



T: 0300 244 4000
E: scottish.ministers@gov.scot

Sandra White MSP
Convener
Social Security Committee
The Scottish Parliament
Edinburgh
EH99 1SP

29 March 2017

Dear Sandra

As you know, the Joint Ministerial Working Group on Welfare last met on 20 February. The minutes of that meeting have now been agreed with UK Government, and I am pleased to enclose a copy.

You will note that the group discussed the progress achieved to date on devolved employability programme as we moved towards its launch in April 2017.

We also discussed on-going work around the interaction between Universal Credit and the Bedroom Tax, namely that any additional benefits or discretionary payments introduced by the Scottish Government under our new powers must provide additional income to the individuals concerned.

The forthcoming changes to Housing Benefit for 18 - 21 year olds was also raised where it was agreed that as part of official discussions, there should be consideration of making 18-21 year olds in Scotland exempt.

The minutes reflect that good progress has been made on the necessary commencement regulations. You might be interested to note that they have now been laid by UK Government. The Scotland Act 2016 (Commencement No. 5) Regulations 2017 <http://www.legislation.gov.uk/uksi/2017/455/contents/made>

The Scotland Act 2016 (Transitional) Regulations 2017 <http://www.legislation.gov.uk/uksi/2017/444/contents/made>

I am sending a copy of this letter to the Rt Hon David Mundell MP - Secretary of State for Scotland and the Rt Hon Damian Hinds MP – Minister for Employment.

I hope you find this helpful.

Angela Constance
ANGELA CONSTANCE

JOINT MINISTERIAL WORKING GROUP ON WELFARE
Dover House, London, Monday 20 February 2017, 16:00-18:00
7th Meeting – Meeting Minutes

Present

David Mundell, Secretary of State for Scotland (Chair)
Angela Constance, Cabinet Secretary for Communities, Social Security and Equalities
Jamie Hepburn, Minister for Employability and Training
Jeane Freeman, Minister for Social Security
Damian Hinds, Minister for Employment

In attendance

Stephen Kerr, Scottish Government
Michael McElhinney, Scottish Government
Ann McVie, Scottish Government
Jeanette Campbell, Scottish Government
Pete Searle, DWP
Mary Pattison, DWP
Nick McGruer, DWP
Louise Nicholls, Scotland Office
Jessica Niven, Scotland Office
Julie Humphreys, Scotland Office

Note of last meeting and review of actions

1. The Secretary of State for Scotland (SoSS) welcomed everyone to the meeting. The note of the last meeting (11 October 2016) was agreed. There were no outstanding actions although the Cabinet Secretary for Communities, Social Security and Equalities (Cab Sec CSSE) noted she wished to raise a point under matters arising in relation to finance.
2. Cab Sec CSSE highlighted that new issues around proposed reductions in financial budgets relating to Discretionary Housing Payments and Employment Support Programmes had emerged which she would like to seek clarity on. The proposed reduction removed purported administration costs that the Scottish Government had understood would be classified as programme costs. Scottish Government Ministers said that, in their view, the proposed reductions did not comply with the agreement set out in the Fiscal Framework, which covered the transfer of 'full programme costs' for the devolving powers. Cab Sec CSSE noted that planning had taken place based on previously agreed budgets.
3. SoSS acknowledged that it was important for ministers to be able to proceed with certainty and UK Government ministers agreed to seek a timely update from HM Treasury once Scottish Government ministers write to set out the key issues. It was also agreed that consideration should be given to finance ministers from UK Government and Scottish Government being invited to future meetings, as had previously been the case, notwithstanding the role of the Joint Exchequer Committee.

Action: SG/SO/DWP

Scotland Act 2016 Commencement Update – Tranche 2

4. The Minister for Employment (MfE) commented that there had been excellent progress on the development of draft regulations which achieve the agreed position to split commencement in relation to the remaining welfare sections of the Scotland Act 2016. He was confident that the UK Government can achieve this innovative new approach within agreed timescales, and that ministers aim to lay these regulation on or before 10 April.
5. MfE noted that regulations had been drafted without sight of Scottish Government's draft Social Security Bill which is currently in development, and DWP could not fully test their regulations without this. MfE requested early sight of the Bill and noted that the UK Government retain the ability to amend regulations later on; this was agreed.
6. MfE sought to agree two principles with Ministers in attendance – firstly that only one Government will have executive competence at one time, and secondly that there needed to be good progress to explore what is required on Agency Agreements. Ministers agreed to the approach, noted the importance of Agency Agreements and noted work should be undertaken in a proportionate way. It was agreed that it was important to remain committed to the principle of there being no gap in service for the individuals claiming any of the benefits to be devolved.

Action: DWP/SO/SG

7. Cab Sec CSSE noted the good progress made to date and commented that it was an important milestone to move from commencement to the transition process. The Minister for Social Security (MfSS) will be making a statement at the Scottish Parliament on the Social Security Consultation on 22 February. MfSS agreed to check protocol on sharing clauses of the draft Social Security Bill, with the aim of sharing this in the future to assist DWP in understanding implications for planning its work to support the transfer.

Action: SG

Universal Credit and Spare Room Subsidy

8. SoSS noted that since he and Cab Sec CSSE last met, officials have sought to engage and find a way forward, including developing a joint options paper.
9. Cab Sec CSSE said that although officials have worked with the aim of identifying a solution in the joint options paper, the Scottish Government's position is that two key issues must be resolved in any such solution. Firstly, as a point of principle, as set out in Smith (Paragraph 56) and the UK Government's paper 'An Enduring Settlement' (Paragraph 4.3.13). Scottish Ministers read from paragraph 56 of the Smith Commission Agreement states that "The UK Government's benefit cap will also be adjusted to accommodate any additional benefit payments that the Scottish Parliament provides." Scottish Government Ministers also quoted 'An Enduring Settlement' in particular paragraph 4.3.13: "Paragraph 56 of the Smith Commission Agreement makes clear that the household benefit cap, which caps the total level of payments per household, should not include any additional benefit payments provided by the Scottish Government. Therefore, while this requires no legislation and so is not covered by the draft clauses, the UK Government will ensure that if Scottish Ministers were to increase the amount of a payment in relation to any benefit included within the cap, then the additional amount provided by the Scottish Government would be

disregarded for the purposes of the cap, and only the amount of the payment equivalent to that provided by the UK Government would be subject to the cap.” Cab Sec CSSE also highlighted paragraph 89 of the Fiscal Framework which stated that “any new benefits or discretionary payments introduced by the Scottish Government must provide additional income for a recipient and not result in an automatic offsetting reduction by the UK government in their entitlement elsewhere in the UK benefits system.”

10. Secondly there are concerns around the administrative complexity, including the potential cost and issues of double-funding for Scottish Government if claimants are asked to self-identify and make an application for a Discretionary Housing Payment. Cab Sec CSSE noted that work by officials had not, in her view, found an acceptable way to overcome these two key points.
11. UK Government Ministers stated they favoured the practical suggestion put forward in the joint paper and that their view was this approach would be fully consistent with the letter and spirit of the Smith Commission Agreement.
12. UK Ministers also re-iterated that, as set out in paragraph 43 of the Smith Commission Agreement, Universal Credit remains a reserved benefit which is provided to claimants by the UK Government and on a whole payment basis. For this reason, the reserved benefit cap would still apply to Universal Credit payments.
13. SoSS and MfE confirmed that the UK Government in no way wanted to stop Scottish Government from achieving its policy aim and restated that it was more of a practical issue on how the Scottish Government’s policy could be achieved.
14. Scottish Government Ministers said that there could be a simple solution to flag individuals where the zero-rated spare room subsidy resulted in them breaching the benefit cap limit. UK Government Ministers explained that this was not deliverable in the short term and agreed to write to Scottish Government Ministers to explain the technical complexity. It was also agreed that the costings of each option will be provided as options are developed.

Action: DWP

15. It was agreed that analytical resource from both Governments should be used to jointly understand how many people would be affected and that this was an important next step.

Action: SG/DWP

16. DWP officials noted that in order to introduce the option of zero rating the spare room subsidy in Universal Credit, DWP would need to know whether Scottish Government wish to proceed with any work around by 31 March 2017.

Action: SG

Housing Benefit for 18 – 21 Year olds

17. Cab Sec CSSE noted that there had been an exchange of letters on this issue and that officials were meeting later in the week to continue to progress. However, Scottish Government were keen to understand why the UK Government were pursuing the use of section 11(5) of the Welfare Reform Act, rather than section 11(4).

18. DWP officials set out that as the UK Government policy is about taking certain individuals, those aged 18-21, out of housing benefit, section 11(5) of the Welfare Reform Act 2012 is deemed appropriate as it relates to entitlement to receive any payment, whereas section 11(4) relates to levels of housing costs, and as such was not appropriate. DWP agreed to share the details of timetable for laying the regulations. MfSS made the point that a solution would be for the Housing Benefit regulations for 18-21 year olds to not apply in Scotland.

19. It was agreed that as part of official discussions, there should be consideration of including Scottish 18-21 year olds as an exemption. Scottish Government Ministers noted that UK Government Ministers and officials present were unable to provide the date on which they intended to lay the Housing Benefit regulations for 18-21 year olds at the meeting. DWP agreed to update the Scottish Government as soon as possible.

Action: DWP/SG/SO

Employability

- **Interaction of voluntary devolved programmes and conditionality**

20. The Minister for Employability and Training (MfET) noted that he was pleased to have clarity on the interaction of voluntary devolved programmes and conditionality. Both governments agreed that it was important for claimants to have total clarity in terms of expectations, as well as the need for Jobcentre Plus staff to understand the new programmes. It was also agreed that there was a requirement to work cooperatively in the future, for example on referral levels between reserved and devolved services.

- **Joint operational working frameworks and Scottish Employability Forum**

21. MfE referenced the joint paper which sets out broad principles for working together in a Joint Working Framework. It was agreed that a refreshed Scottish Employability Forum (SEF) could have an important role as part of this framework, with a particular focus on how Governments can work together to support long term unemployed and disabled people given the April launch of the SG employability programme.

22. MfET noted that any SEF replacement needs to be meaningful as a forum to explore ways forward on Paragraph 58 of the Smith Commission Agreement. The future approach could also involve local government partners who invest significantly in employability. It was agreed that a further developed Joint Working Framework would be considered for the next meeting, including proposals on a revised SEF mechanism to be provided in June.

Action: SG/DWP/SO

Carer's Allowance Feasibility Study

23. It was noted that DWP officials had shared the feasibility study on an interim solution to paying Scottish carers an additional amount. The options have been assessed by DWP without prejudice. Should Scottish Government indicate they wish to proceed with either option for implementation, it was noted DWP would need to carry out detailed work on the deliverability of any preferred option. This would be needed to confirm when the changes could be delivered.

24. Cab Sec CSSE remarked that increasing Carer's Allowance to the same rate as Jobseeker's Allowance was a key priority of the Scottish Government. A response will be sent to the feasibility study, once the Scottish Government has had an opportunity to assess in full the implications, including the financial and timing implications.

Joint Communications

25. Cab Sec CSSE remarked that although the group could reflect on how to improve communications, it was important to note the good progress in terms of workshops and communications between officials on employability, as well as recognising the good progress on commencement and other issues. She also emphasised the importance of having a shared view of joint milestones and recognising the different audiences who will be impacted by the changes. The SoSS emphasised the importance of consistency of messaging for those who advise and support people receiving benefits.

26. It was agreed that there should be continued work on joint communications, reflecting the requirements of different audiences but insuring consistency of messaging.

Action: SG/DWP

DWP Estates Strategy, options & consultation

27. MfE spoke about the various ways he has been engaging on Jobcentre Plus proposals including events and debates in Parliament, correspondence, meetings, and oral questions and that there was no sense of reluctance to engage on the issues. MfE outlined the overall estates announcements and remarked that per head, Scotland will have higher Jobcentre Plus coverage to England and that the department expects to have more work coaches to support claimants in the future.

28. MfET expressed significant concerns about the specific proposals for changes to the JCP estate in Scotland, and referenced the recent Scottish Parliament debate which voted by a majority of 91-30 to call on the UK Government to halt the process MfET also called for arrangements for meaningful dialogue under paragraph 58 of the Smith Commission Agreement around these issues before announcements are made.

29. It was agreed that there was willingness to explore further possibilities and MfE remarked that until recently it was not possible to discuss the DWP estate beyond 2018. However that is now possible and the DWP can discuss potential future partnership opportunities with a more settled DWP estate.

30. It was agreed that there would be a future discussion as part of the Joint Operational Working Framework on future communications.

Action: DWP/SO/SG

AOB and Next Meeting

31. It was noted that officials and ministers will be appearing at joint sessions of the Social Security Committee and Scottish Affairs Committee on 13 and 20 March respectively.

32. It was agreed that the next meeting should take place in Scotland after Easter, at the appropriate time.

Action: DWP/SO/SG

END