



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Social Security Committee

**Thursday 14 September 2017**

**Session 5**



The Scottish Parliament  
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - [www.parliament.scot](http://www.parliament.scot) or by contacting Public Information on 0131 348 5000

---

**Thursday 14 September 2017**

**CONTENTS**

	<b>Col.</b>
<b>DECISION ON TAKING BUSINESS IN PRIVATE</b> .....	1
<b>SOCIAL SECURITY (SCOTLAND) BILL: STAGE 1</b> .....	2
Minority Ethnic Carers of People Project (Report) .....	23
Coalition of Carers (Report) .....	25
<b>SOCIAL SECURITY (SCOTLAND) BILL: STAGE 1</b> .....	27

---

**SOCIAL SECURITY COMMITTEE**

**16<sup>th</sup> Meeting 2017, Session 5**

**CONVENER**

\*Sandra White (Glasgow Kelvin) (SNP)

**DEPUTY CONVENER**

\*Pauline McNeill (Glasgow) (Lab)

**COMMITTEE MEMBERS**

\*George Adam (Paisley) (SNP)

\*Jeremy Balfour (Lothian) (Con)

\*Mark Griffin (Central Scotland) (Lab)

\*Alison Johnstone (Lothian) (Green)

\*Ben Macpherson (Edinburgh Northern and Leith) (SNP)

\*Ruth Maguire (Cunninghame South) (SNP)

\*Adam Tomkins (Glasgow) (Con)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Morag Campsie (Audit Scotland)

Caroline Gardner (Auditor General for Scotland)

Professor Gráinne McKeever (Ulster University Law Clinic)

Mark Taylor (Audit Scotland)

**CLERK TO THE COMMITTEE**

Simon Watkins

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



## Scottish Parliament

### Social Security Committee

*Thursday 14 September 2017*

*[The Convener opened the meeting at 09:30]*

### Decision on Taking Business in Private

**The Convener (Sandra White):** Good morning, everyone, and welcome to the Social Security Committee's 16th meeting in 2017. I remind everyone to turn off their mobile phones, as they interfere with the broadcasting system.

Agenda item 1 is a decision on whether to take item 7 in private. Do members agree to take that item in private?

**Members** *indicated agreement.*

## Social Security (Scotland) Bill: Stage 1

09:30

**The Convener:** Agenda item 2 is the Social Security (Scotland) Bill. I welcome to the meeting Professor Gráinne McKeever. I know that she had a difficult time getting here, because the plane that she was on was delayed. I thank her for rushing to get here on time, which meant that we did not have to change the agenda, which we had to consider doing earlier.

Professor McKeever is from the Ulster University law clinic. Before we move to questions, I should mention that when members considered who to invite to give evidence on the bill, there was a distinct interest in looking at the experience in Northern Ireland. We invited representatives from the relevant Northern Ireland Executive department to give evidence, but in the unfortunate absence of a functioning Government, no one was able to participate today. Therefore, I hope that we can rely on Professor McKeever to cover some of the ground and to answer some of our questions—no pressure then.

Professor McKeever, I understand that you have been involved in research on social security and are a member of the Social Security Advisory Committee. I may come in later and ask you a few questions about that, if you do not mind. First, however, when progressing the Social Security (Scotland) Bill, what lessons can—and should—we learn from the history of devolved social security in Northern Ireland?

**Professor Gráinne McKeever (Ulster University Law Clinic):** We are starting with an easy question then. The first thing to note is that the social security powers in Northern Ireland are fully devolved, so they are different from the package of powers that are available to Scotland, where there is a mixture of devolved and reserved powers.

The driver for devolution of social security in Northern Ireland is different from what it is in Scotland. The powers were devolved in 1920, when there was a drive to maintain parity with the rest of the United Kingdom, which was an ideological commitment by the unionist-dominated Parliament of the time. That maintained the system of social security in Northern Ireland in symmetry with that of Great Britain. Therefore, the evolution of devolution of social security in Northern Ireland has been different from the Scottish experience, although the political and ideological drivers in Northern Ireland are not the same as they were, because we have a power-sharing Government—well, sometimes we do.

In reality, the powers devolved to Northern Ireland have not been exercised to their full extent because of financial limitations. The immediate ambition to keep the Northern Ireland social security system the same as the rest of the UK's meant that the Northern Ireland Executive had to meet the expenditure required to sustain particular contributory benefits. In Northern Ireland, the difficulty was the higher levels of unemployment, so more people were drawing on the social insurance fund and fewer people were paying into it. That led to a potential state of bankruptcy for Northern Ireland in the early 20th century, so the Treasury had to intervene financially. In order to maintain parity, there had to be financial limitations, which still apply. They limit ideologically and operationally the devolutionary differences that happen in Northern Ireland.

The lessons that I bring from Northern Ireland are on how you might seek to manage devolved powers within tight fiscal constraints. The ambition to do things differently must be tempered, of course, by the reality of what that would cost.

Part of the system's development must come through intergovernmental agreement. The package of reforms from Northern Ireland that you will be interested in looking at are the supplementary payments—the mitigation package—that was agreed in relation to the UK Welfare Reform Act 2012, which came in Northern Ireland in 2015. That came about as a result of a constitutional cliff edge—as is so often faced in Northern Ireland—where there was a political impasse. The UK Government agreed that devolved powers would be passed back to Westminster and in return a package would be agreed for Northern Ireland that would allow for additional payments to mitigate the worst impacts of welfare reform, recognising the particular circumstances in Northern Ireland. Without that intergovernmental agreement it is unlikely that the Northern Ireland Executive could have done what it wished to do in respect of mitigation. That is the first lesson. The UK Government involvement remains critical.

The second lesson is more general. There have been operational variations in Northern Ireland, notwithstanding the drive for parity and the need to maintain symmetry, and they are sometimes insignificant and sometimes significant. They relate as much to the administration of benefits and the culture of that as to the benefits themselves.

Working around the edges in social security can make quite a difference—that applies across the piece and not just in Northern Ireland. You can recognise exceptional needs in particular categories of claimants, for example, and make adjustments there. Working around the edges to

improve the operational delivery of benefits might mean that although the policy design is the same, you can change the outcome. That is probably where Scotland is at the moment: looking at the outcome of the reforms that you hope to bring in as much as how the policy delivery will be considered.

**The Convener:** You seem to be saying that although social security powers are devolved to Northern Ireland and remain the same, Westminster operates the powers and tops up the Northern Ireland budget from the Treasury. Am I getting that wrong?

**Professor McKeever:** Yes and no. The devolved powers have always been fully devolved and the process in Northern Ireland is that we do a karaoke version of the British legislation—we change the name to Northern Ireland and change bits and pieces in the legislation, but the bill remains the same. The history of social security legislation passing through the Northern Ireland Assembly is that it has been an expedited process. There has not been much scrutiny, partly because of political control of committees—a unionist-controlled committee is less likely to wish to scrutinise in detail because it might lead to changes to the bill, which might upset the objective of parity.

The main difference was the UK Welfare Reform Act 2012, which produced substantial political differences when it came to the Assembly. It came at a time when there were other political issues at play in Northern Ireland and so it started to divide parties along fairly traditional lines. The legislation acted as a lightning rod for a lot of other political issues that were going on at the time. The legislation was defeated in the Assembly—a petition of concern was raised in order to block it from proceeding in May 2015. The only way to get the legislation through was to get the Assembly to agree to pass powers to put through the welfare reform provisions with those of the Welfare Reform and Work Act 2016. It was a temporary measure and has a sunset clause. There are also some limitations on what the Westminster Parliament can do. However, overall the devolved powers are now with the Northern Ireland Assembly—or would be if the Assembly were operational.

The subvention continues to come from the Treasury and that creates a disincentive to do things differently. There is a bit of a heads I win, tails you lose situation: if Northern Ireland created a bespoke system that generated savings in social security, those savings would be handed back to the Treasury, but if Northern Ireland created a bespoke system that cost extra money, that money would have to be found by the Northern Ireland Executive. The financial incentive to

change things is limited not just by the fiscal limits on what the Treasury will give, but on the outcomes of differences that might happen.

**The Convener:** Thank you. Ruth Maguire wants to come in.

**Ruth Maguire (Cunninghame South) (SNP):** If you will indulge me, convener, I will come to scrutiny later; first I have a different question on the powers.

**The Convener:** You can start with your supplementary question.

**Ruth Maguire:** Given what you have said, Professor McKeever, who is best placed to take that cross-border view of the interaction between new devolved and reserved powers? What is your advice to ensure that the interaction between them does not have unintended consequences?

**Professor McKeever:** Just to check the borders that I am talking about, do you mean those between Scotland and the rest of GB?

**Ruth Maguire:** Yes.

**Professor McKeever:** Okay. Normally, when I talk about borders, I talk about the Irish border, so that is a nice change.

I think that you are talking about scrutiny from the start of the legislation right through to implementation and delivery. My view is that there needs to be effective scrutiny of the regulations. Social security regulations are where social security happens. On the primary legislation, I know that some of the responses to the Social Security (Scotland) Bill have outlined that the legislation is quite bare and that there is very little detail on the face of the bill. That is becoming increasingly normal for social security legislation—the detail is fleshed out in regulation, so you need proper scrutiny of the regulations. That would apply whether or not there was a border issue.

The scrutiny process for regulations in the UK in relation to reserved benefits and in relation to devolved benefits in Northern Ireland is the Social Security Advisory Committee, which does not have a remit to scrutinise devolved legislation in Scotland, so that creates a gap. On the question of who might be best placed to carry out scrutiny, we could make the argument that the Social Security Advisory Committee would be best placed, but that argument has been lost. The amendment to the bill that became the Scotland Act 2016 very clearly took care of that.

My proposed arrangement would be to have a Social Security Advisory Committee-type body for Scotland that would scrutinise devolved legislation in Scotland relating to social security. There would be some degree of connection and co-ordination with the UK Social Security Advisory Committee

so that there could be oversight of where the overlaps were. We do not know what those overlaps will be at this stage. We do not know what the Scottish devolved legislation will look like, so we do not know where the gaps will appear, but we know that gaps will appear.

In a piece for the *Journal of Social Security Law*, I proposed three potential models. One is to have a memorandum of understanding with the Department for Work and Pensions that would allow some scrutiny by the Social Security Advisory Committee in an advisory capacity rather than on a statutory basis, so that the committee could advise on devolved legislation. There would presumably be a reciprocal arrangement with an equivalent committee in Scotland. I am not sure what the appetite of both Governments for that would be.

The second model would be to have cross-membership, which would probably be the most advantageous in ensuring that there was cross-fertilisation of ideas, but again, that would require intergovernmental agreement. There is a model for that: the Administrative Justice and Tribunals Council, which is now defunct, had a main UK committee and Scottish and Welsh subcommittees, although sadly not a Northern Irish one. That council was able to bring the issues from Scotland to the main committee and bring the issues from the main committee back to Scotland, so the cross-membership model has existed. It would require intergovernmental agreement because the joint membership would have to be agreed by both Governments—or both Governments would have to agree on the overlapping members, at any rate.

In the interim, the most straightforward solution might be to have good working relationships between a Scottish committee and a UK advisory committee. That would rely on good chair-to-chair relations; it would rely on using the powers that already exist to invite presentations from Scotland and creating powers for a new committee in Scotland to invite presentations from the main UK Social Security Advisory Committee, to try to understand what the issues are for each committee and to work on co-operation and co-ordination where possible.

The Social Security Advisory Committee has good form on that—I stress that I am speaking as a member of that advisory committee rather than as the voice of the committee. However, the danger with that model is that it falls victim to other statutory requirements. Currently, the bulk of the Social Security Advisory Committee's work is the scrutiny of regulations for GB and Northern Ireland. If that work is substantial, something else will have to give in order for that statutory commitment to be met, so there is a danger that

that model might not work as well in practice as you might hope. However, it would be a good starting point for seeing what a future model would look like. You could test what the co-operation arrangements should be like. You could test what the extent of overlap and the need for it was because, at this stage, we do not really know what that need will be.

You are right to say that there are likely to be unintended consequences—there always are with social security legislation—and I think that bringing geographical circumstances into a complex system of assessing need is likely to produce unintended, unforeseen consequences at this point.

**Alison Johnstone (Lothian) (Green):** Good morning, Professor McKeever. Your report on dignity and respect says:

“A commitment to dignity and respect requires certain minimum standards”

and

“is an obstacle to the lowering of current standards”.

I understand from that that minimum standards, with regards both to how someone is treated by the system and the extent to which benefits support a minimum standard of living, are central to the idea of dignity and respect. I would be interested to know how you think that we can determine and then protect those minimum standards, especially in terms of the amounts that are paid.

09:45

**Professor McKeever:** I wrote that report for the Equality and Human Rights Commission with two colleagues, Mark Simpson, who is the lead author, and Professor Ann-Marie Gray. We were asked to try to figure out what dignity and respect would look like, particularly in legal terms, and how that could be embedded in a social security system.

We could figure out dignity, because there are international human rights agreements that allow us to provide some conception of what dignity might look like. In legal terms, respect is very nebulous, so we did not find anything that would allow us to define it. However, I think that if you get dignity right and you get the culture right, respect will follow.

When we looked at what dignity might involve, we considered the existing international standards. In the briefing paper for this meeting, I set out some of those standards. In particular, we would recommend a close look at the International Covenant on Economic, Social and Cultural Rights and the European social charter, both of which provide an idea of what a minimum income standard might look like. Very few international

instruments provide a monetary figure—understandably, perhaps, because it is an issue for each Government or Executive to figure out for itself, and the figure will differ depending on location, timeframe and so on. There is really nothing in the international human rights instruments that guides us on a minimum income standard, although lots of work has been done, for example by the Joseph Rowntree Foundation, on minimum income standards and what is necessary to survive—on what that looks like.

The value of the international instruments is that they do not just look at a subsistence allowance or an absolute definition of poverty. They go beyond saying that it is about people having a roof over their head and enough to eat; they say that there is a right to cultural and civic participation in society. It is about living rather than existing, and that is what provides the protection for dignity. It is a matter not just of having enough to survive but of being able to actively engage in activities that other citizens take for granted, such as having a cup of coffee or going round to someone’s house for a meal.

That would fit very well with the idea of a consensual definition of poverty in Scotland that is led by a co-production model. The idea of a consensual definition of poverty is becoming clearer, certainly through the responses to the bill. A model to measure that already exists. The poverty and social exclusion surveys provide an indication of what the public thinks are basic elements for everyday living. You then prioritise those and identify that people now understand that part of daily living are things such as two good pairs of winter shoes, a suit for an interview or the ability to take your kids to the seaside for a week. Those change over time. Twenty years ago, nobody would have considered mobile phones to be necessary, but now the poverty and social exclusion surveys say that they are necessary.

A monetary figure on its own will not necessarily give you the best definition of dignity for the Scottish Government to look at in terms of the international conventions and human rights instruments. In the report, we recommended embedding international standards in primary legislation in Scotland, using the same model as the Human Rights Act 1998. That legislative model could work. It would allow you to select what it was that you wished to embed that would provide legal protection for those principles. In and of themselves, there is not much common law behind them, and certainly not in the UK outside Scotland—and I am not familiar enough with Scottish law to be able to state what the common-law position on dignity is.

**Alison Johnstone:** I have a question that follows on from your comments. It seems that you



would agree that the uprating of benefits is absolutely essential to any commitment to dignity and respect.

**Professor McKeever:** That definitely has to be a consideration, because benefit levels are set at a basic floor. That floor has fallen while living standards and costs have increased, so the differential between benefit levels and what it costs to live has increased.

There is clear evidence that people on benefits do not have access to dignity, if that is all the income that they have to survive on. We have seen an increase in food banks, for example, and there is lots of research that looks at the indignity of people having to rely on food banks as an absolute measure of poverty.

It is a question for Governments in terms of resource priority but, if you look at it purely from a dignity perspective, you will want to start with what is defined as the minimum income that is necessary to enjoy the rights of citizens and of citizenship. That might include, for example, people being able to feed their family without fear, meet their rent, take their kids to the cinema once a month or do something else with them, and enjoy life as other citizens do. I would look to the minimum income standards as a guide to what you might wish to set benefit levels at.

**Alison Johnstone:** Northern Ireland seems to have a more extensive set of mitigations for welfare reform than Scotland, most notably for disability living allowance and the personal independence payment. They are set in law as entitlements, rather than being discretionary. Do you believe that that is advantageous?

**Professor McKeever:** That is part of what was optimistically called the fresh start agreement, which was the political agreement that allowed for the legislative consent motion that passed the devolved powers back to Westminster at the same time as an additional package to support mitigations in Northern Ireland was agreed.

The mitigations are a transitional, time-limited package. Those that you mentioned in relation to DLA and PIP include the transitional payment for someone who was on DLA and is unsuccessfully transferred to PIP—that is, they are not eligible for PIP but would have been eligible for DLA. There is a transitional payment to enable them to adjust to the position that they will be in in a year's time. It is too soon to say whether that has been successful but, broadly, we can say that it has been advantageous, because it does not leave people on a cliff edge in quite the same way. It allows them to look into other possibilities, rather than just coming off benefit and having to figure it out.

The packages of mitigation payments were designed to deal with the impacts of welfare

reform such as the cliff edge whenever people come off DLA and do not get transferred to PIP. They were agreed by Government and they do not come within the benefit cap—they are supplementary payments and are additional to the benefits that already get paid. We do not know whether they will survive beyond the four-year period for which they are currently scheduled to last.

There are some interesting measures that are worth looking at. There are also things that have not happened yet that will be interesting, such as the cost-of-working allowance, which will offset the issues to do with universal credit work allowance. We hope that the measures will be successful, but I have not seen enough of their implementation to be able to understand exactly how they are working. We will have to keep an eye on that.

**Adam Tomkins (Glasgow) (Con):** Thank you for joining us this morning.

I was a member of the Smith commission, which designed the package of welfare devolution that was legislated for in the Scotland Act 2016. The Smith commission looked at the experience of Northern Ireland, but we did not look at it for very long because we quickly and unanimously realised that it was not what we wanted for Scotland. The whole point of welfare devolution in Scotland is to enable the two Governments to pursue different welfare and social security policies, if that is what they choose to do, which is the opposite of the constitutional position in Northern Ireland. The package in Scotland is expressly designed to not replicate anything much about the Northern Ireland experience.

However, with that in mind, I am interested in the extent to which the current constitutional settlement in Northern Ireland enables the Government there, when it exists, to pursue different policies from those that are preferred by the UK Government. It would be helpful if you could flesh that out.

In particular, I want to know whether there is any equivalent in the Northern Ireland settlement to the no-detriment principle in Scotland. As I understand that principle, if the Scottish Government wanted to legislate for welfare benefits that were more generous than benefits in the rest of the UK, the money to do that would have to be found within the Scottish budget—and, vice versa, if the Scottish Government decided to make social security benefits less generous than benefits in the rest of the UK, it would keep those savings in the Scottish budget and would not hand them back to the Treasury. It sounded to me as though—I want to make sure that I have this right—the opposite is the case in Northern Ireland.

**Professor McKeever:** I will answer your questions in reverse order. We do not have an equivalent to the no-detriment principle.

It is a grand statement to say that there was a constitutional objective behind the devolution of powers to Northern Ireland in 1920. It was a settlement following a civil war, so the constitutional objective, or focus, was not on social security at that time—there was not even a welfare state in 1920. That is just how things have evolved.

The no-detriment principle does not apply. It is not in our constitutional settlement—it is not in the Northern Ireland Act 1998, which followed the Good Friday agreement.

If the Northern Ireland Executive made more generous provision for social security benefits, that would have to be met by the Northern Ireland Executive. However, if we provided a system that produced savings, those savings would, in effect, have to be handed back to the Treasury. There is a complex pathway to get to that conclusion, but that is very much what the Treasury position is. Contesting that position would undoubtedly require complex arguments on both sides, but the overall conclusion would be that that money would be handed back; it would not be kept by Northern Ireland.

On how the constitutional settlement allows Northern Ireland to deviate, there is no limit on what the Northern Ireland Assembly can do to deviate from the social security system in Britain; the limit is around fiscal ability. Section 87 of the Northern Ireland Act 1998 recognises the symmetry between the two systems and talks about the need to have agreement between the Secretary of State for Work and Pensions and the Northern Ireland Government on the extent to which deviations might happen. However, there is no constitutional imperative to maintain parity—and there is no constitutional objection to parity being breached.

If Northern Ireland were to create a bespoke system, it would have to agree to finance the new information technology, the administration and the additional costs that might come from such a benefits system. It would have to look at all the implementation issues itself. I do not think that the UK Government has any particular issue with Northern Ireland doing that—I have never seen that raised as a concern by the UK Government—but we are bound by the fact that we rely on Treasury subventions, so the financial incentive to change is not there.

**Adam Tomkins:** There is no equivalent in Northern Ireland to our fiscal framework. Under our fiscal framework, the UK and the Scottish Governments agreed to share the implementation

costs of social security devolution. A payment of £200 million is going from the Treasury to the Scottish Government to help it to set up the infrastructure that it needs to develop devolved social security regimes. There is no equivalent of that in Northern Ireland.

**Professor McKeever:** Not to my knowledge, but this is not my area of expertise. There are fiscal agreements with the Treasury on how and on what basis subventions happen. There are three agreements in particular, but I cannot think off the top of my head what they are. I would be happy to give the committee more information at a later date if that would be helpful.

My reading of the provisions is not that the devolutionary powers or costs would be shared by the UK Government; as I understand it, if Northern Ireland wants to do something differently it is free to do so, but it would have to do that off its own bat.

**Ben Macpherson (Edinburgh Northern and Leith) (SNP):** Good morning. You provided us with a copy of your article in the *Journal of Social Security Law*, in which you argue that

“the role of the SSAC”—

the Social Security Advisory Committee—

“in providing independent advice to the Scottish and UK Governments to ensure coherence across related benefit systems would seem to be required.”

I have a few questions about that. Is a statutory body necessary for independent Scottish scrutiny? What would be necessary for such a body to be effective? Somewhat aside from that, but on a related point, should the Scottish Parliament have a role in being a scrutiny body? What is the role of elected representatives in scrutiny?

10:00

**Professor McKeever:** I will take your questions in order. You asked first whether an independent body would need to be statutory. Things are always better protected when they are in statute rather than at the whim of a Government, so my instinct is that such a body should be statutory. It would be an arm’s-length, independent body whose remit would in some ways be similar to that of the Social Security Advisory Committee; it would have a remit to review how social security works and to review draft legislation. Putting a body in statute protects its independence, because it is not subject to political whim in the same way.

A few years back, we saw a bonfire of the quangos under the coalition Government, so we are familiar with the idea of reducing the role of arm’s-length bodies—some for good reasons and others for not-so-good reasons. Having a statutory

remit for a body marks it out as having a function with a particular value. Of course, it can be removed from legislation with the consent of Parliament and of the Government, but putting it in legislation sends a clear message that it is a necessary feature of scrutiny and that there has to be an independent body that is there for a particular purpose, which provides additional constitutional comfort to the Parliament in holding the executive to account. The body would not have to be in legislation, but I guess that I conceive it in that way because that mirrors the creation of the Social Security Advisory Committee.

Your question on what is necessary for a body to be effective is a good one. I draw on my experience of the Social Security Advisory Committee—I am speaking as a member of but not as the voice of the committee. What I find to be effective there is the range of expertise. There is technical expertise from members such as Judith Paterson of the Child Poverty Action Group Scotland, who has clear and detailed workings on the regulations and who can drill down into the technical detail and understand where legislation does not fit with definitions in other pieces of legislation, so that the outworkings of how something will play can be clearly identified and problems avoided from the outset.

The range of expertise is critical. I hold the statutory position for a Northern Ireland member, which provides some oversight of where things are different in other areas and allows us to consider issues from different angles. There are positions for people with experience of disability and people with experience of employers and employment, such as the Trades Union Congress representatives who have been on the committee in the past.

Bringing a range of expertise makes committees effective. Sometimes, committees can be ineffective because there is a cacophony of voices, but effectiveness comes from having different input to see how legislation fits with other legislative measures, what the output will be like and how legislation could be changed to avoid unintended consequences and soften the edges.

It is absolutely not the case that such a committee should have a role in demanding policy change. That is not the business of an independent, arm's-length body, and that brings me to your third point—on whether there should be a role for the Scottish Parliament. I take it that you mean a role in such a committee, rather than generally, or perhaps you mean both.

**Ben Macpherson:** I am interested in your opinions on both.

**Professor McKeever:** The value for the Social Security Advisory Committee is that it does not have parliamentary members involved, so there is no ideological objective that dominates or has an influence. That is my personal view on whether there should be parliamentary representation on an independent advisory committee; I think that the point of an independent body is that it is independent of Government influence and is able to make recommendations on legislation rather than on what policy intent might be preferred.

In the scrutiny of legislation by the Scottish Parliament, that process has to happen. You have to be able to hold the executive to account, whatever that executive is. The difficulty with the scrutiny of secondary legislation is that Parliament cannot do anything about it once the draft regulations are laid—it can accept or reject them, but it cannot change them. The difficulty arises when you like most but not all of what is happening, because then you have to choose whether to throw the baby out with the bath water.

Creating an independent committee and giving it the power to scrutinise legislation before it is laid would be effective. Such scrutiny is one of the most valuable and effective things that the Social Security Advisory Committee does. That committee can make changes around the edges to some issues that affect implementation. It is looking at the outcome rather than aiming to change the policy process or objectives. That means that the legislation that comes before Parliament is more robust and has a better chance of avoiding unintended consequences.

Parliament's ability to scrutinise will be fairly limited, because there will be a significant volume of legislation as a result of the devolved powers. In the previous parliamentary year, when there was no major welfare reform, the Social Security Advisory Committee scrutinised 44 pieces of legislation. Most of the legislation was technical and we dealt with it without any major incidents. Some regulations were quite controversial and we consulted on them. The Westminster Parliament has a second chamber, but its ability to scrutinise 44 sets of regulations was limited. The Scottish Parliament has only one chamber, so there will be a huge burden on parliamentarians, who will not necessarily have the time or expertise to provide that scrutiny.

Having a body that is independent of Parliament provides some constitutional comfort. That body would advise the Parliament, although the decision on whether to take the advice would be another matter. That approach would give the legislation a chance of delivering the policy intent. That is the trick with legislation. The policy intent may be quite simple—for example, universal credit involves the simple idea of simplifying the benefits

system so that people claim just one benefit. However, the delivery of that may turn out not to be so simple. The ability to see what the legislation looks like and to scrutinise it effectively will allow the social security system in Scotland to develop. You want to get that right. You do not want to keep going back and changing the regulations, because that takes yet more scrutiny and more parliamentary time.

The absence of a second chamber is a consideration. The House of Lords does not always send a piece of legislation back to the Commons and refuse to implement it, but it provides an important check and balance on the executive. You want to have that structure in place so that the system is protected, rather than simply saying that, as the Scottish Government wants us to look at principles of dignity and respect, we can trust it. That may well be the case now, but you will want the system to endure. You will want to put something in place now to ensure that the system lasts and includes scrutiny that allows the executive body to be held to account and to deliver the policy as intended, rather than in an unintended, adverse way.

**Jeremy Balfour (Lothian) (Con):** Thank you for the information that you have shared with us so far. I seek your advice on residence issues and entitlement to benefit. We could end up with differential payments north and south of the border—I am talking about the England and Scotland border and not about the Irish context. How would that work? For example, if I were successful in getting PIP in Aberdeen, but I then moved to Plymouth to work, how would that work if the Scottish award were higher? Would you expect an intergovernmental agreement that the higher payment would last for a certain period, or would I have to reapply for PIP south of the border? Another example might be an older person who is on attendance allowance in Birmingham and who moves north of the border for family reasons. The rules and regulations and the entitlement might be slightly different. Have you any experience of how that might work?

Is there a minimum period for which someone has to have been resident in a country before they can claim an award? As the legislation stands, I can live anywhere in the UK and claim the new awards that will come out of the Social Security (Scotland) Bill.

**Professor McKeever:** That is a really tough question, which I am not sure that I will be able to answer to your complete satisfaction. We have some experience in Northern Ireland of people moving geographically. Many of the regulations that the Social Security Advisory Committee scrutinises relate to the geography of the GB jurisdiction. The fact that there have to be mirror-

image regulations for Northern Ireland means that a shortfall can arise in moving from Northern Ireland to GB. More often than not, that has been managed through an interdepartmental agreement whereby, if someone who has claimed a benefit in GB moves to Northern Ireland, their entitlement to that benefit will be maintained. However, it is sometimes necessary for the issue to be raised and legal action to be threatened—for example, a pre-action protocol letter might have to be issued—to identify and address the position, because it is not always obvious that people will want to move into or out of Northern Ireland. There are interdepartmental methods of addressing that, which can be straightforward. They are straightforward in the sense that the benefit entitlement—the provision that is made and the criteria for the benefit—will be the same in both jurisdictions.

The situation becomes a bit more complicated when it comes to moving from Aberdeen to Southampton, and I am not sure that I know the answer to your question about how that interaction might work. If someone can receive the same benefits in the two countries, that will be fine, but if we are talking about two different sets of benefits, a protocol will have to be arranged to provide certainty for claimants and protect them if they move. It is probably advisable for that protection to be time limited. In that way, people could move for a short period and then return, or they could move for a short period and decide to stay but have time to make a new application, if that was required because the relevant benefit was a different benefit with different entitlement criteria and a different payment.

There are minimum periods that relate to people moving out of GB or Northern Ireland. When people cross our border between the north and the south, they move to a different jurisdiction with a different legal system and a different benefits system. We have to have provision for that, because there is a lot of cross-border movement. Such provision tends to be on a time-limited basis to people who are out of the country for a certain time. That period might be four weeks—it depends on what the benefit is. For housing benefit, it might be four weeks, but exceptions might be built in to extend it to 12 weeks for victims of domestic violence, for example. It might also be extended for people who work overseas, such as members of the security forces.

There is guidance on how to model such arrangements, but the difficulty will arise when two different types of benefits are involved. There could be a time-limited period whereby someone could take their Scottish devolved benefit with them to Southampton—they could maintain that for four weeks, for example, or for longer if they

were moving because they were a victim of domestic violence.

**Jeremy Balfour:** Should that be dealt with in regulations or should some kind of definition of the principle be in the heart of the bill?

**Professor McKeever:** Ideally, the question would be dealt with in the heart of the bill, because the bill will provide the legal certainty that people will look for when it comes to dignity. That will involve people knowing what they will be entitled to in the face of changing circumstances. People will want some legal certainty; they will want to know that an element of the rule of law will apply in such situations. The difficulty might be that a principle could be put in the bill that could not be delivered, so there would need to be an understanding that the principle could be delivered by the Scottish Government and that agreement could be reached with sister departments in Northern Ireland and the rest of the UK.

In Northern Ireland, the way in which time-limited periods and periods for continuing to receive benefits while out of the country work is through regulations—that is the case for housing benefit, for example. That is a way of responding to changing circumstances that arise, and it might be a way of negotiating differences that become apparent as the Scottish system develops.

**Pauline McNeill (Glasgow) (Lab):** What you said about the importance of having a social security advisory body is extremely helpful. You said some other things about scrutiny. Because this area is so important, I want to go over it and make sure that I understand what you said.

I am clear about the importance of a social security advisory body and what it can do. You went on to talk about a memorandum of understanding with the DWP to allow some scrutiny of Scotland's social security legislation, and you talked about cross-membership through an intergovernmental agreement. I want to understand how those might fit together. The final element is the Scottish Parliament committee system having a scrutiny role and a role in making recommendations and policy. Anything you can add to explain to the committee how you think it all might fit together would be helpful.

10:15

**Professor McKeever:** The memorandum of understanding idea comes from the existing relationship between Her Majesty's Revenue and Customs and the Social Security Advisory Committee. When the SSAC was set up, it scrutinised social security benefits, which were contained within one department. Then tax credits came along and HMRC had responsibility for that, but it became important in social security terms for

them to be under a scrutiny provision. The arrangement was that there would be a memorandum of understanding with HMRC that the SSAC could review the regulations. It has no power to take them on formal reference, so the committee's role is only advisory. The memorandum of understanding means that we do not have a statutory power to take HMRC regulations on formal consultation. If we saw something coming through that we felt was insufficiently supported by the evidence, for example, as we have in the past, our options are fairly limited. We do not have the power to say to HMRC that it should change the regulations. A valuable way of working is to talk to officials behind the scenes to ask them to look again and see whether amendments or adjustments can be made.

It is possible to encourage co-operation. It does not always work, but it is a way of engaging two departments that otherwise have very different ambitions. It is fair to say that the ambitions of the DWP on social security benefits are very different from those of HMRC.

If we assume that there will be a Scottish version of the SSAC, that model could work to get the two committees together to allow some discussion between the two, some scrutiny and some interaction to begin to see where the overlaps lie so that one committee can adjust its advice to the UK Government and the other could adjust its advice to the Scottish Government, depending on how those overlaps played out. Of course, that will require intergovernmental agreement so I am not going to assume that it will happen. I am not going to assume that either Government would be content for that to happen.

Cross-membership would mean that there would be a position on each committee for a member of the other committee. That position would presumably be reserved. The Northern Ireland position, for example, is a statutory position to give insight into what happens in Northern Ireland. That is not an ideal position because, if I do not speak for the Social Security Advisory Committee, I sure as heck do not speak for Northern Ireland, and the idea that I can presents some difficulty. The idea of having a committee behind that Scottish voice or UK voice is more helpful. It would allow for the chair of a Scottish committee, for example, to have a position on the UK Social Security Advisory Committee.

Again, there might be some issues around that. Appointments to the UK Social Security Advisory Committee are made by the UK Secretary of State for Work and Pensions. My position is run past the Northern Ireland ministers, but it is ultimately the decision of the UK minister, and the Scottish

Government might not wish to entertain such an arrangement. The quid pro quo would be that, on the Scottish committee, the position reserved for the UK member would effectively be appointed by the UK Government. That is where political difficulty might lie.

I do not think those issues are insurmountable but, again, I do not wish to assume that agreement would be reached. The third option is, therefore, to have two parallel committees that have some informal arrangement between them to keep in touch with each other and to co-ordinate and co-operate on a more informal basis. That could be accommodated within the work that the Social Security Advisory Committee does. For example, at our last meeting, we had a presentation from the Northern Ireland department on issues affecting Northern Ireland, and that is standard.

We do stakeholder visits—we did a stakeholder visit to Scotland, we are due to go to Wales this year and we have been to Northern Ireland—so there is form there for the Social Security Advisory Committee to take account of what is happening in Scotland and to adjust its recommendations on that basis.

It is by custom and practice that we have a position for a Scottish member—in fact, we currently have two Scottish members. Dr Jim McCormick is the other member from Scotland, along with Judith Paterson, so that is helpful. We also have a customary position for Wales. Those members from the other devolved areas can bring expertise, but it would be much easier to bring that expertise from a committee that was looking at the issue in Scotland than it would be for an individual to have their own insight into what was happening.

Is that helpful?

**Pauline McNeill:** Yes. So the cross-membership would relate to the social security advisory body. In other words, there would be someone from each Parliament on the corresponding committee to get some—

**Professor McKeever:** It would not be someone from each Parliament; it would be someone from each committee. The committee would be an arm's-length body; it would not be a parliamentary committee. You asked about the role of the parliamentary committees in the process. The advisory committees would be arm's-length bodies; they would not be parliamentary committees. I am not proposing that a member of the Social Security Committee here would go and sit on the Work and Pensions Committee; that is a whole different ball game, and I am not even going to get into that.

There is a role for this committee to scrutinise legislation and certainly this committee and its predecessor have good form on investigating the

impact of welfare reform. Some really valuable work has been done. However, I worry about the committee's capacity to do that, because there will be so many issues with welfare reform and devolved benefits. I think that your plate will be pretty full and your ability to provide detailed technical scrutiny of the draft regulations might have to be considered. Certainly, our recommendation in the report for the EHRC was that that should be kept under close scrutiny because the committee might well become overwhelmed and therefore not be able to discharge that duty. Having said that, I think that there is a clear role for the committee to understand what is developing, so it could take evidence from the UK Social Security Advisory Committee as well as from the proposed Scottish social security advisory committee to be informed on that.

The other aspect of the Social Security Advisory Committee is that it has a remit to do independent research. That is its other statutory function. If a new Scottish body had a similar statutory function, that might work very well with your remit; you could identify issues that would be of value to this committee for that new advisory committee to look at. We speak to officials, lots of stakeholders and Government ministers to identify what we think it would be useful to look at in our independent work programme, so there might be additional complementarity there between the parliamentary committee and the independent committee that would scrutinise regulations.

**Pauline McNeill:** Can that research and information be shared with the parliamentary committee?

**Professor McKeever:** Yes.

**The Convener:** As you have been talking about committees, I point out that we have had joint meetings with the Scottish Affairs Committee—it has been here and we have gone down to Westminster—and it is the intention of both committees to meet again. Would you say that that would be a good way to air the issues around what is devolved to Scotland and what is reserved to Westminster? It could, I hope, iron out some obstacles. Is that still a good way to go?

**Professor McKeever:** I would say so. I do not know much about politics—I am an academic, so that is my game—but it always seems to me that talking behind the scenes achieves quite a lot. Certainly, it has been my experience on the Social Security Advisory Committee that the head to head of the ministers is where the bold statements happen, but the hard work gets done behind the scenes, where individuals can agree on the extent to which changes can be made and the extent to which agreement might be reached. That political process would be very helpful in understanding

what the issues are and how resolutions might be agreed, and in making compromises where possible on the issue of scrutiny over the border and how that would work.

**Mark Griffin (Central Scotland) (Lab):** On the mitigation package that was agreed, my understanding is that the Northern Ireland Executive came to a policy decision and then it was passed to the DWP to implement that operationally. Is that correct?

**Professor McKeever:** No. On the supplementary payments and mitigations that Northern Ireland had, a political agreement was reached with the UK Government that there would be a mitigations package. That was then handed to a working group chaired by Professor Eileen Evason, who, working with other members, identified a set of measures that she thought would be effective in mitigating the impact of welfare reform.

Those recommendations were put to the Executive, which agreed them, and the implementation now falls to Northern Ireland. Sorry, I will correct myself—the legislation to implement the mitigations package for the most part falls to the DWP, because of the legislative consent motion. However, there are some mitigations that it will not be possible for the DWP to implement; for example, we are still awaiting some mitigations in relation to universal credit. Mitigations relating to the legacy payments have been implemented by the DWP. Others will have to have Assembly approval, so we are in a tight spot because we do not have an Assembly, but those powers will pass back to the Assembly if and when it is restored. It will be up to Northern Ireland to implement those measures, if they are still outstanding. Delivery will be through the Department for Communities, which will be the body that implements the supplementary payments system and advises on how claimants can access those payments and on the implications of that access.

**Mark Griffin:** Is that the right way for the Scottish Government to go as well? For example, would it be advisable for the Scottish Government to pursue administering on its own the powers to top-up or to create a new benefit, rather than contract or tender to the DWP to implement those?

**Professor McKeever:** My instinct is to say yes, because part of what we identified in the report on dignity in social security is that it is not just about what is put in a piece of legislation; it is about cultural changes and shifts in attitudes.

My colleague Dr Mark Simpson has done work on the cultural differences in social security administration between areas. The ability in

Northern Ireland to sanction less, for example, seems to be partly related to a Northern Ireland-specific cultural attitude of not wishing to rock the boat and so not necessarily sanctioning because doing so might have other ramifications—which, I hope, would not apply in Scotland. There is also the ability to communicate more readily and effectively with claimants, so that we can understand what their behaviour is and help them avoid sanctions or breaching other conditions, or falling foul of application processes.

If you are going to devolve the legislation, it makes sense to keep the devolved Administration involved in that process. I think that that has been more effective in Northern Ireland than handing the administration back to the DWP. That view is informed by attitudes rather than a constitutional position on who should administer the benefits.

**Mark Griffin:** How simple has it been for the Governments to agree on the flexibilities in universal credit and administer them? In Scotland, we have had some legislation on payments directly to landlords, but there seems to be difficulty related to the technicalities of split payments. I think that the Government and Parliament would be minded to go ahead with that, but there is some debate about the technicalities of being able to implement it. What has the situation been in Northern Ireland?

**Professor McKeever:** The situation in Northern Ireland is that we have not yet introduced universal credit. You have got me a week too soon—we introduce it on 27 September—so we have not seen how those technical details will play out. However, social security is bedevilled by technical difficulties so, if you were to be concerned by technical difficulties in social security, you would not do anything. I do not mean to make light of the situation; you are right that there are lots of difficulties. I know that the Work and Pensions Committee took evidence yesterday on the difficulties with universal credit payments reaching landlords. I do not underestimate how much work will be involved in overcoming the difficulties, but I think that it is a worthwhile endeavour, because it will make a difference to the experience of universal credit for many claimants, so something has to be done.

We do not yet have the experience of how it is going to work out in Northern Ireland. We are already having some difficulties with recognising identity certificates. Under the Northern Ireland Act 1998, Northern Irish citizens can have an Irish passport, a British passport or both. However, if someone submits an Irish passport to the DWP, it does not work so well, because the DWP does not pay benefits to Irish citizens—except that it does in Northern Ireland. We already see some glitches happening and they just have to be worked

through. I do not know what the solutions to those difficult questions about split payments will be because, although the legislation is there, we have not tested it. In a year's time, I might be able to come back with some solutions.

**The Convener:** Thank you for taking the time to speak to us, Professor McKeever. I was going to ask about the Social Security Advisory Committee, but you have already given us a full explanation in answer to other questions. Your evidence has been excellent.

### **Minority Ethnic Carers of People Project (Report)**

10:30

**The Convener:** The next item is a report back from the Minority Ethnic Carers of People Project.

**Ben Macpherson:** On 29 August I attended a workshop with users of MECOPP, which is based in my constituency. With its ethos of working in partnership with carers and the voluntary and statutory sectors, MECOPP actively seeks to dismantle barriers that deny black and minority ethnic carers access to health, social work and other social care services in Edinburgh and the Lothians.

As the committee paper details, we discussed several aspects of the Social Security (Scotland) Bill. I should note that all the discussions took place in Cantonese and were translated.

We discussed the principles of the bill, for which there was general support among attendees. However, it was agreed that in the current system it can be extremely difficult for people who do not speak English to access information on benefits or to speak to officials over the phone. There are also challenges around making use of information technology facilities, and people are often reliant on support workers to help them because of language barriers. Therefore, it was suggested that there should be an additional principle regarding equity of access—equal access to information and advice to apply for benefits.

It was also suggested that there should be specific help and support made available for non-English-speaking communities. That was about equal access to information, in respect of sections 1(e) to 1(f) of the bill.

We went on to discuss the charter. There was strong agreement that the charter is a good idea. There was support for the reports that are detailed in the charter and agreement that the annual reports should be honest, sufficiently detailed and publicly available.

As principles can be difficult to pin down, it was suggested that it would be helpful to have a

concrete set of standards underpinning each one. There was also discussion about the importance of engagement in the creation of the charter, and of on-going scrutiny of it. A suggestion was made that an expert panel, perhaps like the Scottish Government's experience panels, could be set up to assess whether the principles of the charter are working in practice. Panels could be set up for different communities because otherwise it might be difficult for people to access them if English is not their first language.

The next item for discussion was the rules. There was general support for the rules, but the point was raised again that effort will need to be made to ensure that people from non-English-speaking communities are aware of them. The attendees suggested that support organisations, such as MECOPP, could be used to do that.

There was a discussion on benefits that are being devolved and included in the bill. In particular, there was a discussion on funeral payments, on which it was suggested that a quicker and more efficient decision-making process is needed in the new system to make things easier for people during a difficult time.

On cold weather payments, there was a suggestion that the temperature at which the cold weather payment is triggered should be reconsidered, because elderly people are more susceptible to the cold and therefore have higher heating costs. It was also suggested that it could be offered to people with chronic illnesses or mobility issues.

Most workshop attendees agreed that short-term assistance is a good idea and that it should not have to be paid back once a decision regarding a claimant's benefits has been made. In general, it was considered that the overall decision-making process should be quick and efficient so that there is less need for such assistance.

Last, because the participants were carers, there was very strong support and agreement among them about the proposed increase in carers allowance. It was suggested that financial help should be available for the period immediately after someone's caring responsibility ends in order to provide a cushion.

Although this does not necessarily relate to the bill, I mention it in order to give an accurate summary of the discussion. Issues were also raised about carers allowance and the state pension, which is a reserved matter. People talked about the differences between carers allowance and the state pension and the relationship between them once the claimant reaches state pension age. I do not think that that matter has been raised elsewhere.



I hope that that provides some insight into the important and interesting discussion that took place.

**The Convener:** Thanks very much, Ben. That was an excellent piece of work, particularly in highlighting how one benefit, such as the state pension, can impinge on another. The issue has been raised in various older people's groups.

### Coalition of Carers (Report)

**The Convener:** Agenda item 4 is a report back from Alison Johnstone on the workshop that she attended.

**Alison Johnstone:** As a rapporteur for the committee, I attended a Coalition of Carers in Scotland event on 30 August, and I will report back on some of the issues that were raised on the day. Chris Boyland, the Government's lead official on the Social Security (Scotland) Bill, presented an overview of the bill, and the many attendees raised various issues. I will quickly update the committee on what they were.

There was discussion of the balance between primary and secondary legislation, in which the fear was expressed that regressive changes could be made too easily, as under the current UK legislation. There was recognition of the fact that we need a robust scrutiny procedure, including perhaps a Scottish version of the Social Security Advisory Committee. Concern was also expressed about principle 7—the principle that the system should provide value for money—and how the definition of value for money could open the door to cuts and prioritisation of efficiency over rights.

The attendees felt that the social security system should actively work to reduce poverty and that that should be a key factor in any system. They felt that there is a lack of clarity about rights in the charter and that the sections on the charter do not clearly explain what people can expect or set out their ability to seek redress if their rights are not respected. They would like to see an explicit commitment in the bill that the private sector should not have a role in the system.

Concerns were raised about mandatory reconsideration. People are worried that it could discourage appeals to tribunals, as is the case with the UK procedure. They also said that people should not have to repay overpaid benefits and that there should be some clarity around that.

As Ben Macpherson said of his meeting, attendees were pleased that there is to be an increase in carers allowance, but there was a view expressed that the increase to jobseekers allowance does not reflect the value of the care that carers provide because it provides, in effect, only £2 an hour for a 35-hour week. They also

raised the issue that carers allowance does not currently allow people to claim more support if they care for more than one person. Also, the 35-hour care rule means that many carers cannot get their benefits—they could be caring for 34 hours—and there was discussion around whether different amounts should be considered for different caring responsibilities. The attendees wanted the carers allowance schedules to address those issues.

It was a very interesting day and I was pleased to attend.

**The Convener:** Thank you very much for that excellent report. On the carers allowance, the working limit and issues that carers face when they get to a certain age were raised in some of the round-table discussions that I was involved in. It is an area that the committee will have to look at.

I suspend the meeting for a couple of minutes while the Auditor General takes her seat.

10:39

*Meeting suspended.*

10:44

*On resuming—*

## **Social Security (Scotland) Bill: Stage 1**

**The Convener:** In item 5 we will hear from the Auditor General for Scotland. Thank you very much for coming. I know that you have been very busy today and have come straight from another committee. I invite you to make opening remarks.

**Caroline Gardner (Auditor General for Scotland):** Thank you for inviting us, convener. It is always a pleasure to be here with the committee. I will make sure that my opening remarks are brief, because I know that your time is short.

In May, we published a briefing paper that pulls together the lessons that have been learned from a range of work that we have done on previous IT projects with lessons from around the world, which we hope will be useful to the committee in your consideration of the issue. In that paper, we identified a number of common themes in the difficulties that have been experienced in digital programmes, which we grouped into a set of five principles covering planning, governance, users, leadership and strategic oversight and assurance. It is important for us to be clear that those principles cannot be considered in isolation, because they interact with each other. Alongside them, throughout the briefing, we pulled out the importance of skills and experience as a cross-cutting theme that is critical to success.

In March, we published the latest in our series of audits on how the Government is implementing its new financial powers, of which social security is an important element. Among the key messages in that report was that, in many ways, moving into having social security powers is a step up in terms of the complexity and scale of what the Government is trying to do, and that there are some real challenges still to be tackled.

Since we published the report, things have moved on: we will publish a further report in the spring of 2018, which will look at the progress that has been made, since our report this year, in how the Government is planning and organising in order to deliver its social security responsibilities—in particular, the governance and leadership arrangements and the plans for developing the IT systems. We will also look at costs and at progress to date.

Mark Taylor and Morag Campsie, who are with me today, have been heavily involved in both those pieces of work. We will do our best to answer your questions.

**The Convener:** Thank you. The committee has the excellent reports that you have produced, and we look forward to your report on how we will go forward.

What lessons do you think should be taken into account in designing the social security IT system?

**Caroline Gardner:** In our digital briefing, we pull out the importance of getting some of the planning in very early, whether that is planning for the scale of what the system needs to do, planning to have the right skills and experience in place or planning for the right governance arrangements. Often, when we look at a system that has not gone as planned, we see that the roots of the problems are in the very early stages—for example, Police Scotland's i6 system and in the NHS 24 system. We are therefore keen to see planning being started early.

Morag Campsie led on the digital briefing work for us, so she might want to add to that.

**Morag Campsie (Audit Scotland):** As the Auditor General said, planning is key, as is getting the right people in from the start. Having integrated teams involving policy, service design and digital experts right at the start is important. In the past, especially in complex policy areas involving an IT problem, the policy has often been designed only for us to find out that it is not easy to design a system to deliver the intended outcomes. Given that many of the benefits that are to be devolved will be managed online and that there may be others in the future, the need to develop a system that is future-proofed and that can easily be changed as we go along is also key. Governance arrangements are always critical, and ensuring that the right level of skills and understanding exists at all levels of governance is critical.

**The Convener:** Thank you for that. The committee has met both sides—Westminster and the Scottish Parliament—together, and they seem to be getting along well and doing quite a good job.

Other members want to ask questions. Ben Macpherson will begin.

**Ben Macpherson:** It is interesting that the briefing paper starts on the need for clear, thorough and effective planning. That is an issue that has been raised today, along with design.

One of my responsibilities is as a member of the Justice Sub-Committee on Policing, which looked at the March 2017 paper that you produced on i6. One of the important lessons from that was about the difference between the waterfall and agile methods for developing IT systems. To clarify for

the rest of the committee, paragraph 15 of the report states that in the waterfall method

“software is developed in distinct phases, each leading to the next phase in a sequence resembling a waterfall.”

That creates the potential for a phase stalling if the previous phase is not delivered, whereas the agile development system is, in the wording of your report,

“a more flexible, incremental approach where the team work on small-scale launches of a functioning product.”

I know that the issue is quite technical but, for the benefit of getting it right for social security, it is worth raising. To me, that was the stand-out point in the “i6: a review” report. Do you agree?

**Caroline Gardner:** Yes—I agree absolutely. I hope that one of the themes that comes through in the digital briefing is the sense that, although it can be tempting to think about a big-bang approach that aims to tackle a big problem all at once, our experience, and that of projects elsewhere, suggests that it is increasingly important to break projects down into manageable chunks and to think about how to build from a good start towards the things that will matter in the future. That is particularly true in the case of social security, as Morag Campsie said, because we know that existing benefits that are within the bill’s scope will come on over time and there is always, in the context in which we all work, the possibility of further changes to the devolution settlement. That is increasingly possible with project management approaches such as the agile approach and with how technology is changing. Much more development is being done through rapid prototyping, and apps have been developed that do particular things, but also interact with each other.

It is also important that, if the agile approach is taken, it is built in at the beginning with the options appraisal, the procurement options, and the skills and experience that are available. Morag Campsie will want to expand on that. We have seen examples of people starting to use the agile approach without fully understanding what the implications are, and having to back up and start again.

**Morag Campsie:** The Auditor General is right: the agile approach is being used a lot more in the public sector. It is likely that the agile approach will be used, but there might be parts of the programme that will use more traditional methods. Things can be tweaked to see which is the best fit for what you are trying to deliver. It will be key to ensure that everything is in place at the procurement stage for alignment with whatever method is to be used.

Returning to governance arrangements, when the agile approach has been used in the past,

governance boards have often not fully understood it. It will be key to clearly set out where decisions will be made and at what speed they will need to be made, because that is always a critical feature of using the agile approach. Clarity about that and who will be responsible for making decisions will be a factor.

**Ben Macpherson:** As it was with i6, is it almost essential to use an agile approach? It might be necessary to an even greater extent because of the complexity of DWP data and the systems that will be inherited or built upon to deliver the new benefits in a new IT structure.

**Morag Campsie:** The Scottish Government is probably still thinking through which method to use for which piece of the programme. I cannot say that one method would be better than other. However, it is key that that is all thought through and planned, and that the right processes and arrangements are put in place to manage the programme and to scrutinise activity to ensure that everything is being delivered.

**Adam Tomkins:** You might know that yesterday the Finance and Constitution Committee, on which I sit, took evidence from the bill team and other officials from the Scottish Government about the bill’s financial memorandum. The Finance and Constitution Committee will report to this committee in due course, but it is fair to say that a number of concerns about some of the numbers used in the financial memorandum were expressed, not all of which were resolved. Relevant to today’s meeting were the concerns about the figure of £190 million that is used in the financial memorandum in connection with the information technology costs. How should we treat that figure?

**Caroline Gardner:** There are two things to say about that, and I will ask Mark Taylor to come in shortly.

First, I know that one of the areas under discussion yesterday was the relationship between the figures in the fiscal framework for funding new devolved powers, including social security, and the figure in the financial memorandum. In our March 2017 update on the new financial powers, we reported about the way in which the figures in the fiscal framework had been reached.

From the available documentation, it is clear that they were not intended as an estimate of the cost; they were a contribution that the UK Government is making to the Scottish Government’s costs. It is important to get that on the record first.

The second point is about the quality of the estimate in the financial memorandum. It is entirely appropriate that the committees of the Parliament subject those estimates to proper

scrutiny. We have seen examples in the past where those figures have not stood the test of time as the policy is developed and the new services or agencies are put in place.

As part of our continuing work, we will be auditing the basis on which those estimates have been developed and how they stand up against experience as the work rolls out. I will ask Mark Taylor to come in here as the person who has led that work on new financial powers so far.

**Mark Taylor (Audit Scotland):** When we reported back in March, one thing that we were clear about was the need for the Government to develop its thinking to the extent that it was able to assess the cost that it was expected to require. It needs to recognise the link between decision making—some decisions are still to be made and some approaches are still to be determined—and how those decisions affect the overall cost figures.

We are clear that there is a need to establish a benchmark for the costs and the Government needs to manage against that benchmark on an on-going basis. We also recognise that things happen as decisions are made, so it needs to refine that benchmark and keep it under review.

As we look to our new piece of work, we will pick up on how that plays out in practice. It is apparent that the Government has moved things on since we last spoke and some of that work has been reflected in the estimates that have gone into the financial memorandum. As the Auditor General says, there is still a lot more work to be done around the costs that all this will incur, the management against those costs and the value that is delivered out of that spending.

**Adam Tomkins:** My question was about how we are to understand that £190 million figure. Correct me if I am wrong, but your answer is that we should understand it as a benchmark. How has that benchmark been arrived at? Why is it £190 million and not £150 million or £390 million or anything in between?

We do not yet know very much about the agency, where it will be or how many offices it will have. We have been given estimates of its annual running costs and its eventual staff size. We do not know anything very much about the extent to which the new devolved benefits will be automated. Pauline McNeill has a question to ask in the chamber later on today about that. We might know a bit more about these things on Tuesday when the Minister for Social Security gives her next statement to Parliament. It might touch on some of these issues; I do not know because I have not seen it. Given all the things that we know that we do not know, how reliable is that £190 million?

**Caroline Gardner:** That is a good question, and it is one that you genuinely need to direct to colleagues in Government. I am looking at our report from March on developing new financial powers, and one of our key recommendations is that the Government needs to model more detailed costs and develop its plans and timescales for the implementation of the social security powers.

When we carried out that audit work, there was not enough for us to be able to comment on the robustness of the work assumptions that were in place. That was six months ago. The figure in the financial memorandum will have a basis in the work that has been done by the Scottish Government, and it is entirely appropriate for Parliament to test that with the Government through its committees. Our work will do that when we report back next spring; we are not yet in a position to give you that assurance.

11:00

**Adam Tomkins:** You are not in a position to give us any assurance that the figure is robust, so we will just have to discover that for ourselves by putting the right questions to the right ministers at the right time.

**Caroline Gardner:** Our audit work at the beginning of this year looked at the Scottish Government's circumstances at that time. We did not consider that the modelling of cost was detailed enough for us to be able to comment on it and we recommended that the model needed to go further

**Adam Tomkins:** I do not mean to be pejorative in asking this, but how can we know that the figure is anything more than just a guess?

**Caroline Gardner:** At this stage, this committee and the Finance and Constitution Committee can ask the Government about the basis on which the £190 million figure is put together, with the assurance that we will be looking at it as part of our audit work and reporting back in May 2018.

**Pauline McNeill:** I have been ploughing through all the lessons to be learned on information and communications technology management—and there are many. It seems to me that this is not about being ICT literate, because a common thread throughout is about the need to apply basic management principles. There needs to be one team, the people on it need to talk to one another, there needs to be project governance, the end users need to be involved and so on.

From the evidence that we have heard from Jeane Freeman, the Minister for Social Security, a lot of the issues that have been raised have been planned for. For example, we have 2,000 end

users on panels, and we can input their views into the system.

In some cases, the use of short-term contracts has led to problems with ICT management systems. Is it your view that the Government should learn lessons from those cases on whom they should employ? I do not know if you are able to comment on whether we have the expertise to carry out the work. The size of the project is probably bigger than anything I have read about so far.

**Caroline Gardner:** You are right about the scale and complexity of the work. As Morag Campsie has said in our work on digital programmes, a continuing theme has been about the importance of the right skills and experience and, very often, either the lack of them or their poor use.

The Scottish Government's digital directorate has been working hard to fill the short-term gaps and to develop longer-term capacity in the Government and across the public services. Recently, the chief information officer wrote to the Public Audit and Post-legislative Scrutiny Committee to update it on that issue. I understand that you have a copy of that letter—it is certainly in the public domain. We can talk about that a bit more, if that would be helpful.

It is entirely appropriate for big programmes to make use of contractor staff. Such projects have a big hump of workload that needs to be accommodated, and having staff in post to do that all the time would not be a good use of constrained public money. However, we often see that those teams are not well integrated with the programme and policy staff. As Morag Campsie has said, such integration is critical. We also see a lack of good plans for transferring their knowledge and experience—in general, but particularly in relation to the system that they are developing—to the staff who will take on long-term responsibility for the system. Therefore, the skills and experience that will be needed must be planned for from the beginning, rather than trying to bring those on board in a rush because of tight timescales. There also needs to be planning for how to transfer contractor staff experience to the permanent staff. Those two elements make that a good way of working rather than an additional risk in an already big and complex project.

**Pauline McNeill:** I appreciate that you may not be able to answer my follow-up question—it is a bit of a hot potato. I am not trying to draw you into the discussion around where the new agency is to be located, but, as you have said, planning is taking place at the early stages—which is now—and will be followed by the establishment of the agency itself. Presumably, planning and managing will go into identifying the start date. Does where

the agency is located matter, in the sense of where it might need to draw its skills from?

**Caroline Gardner:** That, in some ways, is a policy decision, so I am precluded from commenting on the matter—for good reasons. However, you are right that I would expect that when the Government is making decisions it will be thinking about where it will have access to the skills that it needs, as well as considering the interactions with other parts of the public sector. Mark Taylor may want to comment on that, given his thinking on the broader social security programme.

**Mark Taylor:** The short answer is that a range of factors come into making that decision. A policy decision that the Government will make is how to balance those factors. Access to skills and to a workforce is among the factors that I am sure that the Government will consider when making its overall decision.

**George Adam (Paisley) (SNP):** Auditor General, you have highlighted the complexity of the whole scenario, which the committee has also highlighted. As I have said on numerous occasions, there is no big red button that we can press. People just want to know when their benefit money will be in their account and they want a seamless transition from one system to the other.

I have looked at your briefing paper from May and the handy wee infographic on page 5, which shows the five principles for success. I have worked in the real world, in an industry that loved infographics but which did not necessarily read or abide by them. Given your dealings and expertise in this area, do you know whether the Scottish Government has worked towards those five principles so that there are no issues on the day?

**Caroline Gardner:** I would say that it is work in progress. As I think that the committee knows, we produced the briefing paper because we have reported on a number of different IT programmes, of varying degrees of importance, that have not succeeded. We thought that, to help people learn from our reports, it would be useful to pull that information together. The Scottish Government is taking the issue very seriously and has recently given evidence to the Public Audit and Post-legislative Scrutiny Committee on its progress in making the underlying changes that are needed to be able to do this work better.

Equally, we all recognise that there is no quick fix. We continue to look at the way in which the specific programmes that we audit are being delivered and we very much welcome this committee's early interest in how that is going. However, I am very conscious that, as Ms McNeill said, often the things that go wrong are the commonsense things that you would expect to be

there all the time. Human beings and organisations are not perfect and things do not work as planned. It is often the softer things around culture and leadership that make the biggest difference. The reason for the reports that we have produced so far is to acknowledge, first, both that progress is happening and the complexity and scale of the issue, and secondly, as you said, the potential of this to have a real impact on people's lives and, in many cases, the lives of those who are the most vulnerable in Scotland.

**George Adam:** You said that, in previous programmes, everything happened early on, at the planning stage. From what we have seen, the Government seems to be open to getting it right at this stage. Has there been sufficient interaction with the in-house and external organisations that you mentioned to ensure that we have addressed the situation?

**Caroline Gardner:** In the March report on the new financial powers, we talk about the good start that has been made. All that I can do, however, is refer again to the unprecedented scale and complexity of the issue. Even starting as early as the Government can start, the timescales are still short, which is unavoidable given the timescales that have been agreed for the transfer of powers. However, there is no doubt that this is a very significant challenge for the Government.

**George Adam:** The complexity lies in the fact that, as the committee has heard previously, there are three or four different computer systems that do not talk to one another. In addition, some of the information is in a manual system in some undisclosed place down south. Trying to get all that together adds to the complexity. Do you believe that the Scottish Government has stuck with the five principles, while working towards ensuring that we do not have difficulties at a later date because of information and data being a major issue?

**Caroline Gardner:** With the caveat that I gave in my answer to Mr Tomkins, we said in the March report that we thought that the Government had made a good start, but the examples that you are talking about highlight how complex the issue is. Until we have done the next round of audit work, I do not feel that I can give very much more assurance around what we are seeing.

**Mark Taylor:** What we saw in March and what we have seen since then is a commitment from the programme to learn lessons from other systems. We talk about that a little in the March report and I know that information has been shared with the committee since then about the number of organisations that the Government has spoken to in order to understand and learn those lessons. We are optimistic but yet to be convinced.

**Alison Johnstone:** The theme of the need to ensure that we have the correct skills, experience and expertise comes up time and time again. How much do you think that we, as a committee, need to scrutinise that? We are discussing principles and relationships with the UK Government and so on, but if the system is not delivered properly, it will have devastating consequences for millions of people.

Could you elaborate on where you believe we are at the moment? The Scottish Government will be making more payments in a week than it currently makes in a year. How do we make that leap and ensure that it is successful?

**Caroline Gardner:** There is no simple single answer to that. It might be helpful if I talk you through what we will be looking at in our audit work, because I suspect that there will be strong parallels between that and what the committee will be interested in.

We will look closely at the plans that the Government puts in place on the overall programme and the individual workstreams, and we will test them to make sure that we think that they are realistic, that the interdependencies are taken account of and that they are doable, given that the capacity of the civil service is smaller now than it was 10 years ago and that there are a number of other pressures on people's time, for good and well-known reasons.

We will look at the way in which the Government models the costs of what it intends to do. We will consider not just the costs of the programme but where it sits in the overall financial envelope as we move into a new world in which the Scottish Government will be raising about half of what it spends, which brings with it a lot of volatility and uncertainty.

We will also look critically at the people aspects—the leadership of the programme and the extent to which people are making choices about priorities, working those through their plans and making sure that the right people with the right skills are in place and are being supported to do what is needed on a long-term basis. In relation to the common agricultural policy futures programme, which has been another big area of interest for us, we are very conscious of the long-term strain on people as they have tried to recover from the situation that became apparent a few years ago. A huge commitment is being shown that is admirable and which should be recognised, but people cannot be expected to work in that way indefinitely.

We know that people will be working very hard in the social security programme to meet the 2021 timescale for full transfer. As well as thinking about having the right skills in place, a workforce needs

to be developed that can do the work in the longer term. Expertise and experience need to be built up, and the risk should not be run of burning people out to meet very short timescales. We do not see any evidence that that is happening now, but it is one of the things that we will be looking for. We want to ensure that there is a sense of sustainability as we look ahead.

**Jeremy Balfour:** I suppose that I have been around too long, because in local government and the national health service, we have lots of reports of lessons learned, yet we always seem to fall back into making the same mistakes. That is true of all parts of national and local organisations.

To carry on from Alison Johnstone's point, what is the best way for the committee to scrutinise the social security IT programme to make sure that we do not make the same mistakes that have been made in previous projects? Is there an endemic problem in local and national Government that leads to those mistakes being repeated, or does the same problem exist in the private sector?

**Caroline Gardner:** I will start with your last question, because it is the easiest one to answer. There is no doubt that the same problem exists in the private sector as exists in the public sector. There have been highly visible failings in banking over the past few years. We will all have read the articles that suggest that most banks still have a deficit to make up in the robustness and resilience of their IT systems, which we all depend on daily. The issue does not affect only the public sector by any means. The skills that are needed are in scarce supply right across the economy.

As far as what the committee might be looking for is concerned, I am not sure that there is much that we can add to the answer that we gave to Ms Johnstone, other than to say that a good starting point would be to develop, with the Government, some clear shared expectations with regard to what the committee is interested in and the frequency with which the Government should share that information with you. The fact that we will be reporting regularly on the programme will act as back-up. We will do so a couple of times a year: first, in the spring update on the new financial powers more generally, of which we know that social security will form an increasingly big part; and, secondly, in the annual report that I do on the Scottish Government's accounts, which pulls out significant aspects of the audit each year. That tends to come out in the autumn—the next one is due towards the end of this month or in early October. The committee will get assurance from us twice a year about the problems that we see.

It is a case of agreeing with the Government what you expect to receive and how it will provide you with that on a regular basis. You do not want

to receive information on the programme on such a frequent basis that you are constantly pulling it up by the roots to have a look, but you need to do so regularly enough to enable you to pick up signs that things are going off track before it is too late to do anything about them. That would be a good starting point for the committee's scrutiny.

**Jeremy Balfour:** Thank you.

**The Convener:** Thank you for answering our questions so succinctly, Auditor General, as you always do. I thank Morag Campsie and Mark Taylor for their answers, too.

11:15

*Meeting continued in private until 11:37.*





This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

---

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

---

All documents are available on  
the Scottish Parliament website at:

[www.parliament.scot](http://www.parliament.scot)

Information on non-endorsed print suppliers  
is available here:

[www.parliament.scot/documents](http://www.parliament.scot/documents)

For information on the Scottish Parliament contact  
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: [sp.info@parliament.scot](mailto:sp.info@parliament.scot)

---



The Scottish Parliament  
Pàrlamaid na h-Alba