The Committee will meet at 9.30 am in Committee Room 4.

1. **Fact-finding visit:** The Committee will hear a report back from a fact-finding visit to an Atos assessment centre.

2. **Subordinate legislation:** The Committee will take evidence on the Scotland Act 1998 (Modification of Schedule 5) (No. 2) Order 2012 [draft] from—

   Margaret Burgess, Minister for Housing and Welfare, Ann McVie, Team Leader, Welfare Division, and Colin Brown, Senior Principal Legal Officer, Directorate for Legal Services, Scottish Government.

3. **Subordinate legislation:** Margaret Burgess (Minister for Housing and Welfare) to move—S4M-05103—That the Welfare Reform Committee recommends that the Scotland Act 1998 (Modification of Schedule 5) (No. 2) Order 2012 [draft] be approved.

4. **Social Security Advisory Committee:** The Committee will take evidence from—

   Paul Gray, Chair, and Professor Janet Walker, Deputy Chair, Social Security Advisory Committee.

5. **Scottish Welfare Fund:** The Committee will take evidence from—

   Nicole Bethune, Senior Welfare Rights Officer, Midlothian Council;

   Richard Gass, Chair, Rights Advice Scotland;

   Tommy Gorman, Senior Project Manager, Macmillian Cancer Support.
6. **Subordinate legislation:** The Committee will consider the following negative instrument—

the Council Tax Reduction (Scotland) Regulations 2012 (SSI 2012/303).

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—

**Agenda item 2**
Note by the Clerk WR/S4/12/14/1

**Agenda item 4**
Note by the Clerk WR/S4/12/14/2

**Agenda item 5**
Written submission WR/S4/12/14/3
PRIVATE PAPER WR/S4/12/14/4 (P)

**Agenda item 6**
Note by the Clerk WR/S4/12/14/5
Introduction

1. At its meeting on 13 November, the Committee considered the Scotland Act 1998 (Modification of Schedule 5) (No. 2) Order 2012 [draft] and heard oral evidence from the Scottish Government and COSLA on the interim scheme that will be brought in to make successor provision for the discretionary elements of the Social Fund.

2. As the Order is subject to affirmative procedure the Committee will be invited to agree whether to recommend to the Parliament that the Order should be approved. Margaret Burgess MSP, Minister for Housing and Welfare, will attend the Committee to respond to any queries that Members may have before moving a motion seeking the Committee’s recommendation that the Order should be approved.

Scottish Government response to the Committee and Subordinate Legislation Committee report

3. At the meeting on 13 November, the Committee asked the Scottish Government the following question—

“Article 2(3) of the Order sets out the points at which two pieces of legislation would be considered to be ‘frozen’ from the point of view of interpreting the scope of welfare benefits that will remain reserved under the Scotland Act. One of those points is given as a day in the past so we can be certain of what it is the Parliament is being asked to agree. However, the other point is given as a date in the future which means, as the legislation concerned is not devolved, that the Parliament is being asked to agree to an interpretation of something that could be amended between the instrument being approved and coming into effect and over which the Parliament has no control.

Could the Government clarify whether my understanding of this position is correct and, if so, how the Parliament can be confident that it knows what it is being asked to agree to?”

4. The provision in question is section 69 of the Child Support, Pensions and Social Security Act 2000. In its response to the Committee (see Annexe A), the Government accepts that at the date the Parliament is being asked to approve the Order, it will not be able to be absolutely certain what the provisions of section 69 may be when the Order comes into force next year. The response also provides an explanation as to why it is necessary to select a specific date at which to refer to the subject matter of an enactment when making modifications to Schedule 5.
5. In considering this response, Members may wish to note that the Cabinet Secretary for Infrastructure, Investment and Cities wrote to the Secretary of State for Work and Pensions to confirm whether the UK Government intends to amend section 69 before the commencement date of 1 April 2013. The Secretary of State has replied to confirm that the UK Government does not intend to bring forward any amendments to this provision. The correspondence is reproduced at Annexe B.

6. The Subordinate Legislation Committee (SLC) has not drawn the Order to the attention of the Committee on any formal reporting ground but has highlighted the practical effect of the Order. The relevant extract from the SLC report is attached at Annexe C.

7. The first point highlighted by the SLC was the same issue on which the Committee sought clarification from the Scottish Government. The second point relates to the Scottish Government’s intention to make interim provision for the Social Fund successor arrangements using powers in the Local Government in Scotland Act 2003. In the view of the SLC, the relevant provision of the Order, article 3, does not provide absolute clarity as to what the effect of that provision would be given that it makes a reference to “any pre-commencement devolved enactment” which therefore extends more widely than the specific provisions of the 2003 Act.

Conclusion

8. Members are invited to consider whether they wish to raise questions or seek further clarification from the Scottish Government in relation to this Order.

Clerk to the Committee
December 2012
RESPONSE FROM THE SCOTTISH GOVERNMENT

THE SCOTLAND ACT 1998 (MODIFICATION OF SCHEDULE 5) (NO. 2) ORDER 2013

At its meeting on 13 November 2012 the Welfare Reform Committee considered the above Order and noted that article 2(3) of the Order specifies a date in the future for the purpose of identifying the scope of a welfare benefit that will remain reserved under the Scotland Act 1998.

The Committee asked (a) if the Parliament is being asked to agree to an interpretation of something that could be amended between the approval of the Order and its coming into effect and over which the Parliament would have no control, and (b) how the Parliament can be confident that it knows what it is being asked to agree to.

The Scottish Government answers the Committee’s questions as follows –

(a) the Committee is understood to be referring in these questions to the reference, in article 2(2) and article 2(3) of the Order, to section 69 of the Child Support, Pensions and Social Security Act 2000. The subject matter of this section will not be excepted from the social security reservation in section F1 of Schedule 5 to the Scotland Act 1998 in terms of this Order. The subject matter of this section is currently reserved and will remain so after this Order comes into force. The provisions of section 69 could therefore be amended by the UK Government between the date of approval of this Order and the date that it comes into force and the Scottish Parliament would have no control over that.

(b) it is accepted that at the date that the Scottish Parliament approves this Order it cannot be certain about the scope of the provisions of section 69 of the 2000 Act that will, by virtue of this Order, remain reserved to the UK Parliament. However it is suggested that the following points need to be borne in mind –

(i) the subject matter of section 69 is currently a reserved matter and it will remain so after the amendments to the Social Security reservation referred to in this Order are made. Therefore the Scottish Parliament’s competence in relation to the matters specified in this provision is unaffected, since it has none.

(ii) paragraph 5(1) of Part 3 of Schedule 5 to the Scotland Act 1998 provides that where functions specified in Schedule 5 (reserved functions) are described by reference to the subject matter of an enactment that is to be read as a reference to the subject matter of the enactment on the principal appointed day, namely 1 July 1999. That was the date when functions transferred to Scottish Ministers under section 53 of the 1998 Act. That could not logically apply in respect of any subsequent amendments to Schedule 5, so the provisions of paragraph 5 need to be disapplied in relation to functions now transferred. An alternative date needs to be selected.
Following the approach taken as regards functions transferring under section 53, where additional functions subsequently transfer to the Scottish Ministers, and the legislative competence of the Scottish Parliament changes, and these functions and competence are described by reference to the subject matter of an enactment, it is reasonable to determine the scope of the functions transferring and altered competence of the Scottish Parliament by reference to the terms of the enactment at the date of transfer.

In this case of course the reference to section 69 of the 2000 Act describes the scope of powers and functions retained by the UK Government. However it is considered that the same principle holds good, and the scope of powers and functions retained should be described by reference to a provision as at the date on which the Order comes into force. That is what is achieved by this provision.
EXTRACT FROM THE SUBORDINATE LEGISLATION COMMITTEE REPORT

CORRESPONDENCE BETWEEN THE SCOTTISH GOVERNMENT AND THE DEPARTMENT FOR WORK AND PENSIONS

Letter from the Cabinet Secretary for Infrastructure, Investment and Cities – 27 November 2012

As you will be aware, the Scottish Parliament is at present considering the terms of the draft Scotland Act 1998 (Modification of Schedule 5) (No.2) Order 2013, which will amend Schedule 5 to the Scotland Act 1998 to provide a new exception to the social security reservation.

The Parliament's Subordinate Legislation Committee has referred a couple of points relating to the drafting of the Order to the lead committee and the Parliament, and I would appreciate your comments in relation to one of them. It relates to the continued reservation, by article 2 of the draft Order, of the subject-matter of

a) section 138 of the Social Security Contributions and Benefits Act 1992 and

Unless otherwise provided, the effect of paragraph 5(1) of Part 3 of Schedule 5 to the Scotland Act 1998 would be that the subject-matter of these Acts would be defined as at 1st July 1999, which would not achieve the intended effect (and indeed would make no sense for the 2000 Act).

The draft Order therefore provides that the subject-matter of the 1992 Act is to be construed as at 8 May 2012, and the subject-matter of the 2000 Act as at the date on which the draft order comes into force, which is intended to be 1 April 2013. In the case of the 2000 Act, at that date any uncommenced amendments made by the Welfare Reform Act 2012 are to be regarded as in force in construing the 2000 Act's subject-matter.

The Subordinate Legislation Committee's comments are annexed, but in short the Committee is observing that this approach means that the two Parliaments cannot currently ascertain with certainty what the terms of section 69 will be at the date the Order commences.

I appreciate that in drafting the Order it has been necessary to address the existence of uncommenced amendments to the sections of both the 1992 and 2000 Acts, and to provide alternative dates to the unworkable date that the Scotland Act 1998 would otherwise provide.

Unlike some previous Orders under section 30 of the 1998 Act, the draft therefore cannot simply refer to the subject-matter of Acts as at the date they received Royal Assent.

Although there are uncommenced amendments to section 138 of the 1992 Act at the present time it was decided that the subject-matter of section 138 should be interpreted as the subject-matter prior to the commencement of those amendments.
The date of the last commenced amendments was 8 May 2012 therefore that is the date which was selected for the reference to section 138.

For section 69 of the 2000 Act, the presently uncommenced amendments have a bearing on the change to the devolution settlement, so it was decided to adopt the date the Order comes into force, but to deem all currently uncommenced amendments to be in force at that date.

That is not an unusual practice, and indeed follows the precedent of the Scotland Act 1998 itself, since it referred to the subject-matter of enactments at a date still to be determined (and subsequently set as 1 July 1999), when the Act was considered in 1998.

However, it might allay any concerns in the Scottish Parliament if you were able to confirm before the lead committee and the Parliament debates the Order on 11 December that the UK Government has no current plans to propose any further amendments to section 69 of the 2000 Act, ahead of 1 April 2013. I understand from discussions between our officials for this to be the position.

I am copying this letter to David Mundell, Parliamentary Under Secretary of State at the Scotland Office.

Response from the Secretary of State for Work and Pensions – 4 December 2012

Thank you for your letter of 27 November seeking my assurance that the UK Government has no plans to amend either section 138 of the Social Security Contributions and Benefits Act 1992 or Section 69 of the Child Support, Pensions and Social Security Act 2000 before 1 April 2013.

I can confirm that there are no current plans to amend either of these sections ahead of 1 April 2013.
EXTRACT FROM THE SUBORDINATE LEGISLATION COMMITTEE REPORT

The Committee agreed to refer the following instrument to the lead Committee for consideration—

Scotland Act 1998 (Modification of Schedule 5) (No.2) Order 2013 [draft].

Although the matter does not relate to a formal reporting ground, the Committee considered that the practical effect of the instrument is something that the lead committee may wish to consider further. The Committee’s deliberations are set out later in this report.

**Scotland Act 1998 (Modification of Schedule 5) (No. 2) Order 2013 [draft]**

The Committee agreed not to draw the instrument to the attention of the Parliament under any of the reporting grounds within the Committee’s remit, but to refer the following practical effects arising from the drafting of the order to the lead committee and the Parliament for consideration. The lead committee and the Parliament may wish to seek an explanation of these matters from the Scottish Government to inform consideration of the draft order.

**Scope of the reservation**

Article 2 of the order modifies the reservation of Social Security schemes set out in Section F1 of Schedule 5 to the Scotland Act 1998. The new exception to the reservation makes clear that, once the order comes into force, the subject matter of section 69 of the Child Support, Pensions and Social Security Act 2000 will remain reserved. However, section 69 is to remain reserved as it will have effect on the date on which the order is due to come into force - 1 April 2013.

As this is a date in the future, and as the Scottish Parliament does not have the power to control the subject matter of section 69, the Committee observes that at the point that the Parliament is being asked to approve the terms of the order it is not clear what subject matter is being reserved by this provision.

**Extension of functions**

Article 3 of the order modifies existing devolved statutory functions of the Scottish Ministers and local authorities so that from 1 April 2013 they are to have effect as if the transfer of legislative competence made by article 2 of the order had had effect at the time the functions were conferred.

The purpose of article 2 is to confer legislative competence over community grants and crisis loans on the Scottish Parliament with effect from 1 April 2013. By giving effect to article 2 in this manner from that date, article 3 makes provision that would be within the legislative competence of the Parliament on that date. The Parliament should therefore be clear exactly what the effect of article 3 is intended to be if legislation is being made on its behalf by order promoted by the Scottish and UK Governments.
The policy note submitted by the Scottish Government indicates that the intention is for local authorities and the Scottish Ministers to make provision for the new devolved matters of community care grants and crisis loans through the exercise of their powers to advance well-being under the Local Government in Scotland Act 2003. If that is the case it is not clear why the exercise of the Parliament’s new competence under article 2 needs to extend more widely than those specific provisions to “any pre-commencement devolved enactment”. Without an exhaustive review of the statute book it is not clear what the full effect of article 3 will be.
Welfare Reform Committee

14th Meeting, 2012 (Session 4), Tuesday, 11 December 2012

Social Security Advisory Committee

1. The Committee will hear evidence from—
   
   • Paul Gray, Chair of the Social Security Advisory Committee, and
   
   • Professor Janet Walker, Deputy Chair of the Social Security Advisory Committee.

2. The evidence session is expected to focus on the work undertaken by the Social Security Advisory Committee (SSAC) in relation to passported benefits. To support this session, Members will find attached to this note the Executive Summary of the SSAC report and the response from the UK Government.


Clerk to the Committee

December 2012
PASSPORTING TO THE FUTURE
THE SSAC REVIEW OF PASSPORTED BENEFITS
Passporting to the Future
The SSAC Review of Passported Benefits

Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foreword</td>
<td>26</td>
</tr>
<tr>
<td>Executive Summary</td>
<td>27</td>
</tr>
<tr>
<td>1. Introduction to the Review</td>
<td>27</td>
</tr>
<tr>
<td>2. Key Findings from the Review</td>
<td>28</td>
</tr>
<tr>
<td>3. The Current System of Passported Benefits</td>
<td>29</td>
</tr>
<tr>
<td>4. Possible Ways Forward Under Universal Credit</td>
<td>31</td>
</tr>
<tr>
<td>5. Guiding Principles for the Future</td>
<td>33</td>
</tr>
<tr>
<td>6. Concluding Comments</td>
<td>35</td>
</tr>
<tr>
<td>Chapter 1 Introduction to the Review</td>
<td>36</td>
</tr>
<tr>
<td>The Commission</td>
<td>36</td>
</tr>
<tr>
<td>Rationale for the Review – 21st Century Welfare</td>
<td>39</td>
</tr>
<tr>
<td>Understanding and Defining Passported Benefits</td>
<td>43</td>
</tr>
<tr>
<td>The Scope of the SSAC Review</td>
<td>47</td>
</tr>
<tr>
<td>The SSAC’s Approach to the Review</td>
<td>50</td>
</tr>
<tr>
<td>Chapter 2 Understanding the Current System of Passported Benefits</td>
<td>53</td>
</tr>
<tr>
<td>Introduction</td>
<td>53</td>
</tr>
<tr>
<td>Characteristics of the Current System</td>
<td>55</td>
</tr>
<tr>
<td>Assessing the Value of Passported Benefits</td>
<td>62</td>
</tr>
<tr>
<td>Integrating Policy Objectives and Targeting Need</td>
<td>65</td>
</tr>
<tr>
<td>Education-Related Benefits</td>
<td>66</td>
</tr>
<tr>
<td>Health-Related Benefits</td>
<td>72</td>
</tr>
<tr>
<td>Access to Justice Benefits</td>
<td>80</td>
</tr>
<tr>
<td>Utility-Related Benefits</td>
<td>84</td>
</tr>
<tr>
<td>Summary</td>
<td>89</td>
</tr>
<tr>
<td>Chapter 3 Possible Ways Forward Under Universal Credit</td>
<td>93</td>
</tr>
<tr>
<td>Introduction</td>
<td>93</td>
</tr>
<tr>
<td>Ambition and Reality</td>
<td>93</td>
</tr>
<tr>
<td>Reducing Complexity, Making Work Pay and Maintaining Cost-Neutrality</td>
<td>94</td>
</tr>
<tr>
<td>Defining Eligibility, Ensuring Appropriate and Effective Delivery and Managing Withdrawal</td>
<td>98</td>
</tr>
<tr>
<td>Education-Related Benefits</td>
<td>102</td>
</tr>
<tr>
<td>Other Options</td>
<td>108</td>
</tr>
<tr>
<td>Health-Related Benefits</td>
<td>119</td>
</tr>
<tr>
<td>Access to Justice Benefits</td>
<td>129</td>
</tr>
<tr>
<td>Utility-Related Benefits</td>
<td>132</td>
</tr>
<tr>
<td>The Social Fund</td>
<td>135</td>
</tr>
<tr>
<td>Summary – Options Going Forward</td>
<td>136</td>
</tr>
</tbody>
</table>
Foreword

The basic formula that links the income of an individual or family to the provision of ‘free’ services or support by the Government is a simple one that has endured for over a century despite repeated attempts to reform and simplify the welfare system during that time.

Over time, however, this system of passported benefits has grown considerably in variety and complexity, from simply providing meals to children who were ‘unable by reason of lack of food to take full advantage of the education provided for them’ in 1906, to a position today that sees a plethora of inter-dependent passported benefits being administered by a variety of government departments, devolved administrations and by non-government organisations such as those who supply utilities. The complexity and cost of administering this nexus of arrangements has been brought into sharp relief with the impending introduction of a Universal Credit in 2013.

In the absence of an overarching coherent strategy for passported benefits, or satisfactory arrangements to oversee it, Lord Freud (Minister for Welfare Reform, DWP) invited the SSAC to lead a review of passported benefits and, in particular, to consider how they might interact with Universal Credit when it is introduced.

The Committee was pleased to receive this very different type of commission to its normal work, and to have the opportunity to inform the Government’s thinking on passported benefits. This report sets out options for change and the guiding principles that we consider would serve the Government well in examining passported benefits within the Universal Credit regime. We have not made any specific recommendations or given formal advice, but have sought to highlight potential options for both the short and longer term. The impetus for change is increasing and the introduction of UC provides a unique opportunity to rethink passporting.

A considerable number of organisations and individuals have supported SSAC during this review, and I would like to record the Committee’s grateful thanks to everyone who has contributed to our review activities during 2011. The Committee’s particular thanks go to Professor Janet Walker (the Deputy Chair of SSAC) for leading this review so ably, and to Dr Nicola Moss, SSAC’s Research and Policy Officer, who supported her in doing so. I should also thank officials from across Whitehall and from the Scottish Government, Northern Ireland Assembly and the Welsh Government for their generous support throughout the process.

Paul Gray
SSAC Chair
February 2012
Passporting to the Future
The SSAC Review of Passported Benefits

Executive Summary

1. Introduction to the Review

1.1 In May 2011 the Social Security Advisory Committee (SSAC) was commissioned by the Minister for Welfare Reform to undertake an independent review of the current system of passported benefits and to provide advice on the possible approaches to the provision of these benefits when Universal Credit (UC) is introduced in 2013. Such approaches should neither involve a net increase in expenditure nor compromise the key objectives of welfare reform: simplification of the benefits and tax credits systems and making work pay. The Committee agreed to put forward possible options for the future but to stop short of making specific recommendations as to the best way forward. This Commission was unprecedented: it enabled the SSAC to offer assistance at the formative stage of policy making, having gathered evidence from a wide range of sources.

1.2 The social security system in the UK is in the process of being overhauled. Central to the Government’s reform agenda is the introduction of a single dynamic benefit for people of working age – Universal Credit – which will be withdrawn smoothly via a taper as people move into work or increase their earnings. The introduction of UC presents considerable challenges for other parts of the welfare system: under UC the current eligibility criteria for accessing passported benefits will no longer exist – simply migrating the current system is not an option and change is inevitable.

1.3 The SSAC defined passported benefits as those additional benefits to which working-age claimants on certain means-tested benefits and tax credits\(^3\) are automatically entitled. The main passported benefits are delivered as benefits-in-kind, or as cash benefits, or as discounts on charges. The review did not consider Housing Benefit, or Council Tax Benefit, and referred only briefly to benefits within the Social Fund. The review took account of the differences in the devolved administrations wherever possible.

\(^3\) Income Support, Income-based Jobseeker’s Allowance, Income-related Employment and Support Allowance, Child Tax Credit and Working Tax Credit.
2. Key Findings from the Review

The review found that:

- all passported benefits fulfil important needs, are highly valued by those who receive them, and make a significant contribution to:
  - children’s health and wellbeing and their educational and emotional development
  - the health, wellbeing and quality of life for adults and families who are out of work or living on a low income
  - reducing child poverty, health inequalities and social exclusion
- benefits-in-kind are generally regarded as particularly beneficial in helping low-income families and there was little support from review respondents for cashing these up within UC
- there is no rigorous research evidence to show that the provision of passported benefits acts as a work disincentive: when people take decisions about moving into work or increasing working hours, they take a range of factors into account
- the loss of out-of-work passported benefits when people take a job can create an unhelpful cliff-edge and reduce the apparent gains to work
- as the number of passported benefits has increased, so to has the complexity in the system and greater simplicity and better coordination of passported benefits is essential: this should reduce administration costs, render passporting more effective and efficient, improve awareness, understanding and take-up, and ensure better targeting
- options for the future should not undermine the policy objectives of individual passported benefits, nor undermine the overarching principle that people should be better off in work than they are on benefits
- it is unlikely that one approach will suit all passported benefits in future, and more radical options will need further consideration and may require additional expenditure
- the constraint of cost-neutrality creates tensions which will need to be balanced
3. **The Current System of Passported Benefits**

3.1 We categorised passported benefits into four main groups: education; health; access to justice; and utilities.

**Education-related benefits**

3.2 The provision of free school meals to children throughout the UK whose parents are in receipt of a means-tested benefit drew the most responses during the review.

3.3 The evidence gathered indicates that the provision of school meals as a benefit-in-kind is critically important and highly valued by educationalists and families alike. The policy is designed to ensure that pupils are provided with a healthy, nutritious meal at school. Although there is a continuing increase in the proportion of children in state-maintained schools known to be eligible for and claiming school meals, the take-up is lower than would be expected. Moreover, there is still some stigma associated with taking free school meals. In future, the system for providing free school meals needs to be simple and easy to administer, so as to encourage better take-up.

**Health-related benefits**

3.4 We reviewed a range of health-related benefits including prescriptions, support for dental and optical treatment, and Healthy Start vouchers.

3.5 The evidence gathered indicates that health-related benefits designed to ensure that people on benefits or a low income are not deterred from monitoring their health, seeking medical advice and undergoing treatment, are highly valued. The lack of medical treatment makes it more likely that people who are unable to work because of ill-health will take longer to recover and their ability to work will be reduced. Moreover, visual impairment causes substantial social and human cost and is regularly quoted as a barrier to accessing employment.

3.6 Review respondents argued that access to healthcare should be provided free to all low-income families or, preferably, to everyone as it is in the devolved administrations.

3.7 There is considerable complexity in the system, particularly in England, and greater simplicity, transparency and a more joined-up approach are needed to enhance take-up.
Access to Justice Benefits

3.8 Evidence was obtained about three passported benefits: remission from court fees; legal aid provision; and the Assisted Prison Visits Scheme. The eligibility criteria for each vary both across and within benefits. Access to justice benefits are a devolved matter in Scotland and Northern Ireland.

3.9 Although these passported benefits may not be needed by all those eligible to receive them, they are extremely important for, and highly regarded by, those that do require this kind of support. The evidence gathered indicates that legal aid and court fee remission are deemed fundamental to social and legal justice and they are designed to enable access to court processes for people who cannot afford to pay, help people understand their legal obligations, protect their basic rights, get a fair hearing, sort out disputes, and solve problems related to social exclusion.

3.10 Simplicity is key in terms of application for and delivery of these benefits: they need to be flexible to meet the variable costs of support but different eligibility criteria can be complex and confusing for claimants.

3.11 The Assisted Prison Visits Scheme supports prisoners’ families to maintain family ties, which can reduce the likelihood of re-offending and increase the likelihood of employment after release.

Utility-related benefits

3.12 Evidence was gathered about WaterSure (in England), Cold Weather Payments, the Warm Home Discount and a range of social tariffs. Assistance with utility costs is mainly provided by individual companies, and there is considerable variation in eligibility between schemes, adding to complexity and potential confusion for customers. Furthermore, there are variations between countries in the UK.

3.13 The evidence gathered indicates that utility-related benefits are vitally important to support the most vulnerable households: families living in cold homes, for example, are more likely to suffer physical and mental ill-health. There is a need to join-up provision across the various providers of utility-related benefits to co-ordinate eligibility and target more effectively.
4. Possible Ways Forward Under Universal Credit

4.1 One of the most important messages from the review of the current system of passporting, about which there is universal accord, is the opportunity afforded by the introduction of UC to greatly simplify it. There is unlikely to be one option which can be applied to all passported benefits under UC, however, and a mixed economy is inevitable, in the short term at least. This raises challenges for the overall simplicity that can be achieved. Nevertheless, there are clear opportunities to implement a more rational and better-integrated system, and a window of opportunity to work towards greater simplification in the arrangements for passporting during the UC transition period.

4.2 Review respondents identified a tension between three key factors: reducing complexity, making work pay while maintaining a range of policy objectives, and keeping costs neutral. One of the simplest solutions identified by review respondents would be to extend eligibility for passported benefits to everyone receiving UC. This option would not meet the constraint of cost-neutrality, even if administration costs were reduced as a result.

4.3 Any option for the future should:
- promote simplicity
- avoid limiting eligibility in order to retain cost-neutrality
- avoid cliff-edges
- keep administrative costs to a minimum
- make it as easy as possible to identify potential entitlement, make and process applications, and demonstrate and verify eligibility
- consider how rapidly advancing technology might reduce administration costs and streamline processes for claimants and delivery agents

4.4 The main options to consider going forward for education and health passported benefits include cashing up some benefits (such as free school meals and health costs) within UC: there are a number of pros and cons to this approach but the majority view was that these benefits should remain as benefits-in-kind.
4.5 An alternative approach would be to impose income thresholds within UC, below which claimants are automatically entitled to receive certain passported benefits. This is relatively easy to communicate to claimants, it would achieve cost-neutrality, and it is relatively straightforward to deliver. It would, however, create a cliff-edge when the income threshold is reached and would impact on family budgets. To alleviate the cliff-edge it would be possible to:

- impose an earnings disregard
- allow the benefit to run-on for a period of time after the cut-off point has been reached
- withdraw the benefit in a stepped taper, but this would be more complex for claimants to understand and delivery agents to administer, create mini cliff-edges, and would not necessarily meet the educational policy objectives

4.6 A reduced earnings disregard approach would involve a cash value equal to the cost of a school meal, for example, being added to the gross UC award. In this option the Government would need to consider:

- the potential complexity for families
- the optimum approach to transfer payments to avoid an administrative burden being placed on claimants

4.7 With regard to access to justice benefits, one option would be to define an income threshold within UC, below which eligibility for these benefits would be automatic; another option would be a separate means test.

4.8 In respect of the utility-related benefits, there are opportunities to develop a more coordinated approach if consent from claimants could be obtained to share relevant information on the UC data base with service providers. This would enable more effective targeting, avoid repeated means-testing, reduce administration costs, and increase take up. Since utility companies tend to offer a social tariff for a year, severe cliff-edges could be avoided when people move into work or as income increases.
5. **Guiding Principles for the Future**

5.1 Whatever options are chosen, a number of guiding principles have emerged from the review. These are considered within the context of the Government’s key objectives for welfare reform – simplification and making work pay.

**Simplification**

5.2 A number of broad principles could assist in reducing complexity in the current system and, at the same time, reduce administration costs:

- providers of passported benefits should ensure that they work closely together to improve coordination and increase understanding of the impact of the design of passported benefits on the wider system of benefits and vice versa. As a minimum, this calls for greater sharing of data and information about claimants, subject to appropriate data protection safeguards

- policymakers should give careful consideration to joining-up and integrating passported benefits: for example, combining benefits that have similar objectives, such as ensuring people have warm homes

- providers of passported benefits should consider and question the best way to deliver passported benefits: whether those currently delivered as benefits-in-kind might be brought into the UC calculation in due course, for example

- consideration should be given to ways of ensuring greater coordination and oversight, so as to increase the potential for simplifying their delivery of in the longer term

5.3 A number of practical steps could be taken to promote a more joined-up approach to passporting:

- information sharing/data transfer to reduce the need for multiple applications and promote more effective targeting

- an agreed definition of income and agreement about the evidence required to validate claims

- carefully crafted, clear and unambiguous statements on the UC Notification simple to understand

- making efforts to avoid any stigma associated with accessing passported benefits, so as to ensure take-up by those who are eligible and improve targeting
Making work pay

5.4 A number of high-level principles should be taken into account when considering approaches to passporting that support the Government’s goal of making work pay:

- designing passported benefits to ensure effective integration of the broader policy objectives relating to education, health, energy and social tariffs, and access to justice, with the policy objectives of welfare reform in general, and UC in particular
- making decisions about whether and how to withdraw passported benefits as income rises which avoid cliff-edges and keep withdrawals simple and smooth
- ensuring that new options for passported benefits should close current loopholes in eligibility which exclude some people on relatively low incomes from the support passported benefits can provide, and aim for greater fairness and predictability
- monitoring the system of passporting when UC is introduced to assess the impacts on targeting and take up, on in-work income and on the employment behaviour of claimants

5.5 Some practical steps can be taken to promote the Government’s objective of making work pay:

- reconsidering how passported benefits are explained, the language used and the messages given will be essential to the integration of passported benefits under UC
- making the value of passported benefits transparent and clear to recipients could assist their understanding of the benefits system overall and of how UC calculations and payments are made
- ensuring that all better-off in work calculations always include the putative value of passported benefits and give information about how they will be withdrawn
- providing information about passported benefits in a joined-up coherent manner rather than as individual benefits with little connection to each other, including information about other options which can ease the loss of passported benefits at certain income thresholds
6. **Concluding Comments**

6.1 The SSAC review of passported benefits has exposed the complexity of and the lack of coordination in the current system. It may be that the Government’s programme for welfare reform will provide the stimulus to rethink just how many benefits should be passported and consider just what could be achieved within UC itself. The opportunities to rethink passporting are considerable, but there are significant challenges involved in promoting greater simplicity within the current financial envelope. The timescale for implementing UC is ambitious, and discussions about how to manage passported benefits will almost certainly evolve during the transition period.

6.2 The tensions created by the constraints of cost-neutrality will have an impact on what can be achieved in the short term but should not stifle more creative thinking in the longer term.
### Contents

**Government's Response**

Introduction ........................................................................................................... 1
The Social Security Advisory Committee’s Report ........................................... 1
Government Response ..................................................................................... 3
Passported Benefits and Incentives to work ....................................................... 5
The Government’s longer-term strategy for passported benefits ..................... 6
Guiding Principles .............................................................................................. 8
Education related benefits ................................................................................. 10
Health related benefits ....................................................................................... 11
Access to Justice ................................................................................................. 16
Utility and Energy related benefits ................................................................... 17
Conclusion ........................................................................................................... 22

**The Social Security Advisory Committee's Report**

The SSAC Review of Passported Benefits ......................................................... 23
Introduction

1. Claimants who are currently entitled to out-of-work means tested benefits or tax credits can also be eligible for a range of other support, including free school meals and health benefits such as free prescriptions. These are known as passported benefits. Defining the entitlement criteria for certain passported benefits is the responsibility of many Government Departments and the Devolved Administrations.

2. The introduction of Universal Credit in October 2013 brings radical changes to the benefits system. It is a new single system of means-tested support for working-age people in and out of work. Support for housing costs, children and childcare costs will be integrated and it will provide additions for disabled people and carers.

3. As a result, some existing means-tested benefits will no longer exist, including income-based Jobseeker’s Allowance, income-related Employment and Support Allowance, Income Support, tax credits and Housing Benefit.

4. Eligibility for passported benefits, therefore, needs to be reconsidered.

5. In May 2011, the Department for Work and Pensions commissioned the Social Security Advisory Committee (SSAC) to undertake an independent review of passported benefits and how they link with Universal Credit. The Department asked the SSAC to review the evidence on passported benefits, consider how they are valued by recipients and the extent to which they impact on the incentive to work and to provide advice on how they should be considered in future.

6. The report by the SSAC is included in this document at page 23.

The Social Security Advisory Committee’s Report

7. The SSAC undertook a public consultation exercise as part of their review and received over 60 responses from individuals and organisations. They also liaised with Government Departments and the Devolved Administrations during the course of their review. They undertook further work with a wide range of stakeholders, including focus groups with benefit recipients and welfare rights groups to inform their findings.

8. The SSAC’s review focussed in particular on the need to reduce the complexity of passported benefits, support work incentives but deliver change on a cost neutral basis.
9. The SSAC set out ‘guiding principles’ for passported benefits and put forward a number of broad suggestions on how they may be taken forward in future. The SSAC did not consider the interaction of passported benefits and Pension Credit within its review and this response focuses on working age claimants only.

10. More specifically, the SSAC has broadly considered passported benefits in four groups: Education, Health, Utilities and Access to Justice.

**Education related benefits**

11. Whilst the SSAC acknowledged that it is not possible to create a hierarchy of passported benefits, they noted that some are considered by recipients to be particularly important, and focussed in particular on the provision of free school meals. They noted that, in the longer term, there may be scope for a radical new approach for free school meals to forge much closer links with Universal Credit, perhaps including a component for school meals in the overall Universal Credit award. This would need to be consistent with the Government’s aim to provide healthy school meals. The SSAC also proposed possible options for eligibility criteria in the short term. These include the potential to provide a ‘run-on’ whereby entitlement continues for a set period even where earnings or income increases above the entitlement threshold and a tapered approach where support is withdrawn gradually as income rises.

**Health related benefits**

12. The SSAC addressed a range of health benefits in their report and focussed on free prescriptions and Healthy Start vouchers in particular. Their consultation found firm support for health related benefits and the essential function they fulfil. The report considered short term options for health benefits to: link eligibility to income levels; align the low income scheme more closely to Universal Credit; provide run-ons in a similar way to that explored for free school meals or use a tapered approach. In the longer term, the SSAC note the potential for using technology to support the administration of health related passported benefits.
Passported Benefits Review: Government’s Response

Access to Justice

13. The SSAC looked at passported benefits delivered by the Ministry of Justice, primarily the provision of legal aid and remission for court fees. They noted that there were fewer responses about the justice passported benefits during the consultation and that the legal aid system was already undergoing a wide ranging programme of reform in England.

14. They also considered the Assisted Prison Visits Programme. They noted the potential in the longer term for applications to be more automated such as through the Universal Credit system.

Utility and Energy related benefits

15. The SSAC considered the range of passported benefits that can provide support with utility costs including help with water bills, electricity costs, and cold weather payments.

16. They noted that the introduction of Universal Credit will provide opportunities for these benefits to be better targeted in future and that better data matching will support improved administration. In the short term, the best solution for determining eligibility for these passported benefits may be to use an income or earnings test.

Government Response

17. The Coalition Government has noted the SSAC’s report into passported benefits. It supports the Government’s view that many of these benefits provide vital support to people on low incomes and are valued highly by the individuals that receive them.

18. The introduction of Universal Credit represents not only a challenge for Departments and organisations with responsibility for passported benefits, but also a unique opportunity to consider more fundamental reform to simplify and streamline some passported benefits in future.

19. In the short term, it is important that Government Departments and the Devolved Administrations focus on setting the new eligibility criteria for passported benefits that will need to be in place from 2013. Once Universal Credit is fully rolled out it will provide support for around 8 million households, not all of whom will be entitled to passported benefits. It is a crucial decision for organisations to consider how best to target funding for passported benefits within the resources available.
20. The SSAC sets out the fundamental objectives for passported benefits and the Government recognises the important role of these benefits to reduce poverty, improve children’s outcomes and the quality of family life and help manage health conditions. In setting the future design of passported benefits, it is essential to underpin these objectives whilst preserving the fundamental aim of Universal Credit to support incentives to work. The Department for Work and Pensions intends to continue to work closely with those responsible for passported benefits as they develop new eligibility criteria. Organisations will need to deliver the new criteria within the financial limits of individual schemes and to deliver well targeted, effective schemes with particular regard to the financial climate.

21. Generally, passported benefits in Scotland are a matter for the Scottish Government. The Scottish Government intends to bring the SSAC’s report to the attention of the newly created Welfare Reform Committee of the Scottish Parliament to help inform the approach to passported benefits in future.

22. The role of this Committee is to review the policies flowing from the UK Welfare Reform Act and monitor the implementation of these policies as it affects welfare provision in Scotland. In particular, the Scottish Government has noted the worked examples in SSAC’s report setting out the financial value of passported benefits and the strong links between those benefits and broader Scottish Government policy objectives, such as early intervention and supporting healthier lives.

23. The Scottish Government accepts the SSAC’s view that a gradual approach to revising arrangements for passported benefits is likely to be appropriate. Whilst it is important that arrangements are in place for the initial rollout of Universal Credit from 2013, greater simplification may be achievable in the longer term. More specifically, the Scottish Government agrees with the SSAC’s view that any options for greater integration is a matter for longer term consideration.

24. The Welsh Government provides a number of passported benefits for Wales and will decide the future of these benefits following the introduction of Universal Credit.

25. The SSAC’s Review will be brought to the attention of the Ministerial Task and Finish Group for Welfare Reform for consideration on the suggested guiding principles in relation to Welsh Government passported benefits. The group is responsible for assessing the impact of Welfare Reform on Wales and ensuring an appropriate, coordinated response. This will be carried out inline with the policy priorities of the Welsh Government.
26. The Welsh Government accepts, in principle, that where possible, consideration will be given to further simplify eligibility for passported benefits in order to create a less complicated process for claimants. The Welsh Government also recognises how valuable passported benefits can be to claimants and their wider role in supporting policy objectives. It is important to note, however, the policy aims of the Welsh Government might not always align with those of the Department for Work and Pensions. The Welsh Government was pleased to note this distinction between the administrations has been picked up within the review.

Passported Benefits and Incentives to work

27. The Coalition Government endorses the SSAC’s view that the design of passported benefits under Universal Credit can have a key impact on incentives to work. In the current benefit and tax credit system, interacting taper rates can mean that some people have little or no incentive to work, or to improve their income once in work. As the SSAC’s report notes, in Universal Credit, a single taper rate and a system of earnings disregards will allow people in work to see clearly how much support they can get while making sure that people considering a job will understand the advantages of work. Whilst final decisions on the taper rate have not yet been made, the Government has illustrated a potential withdrawal rate of 65 per cent\(^1\) which would broadly mean that claimants would be £35 better off for every £100 of net earnings.

28. The Government acknowledges the views of respondents to the review that passported benefits should not be lost in their entirety when people enter into work. Given the potentially high monetary value of passported benefits, it is important to consider the impact on work incentives if they are all withdrawn at the same time and at the same income level.

29. SSAC notes that there is mixed evidence about the impact of passported benefits on work incentives. However, it is important to highlight that the responses gathered in the review focus on the impact of passported benefits within the current benefits and tax credit system rather than the impact under Universal Credit. This is an important distinction as, currently, at the point some passported benefits are withdrawn, recipients often receive an increase in working tax credits that helps compensate for the loss of the value of the passported benefit.

\(^1\) http://www.dwp.gov.uk/docs/ucpbn-14-disregards-tapers.pdf
30. This is demonstrated in the current benefits system where a claimant is compensated for the withdrawal of free school meals at the point they enter into 16 or more hours work by their entitlement to working tax credits whereas in Universal Credit, there is a much smoother uplift in income as earnings increase. Under Universal Credit, the single taper rate will make it much easier for households to know exactly what each hour of work will mean for them financially.

31. The Government aims to ensure that collectively, passported benefits support the work incentive objectives of Universal Credit. Departments and the Devolved Administrations with responsibility for passported benefits are actively considering their eligibility criteria, taking into account work incentives and the policy objectives of the benefits concerned. These issues are discussed in more detail in the sections below on, Education, Health, Access to Justice and Utilities.

The Government’s longer-term strategy for passported benefits

32. The Welfare Reform Act 2012 will bring about radical reform to the welfare system for people of working age. Universal Credit will drive fundamental change to the benefits and tax credit system, and make great strides in the reduction of poverty and worklessness.

33. But change does not start and end with introduction of Universal Credit. The Coalition Government will deliver a programme of continuous improvement that will encompass a variety of welfare support services that are delivered across many organisations. The SSAC report sets out a detailed account of the array of passported benefits available and it is clear that their extensive coverage can make a real difference in all areas of people’s lives. Because of the crucial role that this help provides, it is essential that the Government meets the very best standards in service delivery, encourages full use of those services whilst supporting work incentives objectives.

34. Many passported benefits, and their associated administrative functions, have been in place for many years and in some cases, modernisation is long overdue. The Government recognises that, given the legislative and administrative change that would be required, radical reform of passported benefits may not be achievable for the initial stages of Universal Credit and that the first challenge will be for Departments and organisations to review their entitlement criteria for 2013.

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2 Free school meals are provided to those in receipt of WTC and CTC in Scotland, although entitlement is withdrawn at £6420.
35. The Department for Work and Pensions’ aspiration is to explore further welfare reform by offering a generic approach for the current suite of passported benefits. This could mean that people would be able to claim their usual Universal Credit award, but with added components for a range of other suitable benefits and public services. Claimants would be able to self-certify they have, or will, make payment from their Universal Credit from a list of agreed services. The total award, including the additional component would then be withdrawn gradually as income rises. The Government will consider this alongside other priorities for the next Spending Review.

36. The Government recognises that a pure cash allowance for services or benefits may not be appropriate for some passported benefits. However, mirroring the childcare model that will be used for Universal Credit would deliver the advantages of a cash award whilst preserving the benefit-in-kind principle that guarantees the provision of a specific service. This is because, as with the childcare model, costs will only be paid for the actual cost of the good and checks would be in place with providers to verify that the funds are spent appropriately. Put simply, the payment would be made contingent on funds being spent on the actual service.

37. The Department for Work and Pensions believes that this approach could underpin the clear advantages of Universal Credit whilst supporting the policy intent of specific passported benefits. In particular, a streamlined one-stop service is more likely to deliver a better service to claimants.

38. This approach also has potential to encourage claimants to make greater use of public services. In effect, benefits and services would be made available to more people without impacting on overall cost, and issues associated with accessibility should be removed. This is because those claimants whose Universal Credit award is subject to the taper would be part funding the cost of the service from other income.

39. The key benefit of this generic approach is that it could eliminate any adverse effect of passported benefits on incentives to work. This is because the cliff edge issue discussed in the SSAC report would be removed. In some cases, claimants may be able to see financial impact of moving into work against the entire range of support they receive from the Government.
40. The Government recognises that for people on low incomes, it is essential to avoid requiring claimants to make upfront payment for goods or services. The system will be supported by IT that will adjust Universal Credit payments according to income reported through an upgraded real-time information version of the Pay-As-You-Earn tax system. This will reduce the need for claimants to inform the Government of changes in their income and will be more responsive to those changes to ensure that people receive additional help quickly should their incomes fall. Working in partnership with Her Majesty’s Revenue and Customs by linking in to their real-time information system, the Department for Work and Pensions will ensure Universal Credit is a responsive, efficient means of support. For the additional services that may be included in Universal Credit in the future, the Government will explore how best it can deliver prompt support, either through payment in advance or by further re-use of information provided through the real-time information system.

41. Whilst this might not present the optimum solution for all passported benefits and other models may be considered for some benefits, the design of Universal Credit means that more services could gradually be added over time. There is further scope to add one-off electronic claims for some passported benefits which may be paid irregularly.

42. The Coalition Government will explore its longer term strategy for passported benefits in more detail as Universal Credit beds in from 2013. However, an integrated, streamlined system would remove some of the administrative burdens currently associated with many passported benefits and deliver modern services that fit within the guiding principles of simplification and making work pay as set out in SSAC’s report.

Guiding Principles

43. The SSAC set out its guiding principles for passported benefits within key objectives of simplification and making work pay.
Guiding principles - Simplification

44. In relation to simplification, the Coalition Government and Devolved Administrations are already working together in advance of the introduction of Universal Credit to consider entitlement to passported benefits and therefore supports the SSAC’s comments about close working to improve co-ordination and understanding. Whilst the Government accepts there may be scope for more consistency in its approach to some passported benefits, it is also important to look across the piece at the eligibility and withdrawal criteria to avoid passported benefits being withdrawn in bulk as claimants start work or increase their income.

45. The Government will consider opportunities for more automated processing and entitlement through better use of technology.

46. The SSAC report mirrors the recommendation made by the National Audit Office and the Public Accounts Committee that one organisation should have responsibility for co-ordinated means tested benefits across Government. The Government has responded to the Public Account Committee’s report separately. It should be noted, however, that the recommendation in their report refers to means-tested benefits in their entirety, including the out of work benefits and tax credits that will be replaced by Universal Credit.

Guiding principles – Making work pay

47. The Coalition Government notes the SSAC’s comments on the terminology used for passported benefits and this will be considered more widely in line with further integration with the Universal Credit system in future.

48. The Department for Work and Pensions will undertake a wide ranging communications strategy in advance of the introduction of Universal Credit to support claimants with the changes it will bring and to support effective delivery. They will work closely with other Government Departments, the Devolved Administrations and other external organisations, to explore how best these messages can support improved awareness and understanding of passported benefits.
Education related benefits

49. In relation to education related benefits, the SSAC’s report focuses on the provision of free school meals. The Coalition Government recognises that free school meal eligibility is important to securing the policy objective of providing a nutritious meal to a defined group of children.

50. The Government is committed to ensuring that pupils can eat good quality, healthy food. Healthy school food underpins work to improve academic standards, improve behaviour at school, reduce incidence of preventable illness and improve social equality. Healthy school dinners are an important source of nourishment, particularly for children from poorer families. Some families struggle to afford school lunches and a school lunch may be the only balanced meal some disadvantaged children get. It is right that these pupils have the opportunity to eat healthy food at school.

51. As well as being an important benefit in its own right, free school meal eligibility is also used as a proxy indicator of deprivation, for example in allocating the Pupil Premium to schools and in school performance tables and other research. The Government wants to ensure that the eligibility criteria under Universal Credit can continue to be used in this way in England.

52. Whilst eligibility for free school meals can sometimes link to other passported benefits, it is important to note that receipt of the meal does not mean that a child is automatically entitled to school transport, school clothing grant or school milk as is suggested in some of the illustrative examples in the SSAC’s report. For example, some local authorities no longer provide clothing grants and not all schools provide milk.

53. The introduction of the award winning online free school meals Eligibility Checking System in England and Wales has had a significant impact on the smooth running of the application of free school meals and enables local authorities to check eligibility quickly, simply and cheaply. The Government’s aim is to ensure that the Eligibility Checking System will continue to check data from the Department for Work and Pensions once Universal Credit has been introduced. The Department for Education will work with local authorities to ensure a seamless transition and to see whether it is possible to make any improvements to the system.
54. The provision of free school meals to all recipients of Universal Credit would almost treble the numbers currently eligible. Although the Government is sympathetic to the arguments for extending eligibility to free school meals, this is simply unaffordable in the current economic climate. In England, the Department for Education is, therefore, likely to propose defining eligibility in relation to a fixed income threshold assessed within Universal Credit and will be consulting on new eligibility criteria later this year. The focus of the consultation will be on setting criteria which can be put in place for the change to Universal Credit from October 2013.

55. In relation to the longer term strategy for free school meals, the Government notes the SSAC’s discussion around ‘cashing up’ free school meals. A change of this magnitude would require substantial legislative and administrative change and could only be considered as part of the Government’s longer term strategic approach to passported benefits. Whilst the focus of the Department’s consultation is in relation to the approach for free school meals from 2013, it will also seek comments on the longer term strategy. The Department for Education has not decided whether free school meals would be included in any future generic approach to passported benefits. Any model used will need to ensure there is a positive impact on the take up of free school meals and would need to ensure school’s could identify children who attract the Pupil Premium.

Education related benefits in Scotland

56. The Scottish Government is clear about the benefits of providing free school meals, particularly to families affected by poverty, and notes the evidence and views presented in the SSAC’s report about retaining free school meals as a passported benefit. The Scottish Government is planning to consult on how best to adapt its policy to maintain the current levels of eligibility for free school meal provision, following the introduction of Universal Credit.

57. The SSAC noted the legislation in place which gives local authorities in Scotland the power to provide free school meals to children from Primary years 1 to 3. This will not be affected under Universal Credit.

Health related benefits

58. Different arrangements for health benefits are in place in England, Scotland and Wales (for example prescriptions are free for all in Wales and Scotland).
59. The Coalition Government welcomes the views of respondents to the SSAC’s consultation which underlined the importance of health benefits such as free prescriptions and Healthy Start vouchers. These benefits play an important role in supporting people to stay healthy.

60. In relation to health related benefits, the SSAC’s report focuses on free Prescriptions and Healthy Start vouchers, although help is also available for:

- charges for NHS prescriptions
- charges for NHS dental treatment
- charges for NHS wigs and fabric supports
- the cost of sight tests and glasses or contact lenses
- the cost of travel to receive NHS treatment under the care of a consultant, or for any additional journey to receive NHS care following a referral by a doctor or dentist (but not for primary care).

61. Exemption from the above listed benefits (along with prescription charges) is generically termed Help with Health Costs. There are extensive exemption arrangements, which can vary for each type of NHS charge based on age, or medical condition or income. Under the current arrangements, people receiving certain income related benefits, e.g. Income Support, income based Jobseeker’s Allowance or income related Employment and Support Allowance, are entitled to full Help with Health Costs (i.e. they are “passported” to entitlement.) Those getting child tax credits, either with working tax credit, or child tax credit on its own, or those receiving working tax credit with a disability element are also passported to entitlement, if their income for tax credit purposes is £15,276 or less. These exemptions help to ensure that cost is not a barrier to receiving treatment for those on the lowest incomes.

**The NHS Low Income Scheme**

62. The SSAC’s report considers the Low Income Scheme which is available for people who would otherwise have to pay and are not in any of the automatically passported groups. The Department of Health operates this scheme in England and similar provision is available in Scotland and Wales.
63. Help is available on a full or partial basis (except in the case of prescription charges, where there are no arrangements for partial help). The extent of any help is based on a comparison between a person’s income and needs. The calculation is based on income support arrangements with "needs" being equivalent to the income support applicable amount plus full housing costs and council tax. Anyone who is entitled to help will be sent a certificate for either full help or partial help. Each certificate will show who may use it and how long it lasts for, normally 12 months.

64. The Department of Health notes concerns raised by respondents to their consultation about this scheme. It should be noted this scheme currently provides an important safety net to those people who are not automatically passported, for example those getting contribution based benefits, as well as those over state pension age. However, the Department of Health will review the NHS Low Income Scheme, to consider how best to align it with Universal Credit in a way that provides the best way forward for health support costs within the current financial climate.

**Prescription Prepayment Certificate**

65. Anyone who is not entitled to full help but needs 4 or more prescription items in three months or more than 13 items in 12 months may benefit from buying a prescription prepayment certificate. Holders of these certificates pay no further charge at the point of dispensing.

66. The Government has held prescription pre-payment certificate prices at the same level this year; from 1 April 2012 a three monthly Prescription Prepayment Certificate is £29.10. A 12 month certificate is £104.00 and can be paid for in a lump sum or it is available by 10 monthly direct debit instalment payments.

67. The Department of Health welcomes the opportunity to review the role that passported benefits play in the welfare state for all the Government’s objectives. In considering the SSAC’s report, the Department of Health accepts the SSAC’s view that a pure model to "cash up" health benefits is probably neither feasible nor practical for health benefits. As respondents to the report highlighted, for many, health costs can be unpredictable and cost should not be a barrier to treatment. Being able to claim entitlement at the point of delivery is essential for those who are entitled to exemption. Ensuring that people have access to treatment (e.g. prescription medicines) without the worry of having to pay, will also help maintain their fitness to work.
68. The Department of Health agrees that it will be important to work closely across Government to share information on passported benefits. It is important that there is a coherent approach to these benefits, enabling passported benefits to contribute as far as possible to the Government’s wider goals on making work pay, whilst also continuing to meet the specific needs they are designed to address.

69. For the effective and simple delivery of Help with Health Costs, a clear statement of entitlement to health benefits as part of the Universal Credit award notification is important. Providing a statement of entitlement directly from the Universal Credit system would support the SSAC’s suggestion that Universal Credit IT should automatically calculate entitlement to some passported benefits. Further, such a statement would inform claimants of their entitlement, leading to greater transparency and simplicity.

70. The Department of Health recognises the importance of using technological approaches to service delivery in the future. The Electronic Prescription Service has potential to link with the Universal Credit IT system to indicate in real time if a patient meets qualifying prescription charge exemption criteria. However, the Electronic Prescription System will not cover all prescription even when fully rolled out, so this would need to be supported by other mechanisms to check prescription charge exemption declarations.

71. The Department of Health welcomes the SSAC’s discussion on options for Help with Health Costs and will explore options based on an income threshold, and will also consider the affordability and feasibility of offering a short run-on to cushion families no longer meet the entitlement criteria as a result of moving into work or increasing income.

72. In developing on any new eligibility criteria for Help with Health Costs under Universal Credit, the Department of Health will have regard to the following principles:

- protecting those on the lowest incomes, in particular families with children to support the wider Government objective of lifting children out of poverty
- maintaining access to treatment, by protecting the ability for a patient to claim entitlement to at the point of need e.g. collecting a prescription without charge from the pharmacy
- supporting the Department for Work and Pensions benefit reform programme by encouraging people to take up work
- having due regard to the aims of the equality duty
- removing complexity where possible
- creating no additional pressure on Department of Health and National Health Service budgets, at a time of financial constraint.
Healthy Start vouchers

73. With the provision of Healthy Start vouchers, the Coalition Government’s aim is to support broadly similar groups as is the case now, whilst using the introduction of Universal Credit as an opportunity to make absolutely sure that vouchers are targeted in the fairest and most appropriate way.

74. In setting new criteria, the Department of Health is exploring eligibility criteria approaches related either to an income threshold or to the Universal Credit earnings disregard, depending which helps target the most vulnerable most effectively. It will consult on eligibility options later in the year.

75. The Government will consider how best Healthy Start vouchers can be withdrawn to support people as they move into work although it is essential that the options underpin the objective of Healthy Start vouchers to provide a nutritional safety net for the most vulnerable families.

76. The Department of Health welcomes the opportunities presented by Universal Credit to streamline Healthy Start’s relationship with the benefits system – in particular to improve data sharing functionality, allowing the benefit to be more responsive to the needs of vulnerable families.

Health related benefits in Scotland

77. The Scottish Government notes the SSAC’s recognition of its distinctive policy on free NHS prescriptions, free NHS eye examinations and free NHS dental examinations for all.

78. The Scottish Government is committed to retaining the current provision for health related passported benefits, including free NHS dental treatment and NHS optical vouchers. The Scottish Government is exploring possible eligibility criteria that will deliver this service under Universal Credit, bearing in mind the need to deliver any changes on a cost neutral basis.

79. The Scottish Government will liaise with the Department of Health in their discussions with the Business Services Authority in relation to the NHS Low Income Scheme.
Access to Justice

Legal Aid

80. The Coalition Government welcomes the SSAC’s view that legal aid provides vital support to claimants at certain points in their lives, whilst acknowledging that as it is usually paid less regularly than some other passported benefits, it may have less of an impact on an individual’s decision to move into work.

81. The Government notes the SSAC’s concern regarding potential work disincentives if legal aid is withdrawn in a way that would create a cliff edge at a low income threshold. However, it is important to note that, as is the case now, claimants who are not automatically passported will be able to claim legal aid on a means-tested basis. For example, in England and Wales, to be financially eligible for civil legal aid an individual must have disposable capital of less than £8,000 and they can obtain non-contributory legal aid if they have a gross monthly income of less than £2,657 and a monthly disposable income below £315. Where disposable income is between £316 and £733 funding can be offered on the basis that they agree to pay contributions from income towards their legal costs. The provision of graduated income contributions and the irregularity of legal aid claims in most people’s lives means the Government does not expect the provision of legal aid, or its removal, to have a negative impact on work incentives.

82. The Ministry of Justice is considering how the existing passporting arrangements for legal aid can be adapted under Universal Credit to support the principles of simplicity and transparency identified by the SSAC. The Government is exploring a number of options, including how to identify an appropriate income threshold for recipients of Universal Credit. A key factor in exploring options is to ensure that administrative costs do not outweigh the benefits of adapting the passporting process and that the new process is streamlined and efficient.

Court Fees

83. Her Majesty’s Courts and Tribunal Service provides a fee remission system for users of its fee charging services to ensure that access to its services is protected for individuals who are less well-off. The majority of successful applications for remissions are granted on the production of evidence of the receipt of income related benefits which enables an administratively straightforward process. Similar to the legal aid scheme, applicants on low incomes may also apply for a remission based on a means test of gross annual income or disposal income. This means test allows applicants on low incomes to access Her Majesty’s Courts and Tribunal Services that were not eligible through passported benefits.
84. The Ministry of Justice is considering how the existing passporting arrangements for legal aid can be adapted under Universal Credit to support the principles of simplicity and transparency identified by the SSAC. The Government is exploring a number of options, including how to identify an appropriate income threshold for recipients of Universal Credit. A key factor in exploring options is to ensure that administrative costs do not outweigh the benefits of adapting the passporting process and that the new process is streamlined and efficient.

Assisted Prison Visits Scheme

85. Similar to the legal aid scheme, the Assisted Prison Visits Scheme is not a continuous payment to the majority of claimants as most offenders are not imprisoned for long terms. Under this scheme, support is provided in England, Scotland and Wales.

86. The Government recognises that the current scheme may have a cliff edge and the Ministry of Justice needs to develop a means of eligibility under Universal Credit. However, given the often occasional payment of this benefit, it is unlikely to impact heavily on work incentives in the same way as some other passported benefits.

87. The Ministry of Justice will consider short term options for the introduction of Universal Credit in 2013 and could involve, for example a tapered approach or targeted support to some Universal Credit claimants. In the longer term, there may be advantages to considering adding one off applications for the cost of prison visits onto the Universal Credit award. This could automate a broadly similar process that is currently clerical.

Access to Justice in Scotland

88. The Scottish Government is also now considering how the existing passporting arrangements for legal aid can be adapted under Universal Credit, including giving consideration to the principles of simplicity and transparency identified by the Committee.

Utility and Energy related benefits

89. The SSAC considered a range of passported benefits which assist with energy and utility costs.
Water affordability

90. In England, the White Paper ‘Water for Life’ set out the Coalition Government’s commitments for tackling water affordability issues. This explains that Government will shortly issue guidance to enable water companies to develop social tariffs to reduce the charges of those customers who are unable to pay their charges in full. Many water companies have existing support schemes for vulnerable customers and for customers in debt.

WaterSure

91. The Coalition Government-mandated scheme is WaterSure which caps the bills of low-income metered households in receipt of a qualifying means-tested benefit or tax credits at the average bill for their company if the household either has three or more children or somebody in the house has a medical condition which necessitates high use of water.

92. The Department for Environment, Food and Rural Affairs is considering how best to amend the regulations in light of the introduction of Universal Credit with the aim of maintaining the current principle of capping the bills of metered customers on low incomes but with essential high use of water.

93. In its White Paper, the Department for Environment, Food and Rural Affairs confirmed that it would not be extending the WaterSure scheme to a wider group and would focus on enabling water companies to offer support to the full range of customers at risk of affordability problems through company social tariffs. The eligibility criteria for Universal Credit will therefore aim to provide support to a broadly similar group as is the case within the current scheme.

94. The Government will work with key stakeholders including those which represent water companies, to discuss and communicate the changes to WaterSure.
Company Social Tariffs

95. Once final guidance is issued, it will enable water and sewerage companies to create social tariffs to reduce the charges of those people who would otherwise be unable to pay their water bills in full. They will be able to design their own schemes including eligibility criteria, the level of concession and the level of cross-subsidy and will decide whether a social tariff is the best way of tackling water affordability problems in their area. As Universal Credit will provide support to people in and out of work, water companies may find Universal Credit a useful passport to their social tariff. Other companies may choose to use other ways of determining eligibility. The Government will work closely with water industry representatives to ensure they have the information they need to develop social tariffs in consultation with their customers.

Warm Home Discount

96. The Department for Energy and Climate Change welcomes the views of respondents to the SSAC's consultation about the importance of providing support for energy bills for people on low incomes. For customers who are not entitled under the Pension Credit arrangements, the Warm Home Discount suppliers are required to use eligibility criteria to target a set amount of support at low income and vulnerable households. This applies in England, Scotland and Wales. The Office of the Gas and Electricity Markets (Ofgem) will approve the criteria used. All suppliers currently use a variety of state benefits, including those which lead to entitlement for Cold Weather Payments. In the future suppliers are likely to use eligibility criteria of certain levels of entitlement to Universal Credit to target support in the same manner and the scheme regulations will need to be updated to reflect this.

97. Within the Warm Home Discount scheme energy suppliers are able to choose to use state benefits as eligibility criteria for distributing support - providing these are targeted at low income vulnerable households. Energy suppliers are required to gain approval from Ofgem for their choice of eligibility criteria and the scheme regulations currently list a number of benefits. The Department for Energy and Climate Change is exploring how Universal Credit should be incorporated into this list to retain the focus on households which are both low income and vulnerable. This is work closely linked to that of the Department for Work and Pensions on new and revised eligibility criteria for the distribution of Cold Weather Payments. Changes to the Warm Home Discount scheme regulations will be made in time for the introduction of Universal Credit. Proposals will be approved by the Office of the Gas and Electricity Markets for use within the scheme.
98. The Coalition Government recognises the SSAC’s concerns that allowing suppliers a degree of discretion in choosing eligibility criteria could add to the complexity of the scheme. However, to ensure claimants are given a fair deal, the Government has provided clear guidance that support must go to those who are on a low income and vulnerable. Allowing suppliers a degree of discretion provides for suppliers to target those of their customers most in need. It is also important that suppliers are not required to assist all those who meet their eligibility criteria (beyond the pensioners who are assisted through the core group). The level of spending on this scheme was capped in the last Spending Review and suppliers are required to meet spending obligations scaled according to their share of the domestic energy.

Cold Weather Payments

99. Cold Weather Payments are currently directed at those that are susceptible or vulnerable to the cold such as the elderly, the very young or disabled and who are receiving income related benefits, when periods of severe weather occur or are forecast.

100. As the SSAC notes, the design and operation of the Cold Weather Payment scheme is the responsibility of the Department for Work and Pensions supported by the Meteorological Office. The Meteorological Office's main role is to provide temperature data – both actual and forecast – on a daily basis during the winter season in order to determine if the payment criterion has occurred.

101. The current Cold Weather Payment system operates very effectively. Payments are made automatically, and the Department for Work and Pensions are able to react to severe and varied patterns of weather in local areas enabling the resources of the scheme to be targeted at those most in need. This is evident from the severe winter that occurred in 2010/11 where an estimated £490 million was made to 4.2 million eligible customers.

102. The Government notes the SSAC’s comments in relation to transferring responsibility for Cold Weather Payments from the Department for Work and Pensions to the Department for Energy and Climate Change. Whilst there are clear links between the two schemes in relation to their contribution to the alleviation of fuel poverty, there would need to be a very clear rationale for such a transfer given the wholly automated administration of Cold Weather Payments. However, the Government recognises the need to tackle fuel poverty and will continue to work closely together across Departments to support this wider goal. One example of this is in relation to the Warm Home Discount scheme, under which the Government is using powers provided by the Pensions Act 2008 to lawfully undertake data matching with energy suppliers to identify customers eligible for the scheme.
The Government has a range of policies which act on the three drivers of fuel poverty to improve household incomes, improve household energy efficiency and provide support on energy prices.

Utility and Energy related benefits in Scotland

In Scotland, the current Energy Assistance Package will close to new applicants in 2013. Scottish Ministers are planning a successor scheme with the objective of tackling fuel poverty and climate change and improving domestic energy efficiency. They have asked the Fuel Poverty Forum to make recommendations on the successor scheme by Spring 2012. The Scottish Government will draw the attention of the Fuel Poverty Forum to the SSAC’s report in order that it might inform its work.

Other Information

The report did not consider the localisation of Council Tax Support. However, as Council Tax Support policy is developed, the Department for Work and Pensions will work with the Department for Communities and Local Government, Her Majesty’s Revenue and Customs and the Devolved Administrations to consider data sharing and IT requirements around the availability of information for local authorities to establish eligibility and generate awards. The Government will also provide guidance to ensure that local authorities understand how to design schemes that also support the work incentives objectives of Universal Credit.

Disabled Facilities Grant

The Disabled Facilities Grant is paid by local authorities in England to individuals for housing adaptations to enable independent living. Receipt of means-tested benefits is currently used as one way to demonstrate eligibility, although claimants may also be eligible in other circumstances. The Department for Communities and Local Government will review the criteria to be considered within Universal Credit to ensure people with disabilities can continue to receive support with adaptations.
BT Basic

107. The BT Basic tariff scheme provides discounts to those in receipt of Income Support, Income-based Jobseekers Allowance and Income-related Employment Support Allowance. It should be noted that the discounts are also applicable to mobile phone users. BT are currently considering their approach to Universal Credit and will put forward proposals that will be agreed with the Ofcom.

Conclusion

108. The Coalition Government recognises the opportunities, and the challenges, that Departments and the Devolved Administrations in Scotland and Wales face in reforming eligibility criteria for passported benefits in light of the introduction of Universal Credit. Whilst acknowledging the SSAC’s view that significant effort will be required to meet these challenges, it is important to note that there has already been a considerable amount of work undertaken to prepare for the changes that will be needed. The Government and the Devolved Administrations are working to achieve the best deal in all areas and there has never before been so much co-ordination on this issue.

109. Clearly, it is essential that organisations consider the most effective way to target resources to the people who need the most support of particular passported benefits in order to deliver cost neutral solutions. The Government recognises that, in some cases, short term solutions may be required for the initial stages of Universal Credit in 2013. However, in the longer term, through the Universal Credit system there is scope to deliver more automated processes that utilise modern technology and deliver seamless services that preserve the policy objectives of passported benefits whilst supporting work incentives.
Scottish Welfare Fund – written submission from Macmillan Cancer Support

Macmillan Cancer Support welcomes the opportunity to give oral evidence to the Scottish Parliament; Welfare Reform Committee. The charity has been working with partners from all sectors to provide financial advice and support for people affected by cancer. Although this work has met with a great degree of success in Scotland we are very aware that the changes in the benefit system will present new challenges. The change from a UK wide Social Fund to the interim Scottish Welfare Fund is in itself a complex adjustment in the approach to crisis situations.

Macmillan as a leading cancer charity is committed to work with a broad range of partners through our face to face benefit advice services, Macmillan telephone Support line and our patient grants to find solutions that minimise distress and hardship for those most in need.

A cancer diagnosis frequently results in a drop in income for people affected by cancer; this includes patients, carers and family members. With more than one in 3 people diagnosed at some point in their lives cancer is an issue which cannot be ignored. Macmillan partnerships aspire to provide accurate focused & advice, information and support to help service users navigate the complex benefits system through access to an experienced benefits adviser; as well as signposting to emotional and practical support for people affected by cancer.

- Currently there are around 190,000 people in Scotland living with a cancer diagnosis
- There are over 31,000 new cases of cancer diagnosed each year in Scotland compared with 26,000 per year between 1996 and the year two thousand
- 91% of patients suffer a loss of income as a direct result of their cancer
- 8 out of 10 financially excluded people are social rented tenants.
- 81% of social rented tenants have no savings and 91% have no insurance
- Significant amounts of money in disability benefits remain unclaimed each year
- 77% of cancer patients are not given financial advice & support

People affected by cancer tell Macmillan that they need support to navigate the benefits system for them when their ability to do so is impaired through their illness or to offer the appropriate level of support and information to aid their own investigation of their entitlements. That is why Macmillan has developed advice partnerships throughout Scotland. However, this unmet need extends beyond the cancer community.

Long-term illness frequently results in a drop in income as jobs are lost and savings are eroded. Research has established that for many people affected by cancer, financial concerns are a significant cause of stress, in some cases, second only to physical pain. Providing information that is easy to access and focused appropriately to ensure that those affected by cancer and other long-term conditions are supported
in the process of claiming the money they are entitled to claim or are simply empowered to manage their financial affairs can be a complex matter for patients and carers. More people are living with cancer than ever before and so improving the patient experience throughout the cancer journey is paramount. In doing so, we can ensure that cancer patients are not financially excluded and disadvantaged due to circumstances beyond their control.

People of working age with a cancer diagnosis are six times more likely to report being unable to return to work because of their health and cancer survivors in general are more likely to have a lower income and ongoing financial problems than the general population.

**Macmillan Grants to patients**
Macmillan grants are available to prevent low income cancer patients reaching crisis point. They can help with travel, telephone, energy costs, new clothing due to weight changes and other items in special circumstances. It is a simple and effective method of support that is available for cancer patients on a low income; decisions are made very quickly with minimum bureaucracy.

In 2011 Macmillan UK wide awarded £10.6 reaching 31,716 cancer patients.

- In Scotland in 2011 Macmillan paid out £1.8 million assisting 4,652 low income cancer patients in the process.

**Fuel Poverty**
The final report of the Independent Fuel Poverty Review recognises that vulnerable groups, such as the elderly and people with a disability or long-term illness, can be particularly susceptible to fuel poverty due to their circumstances and should therefore be prioritised for support. This was reflected in grant applications made to Macmillan in 2011 which are in place to relieve stress & anxiety related to financial pressure and improve the wellbeing of the applicants. The number of people assisted with fuel poverty in 2011 was 2,825 receiving a total of £565,318 which is 33 percent of the total Macmillan grant expenditure in Scotland.

**Future partnership working**
Macmillan Cancer Support is committed to working with Scottish Government and others to ensure that vulnerable citizens in financial crisis receive the support they need and deserve.
Welfare Reform Committee

14th Meeting, 2012 (Session 4), Tuesday, 11 December 2012

Council Tax Reduction (Scotland) Regulations 2012 (SSI 2012/303)

Introduction

1. At its last meeting, the Committee undertook initial consideration of the Council Tax Reduction (Scotland) Regulations 2012, hearing evidence from both COSLA and the Scottish Government.

2. The Regulations are on the Committee’s agenda again today to enable members to consider points raised on the Regulations by the Subordinate Legislation Committee (SLC) and to make the Committee aware of a matter that was raised by the Scottish Committee of the Administrative Justice and Tribunals Council.

3. Additionally, Members will find attached (at Annexe A) information provided by the Scottish Government about the differences between Council Tax Benefit and Council Tax Reduction.

Points raised by the Subordinate Legislation Committee

4. The SLC has drawn the attention of the Committee to these Regulations on a number of points. The relevant extract from the SLC report, including correspondence with the Scottish Government, is attached at Annexe B to this note.

5. The Committee may wish to note that a number of the points raised by the SLC relate to drafting issues and that the Scottish Government has indicated that an amending statutory instrument will be brought forward to correct these issues.

6. The Committee is invited to note the drafting issues identified and the Government's undertaking to bring forward an amending instrument.

7. Schedule 7 to the Regulations makes amendments to a number of pieces of legislation – these amendments are consequential and serve to include reference to the Regulations in the other pieces of legislation identified in the schedule.

8. However, schedule 7 also makes amendments to include references to a different SSI, the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012. At the time these Regulations were laid before the Parliament, the State Pension Credit Regulations had not yet been made.

9. The SLC has drawn the Committee’s attention to this point on the grounds that the power to make consequential amendments used here permits the Scottish Ministers to make consequential amendments that they consider necessary or expedient, but only amendments which are consequential on these Regulations. The view of the SLC is that this power does not enable the provision in schedule 7 of
these Regulations which are consequential on the State Pension Credit Regulations and that there is therefore a doubt as to whether this provision is *intra vires*.

10. In responding to the question raised by the SLC on this point, the Scottish Government had noted notes that both the Regulations before the Committee today and the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 will come into force on the same day, 28 January 2013. The Government response expresses the view that “as the consequential amendments for each set of Regulations amend the same instruments it is appropriate to have one set of consequential amendments.”

11. As Members are aware, these Regulations are subject to negative procedure and will therefore come into force unless the Parliament agrees a motion to annul.

12. In considering the points raised by the SLC and the Government's response, Members may wish to consider the evidence presented to the Committee at its meeting on 13 November.

13. In particular, Members will recall the evidence presented at its meeting on 13 November, by June Deans of Glasgow City Council and Jonathan Sharma of COSLA, that there is a need to have the necessary statutory provisions in place to allow local authorities to deliver the scheme from 1 April next year and the timetable of the preparations for doing so—

“If we did not have a scheme in place by February or March, when we usually do our annual billing and council tax exercise, things would be very difficult for us. We have been working on having contingency planning in place if that did not happen, but we have some faith in the regulations being ready, so we are preparing in the same way that we would normally prepare for council tax billing.” (June Deans)

“Obviously, we welcome the fact that the regulations have been laid in Parliament. That gives a great deal of confidence and certainty to the local government community, which has had to deal with implementation while waiting for the regulations to come into place. Therefore, there has been a little bit of trust on that. We are greatly encouraged that the regulations have been laid. That pretty much allows the councils to get on and get them implemented.” (Jonathan Sharma)

14. **The Committee is invited to consider its view on this point.**

15. Members may also wish to note that the SLC asked the Scottish Government to explain why the Regulations do not relate to any of the reserved matters specified in Section F1 of Part II of Schedule 5 to the Scotland Act 1998.

16. The explanation provided by the Government can be found at page 12 of this note. The SLC’s report on the Regulations did not draw this matter to the attention of the Committee.
Scottish Committee of the Administrative Justice and Tribunals Council

17. The Clerks were contacted by the Scottish Committee of the Administrative Justice and Tribunals Council in relation to potential concerns about the operation of the appeals system under the Council Tax Reduction Scheme.

18. The area of concern that was identified by the Scottish Committee does not relate to a particular provision of the Regulations as laid before the Parliament but rather to the mechanisms for appeal against the calculation of liability for Council Tax. The note from the Scottish Government attached at Annexe A explains—

"Appeals against decisions on Council Tax Benefit are dealt with by the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001. Appeals against decisions on Council Tax Reduction will now be part of the Council Tax system, with the existing procedures, including the scope to escalate an appeal to a Valuation Appeal Committee under section 81 of the Local Government Finance Act 1992, now applying."

19. The Scottish Committee’s view is that adding council tax reduction appeals to the Valuation Appeals Committees will create difficulties in interpreting the legislation which would lead to inconsistent application by individual local authorities.

20. However, the Scottish Committee decided not to formally submit their concerns to the Welfare Reform Committee and has indicated that it is hopeful that agreement can be reached between the Scottish Committee, the Scottish Government, Valuation Appeals Committees and others that will address the concerns around the appeals process.

21. The Committee is therefore invited to note this matter for information.

Recommendation

22. The Committee is invited to consider and agree whether to note the instrument or whether to report the instrument to the Parliament. Members may wish to note that the deadline for this instrument to complete its passage through the Parliament is 18 December.

Clerk to the Committee
December 2012
DIFFERENCES BETWEEN COUNCIL TAX BENEFIT AND REDUCTION AVAILABLE UNDER THE COUNCIL TAX REDUCTION (SCOTLAND) REGULATIONS 2012 ("the Regulations")

- Council Tax Benefit is a social security benefit and takes the form of a system of payments by DWP to Local Authorities on behalf of claimants. Council Tax Reduction is a scheme prescribed by the Scottish Ministers using powers in the Local Government Finance Act 1992 under which individuals are entitled, upon application, to a reduction in their Council Tax liability if certain criteria are met.

- Somebody in receipt of Council Tax Benefit will still receive a Council Tax bill, but that bill will reflect that DWP have paid some or all of the tax due. People entitled to Council Tax Reduction will also receive a bill, but that will be adjusted to reflect their reduced liability.

- Regulation 14 of the Regulations is the central operative provision and it does not have an equivalent in the Council Tax Benefit Regulations 2006 ("the 2006 Regulations"). However, it reflects section 131 of the Social Security Contributions and Benefits Act 1992, which is to be repealed, and which is the central operative provision for Council Tax Benefit. Regulations 7 to 9 also reflect provisions in that Act which are to be repealed.

- Many of the entitlement criteria set out in the 2006 Regulations have been adapted in the Regulations and hence the model of determining entitlement by calculating the applicant’s eligible Council Tax due, their income and capital and their living expenses ("the applicable amount") are essentially the same. In particular, the assessment of various forms of income, the income to be disregarded, the capital savings limits, the treatment of others in the household ("non-dependent deductions" and also the alternative maximum Council Tax reduction or "2nd adult rebate") as well as the applicable amounts, mirror the 2006 Regulations, as amended.

- Where the 2006 Regulations have been adapted, they have been updated so that they are gender neutral and modern drafting style has been adopted in so far as that is possible while retaining the substance of the provisions. They also take into account changes to legislation to which they refer.

- The 2006 Regulations provide that ‘persons from abroad’ are not entitled to council tax benefit. To take into account changes in immigration law the Regulations provide that “persons treated as not being in Great Britain’ and ‘persons subject to immigration control’ are not entitled to Council Tax reduction. Much of the practical effect is unchanged – those not resident or refugees are the subject of UK Home Affairs Legislation and will not be entitled to reduced Council Tax.

- As Council Tax Reductions will be an integrated aspect of the council tax system, notification of entitlement to a council tax reduction will be made through the normal council tax billing process, so the Regulations do not reflect the 2006 Regulations in this respect.
The 2006 Regulations also provided that Council Tax Benefit could be recovered in the event of an overpayment being made. This is a matter which can now be resolved within the existing scheme for administration of Council Tax so that if a reduction is granted that is incorrect, Council Tax can be re-billed.

Local Authorities presently have discretion about how income from war pensions is treated, although in practice all in Scotland choose to fully disregard such income, The new Regulations remove this discretion and align the full disregard with established practise.

Local Authorities presently have discretion regarding when the up rating of Social Security benefits or the impact of annual tax changes are applied in assessing a benefit claim. This was largely a way of easing the administration of the benefit. The new Regulations do not provide such local discretion, requiring such changes to be responded to by the issuance of revised Council Tax bills based on the correct information.

At present, somebody who is not an appointed attorney may act on behalf of a Council Tax Benefit claimant, but the powers under which these Regulations are made do not allow that to be replicated.

Appeals against decisions on Council Tax Benefit are dealt with by the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001. Appeals against decisions on Council Tax Reduction will now be part of the Council Tax system, with the existing procedures, including the scope to escalate an appeal to a Valuation Appeal Committee under section 81 of the Local Government Finance Act 1992, now applying.

The Regulations take into account Welfare Reform changes. Specifically, they make provision for applicants in receipt of Universal Credit, and Personal Independence Payments.

The Scottish Government
November 2012
1. These Regulations establish a scheme of reductions to council tax, using powers in the Local Government Finance Act 1992, which allow the Scottish Ministers to make regulations to reduce council tax liabilities. The Regulations seek to ensure that recipients of council tax benefit will not be disadvantaged by its abolition and will receive the same level of support, provided their circumstances remain the same, by way of a reduction in liability. Therefore, existing entitlement criteria are adopted as much as is possible.

2. The Regulations make provision for a reduction in liabilities, based on status and means, for persons of working age. A further set of Regulations for persons who have reached the qualifying age for State Pension Credit will be considered by the Committee at a future meeting.

3. The Regulations are subject to negative parliamentary procedure, and are due to come into force on 28 January 2013. They prescribe council tax reductions from the financial year starting 1 April 2013, and subsequent years.

4. In considering the instrument, the Committee asked the Scottish Government for explanations on various matters. The correspondence is reproduced in Appendix 1.

5. The Regulations make consequential amendments to the Council Tax (Administration and Enforcement) (Scotland) Regulations 1992, the Council Tax (Reductions for Disabilities) (Scotland) Regulations 1992, and the Council Tax (Reduction of Liability) (Scotland) Regulations 1994. Some of those amendments refer to the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012, in schedule 7, paragraphs 1(2), 2 and 4. Those Regulations were made on 21 November, after the making of these Regulations. (Those Regulations implement the council tax reduction scheme for persons who have reached the qualifying age for state pension credit).

6. The Committee therefore sought an explanation of the basis on which those consequential provisions are properly made. The Scottish Government responded that, as the consequential amendments for each set of Regulations amend the same instruments, it was considered appropriate to have one set of consequential amendments.

7. The Committee considers that there is a doubt whether the statutory powers which are available to make the Regulations also enable (within the instrument) those consequential provisions which refer to the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012. The power in section 113(2) of the Local Government Finance Act 1992 provides that a power of the Scottish Ministers under the Act to make regulations includes the power to make such consequential provisions as they think necessary or expedient. That refers to provisions consequent upon the Regulations which are being made.
8. The Committee considers therefore that that power permits provisions which are consequent upon the Regulations, but not consequent upon the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 (which were yet to be made at the date of making these Regulations, and which implement the council tax reduction scheme for different persons.)

9. The Committee draws the Regulations to the attention of the Parliament on reporting ground (e) as there is a doubt whether the following provisions are intra vires:

10. In Schedule 7, paras 1(2), 2 and 4, consequential amendments are made to the Council Tax (Administration and Enforcement) (Scotland) Regulations 1992, the Council Tax (Reductions for Disabilities) (Scotland) Regulations 1992, and the Council Tax (Reduction of Liability) (Scotland) Regulations 1994, which add references to the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012.

11. The powers contained in section 113(2) of the Local Government Finance Act 1992 permit the Scottish Ministers to make consequential provision which they consider necessary or expedient, but only those which are consequential on making these Regulations. This does not enable provisions in these Regulations which are in fact consequential on the making of the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 (which Regulations were not made as at the date of making these Regulations).

12. Paragraph (3)(j) of regulation 20 sets out in subparagraphs (i) to (v) certain categories of student to which paragraph (2) does not apply. Those categories are not excluded from a possible council tax reduction in respect of a day and a dwelling of which the student is resident.

13. Head (iv) of that paragraph (3)(j) is explained below. The provision fails to implement the underlying policy, as it is intended that the references to the regulations in that head should be alternatives, not that a student should be the recipient of a grant under all of the regulations specified. The Government has acknowledged that this is an error and undertakes to correct this by amendment.

14. The Committee draws the Regulations to the attention of the Parliament on reporting ground (i) as there appears to be defective drafting in paragraph (3)(j)(iv) of regulation 20. That head (iv) requires a student to be one in respect of whom a grant for living or other costs has been made under regulation 38 of the Education (Student Support) Regulations 2011, regulation 25 of the Assembly Learning Grants and Loans (Higher Education) (Wales) (No. 2) Regulations 2011 “and” regulation 5 of the Education (Student Support) (No 2) Regulations (N.I) 2009, when it is intended that those references to regulations should be alternatives.

15. The Committee welcomes that the Scottish Government has undertaken to correct this error by laying an amending instrument, and considers that this should be done as soon as possible.
16. In regulation 2(1), “academic year” is defined for the purpose of the Regulations. The term is mentioned in several places, in relation to how council tax reduction is to be assessed for students. “Academic year” means “the period of 12 months beginning on 1 January, 1 April, 1 July or 1 September according to whether the course in question begins in the winter, the spring, the summer or the autumn respectively….”. The start and end dates of the seasons are not further defined in the Regulations, or the Local Government Finance Act 1992 containing the powers to make them.

17. The Committee therefore asked the Scottish Government how one is to determine which start and end dates apply for the purposes of this definition, as the start and end date of the seasons might be considered variable (depending on the context) and might differ from the dates stated in regulation 2(1) to be taken as the start dates for the “academic year”.

18. The Government responded that the definition of “academic year” has been used in the council tax benefit regulations since 2001, and this has not caused a practical difficulty.

19. The Committee noted that the Government’s response did not confirm, given the definition of “academic year”, which date is to be taken for these purposes as the start of “summer”, for example. The Government appears to concede that no statutory definition of the seasons is relevant. The Committee considered that the use of 2 approaches – referring to the year starting from 1 July specifically (for instance), and then according to whether the course begins in the “summer”, raises doubt that the meaning of the provision could have been made clearer.

20. The Committee draws the Regulations to the attention of the Parliament on reporting ground (h) as the meaning of “academic year” as defined in regulation 2(1) could be clearer. The reference to “according to whether the course in question begins in the winter, the spring, the summer or the autumn respectively….” could be made clearer by defining for the purposes of this provision what the commencement dates for each season are, and whether those dates coincide with the dates which are specified, when the “academic year” is held to commence.

21. The Committee also identified some more minor drafting errors in the Regulations, which the Scottish Government has undertaken to correct by amendment. The errors are explained below.

22. The Committee draws the Regulations to the attention of the Parliament on the general reporting ground, in relation to various minor drafting errors. Firstly, in the definition of “additional statutory paternity pay” in regulation 2(1), the insertion of “(a)” after the reference to section 171ZEA is an error. Secondly, the inclusion of regulation 4(3) is a drafting error in respect that it was not intended to apply the extension of the definition of “young person”, which is made by that paragraph, in each case where “young person” is mentioned in the Regulations. Thirdly, in regulation 41(4)(c), the reference to “regulation 17A(7) of those Regulations” is an error. It is intended to refer to the “Jobseeker’s Allowance Regulations”, but the title of the Regulations
previously stated is the Employment and Support Allowance Regulations (in regulation 39(4)). Finally, in regulation 64(3), “family” is omitted from the phrase - “that applicant or a member of the applicant’s is liable”.

23. The Committee welcomes that the Scottish Government has undertaken to correct these errors by laying an amending instrument, and considers that this should be done as soon as possible.

While the Committee does not report on the matter, it also welcomes that the Government has undertaken to clarify, in regulation 48(4)(b), the reference to regulation 17A(7) of “those Regulations”, by also amending this provision. The amendment will expressly refer to the “Jobseeker’s Allowance Regulations”.

APPENDIX 1

Council Tax Reduction (Scotland) Regulations 2012 (SSI 2012/303)

On 16 November 2012, the Scottish Government was asked:

(1) The objective of this instrument as stated in the Policy Note is for entitlement to support for council tax (for persons of working age) to reflect so far as possible the present entitlement to council tax benefit (“CTB”). This is implemented by “establishing a scheme of reductions to council tax … [to] ensure that recipients of council tax benefit will…receive the same level of support, provided that their circumstances remain the same, by way of a reduction in liability for council tax”. This shall replicate as far as possible, from and after 1 April 2013, the existing entitlement to council tax support (which entitlement has been prescribed by the Council Tax Benefit Regulations 2006), following the abolition of CTB in terms of section 33 of the Welfare Reform Act 2012. The scheme of reductions will be funded by the Scottish Government, with a contribution from local government funds (Paragraphs 3, 4, 7 and 11 of the Policy Note.)

Section 54(2) of the Scotland Act provides that it is outside competence to make any provision by subordinate legislation which would relate to reserved matters, by reference to the purpose of the provision. Section F1, Part II of Schedule 5 reserves schemes supported from central or local funds which “provide assistance for social security purposes to or in respect of individuals” by way of “benefits”. The administration and funding of CTB is expressly reserved. “Benefits” expressly includes any form of financial assistance, “Providing assistance for social security purposes” expressly includes (among other things) providing assistance to or in respect of individuals who qualify for any of the reasons set out in paragraphs (a) to (c) of the interpretation provision in Section F1. Those matters include in relation to liabilities for local taxes (which include council tax), and other matters which are similarly relevant for entitlement to CTB in terms of the 2006 Regulations and entitlement to reduction of tax liability in terms of these Regulations.

Please fully explain therefore why, by reference to the purpose of the provisions, the Regulations do not relate to any of the reserved matters described in Section F1?
(2) In regulation 2(1), “academic year” is defined for the purpose of the Regulations. It means “the period of 12 months beginning on 1 January, 1 April, 1 July or 1 September according to whether the course in question begins in the winter, the spring, the summer or the autumn respectively...”. The start and end dates of the seasons are not further defined in either these Regulations, the Local Government Finance Act 1992 (“the 1992 Act”), or the Interpretation Act 1978.

As the start and end date of the seasons can be considered variable (for instance the start of summer might be taken as 1 June or on the solstice on 21 June), and those start dates may not coincide with the dates stated in regulation 2(1), how are persons to determine which start and end dates apply for the purposes of this definition? Would it have been clearer if, for example, the definition of “summer” had been specified as the period of 3 months starting with 1 June (assuming that is to be taken as the start date)?

(3) In the definition of “additional statutory paternity pay” in regulation 2(1), is the reference to section 171ZEA(a) an error and should refer to section 171ZEA(1)? If you agree, would you propose to correct this timeously by an amendment?

(4) Regulation 4(3) extends the definition of “young person” for the purposes of the Regulations to include “a child or young person in respect of whom section 145A of the 1992 Act applies for the purposes of entitlement to child benefit but only for the period prescribed under subsection (1) of that section”. (Specific provision is made for such a child or young person, in connection with disabled child premium, in schedule 1, para 13).

That section 145A(1) provides for the entitlement of persons to child benefit in respect of a child or young person for a prescribed period following the week in which the death of the child or young person occurs. However the remainder of the Regulations in various places refer to a “young person” for the purpose of the council tax reduction rules, in connection with the entitlement of another person to a reduction, in terms which require the young person to be doing specified acts or activities on the day/s for which the tax reduction is to be (ultimately) assessed.

For example, regulation 18(3)(b)(ii) and (5) prescribe certain rules to disregard a person’s temporary absence from Great Britain for up to 6 months, where the person accompanies a “young person” for the latter’s treatment. In regulation 10(1) a person is to be treated as responsible for a “young person” who normally lives with that person.

Please therefore explain-
(a) the intended purpose and effect of the extension of the definition of “young person” in regulation 4(3), and

(b) how it is capable of having effect, in relation to those provisions in the Regulations which refer to an act or activity requiring to be done by a “young person”, as part of the rules for entitlement to council tax reduction? Could this be clearer?
(5) Paragraph (3)(j) of regulation 20 sets out in subparagraphs (i) to (v) certain categories of student to which paragraph (2) does not apply (so that those categories are not excluded from a possible council tax reduction in respect of a day and a dwelling of which the student is resident). Paragraph (3)(j)(iv) requires a student to be one in respect of whom a grant for living or other costs has been made under regulation 38 of the Education (Student Support) Regulations 2011, regulation 25 of the Assembly Learning Grants and Loans (Higher Education) (Wales) (No. 2) Regulations 2011 “and” regulation 5 of the Education (Student Support) (No 2) Regulations (N.I) 2009. This contrasts with the provisions in subparagraphs (iii) and (v) which both refer to types of payment to, or supplementary requirement for, a student as alternatives, for the sub--paragraph to be applicable- using “or”.

(a) Is it intended that only one of the grant payments requires to be made under one of the regulations specified in subparagraph (iv), for that subparagraph to be applicable to a student?

(b) If so should that intention be given effect in subparagraph (iv), by timeously correcting this, by amending “and” to “or”?

(6) Regulation 39(7) to (10), which have rules assessing where payments to students are taken into account in the calculation of income, refer in various places to a “relevant course of study”. “Relevant payments” are defined by regulation 39(10) but “relevant course of study” does not appear to be defined in the Regulations?

What meaning is to be given to this term and does it require further definition? Is it intended to refer to any course of study undertaken by the student, or to define particular courses in some way for the purposes of regulation 39?

(7) (i) In regulation 41(4)(c), is the reference to “regulation 17A(7) of those Regulations” an error, because it appears from the footnote (b) that it is intended to refer to the “Jobseeker’s Allowance Regulations”, but the title of the Regulations previously stated is the Employment and Support Allowance Regulations in regulation 39(4)? If you agree would you propose to correct this timeously by an amendment?

(ii) Could the opportunity also be taken to correct the further reference to regulation 17A(7) of “those Regulations” in regulation 48(4)(b), because to identify that this refers to the Jobseeker’s Allowance Regulations, it is necessary to identify the reference to those Regulations in regulation 41(7) in the previous chapter?

(8) In regulation 64(3), which word is omitted in “that applicant or a member of the applicant’s is liable”, and what is the effect of the omission? Would you propose to correct this by amendment?

(9) In Schedule 7, paras 1(2), 2 and 4, consequential amendments are made to the Council Tax (Administration and Enforcement) (S) Regulations 1992, the Council Tax (Reductions for Disabilities) (S) Regulations 1992, and the Council Tax
(Reduction of Liability) (S) Regulations 1994, which refer to the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012.

Please explain the basis on which that consequential provision is considered to be properly made, given that the State Pension Credit Regulations have not yet been made as at the date of making this instrument, and it appears that those provisions in Schedule 7 are consequential on those Regulations rather than these Regulations?

The Scottish Government responded as follows:

(1) The reservation at Section F1 of Part 2 of Schedule 5 to the Scotland Act 1998 ("the 1998 Act") relates to schemes supported from central or local funds which provide assistance for social security purposes to or in respect of individuals by way of benefits. At present the administration and funding of council tax benefit is stated as an illustration of that reservation, but the reference to council tax benefit in Section F1 is to be omitted by Schedule 14 of the Welfare Reform Act 2012, which will be commenced by the UK Government in consequence of the abolition of that benefit next year.

Once that revocation is made, the extent of reserved competence with regard to local taxes will be as stated in the interpretation provision of Section F1, i.e. providing assistance for social security purposes to or in respect of individuals in relation to their liabilities for local taxes. However, council tax is specifically excluded from the reservation of fiscal, economic and monetary policy at Section A1 of Part 2 of Schedule 5 to the 1998 Act, and in those circumstances any scheme that provides for reduction of council tax liability (as opposed to assisting a person to meet such liability) is not reserved. Under section 80 of the Local Government Finance Act 1992 ("the Act"), as adjusted by section 53 of the Scotland Act 1998, the Scottish Ministers may make regulations which provide that a person is liable to pay less council tax than the amount for which he or she would otherwise be liable.

Section 80 gives Scottish Ministers the power to prescribe conditions under which an individual’s liability for council tax may be reduced. The conditions may be prescribed by reference to such factors as the Scottish Ministers think fit and may be prescribed by reference to a number of factors, including the circumstances of, or other matters relating to, the person concerned. This allows Scottish Ministers to make provision which takes into account detailed information about an individual’s financial situation in order to determine entitlement to a reduced council tax liability. The Regulations make provision for a reduction for individuals with low income and some factors indirectly related to needs arising out of disability or other needs if, as a result of that disability or need, an individual is on a low income. The reduction in liability under the Regulations supplements existing provision made under the Act for a reduction in liability by reason of disability.

The purpose of the Regulations is as described above and is not to provide assistance for social security purposes or by way of benefits.
As regards funding, the Scottish Government will not directly meet the costs of the reductions in council tax liability that these Regulations introduce. Rather, and to support local authorities’ ability to deliver public services, the Scottish Government will increase the revenue support grant paid to each local authority under section 108 of the Act. That grant is presently calculated and adjusted to reflect the demographics and service delivery needs of each local authority. This practice will continue, with additional funding allocated by a pre-determined formula not directly linked to the shortfall in council tax revenue each authority will experience as a consequence of applying the Regulations.

(2) The definition of “academic year” has been used in council tax benefit regulations since 2001 and the Scottish Government is not aware of any problems in its practical application.

(3) In the definition of “additional statutory paternity pay” in regulation 2(1), “(a)” after the reference to section 171ZEA is the result of an oversight. It was originally a reference to a footnote and when the footnote was moved removal of the reference to it was overlooked. Given that section 171ZEA deals only with additional statutory paternity pay the Scottish Government believes that the meaning of “additional statutory paternity pay” is clear. The otiose reference will be removed at the next opportunity so that the reference is to section 171ZEA, which is consistent with the reference to section 171ZEB.

(4) On further consideration the Scottish Government is of the view that regulation 4(3) is unnecessary. Regulations 10(2)(a) and (b) and 18(3)(b)(ii) refer to young persons who are living with or accompanied by another person, in which case section 145A of the Social Security Contributions and Benefits Act 1992 is not relevant to those provisions. Paragraphs 12(2) and 13(c) of Schedule 1 refer only child benefit payable under section 145A and they are specific in that regard. In those circumstances regulation 4(3) is otiose. The Scottish Government proposes to lay an amending instrument in the first quarter of next year. Although regulation 4(3) has no adverse effect on the operation of the Regulations the Government will take that opportunity to remove it.

(5) In regulation 20(3)(j) (iv) “and” in the third line should be “or”. This error will be corrected in the amending instrument referred to above.

(6) In regulation 39(7) to (10) the “relevant course of study” is the course of study in relation to which the relevant payment would have been payable. The Scottish Government is of the view that this is clear from the provisions themselves.

(7) Regulations 41(4)(c) and 48(4)(b) should refer to the Jobseeker’s Allowance Regulations. These omissions will be corrected in the amending instrument referred to above.

(8) Regulation 64(3) should refer to any council tax or water charges for which that applicant or a member of the applicant’s “family” is liable. The Scottish Government is of the view that that is clear from regulation 64(3) as a whole but will take the next opportunity to correct the omission.
(9) The Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 will be laid before the Scottish Parliament on 23 November 2012 and will come into force on 28 January 2013, the same date that the Council Tax Reduction (Scotland) Regulations 2012 come into force. The Scottish Government considers that as the consequential amendments for each set of Regulations amend the same instruments it is appropriate to have one set of consequential amendments.