an important consideration. JRF has not commissioned research in this area, but we would observe that any major reform creates risks and uncertainties for service users. Improving both take-up levels and the experience of contributors and claimants should be a primary concern.

39. Delivery options for further welfare powers include DWP, HMRC and JobCentre Plus, Scottish Government agencies and local government. For example, HMRC will administer the Scottish Rate of Income Tax, while the newly-established Revenue Scotland will administer the Land & Buildings Transaction Tax from 2015. Further devolution of social security powers should mean corresponding DWP operations and JCP functions becoming accountable to the Scottish Parliament (as in Northern Ireland), while non-devolved areas would continue to be accountable to Westminster.

An ageing society

40. The UK is an ageing society, with significant implications for all age groups not just the rising number of people living long into retirement. More of us will be living with disabilities, dementia and other long-term conditions in future. And more of us are living alone, with at least 40% of households in cities like Glasgow already composed of one adult. Adapting to an ageing society is the final challenge proposed in this response.

41. Demographic change means Scotland has been ageing faster than England and Northern Ireland but more slowly than Wales, while shorter average life expectancy leads to lower retirement costs per head than for GB as a whole. The state pension and pension credit together account for almost 42% of all DWP spending in Scotland. These contributory and income-based payments have led to successful reductions in poverty among older people. Historic gains for older people can’t be taken for granted: we can expect the retirement prospects of working-age people in lower-paid, insecure jobs to be much poorer. Concern about the state pension appeared to be an important factor in the decision by Scottish voters to remain in the UK. For various reasons, we support maintaining these key

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retirement benefits as UK-wide payments and believe working-age benefits should be the focus of further powers.

42. However, we don’t see a clear-cut boundary based on age. Attendance Allowance (AA) costs £500m (2.7%), about the same as JSA. It has been identified as a suitable candidate for devolution by the Conservatives and Labour, as well as IPPR. It meets the test of alignment (in this case, with personal care) and isn’t a cyclical benefit. There is some attraction about being able to bring together a cash benefit with current services. However, unlike the alignment case for Housing Benefit and employment programmes (underpinned by income-replacement benefits) AA is an extra-costs benefit. It plays an important role in its own right and being able to manage support with care is firmly in keeping with the personalisation goals underpinning health and care integration in Scotland.

43. For similar reasons, Carer’s Allowance could be devolved. This working-age benefit to support care of disabled or frail people (of all ages) costs £169m - less than 1% of the DWP total budget. It is accessed via Disability Living Allowance, which is being replaced with PIP. This is outside the scope of Universal Credit and not suggested for devolution. Carer’s Allowance could still be devolved or perhaps more easily topped-up under a general power to supplement UK benefits (see below).

44. Older people are more likely to be social housing tenants than adults as a whole and a relatively large share of HB as well as Council Tax Reduction goes to older people. Based on current UK Government plans, Pension Credit would be expanded to cover an element of support with rent. Council Tax Reduction would continue to be managed by local authorities.

45. Two smaller benefits could be devolved more easily. First, this a reasonable case for devolving universal Winter Fuel Payments (WFP) which currently cost around £200m, less than 1% of the DWP budget in Scotland. This appears to meet the test of alignment with housing and fuel poverty powers and the budget is driven by ageing not the economic cycle. WFP could become taxable, if there was a desire to make it more progressive. Such ‘affluence testing’ might be preferred in future to means-testing which reduces take-up. This could enable WFP to be raised for older people who pay no income tax, or for the over-80s who still tend to have higher poverty rates.

46. In addition, Cold Weather Payments could become a devolved matter. These are small payments triggered by a spell of sub-zero temperatures. Both WFP and CWP could

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22 The Scottish Household Survey (2012) indicates 33% of single pensioner households are in social rented housing compared with 23% of households overall. [http://www.scotland.gov.uk/Publications/2012/08/5277/3](http://www.scotland.gov.uk/Publications/2012/08/5277/3)

be adapted better to Scottish circumstances, including the longer heating season, households without access to the gas grid and the risk of extreme winter conditions.

**General power to supplement benefit levels**

47. An enabling power to supplement but not subtract from UK-wide benefits has been supported by the Conservatives and IPPR’s *Devo More* project. This would maintain key elements of social union while also devolving responsibility for improving support over and above the UK level. This would avoid the need for case-by-case legislation and enable a future Scottish Government to top-up universal benefits like Child Benefit or improve training allowances or in-work elements of Universal Credit (if it were not devolved). Since the full costs would fall within the Scottish budget, accountability for different choices made would be clear. However, as Trench and Lodge state, the extra cost of diverging from UK policy on the bulk of social security provision would be substantial and it is more likely that design improvements to benefit payment, conditionality, commissioning approaches and re-investment of savings would take centre-stage.

**Further devolution needs fiscal devolution**

48. Devolving substantial new powers in the areas outlined should proceed hand-in-hand with greater fiscal responsibility. An extra £6bn of spending would be devolved to Scotland on the basis of proposals set out here. This could be met from a broader revenue base. For example:

- **Taxes directly set by the Scottish Parliament** – the existing power to vary the basic rate of income tax; new Land & Buildings Transaction Tax and landfill tax; and additional income tax powers beyond the Scotland Act (2012).

- **Assigned revenues** – raised and retained in Scotland. These include VAT and alcohol/tobacco duties. Tax-varying powers could not be devolved within EU rules. A strong case could be made to assign the bulk of alcohol/tobacco duties given Scotland’s relatively poor record on health improvement. The risk with so-called ‘sin taxes’ is that governments become reliant on an income stream which it ought to want to see diminish. However, the budget savings from improved public health could be significant. In addition, a population share of oil and gas revenues could be assigned and ear-marked for fuel poverty and low carbon investment.

- Continuing AME and DEL **grant payment** for fiscal equalisation purposes.

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• And the unresolved question of local taxation will need to be addressed to maximise poverty-reduction goals.

49. Access to a wider revenue base than Scotland currently has is essential to enable different policy choices to be made and to locate accountability with Scottish decision-makers. JRF is not an expert in fiscal matters, but we do wish to see a fair balance between Scotland raising and retaining some of its own revenues; contributing other revenues towards the UK; and maintaining an adequate level of fiscal equalisation to ensure the new settlement has positive consequences for reducing poverty in the UK as a whole.

Tracking the anti-poverty impact of devolution

50. Moving towards further devolution in the areas covered by our five tests of tackling poverty would mark a significant new phase for Scotland and the UK. We need to track how far these new powers are contributing to poverty-reduction in practice. A clear commitment to research and independent evaluation of impact will be needed. There is considerable potential for Universal Credit in Scotland to provide better quality data, faster and more consistently, on the links between programme inputs, sustainable job outcomes and earnings progression. Scotland will also need to support independent scrutiny of policy-making in these new areas. JRF looks forward to making own contribution to search out the root causes of poverty and disadvantage and to demonstrate feasible solutions. We would be pleased to discuss any of the points raised in our response and wish the Smith Commission well in achieving its goals.

Joseph Rowntree Foundation
October 2014
ANNEXE D

WRITTEN SUBMISSION

PROFESSOR NICOLA MCEWEN

Devolution and Welfare
Submission to the Smith Commission

This paper outlines some of the issues that the Commission should consider when debating proposals for devolving welfare. It outlines different models of devolution and their implications, considers specific options in relation to Attendance Allowance and Housing Benefit, and concludes by underlining the importance of determining the form, the bureaucracy and the financing of welfare devolution, and the need to take these into account before Heads of Agreement are reached.

Key Points:

- Scottish responsibility for administering DWP programmes can allow for some tweaking of existing policies, but would exclude the power to design the scope and nature of social security policy, or to determine which benefits should be offered, to whom, and under what conditions.

- Some forms of legislative devolution may imply significant autonomy constraints, as in the Northern Ireland model where the parity principle is embedded in the constitutional settlement.

- Full legislative power over a wide range of social security would still constrain significantly the ability of the Scottish Parliament to redesign policy if the bureaucracy for delivering devolved social security benefits was shared with the DWP. A separate Scottish bureaucracy offers more autonomy but creates more costs.

- The scope for policy distinctiveness also depends upon the system of financing welfare devolution and the mechanisms for adjusting the block grant. Cyclical benefits, like housing benefit and universal credit, carry greatest financial risks and, if devolved, should be accompanied by a funding formula which takes cyclical effects into account.

- If the Commission agrees that Attendance Allowance should be devolved, it makes sense to also devolve at least the care component of Disability Living Allowance/PIP for those of pensionable age.

- The devolution of housing benefit is complicated by its integration within Universal Credit and the cyclical effects which make it difficult to forecast associated costs.

Models of Welfare Devolution

In the context of this debate, ‘welfare’ implies social security. The Scotland Act (1998) specifically reserved to the Westminster parliament control over social security, including pensions, national insurance, benefits and other cash transfers to individuals ‘for social security purposes’. What does the devolution of social security powers mean in practice?
There are a variety of models included within the parties’ proposals, dependent upon where legislation is made, where policies are designed and delivered, and how they are financed.

Four factors should be borne in mind:

(i) **We should distinguish between administrative responsibility and legislative devolution.**

The Liberal Democrats, for example, envisaged that the Scottish government would administer and deliver some DWP programmes. The government may then be able to influence how programmes are accessed, the culture of delivery, and perhaps tailor programmes to suit local geographic needs. Labour’s proposals for devolving the work programme may also fall into this category. Likewise, the flexibility supported by the Conservatives, would allow the Scottish government, subject to the approval of the Scottish parliament, to dedicate a proportion of its budget to increasing the level of benefits which Scottish claimants can access. However, in these cases, the power to design the social security system or determine which benefits should be offered, to whom, and under what conditions, and any other aspect which defines the scope and nature of the policy, would rest with the UK government and the UK parliament. In these cases, legislative devolution is not on offer.

(ii) **Some forms of legislative devolution may also imply significant autonomy constraints.**

Social security is formally devolved in Northern Ireland, but in practice it remains part of the integrated UK system and social security law and policy in Northern Ireland conforms closely to the system designed for the rest of the UK. The long-held objective of maintaining ‘parity’ in the rates of contributions and benefit payments across the UK was reaffirmed in the 1998 Northern Ireland Act. This restrictive form of devolution can, with intergovernmental agreement, accommodate some relatively minor differences, for example, regarding residence qualifications or designating who in the household should receive benefits, but it severely limits the capacity to redesign social security policy in more fundamental ways, or to prevent UK-led changes. The refusal of the Northern Ireland Assembly to pass complementary legislation which would fully implement the UK government’s welfare reforms has so far led the Treasury to impose fines of £114 million (effectively deductions from the block grant), which is the Treasury’s estimate of what would have been saved had welfare reforms been fully implemented.

(iii) **Full legislative power may not provide the scope to change the benefits system in significant ways if the bureaucracy for delivering devolved social security benefits was shared with the DWP.**

Most benefits applied for by Scots are processed by DWP offices based in Scotland, which also provide this service to parts of England. However, the system remains deeply integrated. Corporate functions and IT systems are managed centrally. Service delivery is dependent upon an integrated payment and accounting system run by the UK Department for Works and Pensions. DWP have indicated that the new IT system designed for Universal Credit has the capacity to accommodate modest regional differences. The systems underpinning other benefits have much less flexibility, and so a shared delivery
system, e.g. for disability benefits, would struggle to accommodate distinctive policy programmes for social security north and south of the border, and may mean devolved benefits would have to keep step with ongoing and future changes in UK social security.

Meaningful devolution implies the capacity to design and shape social security policy autonomously, including to determine the nature and scope of programmes and entitlements. This is likely to necessitate a separate social security bureaucracy in Scotland, accountable to the Scottish government and parliament. The establishment of Revenue Scotland provides a model, but establishing a separate Scottish welfare bureaucracy would carry significant costs over and above the costs of the benefits themselves, with the likelihood that these would have to be carried by the Scottish government.

(iv) The scope for policy distinctiveness also depends upon the system of financing welfare devolution.

Under the current arrangements, social security is financed under Annually Managed Expenditure (AME), which means that the Treasury covers the actual costs incurred in meeting social security demand. Welfare devolution in Northern Ireland also operates on this basis, hence the assumption that the Northern Ireland Executive will implement any changes in UK regulations designed to make efficiency gains (or, as currently, face the financial penalty of refusing to do so). Even without policy divergence, the cap in AME announced in the budget in March will impose strict spending limits on a broad range of welfare benefits wherever they are delivered in the UK.

An alternative way to finance welfare devolution in Scotland would be to include it within Departmental Expenditure Limits, with changes subject to the Barnett formula. Although this may be difficult in the case of cyclical benefits such as Housing Benefit, it may be an option if other non-cyclical benefits were to be devolved, so long as it doesn’t follow the precedent set by the Social Fund and Council Tax Benefit; when these were abolished and responsibility passed to the devolved administrations, the block grant was supplemented to cover the programme costs minus a 10% cut. The challenge would be to determine the basis on which to calculate the initial block grant adjustment, and how to do so in each subsequent year, as the normal DEL/Barnett rules do not apply to most welfare benefits. The protracted disagreements and prolonged uncertainty over how to adjust the block grant in light of the tax powers introduced in the Scotland Act 2012 illustrate the difficulties than can arise.

Evaluating Options on the Table

The two key benefits identified by the UK parties as suitable for devolution are Attendance Allowance and Housing Benefit. Devolution of these programmes offers clear opportunities to integrate hitherto reserved benefits with social care and social housing. But the form, delivery and financing of devolution in each case requires closer examination.

Attendance Allowance is a benefit paid to those of state pension age who need help with their personal care because of their disability. Processed in DWP centres in Preston and Blackpool, it amounted to £489m in 2012-13 - around 3% of Scotland’s welfare spend. If Attendance Allowance is devolved, it would logically follow that the closely related care component of Disability Living Allowance for pensioners should be devolved too. The most feasible form of devolution would see the Scottish government opting out of the UK-wide
scheme of Attendance Allowance, receiving compensation in the form of a supplement to the block grant, subject to agreement on how it should be adjusted. The Scottish government would then be free, in principle, to redirect resources to its own programme of delivering free personal care, which serves a broadly similar purpose at a similar cost. Although in the longer term, this should generate cost savings, in the short term it may be politically difficult to make significant changes, if to do so would imply withdrawing entitlement from those who currently receive both the cash benefit and the social service.

**Housing Benefit** carries a much heavier price tag, amounting to £1,789 million in 2012-13 - around 9% of welfare spend in Scotland. Housing Benefit policy has undergone significant changes in recent years intended to curtail entitlement and cap or cut expenditure. Housing Benefit costs in Scotland are lower than the UK average because of lower rents, but if the block grant adjustment was calculated on the basis of Scottish costs *after* welfare reforms (as opposed to the UK average), it would limit the capacity of the Scottish government to reverse these cuts.

There are two key problems with devolving Housing Benefit:

(i) Housing Benefit is one of six working-age benefits/tax credits to be merged into the Universal Credit and so is set to be abolished as a stand-alone benefit. It may be technically possible to disentangle it from the rest of Universal Credit or to accommodate modest HB differences within Universal Credit in Scotland, but this would require ongoing intergovernmental collaboration to manage the interdependencies. An alternative may be to devolve all elements within UC: Jobseeker’s Allowance, Working Tax Credit, Child Tax Credit, Employment and Support Allowance, Income Support as well as Housing Benefit. If this much more extensive form of welfare devolution makes it on to the table as part of the Smith deliberations, the form, forecasting and financing has to be clarified.

(ii) Housing Benefit and the other UC benefits are cyclical (unlike most other benefits). They fluctuate according to the state of the economy and are very difficult to forecast. Devolution could expose the Scottish government to significant financial risk if the funding formula did not accommodate these cyclical effects. A form of devolution which entails a transfer of responsibility *without* the power to set the parameters, conditions, and eligibility criteria would significantly heighten the Scottish parliament’s welfare burden without giving MSPs much opportunity to redevelop policy in a way they may deem more suited to Scottish needs.

Determining the form of welfare devolution, the system for delivering any devolved benefits, and the means by which these would be financed is fundamental to the nature and scope of devolution. Such considerations determine how much power the Scottish Parliament would have to shape any new social security policies, as well as its capacity to deliver for those in need. As such, they should be a central part of the discussion about what and whether to devolve welfare powers and policies – they should not be deferred until after a Heads of Agreement consensus.

**Professor Nicola McEwen**  
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ANNEXE E

WRITTEN SUBMISSION
PROFESSOR PAUL SPICKER

The devolution of social security benefits

Professor Paul Spicker

1. This submission has been prepared by Professor Paul Spicker, who holds the Grampian Chair of Public Policy in the Robert Gordon University. Professor Spicker is the author of several academic studies of social security policy, including Poverty and social security (Roudledge, 1995), Poverty and the welfare state (Catalyst, 2002) and How social security works (Policy Press, 2011). He has acted as an adviser on projects for the States of Guernsey, Special Adviser to the House of Commons Work and Pensions Committee on benefit simplification and Budget Adviser to the Welfare Reform Committee in the Scottish Parliament; currently he advises the Scottish Federation of Housing Associations. This response is submitted in a personal capacity.

2. The remit of the Smith Commission is to “deliver more financial, welfare and taxation powers, strengthening the Scottish Parliament within the United Kingdom.” This submission focuses on powers relating to “welfare”, understood here as benefits for social security and income maintenance.

3. The main points in this submission are these:

   - Benefits are complicated. They serve a wide range of needs and circumstances, delivered to meet a wide range of objectives. Any reform of benefits that is based on a single principle, or on a narrow focus, is liable to compromise other principles.
   - If benefits are devolved, they must be expected to vary in their terms and conditions. The ‘parity principle’ applied in Northern Ireland states the opposite; that would not fulfil the remit of the Smith Commission.
   - If devolution was confined only to the delivery of specified benefits, the power of a devolved government to alter those benefits would be limited by finance, administrative constraints and interactions with other benefits.
   - The devolution of powers implies not only that the criteria and conditions for benefits may be modified, but that new benefits will be permissible.
   - Any reform which does not deal with the package of benefits overall for identifiable categories of claimant will lead to inconsistencies and anomalies.
   - Specific proposals to devolve only Housing Benefit and Attendance Allowance have not been thought through sufficiently. The devolution of Housing Benefit will require changes in Universal Credit; the devolution of Attendance Allowance must extend to DLA/PIP.
   - There is a danger that a detailed specification of powers will get in the way of further reforms in the existing structure of benefits.
   - Change is difficult. The benefits system deals with a huge variety of circumstances, often providing for people on very low incomes who are highly vulnerable to the effects of change. Everything has to be done carefully.

Principles

4. The benefits system is complex for good reasons. Part of the complexity is because it deals with a vast array of different circumstances, including

   - old age (for example, State Pensions and Pension Credit)
   - disability (Personal Independence Payment, Industrial Injury Benefit, War Pensions)

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incapacity for work (Employment and Support Allowance)
unemployment (Jobseekers Allowance)
responsibility for children (Child Benefit, Child Tax Credit, Maternity Benefits)
paying rent while on low incomes (Housing Benefit)
low wages (Working Tax Credit, Child Tax Credit, Housing Benefit)
caring responsibilities (Carers Allowance)
bereavement (Bereavement Payments, Widows benefits)
emergencies and crises (The Scottish Welfare Fund)

Although many policy documents have strongly identified benefits with work and the labour market, there is much more to them than that. Most benefits go to older people; much of the remainder goes to people regardless of whether or not they are in work. Jobseeker’s Allowance and the various incapacity benefits account for less than a quarter of working age benefits, and most of that figure goes (in the words of the defining statute) to people who “it is not reasonable to require ... to work”.³

5. A further source of complexity is that benefits are designed to meet a wide range of objectives. The aims of benefits include, amongst many others:

- social protection and insurance
- responding to poverty
- providing for need
- economic policy
- income smoothing (redistribution through a person’s life-cycle)
- shaping individual behaviour
- managing the labour market
- financing social services (such as housing)
- promoting social cohesion
- rehabilitation
- compensation, and
- redistribution.²

Any reform of benefits that is based on a single principle, or on a narrow focus, is liable to compromise other principles.

6. Guy Lodge and Alan Trench, in a report for the IPPR, propose a series of criteria by which devolution of benefits might be judged. They include:

- Solidarity and redistribution. There is an intrinsic problem in devolving benefits if it means that the regions with the least ability to pay also have the greatest burden to bear. Need increases during an economic downturn and only a national scheme offers social protection.
- Economic management. Policies for benefits have to be understood in relation to the UK market and the need for economic growth.
- Integration with local and devolved services. Services for health, social care and social inclusion are organised and delivered at local or regional level? Barnardo’s have argued further

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¹ Welfare Reform Act 2007, s 1(4)b.
³ G Lodge, A Trench, 2014, Devo more and welfare, London: IPPR.
that services should be coherent from the point of view of users.\footnote{5}

Other criteria might reasonably include:

- **Taking account of policy variation.** One of the many objections to the “bedroom tax” was that it assumed integration with policies about rent-setting which actually applied only in England. This meant in Scotland that the assumed ‘removal of subsidy’ was greater than any nominal subsidy that might have been received.

- **Practical administration.** Contribution records for Scotland are held by the National Insurance Contributions Office and cannot sensibly be disentangled from those for England or Wales. By contrast, Housing Benefit in Scotland is administered by Scottish local authorities, making it straightforward to invest them with the appropriate authority to make decisions.

- **Avoiding inequalities and anomalies.** There are already some anomalies in the current system, often arising from gaps or overlaps between benefits (such as whether sick people qualify for JSA or ESA, or the position of people who claim PIP or Attendance Allowance according to age). Devolving some benefits and not others creates a potential for generating further anomalies.

7. The position of some parties in the UK government, as identified in the recent Command Paper, is that there should be uniform terms and rates of benefit for all benefits.\footnote{6} If that principle - equivalent to the “parity principle” in Northern Ireland - is applied, effective devolution is ruled out. It would be possible to devolve the administration and delivery of benefits, but not the criteria, conditions or the level of benefit. That would not be consistent with the remit of the Smith Commission, to deliver more powers relating to welfare and to strengthen the relative position of the Scottish Parliament in this field. For devolution to be possible to any degree, it has to be accepted that benefits in different parts of the United Kingdom might reasonably differ.

The current situation

8. HM Government’s *Scotland Analysis* identifies nearly £18bn of expenditure on benefits and tax credits for 2012/13. Of that figure, £9.6bn goes to pensioners and £8.1bn goes to people of working age and children. The figures for pensioners include not only “pensions” (State Pension and Pension Credit), but elements of Housing Benefit and disability benefits.\footnote{7}

9. Under the terms of the Scotland Act, the Scottish Parliament is expressly forbidden to act in relation to social security benefits.\footnote{8} In circumstances where the UK Parliament has decided to delegate power to Scotland it has been necessary to amend the primary legislation. However, some benefits in Scotland have been devolved within these constraints. They include

- the Scottish Welfare Fund, which has replaced the Social Fund
- Council Tax Reduction, which has replaced Council Tax Rebate
- free prescriptions (and eye tests), which have replaced the previous system for exemptions for people on low-incomes.

\footnote{4} Barnardo’s Scotland, 2014, Barnardo’s Scotland response to the Smith Commission’s call for views from civic society on further Scottish devolution.

\footnote{5} Cm 8946, 2014, The parties’ further proposals on further devolution for Scotland, p.33.


\footnote{7} Scotland Act 1998, Schedule V.
Housing Benefit is effectively administered, for practical purposes, by Scottish local authorities.

10. The formal powers of Scottish Government in respect of benefits are currently less than those of an English local authority. As the law stands, English local authorities have the power to act to promote welfare as they see fit, including the provision of financial assistance to individuals. The Scottish Government does not have the same power, because its competencies are explicitly restricted by the terms of the Scotland Act. That situation has implications for Scottish local authorities. They have been granted powers to promote welfare by the Scottish Parliament, using the same wording as the UK Parliament used to offer power to English authorities. Despite the terminology of the statutes, these provisions are not equivalent, because the powers of Scottish local authorities are restricted by the limitations of the source (the Scottish Parliament) from which they are derived. The introduction of the Scottish Welfare Fund required a rider to be added to the Scotland Act (a section 30(2) order) to empower local authorities to implement the measure.

11. Formal powers, however, are only part of the equation. Northern Ireland has had devolved powers over the whole of the benefits system for most of the last century. Those powers are constrained in practice by the ‘parity principle’, which leads to benefits in the province being delivered strictly in conformity with the rules applied in the rest of the United Kingdom. According to the Northern Irish Department of Social Development, “the long standing principle of parity dictates that an individual in Northern Ireland will receive the same benefits, under the same conditions, as an individual elsewhere in the United Kingdom.” At the time of writing the Northern Ireland Assembly has not passed the 2011 Welfare Reform Bill, intended to implement a series of measures imposed by the coalition government. Many of the measures in the Bill are symbolic, and do not lead to major savings (for example, a benefits cap that affects very few people). However, as a consequence of not passing the Bill, the Northern Ireland has been accused of overspending on its total budget, and it faces fines of £30m for failing to comply with the directions given to it by HM Government. Their experience shows that devolved powers may not be enough to exercise effective authority.

Options for devolution

12. The Command Paper on proposals for devolution outlines three main options for devolution:

   “1. devolving a portion of the expenditure relating to claimants in Scotland of a particular benefit, alongside the power to either vary the rate and rules or operate a separate benefit with a different rate and eligibility criteria, or alternatively to reallocate that funding to another area;
   2. devolving a proportion of the expenditure on a specific welfare service that relates to claimants in Scotland, alongside a statutory responsibility to deliver that service in Scotland, and potentially further powers to either increase or scale back provision of that service; or
   3. powers to ‘top up’ benefits above the level set by the UK Government.”

13. If devolution was confined to the delivery of specific benefits and services, as in options 2 or 3, the power of a devolved government to alter those benefits would be limited. The first constraint is financial: the example of Northern Ireland points to the difficulty of exercising powers without having matching powers to raise funds. Equally, if a devolved administration is reimbursed specifically for administering specified entitlements (the current position with Housing Benefit), it may be possible to

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supplement the payments, but it would be difficult to vary the terms on which benefits are delivered without losing track of the information on which the administering agency’s claim to an allocation ought to be based. The second constraint is administrative. The main options for reforming benefits lie not in varying conditions within benefits, but in redefining boundaries - for example, delivering the care component of PIP in tandem with Attendance Allowance, transferring resources from Housing Benefit to housing grants, shifting the emphasis between Tax Credits and Child Benefit, or reallocating resources between benefits and social care funds. A requirement to deliver a ‘specific welfare service’ would limit the scope to do this. The third constraint is the interaction of benefits. Unless clear arrangements are made about passporting, entitlements and tapers, the effect of increasing one benefit may be to reduce entitlement to others. The introduction of Universal Credit poses particular problems for the operation of Housing Benefit and Council Tax Reduction.

14. Option 3, ‘topping up’ benefits, could apply only in very limited circumstances. No benefit can be paid effectively by two agencies: the agencies would need equivalent access to information about names, addresses and household circumstances. It follows that topping up has to be done by paying over funds to an administering agency with the requirement to deliver benefits on newly specified criteria. It was possible to top up Housing Benefit to compensate for the ‘bedroom tax’ because the benefit is administered by local authorities, and the Scottish Government was able to pay the local authorities to pass on the benefit. It would not be feasible in the same way for the Scottish Government to pay HM Treasury or the DWP to top up Child Benefit, Pension Credit or Industrial Injury Benefits - respectively, a universal, means-tested and a non-contributory benefit. Wherever delivery is the responsibility of a UK-wide agency it will be necessary for the operating service first to distinguish potential claimants with Scottish entitlements, and next to offer distinct rates or calculations for those claims. The mechanisms do not exist to make this possible.

15. The current restrictions on the Scottish Parliament prevent the development of alternative forms of financial assistance. Let us imagine that the Scottish Government was minded to introduce a new benefit that did not exist in England. A plausible example might be a Funeral Grant. As a benefit, it would be consonant with all the principles considered above - the need is not cyclical, it would integrate well with local services, the administration would be relatively simple and the expenditure is relatively predictable. There may be questions to ask about whether it should be included within current priorities, or whether it would be affordable, but that would be a matter for the judgment of the Scottish Government. If, however, social security and financial assistance to individuals are treated in general terms as reserved matters, a benefit of this sort has to be flatly disallowed without further consideration. No doubt a creative interpretation of other provisions could be made to get round the bar, but it does seem appropriate to ask a more fundamental question about the division of powers: should such a decision be barred altogether? I proposed in paragraph 7 that devolution should allow for the possibility that some benefits will be different in different parts of the United Kingdom. Once that principle is accepted, it implies a presumption that further development of powers to promote welfare will be permissible. That means in turn that the feasible options for devolution extend beyond the range outlined in paragraph 12, because they are not broad enough to allow for the development of new forms of welfare.

16. There are reasons for keeping some social security benefits at UK level. The main reason for maintaining National Insurance pensions is a practical one: the mechanism of insurance depends on access to records of contributions accumulated over a person’s working life, which cannot be decentralised effectively. State Pension, Pension Credit and special payments (WFP and cold weather payments) are largely administered by the Pensions Service, which has sufficient administrative capacity in Scotland to manage the bulk of the system. However, entitlements are dependent on contribution records held in England, correspondence files and paper submissions are stored in England, and it would be impossible to administer the current system without full continuing access to those structures. An argument for retaining non-contributory elements within the Pensions Service is that it gives claimants one main office to deal with (though that is not decisive; other benefits claimed by pensioners, such as Housing Benefit and Council Tax Reduction, are not managed in this way.) If the aim was to
introduce a different kind of system - a Citizens Pension, like New Zealand Superannuation, which is dependent on residence rather than contribution - full devolution would be feasible.

17. Jobseekers Allowance and Employment and Support Allowance also have contributory elements, which overlap immediately and directly with contributory benefits. They offer insurance payments for the first six and twelve months respectively, followed by a transfer to the means-tested benefit. Unlike pensions, neither depends on a long-term contribution record; the relevant insurance payments generally are made two to three years before a claim, and that makes it possible to envisage a transition to a devolved benefit over a three year period. As the contributory elements in JSA and ESA have diminished in importance, there may also be an argument to review how those benefits are delivered.

18. Lodge and Trench suggest that Jobseekers' Allowance (JSA) and Employment and Support Allowance (ESA) should not be devolved, for a different reason; they argue that, on the basis that claims are linked to the economic cycle, so that finance is most constrained in times of greatest need.

In the case of JSA, the short-term elements of JSA are clearly cyclical, and that is most of the benefit; five JSA claimants in every six claim the benefit for less than a year. In so far as there is a case to devolve JSA, it is probably stronger in relation to long-term unemployment. Very low proportions of people who become unemployed remain unemployed for very long periods, and there is scope to treat long-term claimants differently from others. If it is thought appropriate for those claimants to be subject to a personalised administrative regime, though the evidence of the effectiveness of such provision is very mixed, it makes sense to do it at local level.

ESA is more complex. It is an awkward amalgam of previous insurance and means-tested benefits covering sickness, long-term incapacity and severe disablement. Some of this may be affected by economic cycles, but the figures have remained stubbornly unresponsive to changes in economic conditions for most of the last twenty years. ESA also covers periods of sickness not covered by Statutory Sick Pay, people whose illness means they cannot return to their previous work, and people in early retirement. At UK level, the administration of ESA in these terms has been deeply problematic, and there is a strong argument for breaking up the benefit into its component parts.

19. The same considerations do not apply in relation to many other benefits, and there is general scope to devolve them. Child Benefit might serve as an illustration. If there is to be a presumption in favour of devolution, such as the Scottish Government has argued for, it should imply that Child Benefit is at least considered for devolved administration. It has not really been mentioned in current debates, largely because its present status is not problematic; but if personal taxation is to be devolved, then for consistency Child Benefit, which incorporates the tax allowance for children, ought to be considered as part of the package. Otherwise the main route open to the Scottish Government for supporting children would be a Child Tax Allowance, creating the potential for overlaps and anomalies in its interaction with Child Benefit and Child Tax Credit.

Devolution of Child Benefit is possible. The benefit is relatively easy to administer, offering long-term entitlement that is not highly sensitive to changes in income or status; the calculation of equivalent value is simple; it incorporates the value of the former tax reliefs for children; it has a direct impact on family poverty, and the Scottish Government may or may not wish to vary the rates, or to review its tax status. There is a case for reviewing whether payments currently devoted to Tax Credits should not be used for Child Benefit instead. That option can be reviewed within a devolved administration, provided that both Tax Credits and Child Benefit are devolved. This does not establish that Child Benefit should be devolved; it indicates that it could be, without evident damage to the principles on which welfare is delivered.

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10 G Lodge, A Trench, 2014, Devo more and welfare, London: IPPR.
20. Lodge and Trench also propose that Housing Benefit and Attendance Allowance might be devolved; that proposition has been accepted by the Conservative Party’s Strathclyde Commission\(^{11}\), and in the submission of the Labour Party to the Smith Commission\(^ {12}\). The devolution of Housing Benefit is practical, because the work is already done by local authorities. There is however a potential inconsistency with the government’s plans for Universal Credit. Universal Credit was intended to bring together a range of different benefits with a common taper, so that there would be a single Marginal Rate of Deduction. That initial objective has been compromised in two ways: it does not include deductions through Income Tax, and it excludes Council Tax Reduction. If Housing Benefit is also taken out, the planned marginal deduction of 65% will be much too high, and marginal deductions overall with UC will far exceed those within it. The Scottish Government has consequently asked for the roll-out of UC to be suspended.

21. Various proposals have accepted the IPPR’s argument for devolving Attendance Allowance, without extending this to Disability Living Allowance/Personal Independence Payment. There is a considerable overlap between the benefits, and as it stands the proposal makes little sense. The current alignment of benefits is the legacy of a policy in the 1970s to restrict help to people with mobility problems on the basis of age, because older people are much more likely to have mobility problems and to the government of the day an age limit seemed a simple way of saving money. PIP, which is in the process of replacing DLA, provides a care component for people with severe disabilities below the age of 65; Attendance Allowance covers the same circumstances for people above the age of 65. However, if a claimant has received DLA or PIP before reaching retirement age, it has been possible to apply for an extension to continue receiving it after that age. Because PIP makes an allowance for mobility, and AA does not, those who can claim the former benefit prefer to do so. Very large numbers of claims for DLA - about a third - fall into this category. That also means that a person who had a stroke at 63 may receive benefit, three years later, that someone who has a similar stroke at 66 does not.

The proposal to devolve Attendance Allowance alone can only exacerbate the existing inequities. Whatever happens to these benefits, they should be considered and reformed at the same time. That points to a general principle: benefits for specified need groups - such as people with disabilities, unemployed people, pensioners and people who are unable to work - should be dealt with together, because any other arrangements will inevitably lead to inconsistencies and anomalies.

22. The structure of existing benefits should not be supposed to be inviolable. Option 1 in the Command Paper allows some variation of benefit rates and eligibility criteria, but the assumption is that existing benefits will be devolved within the constraints of their current definition. That could make further reform exceedingly difficult. New variations would depend on renegotiation (and possibly redesign of delivery systems) between the devolved authority and the Department for Work and Pensions.

Much of the benefits system has taken its present form for less than seven years, and it cannot be expected to have the same form seven years hence. (Indeed, if plans for Universal Credit go ahead, it will not have). Many current benefits are portmanteaus, combining together a range of different functions, purposes and methods of operation. ESA, as pointed out, has lumped together several distinct benefits into a badly integrated whole - among them, Sickness Benefit, Invalidity Benefit, Severe Disablement Allowance and elements of Income Support. Personal Independence Payment, like the predecessor benefit Disability Living Allowance, combines a “care component” (formerly part of attendance allowances), a “mobility component” (formerly part of Mobility Allowance), and support for older people (a third of Disability Living Allowance is delivered in the form of extensions granted to older people who otherwise would claim Attendance Allowance). Housing Benefit combines rent rebates for social housing, rent allowances and provision for supported housing. There is scope to think of these benefits in different terms: identifying the client group, contingency and component budget, and

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\(^{11}\) Scottish Conservatives, 2014, Commission on the Future Governance of Scotland, pp 16-17.

allocating the resources and responsibilities accordingly. In any mixed system, where some benefits are provided at UK level and others are not, this would depend on reconsideration of the terms of benefits at both levels.

**Interdependencies**

23. Benefits generally work by paying people cash, rather than providing people with services. There is some latitude for interpretation in the classification of benefits: at different times, free school meals, residential care home fees, free prescriptions and milk and vitamins for expectant mothers have all been treated as 'benefits', and there is a case for viewing free TV licences, concessionary transport and personal care budgets in similar terms. It is often the case that services might be provided in kind rather than cash provided to pay for items. If, for example, the Scottish Government were to make more direct provision of child care (which they are committed to do in principle), it would have a direct and immediate effect on entitlement to Child Tax Credit payable to meet child care fees. Housing Benefit was initially introduced with the intention of transferring money from housing subsidies to personal benefits, and there is a very strong argument for rebalancing the elements so that money goes again to the subsidy of housing provision. In both cases, this kind of rebalancing could only be done if powers were held at the same level of governance, and the government responsible for delivering the benefits were to have the power over how the resources were used and what was provided.

24. Benefits commonly interact with other benefits, and with the tax system. I have referred to the overlap between benefits and tax allowances, and to the difficulties of establishing a reasonable marginal rate of deduction in the Universal Credit scheme. Increasing payments of non-means tested benefits has the potential to reduce entitlement to means-tested ones: for example, if the State Pension goes up, entitlement to Housing Benefit and Council Tax Reduction goes down. It already happens that some benefits are clawed back through tax (notably Child Benefit when received by higher earners); there could be difficulties if benefits issued by one government were to be taxed by another. Control of effective tax rates may be undermined if National Insurance contributions are made to a different authority. Taxation and benefit powers need to be dealt with in tandem.

25. The programme of 'welfare reform' initiated by the last Labour government, and continued by the present coalition, has attempted to fuse support for employability and work preparation with the benefits system. There are reasons to doubt that this approach works. The biggest group of people without a job are not job-seekers; they are people on ESA, with severe restrictions of their capacity. The Work Programme has a poorer record of placing people in work than the previous system did. A recent IPPR report comments that any apparent gains from the Work Programme are flattening out; that the results for people who are most disadvantaged are poor; and that the performance is very uneven. It seems likely too that the Work Programme is carrying a large proportion of deadweight – services to people who, left to their own devices, would find a job anyway. I have suggested above that longer-term support for unemployment might appropriately be devolved to local level. Beyond that, there is also a distinct case for devolving shorter-term employment support to local services, uncoupling it from the benefits system altogether.

26. There may be alternatives to supporting people's incomes by benefits. One of the most obvious is the minimum wage, and the Commission may wish to consider whether the Scottish Government should not have the power to vary the rate. A further consideration is whether or not the Scottish Government might be granted sufficient powers to permit job creation, which can be done through infrastructure projects financed through bond issues or by increasing employment in the public sector; but that is beyond the immediate scope of this paper.

Practical and legal barriers

27. The assumption that the system can be radically simplified is an illusion. Universal Credit was based on the idea that it should be possible to deliver a unified, personal benefit responding to changes in people’s circumstances in ‘real time’, each of those aims has had to be compromised. The problems of administration, security, incentives and interaction with other benefits were well documented before its introduction; although many of these problems have been attributed to ICT, they are intrinsic to the design. The fundamental flaw, as Richard Titmuss pointed out many years ago, lies in ‘expecting the computer to solve the problems which human beings have not yet adequately diagnosed’.14

28. Benefits need to provide consistent, predictable, stable incomes; “personalised” benefit systems do the opposite. We should be moving to a system based on a collection of small, simple, benefits; the total income or any individual or household will depend on the accumulation of a range of benefits, but the loss of one benefit will not leave people penniless. Using a range of smaller benefits would allow for a degree of responsiveness to varying needs. To make the system more predictable and manageable, there should be common pay days over common time periods – every benefit should have the same pay day for everyone. The advantage of such a system would be the provision of a relatively secure, stable income, delivered at regular intervals.

29. This describes an appropriate direction of movement, but change is difficult. The benefits system deals with a huge variety of circumstances, often providing for people on very low incomes who are highly vulnerable to the effects of change. Over-simplification and cutting corners can hurt people. If budgets are fixed, every change that makes someone better off will make someone else worse off. Everything has to be done carefully. This also implies that in any arrangement in which powers relating to specified benefits or claimant groups are delegated to Scotland, there needs to be an extended timetable, ensuring that at no stage are vulnerable people left without clearly demarcated systems of support.

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ANNEXE F

WRITTEN SUBMISSION

DR DAVID WEBSTER

FURTHER DEVOLUTION OF WELFARE RESPONSIBILITIES

SUMMARY

This submission argues that further devolution of welfare responsibilities should try to remove the friction caused by the adoption of neoliberal policies on social security by the UK government. It proposes a general power for the Scottish Parliament to vary any aspect of the UK social security system in its application to Scotland, with the proviso that any cost would have to be met from the Scottish budget, and with a limit on the total amount of difference. This would be an extension of what has already occurs and would be analogous to arrangements for Northern Ireland. The submission also proposes some provision for formal oversight of the DWP's operations in Scotland by the Scottish Parliament.

Introduction

1. In a political union, it is desirable that there should be a common social security system. This is to promote common citizenship and social solidarity, to save administrative resources, to provide clarity of entitlement, to provide an automatic stabiliser as a key part of regional policy, and to facilitate free movement. Scotland has benefited greatly at various times of economic stress from the existence of a common UK social security system, which has sustained crisis-hit local economies. There are some 500,000 people born in the rest of the UK living in Scotland (almost 10% of the population), and some 850,000 Scottish-born people living in the rest of the UK. These are snapshot figures from the 2011 Census and the numbers of people who spend some part of their lives living in another country of the UK are probably a multiple of these.

The neoliberal stress on the Union

2. However the rise of neoliberalism in UK social security policy since the 1980s has clearly put grievous strain on the Union. The attached Figure 1 shows that most (71.4%) of the variation in the Yes vote share in the Independence Referendum across Scottish local authorities can be explained by the percentage of the population living on means tested benefits or tax credits, as defined in the Scottish Index of Multiple Deprivation (SIMD). The SIMD ‘employment deprivation’ domain, which includes only people on working age benefits, produces a similar but slightly smaller association (70.1%). These are very strong associations by any standards. They are capable of different interpretations, but they certainly do show a strong link between poverty and support for independence. Lord Ashcroft’s poll at http://lordashcroftpolls.com/2014/09/scotland-voted/ has 10% of referendum voters saying that benefits were among the two or three most important influences on their vote; this is substantial in relation to the approximately 20 percentage point difference between the lowest and highest Yes votes. The role of social security in
promoting disillusion with the Union is also indicated by the frequency of references in the referendum debate to the rise of Food Banks and the ‘bedroom tax’. The Work Capability Assessment moving people off Incapacity Benefit/ESA, and benefit sanctions, were also frequently mentioned in voter interviews reported in the media during the referendum campaign. Opinion surveys suggest that the Scottish electorate as a whole is only slightly more sympathetic to benefit claimants than that of the rest of the UK, but there certainly appears to be a considerable gulf in attitudes to neoliberalism between the respective political and civic elites (broadly defined) of Scotland and the UK, and there is clearly a large group of very disillusioned ordinary Scottish voters.

**How to remove this source of friction**

3. Further devolution of welfare responsibilities needs to try to remove this source of friction. It is presumably a recognition of this which has led to proposals for devolution of Housing Benefit (which could address the ‘bedroom tax’) and attendance allowance (which relates to the personal care issues on which Scotland already has a distinctive approach). However, nominating particular aspects of social security for permanent devolution does not seem likely to be effective and may not be desirable. It is impossible to predict what new proposal emanating from the UK government and might provoke another political dispute. For instance, only last week the BBC reported that the DWP was considering almost complete abolition of the Work Related Activity component of ESA, so that claimants would receive only 50p per week more than JSA, rather than the present £28.45. This would be likely to cause outrage in Scotland. Moreover, why devolve the whole of a complex system such as Housing Benefit simply to deal with some objectionable aspects? And devolution of social security should not be a one-way street. Times change. Political attitudes between England and Scotland may reconverge in the future. There should be provision for differences in the social security system to be removed as well as created, with the overriding goal of maintaining parity of provision as far as possible.

4. **What could meet the requirements suggested by this argument is a general power for the Scottish Parliament to vary any aspect of the UK social security system in its application to Scotland, with the proviso that any cost would have to be met from the Scottish budget, and with a limit on the total amount of difference.**

**Northern Ireland**

5. Northern Ireland offers a precedent of sorts for such an arrangement. The Northern Ireland government actually has control of social security, subject to a general requirement to maintain parity of provision with the rest of the UK (Law Centre (NI) 2011). Recently this arrangement has come under strain. Sinn Féin has been strongly opposed to Welfare Reform and has blocked the relevant legislation to implement it. As a result HM Treasury is withdrawing funding corresponding to the estimated amount by which Northern Ireland public spending is higher than it would have been if Welfare Reform had been implemented: £87m in 2014/15 and a further £114m in 2015/16; although it has agreed a temporary £100m loan to tide matters over (Public Finance, 10 October 2014). This has
precipitated a budgetary crisis, although it appears that a compromise has been reached
involving substantial concessions by the DWP, described by the relevant Northern Ireland
minister as ‘the envy of Scotland and Wales’. These include valuable provisions such as
fortnightly payment of Universal Credit, and direct payment of the housing benefit element
to landlords.

6. In operating an analogous system, Scotland would be in a better position than
Northern Ireland, because its gross disposable household income per head is 95% of that
of England, compared to Northern Ireland’s 81%. Consequently Scotland is not so badly
affected by Welfare Reform, and would not be so badly affected by future adverse social
security changes. The estimated Scottish loss per working age adult from Welfare Reform
is almost the same as the GB average (£480 p.a. compared to £470 p.a.), while Northern
Ireland’s is £650 p.a., the worst in the UK (Beatty & Fothergill 2013a, 2013b). Under the
Scotland Act 2012, to be implemented in 2016, Scotland will have considerable additional
tax raising powers and these are likely to be increased further following the Smith
Commission recommendations. If the Scottish Parliament chose to mitigate, or not to
implement, further cuts to social security, it would have scope to do so by raising additional
taxation or making cuts elsewhere.

A limit on total divergence

7. Of course it is possible that a future Scottish Government might be politically to the
right of the UK government, and might wish to raid the social security budget to finance
other programmes. The principle of parity requires that while there may be some flexibility,
social security provisions should not diverge too much between different countries of the
UK, and this is a reason for placing some limit on the total amount of divergence between
Scottish and English provision. This could be say 10% of total spending.

8. This proposal may sound very radical. In practice, however, the amount of variation
between the social security systems of Scotland and the rest of the UK would be likely to be
fairly limited. The need to finance more generous provision from Scottish resources would
put a strong brake on spending, while attempts to reduce provision below the level of the
rest of the UK would encounter strong political opposition.

9. This proposal is an extension of what has already occurred. The Scottish Parliament
has already acted to mitigate the effects of the ‘bedroom tax’, the potential effects of the
abolition of the national Council Tax rebate scheme, and the effects of the abolition of the
Social Fund. However, these actions have been quite complicated, and have involved some
improvisation. Except in the case of Council Tax rebates, they have not been entirely
satisfactory. And there are other contested policies where the Scottish Parliament has had
no power to intervene at all, as in the case of benefit sanctions. A general power of the type
suggested would make it much easier to implement mitigation in future.
Other advantages of the proposal

10. The proposal would have some other advantages:

(i) It would give no comfort to the advocates of ‘English votes for English laws’, itself a major threat to the Union. Whereas outright devolution of elements of the social security system to the Scottish Parliament could be argued to increase the number of ‘England-only’ issues, Scottish MPs would clearly have to retain the right to join in determining social security decisions which the Scottish Parliament would subsequently have to decide whether to implement or otherwise, at its own expense.

(ii) It would make the political debate on social security changes healthier. The Scottish electorate would have to calibrate exactly how it felt about each change in terms of the amount of money it was willing to spend to make it or avoid it. It would no longer be a case of mere protest.

(iii) It would improve governance at Westminster. For example, the 2012 Regulations which drastically increased the severity of JSA sanctions were approved without a vote on the basis of an Explanatory Memorandum which offered no justification for the increased severity, gave no estimates of the financial effects, and falsely claimed that there would be no impact on the voluntary sector. If the Scottish Parliament had had the power to disapply the Regulations in Scotland and had chosen to exercise it, debate would have been much fuller and the DWP would have had to publish coherent estimates of all the financial effects.

Oversight of DWP operations in Scotland

11. It would be desirable to accompany the general power by some provision for formal oversight of the DWP’s operations in Scotland by the Scottish Parliament. DWP officials currently exercise administrative discretion to make what are in effect spending decisions, for instance through benefit sanctions, but there is a total lack of transparency. The Tribunals run by HM Courts and Tribunals Service provide scrutiny of small numbers of individual cases, but do not provide effective oversight of the system as a whole. The Administrative Justice and Tribunals Council (2011) recommended that HM Courts and Tribunals Service should highlight systemic problems which are revealed by the individual cases coming to them, but this has not happened.

Note: Although informed by my research, these comments are my personal opinion.

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Scottish Independence Referendum: % Yes vote by % of population (adults & children) on income related benefits or tax credits (SIMD 2012)

\[ y = 1.3156x + 27.155 \]
\[ R^2 = 0.7145 \]

71% of the variation in the Yes vote share can be explained by the % of population on benefits.

A 1% point increase in the % of population on benefits increased the Yes vote by 1.3% per cent points.

A hypothetical LA with no one on benefits would have voted No by 73% to 27%.
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4 November 2014