



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Social Security Committee

**Thursday 2 March 2017**

**Session 5**



The Scottish Parliament  
Pàrlamaid na h-Alba



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**SOCIAL SECURITY COMMITTEE**  
**4<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)

\*Mark Griffin (Central Scotland) (Lab)

\*Alison Johnstone (Lothian) (Green)

\*Gordon Lindhurst (Lothian) (Con)

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

\*Ruth Maguire (Cunninghame South) (SNP)

\*Adam Tomkins (Glasgow) (Con)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Chris Boyland (Scottish Government)

Jeane Freeman (The Minister for Social Security)

**CLERK TO THE COMMITTEE**

Simon Watkins

**LOCATION**

The David Livingstone Room (CR6)



# Scottish Parliament

## Social Security Committee

Thursday 2 March 2017

*[The Convener opened the meeting at 10:00]*

### Social Security Legislation

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

The main agenda item today is an update from Jeane Freeman, Minister for Social Security, on forthcoming legislation on social security. Welcome, minister, and thank you for coming along to update us. The accompanying Scottish Government officials are David Signorini, head of communities analytical services, and Chris Boyland, legislation and delivery team leader. I believe that you want to make an opening statement, minister.

**The Minister for Social Security (Jeane Freeman):** Thank you, convener. I am grateful for the opportunity to come back to the committee and provide this update. I would like to start with the issues that were raised around the statement that I made to the chamber last week, when I highlighted areas of disagreement in our negotiations with the United Kingdom Government.

The first of those concerns housing benefits for 18 to 21-year-olds. Since June 2016, at both official and ministerial level, we have been pursuing a means by which both Governments could meet their specific objectives. As members will recall, the UK Government's objective is to remove eligibility to housing benefit for 18 to 21-year-olds, and ours is to retain that eligibility. Our solution is to use section 11(4) of the Welfare Reform Act 2012, which allows the Department for Work and Pensions to vary the calculation of the housing element of universal credit, rather than section 11(5), which allows the DWP to change eligibility and is the section that it intends to use and on which it has produced draft regulations. The reason for our position is that, under the Scotland Act 2016, the Scottish Ministers have no power to restore eligibility, but we do have powers under section 11(4) of the 2012 act. I am afraid that not only would the UK Government not consider our approach, but it has also refused so far to commit to our alternative solution, which is to add 18 to 21-year-olds living in Scotland to what is

already a long list of exceptions that it has made to its own policy.

The second area of disagreement concerns the UK Government's intention to apply its benefit cap to individuals who are considered to have income above the benefit cap level as a result of our abolition of the bedroom tax at source—members will recall that that abolition is a clear manifesto commitment for the Scottish Government. Our position is very clear and is well founded on the Smith commission, the fiscal framework and the enduring settlement, which all state explicitly, as at paragraph 89 of the fiscal framework,

“that any new benefits or discretionary payments introduced by the Scottish Government must provide additional income for a recipient and not result in an automatic offsetting reduction by the UK government in their entitlement elsewhere in the UK benefits system.”

Angela Constance and I have both raised those issues on a number of occasions, in addition to the work of our officials. We have raised them at ministerial level with Caroline Nokes, Damian Hinds and David Mundell, in the hope that agreement could be reached. We finally raised them at last week's joint ministerial working group—the appropriate place and process—where we specifically challenged both David Mundell and Damian Hinds to explain to us why the DWP could not simply flag people in Scotland for whom the bedroom tax was abolished and disapply the UK Government's benefit cap from their universal credit award. The answer remains no, although, as I said in the chamber last week, we still do not have a clear explanation as to why not.

The solution that is being offered to us is for the Scottish Government to provide any capped individuals with a discretionary housing payment equal to the amount of universal credit that they have lost.

I am very clear that we cannot agree to that. It would involve additional DHP expenditure by the Scottish Government and would, in effect, result in our paying twice to abolish the bedroom tax because we would, of course, also need to pay the DWP for the bedroom tax income that it had not received as a consequence of our abolishing the bedroom tax.

A cumbersome approach has been suggested. It relies on the individual self-identifying at a local authority office after the cap has been applied, and it does not support the person-centred social security system that we intend to see. What we have proposed instead is simple and straightforward, and would be a better use of public funds.

We will continue to pursue a satisfactory outcome as a matter of urgency and to press UK ministers to honour our shared stated intent to

work together to ensure the smooth transfer of powers and to recognise that that involves engaging in genuine discussion and not simply listening to a case and saying no, as was intended before the case was presented in the first place.

Those issues matter a great deal, but I am pleased to say that we are making progress in other areas. We have reached the important milestone of an agreed timetable for the commencement of the remaining welfare sections of the Scotland Act 2016. The Secretary of State for Work and Pensions has written to Ms Constance to confirm that the UK Government's regulations are being finalised to be laid at Westminster. I fully expect those regulations to be published in time for us to meet our commitment to introduce our bill to the Parliament before the end of June. I will ensure that the committee sees a copy of that letter and the response from the Cabinet Secretary for Communities, Social Security and Equalities.

The letter from the Secretary of State for Work and Pensions also confirms that the way in which the DWP has drafted its regulations will, as we hoped, allow for executive competence for most of the individual existing benefits to transfer to the Scottish Government as we commence our Scottish arrangements to deliver those benefits. In other words, they will transfer incrementally. That is important because it means that we will be able to take a sensible, carefully managed and staged approach to the delivery of the new benefits by switching them on at intervals over the next few years.

The next step between the DWP's regulations and switching on our own benefits is, of course, our social security bill, which will set out more of our approach to not just the individual benefits, but the legislative machinery that will operate the benefits. My officials have provided members with a note that sets out our approach in more detail, so I will address only the cardinal points.

We expect the bill to have three main parts. In the first part, we will enshrine our core social security principles, including the principle that social security is a human right and is essential to the realisation of other human rights. I covered that in my statement last week.

In the second part of the bill, we will lay down key pillars that will hold good for devolved assistance which is provided under the social security system. Our assumption is that, at a high level, the legislative machinery will be more or less the same across the 11 benefits. The rules for determining an individual's entitlement and calculating any payment will vary, but we expect the basic points of application, consideration and decision, for example, to be similar across the board.

In the third part of the bill, there will be sections that are specific to each of the areas of responsibility—disability benefits, industrial injuries, funeral payments and so on—that are being devolved. A schedule will also be attached to each area that will set out how the powers that are conferred by each section will be exercised.

Finally, we will publish illustrative drafts of regulations during stage 1 of the parliamentary scrutiny of the bill and look to involve people and representative groups in their further development to ensure that our regulations are fit for purpose and will operate in the best interests of those who will rely on our system for help and support, and so that people can see in detail how we plan to use our powers.

During my statement last week, in relation to the evidence that has been provided through the consultation, I said:

"What has emerged is a rich seam of evidence—a solid foundation on which we can continue to build as we take each step towards having this new public service"—  
[*Official Report*, 22 February 2017; c 17.]

I will set out some of the ways in which we will do that.

Last week, I talked about the experience panels that we will set up to design and develop better models for delivery. Recruitment for those panels will be through two routes. The first route—open recruitment—will be at our own hand, and I am pleased to tell the committee that, in partnership with our key partners, the Scottish Government will launch that exercise tomorrow. The second route, which will be launched on 14 March in partnership with the Department for Work and Pensions, will use randomly selected mailshots to send our recruitment packs to individuals in Scotland who are on one, or more than one, of the 11 benefits. The recruitment exercise will run for 10 weeks in total and we will ask MSPs and others to publicise it and to encourage involvement.

Last week, I also announced that Jim McCormick has agreed to chair our expert advisory group on disability and carers' benefits. Since then, we have made some progress with regard to the membership of that group, and I advise members that Tressa Burke, chief executive of Glasgow Disability Alliance, Chris Creegan, chief executive of the Scottish Commission for Learning Disability, Lucinda Godfrey, chief executive officer of Dundee Carers Centre, and Professor Carol Tannahill, who is chief social policy adviser to the Scottish Government, have all agreed to serve on that committee. Other members are now being approached and, as soon as we have their confirmation, I will make sure that the Social Security Committee is made aware.

Members and others have shared our concern about increasing awareness of benefit entitlement and encouraging individuals to seek the financial support to which they are entitled. We have been working to understand the best way to do that and have devised an approach that targets individuals where they are and that works in phases. In the next 10 days, we will launch the first phase, which will promote a level of general awareness of benefit support and entitlement. It will be a trigger to get people around Scotland to ask questions and to seek advice about what they might be entitled to from the full range of UK benefits. Thereafter, we will run targeted campaigns, starting with the benefits for which current take-up levels are known to be low.

In addition, before this summer, we will make our decision on the shape of the social security agency. We will advise Parliament about that and about the first suite of benefits that we will deliver by 2019. We will continue our active discussions with health and social care professionals to ensure that we can simplify and speed up decision making for those who are entitled to disability benefits. We must ensure that we use quality evidence for making first decisions in order to significantly reduce the number of assessments that are required and to reduce the delay and anxiety that is experienced by too many people in the current system.

I hope that the update has been interesting and useful to members, and I am more than happy to take questions.

**The Convener:** Thank you very much for your statement, minister. The very concerning issues that you raised at the beginning of your statement were about housing benefit for 18 to 25-year-olds and the bedroom tax. What effect will they have on the social security bill? Will they delay it, or will we still have to liaise?

**Jeane Freeman:** The issues are about housing benefit for 18 to 21-year-olds and the imposition of the benefit cap on those individuals whose income level is taken above the benefit cap level as a consequence of our abolition of the bedroom tax. Those are the two main issues, neither of which will delay the introduction of the bill.

My point was that, although those areas of disagreement with the UK Government are serious, frustrating and important, there was a major piece of good news, if you like, from the joint ministerial working group. That was confirmation that the preparation of the order that the UK Government must lay at Westminster to trigger the transfer of all the remaining benefits is on track to be completed in time to allow us to bring our bill to the Scottish Parliament by June 2017. We are still on track to do that. The current issues around the benefit cap and the bedroom tax, and housing

benefits for 18 to 21-year-olds will not delay that exercise.

10:15

**The Convener:** Thank you very much for the clarification.

**Adam Tomkins (Glasgow) (Con):** Good morning, minister. Thank you for coming to speak to the committee again this morning.

I would like to ask about part 1 of the bill, and the principles that you envisage legislating for in it. In particular, I would like to drill down a little deeper into exactly what is in your mind, and that of the Government, when you talk about a human rights-based approach to social security. Are the rights intended to be declaratory, in the form of political or moral principles, or to be legally enforceable?

**Jeane Freeman:** That is similar to a question that you asked me in the chamber, Mr Tomkins. The intention is that we will set out on the face of the bill that social security is a human right, and we will set out the key principles, with which members are very familiar, that will underpin the system that we intend to introduce. We will also place a statutory duty on ministers to devise a charter, in conjunction with our experience panels and others, that will enshrine those principles and that right. Ministers will then be accountable to Parliament for delivery of a social security system against that charter. That will allow Parliament, and this or its successor committee, to hold ministers directly to account.

I am sure that Mr Tomkins is more conscious than I am that courts, in making determinations as to whether rights have been met, deal with individual cases and not with whole systems. However, the Scottish ministers must fulfil their duties in terms of what the bill says, and an individual who believes that their treatment does not accord with the principles of the bill—and the charter, in particular—will have recourse to the courts.

**Adam Tomkins:** I see. That is very helpful. Thank you. Is it your intention that the charter will not be produced at the same time as the bill—that it will not appear until after the bill has been enacted?

**Jeane Freeman:** That is right, because the act will require that the charter be produced. When we recruit the experience panels, whose work we expect to begin in the summer, we need to take a view, in conjunction with Jim McCormick, about which areas we need them to work on first. With 2,000 volunteers, it is probable that we will be able to have more than one work stream running with the experience panels, although there is a lot of

work for them to do. We will work with them on what the charter might say—in parallel, however, with the bill's scrutiny in Parliament. I imagine that members will have views on what they believe should be in the charter and what it should say, and going through the various parliamentary stages is part of the proper scrutiny. I am sure that the committee will also have views, based on evidence and so on. We need to make all that dovetail smoothly together.

**Adam Tomkins:** I will ask a final question on that, if I may, convener. In the Government's very helpful analysis of the written responses to the social security consultation, there is an extract from the evidence from Engender, which says that

"unless accompanied by a mechanism via which claimants could contest a breach of rights"

—I assume that that means contest in a court of law—

"such a document"

as the charter

"could only have limited value".

You seem to be pointing in a direction that is a little bit different from the one in which Engender wanted you to be pointing. Is that right?

**Jeane Freeman:** I am not entirely clear whether what I have said would satisfy Engender or not. Of course, we will talk with all the various stakeholder groups, and I am sure that Engender will encourage people to volunteer for the experience panels. We will have discussions with Engender and others around the split-payment flexibility on universal credit, and I am sure that we will raise that point then.

I do not know whether I am pointing in a different direction from Engender. I am conscious that charters can simply be warm words, but I hope, through the route that I have described, to ensure that our charter is more than that and is one that ministers are directly accountable to the Parliament for delivering on, and which provides a route for individuals, should they believe that they have not been treated according to the charter's principles, to have their rights enforced.

**The Convener:** Ben Macpherson wants to come in on that point.

**Ben Macpherson (Edinburgh Northern and Leith) (SNP):** I have a small supplementary question, minister. I agree that there must be efforts to ensure that the charter is more than warm words and that it creates true accountability, which was what Mr Tomkins asked for analysis of. However, what role do you envisage the charter playing in shifting consciousness around social security and moving to a different system that is based on dignity and respect?

**Jeane Freeman:** The charter has a potentially big role in that. As well as ministers being accountable for the new Scottish social security agency delivering its business according to the charter, the new agency will have a big responsibility for delivering its service and day-to-day business in a way that exemplifies the principles of dignity, fairness and respect. The charter is therefore a useful tool for our new social security agency in adopting and demonstrating the culture change that we require from it in terms of how it treats not only the people who work for it, but those who come seeking the financial support and help that they are entitled to.

Potentially, the charter has a number of positive roles, but at the end of the day that will be down to how meaningful we can make what it says and how well we can then, individually and collectively in our respective roles, make active use of it. I do not intend that we will have a charter that looks nice presentationally and is on a plaque somewhere but which everybody walks past and nobody notices.

**Alison Johnstone (Lothian) (Green):** I thank you for joining us this morning, minister.

The Scottish Government analysis of submissions for the consultation referred to human rights being at the centre of the new system, which I warmly welcome, because the United Nations and others have criticised as an abuse of human rights the UK Government's cuts to UK benefits, including benefits that are being devolved—for example, disability living allowance. The Scottish Government referred to that in its response to the consultation submissions. If we agree that the cuts are an abuse of human rights and that a human rights-based approach will underpin the new system, is it reasonable, if not inevitable, to conclude that the cuts to benefits must be reversed when they are devolved?

**Jeane Freeman:** That is an understandable approach to take, but it must be balanced against the reality of what is possible from the financial resources that the Scottish Government has and the fact that not all of the benefits system is being devolved to the Scottish Parliament. There are cuts in benefits that will remain reserved, and it is not in the power of the Scottish Parliament to overturn those cuts, even should it wish to do so. I completely understand Alison Johnstone's reasoning on the matter, but that reasoning has to be set against what is possible in terms of our powers, the overall resourcing that the Scottish Government has to deploy and the various pressures and demands on that, which are all legitimate and well argued.

**Alison Johnstone:** I appreciate the minister's comments, but I hope that we will be able to



explore all possibilities with the new powers, and to use taxes as progressively as possible.

Mr Macpherson introduced the welcome language that we are hearing around dignity, respect and fairness, but we can deliver respect and dignity only through people having adequate income. You will know that the UK Government has frozen the rates of some benefits in recent years. I believe, for example, that child benefit will have lost 28 per cent of its value by 2020. Have you given thought to how rates of benefits in the Scottish system will be decided? Will it be by automatic uprating according to inflation? How will you provide protection against benefit cuts, such as we have seen previously? Would you fix protections in primary legislation, so that any future Government could not cut benefits in that way?

**Jeane Freeman:** We have already said in debate, I think in response to an amendment that was lodged by Mr Griffin, that we will uprate benefits in line with inflation, using the consumer prices index, if I recall correctly. Mr Griffin, I think that you asked a further question and we made it clear that we were talking about benefits.

The suggestion about primary legislation is interesting; I am happy to consider putting everything that we might have in primary legislation. We will take that on board, and when the bill comes back, you will be able to see whether we have concluded that that is the right place to do that. We will have a look at that.

**Alison Johnstone:** Thank you.

**Gordon Lindhurst (Lothian) (Con):** Thank you for coming in today, minister. I have a couple of points that need clarification more than anything else. You mentioned parliamentary scrutiny and the appointment of Dr Jim McCormick to the expert advisory group on disability and carers benefits. In your ministerial statement on the social security consultation, you talked about “independent scrutiny”. In particular, you said:

“we will enlist the support of objective experts to advise us on the most appropriate arrangement for the independent scrutiny of our new system’s overall performance.”—[*Official Report*, 22 February 2017, c 18-19.]

Am I correct in reading that as meaning that there will be objective experts to advise the most appropriate form of scrutiny, that whatever form that scrutiny takes will be separate from that group, and that that group of experts is different from Dr McCormick’s group?

**Jeane Freeman:** When it comes to scrutiny, one of the key bodies is, in fact, this Parliament—including this committee, the wider Parliament and any successor committee to this one. I want to make sure that Parliament and its committees are

given their proper place in scrutiny, and not just of what we do over the next four years, but of what future Governments do in delivering social security.

Another key scrutiny body will be Audit Scotland, which will have a role in how the social security agency performs and makes best use of the funds that are given to it.

I am also keen to have, going forward, an additional level of what I describe as independent scrutiny—not only of how the Government performs but of how the social security agency performs as we evolve and develop our benefits and their delivery. That is particularly the case because we are setting out to create a public service in Scotland that will have a specific culture and approach from the outset. I spoke earlier about the principles and the charter and not wanting simply to have a set of warm words.

The expert advisory group that Dr McCormick will chair has a lifespan of four years, at the moment. Its job over that period will be to provide expert advice to ministers, to work with the experience panels and others, and to look at disability benefits and carers benefit, in particular.

10:30

My starting point in considering what we might have by way of independent scrutiny over the longer term is to speak to Dr McCormick. As you know, the Social Security Advisory Committee, which operates at UK level, provides advice to the Department for Work and Pensions on regulations and so on, and there is also the Industrial Injuries Advisory Council. The UK Government took the view that, when the benefits in question were devolved to Scotland, those committees would no longer apply to the work in Scotland, so I am looking to see what we might develop that would provide independent advice and scrutiny not just to us, but more widely and therefore more publicly. In due course, I will also turn my attention to what we need to do as regards industrial injuries and severe disablement benefit, but the starting point on independent scrutiny is to begin the discussion with Jim McCormick, to take his views and to scan more widely to see how we might establish such a body.

**Gordon Lindhurst:** So, in general terms, is it correct that your body can be viewed as an equivalent of the UK body, although it will not necessarily be the same, because you are looking at matters afresh?

**Jeane Freeman:** I do not want it to be like the UK body, because the UK body confines itself largely to regulations and provides advice to the DWP, so it is a bit of a circular arrangement. I want our body to be more open than that and to

have a role that goes wider than consideration of regulations and amendments or changes that a future Government might want to make to devolved benefits. It would have a role and a voice in that, but—critically—so would Parliament and a successor committee to this one. I also want our body to look more widely at how the 11 benefits that we will deliver can be continuously improved from the point of view of their scope, their criteria and their delivery. In other words, I want the body to have a wider outlook than the current UK body.

**Gordon Lindhurst:** I have a final follow-up question. At this stage, can you say whether the Scottish Government will commit to following the advice of the advisory panel that is to be set up?

**Jeane Freeman:** No, I cannot say that at this point, because we need to devise its remit and how that might sit alongside Parliament's and the committee's roles. We will examine the relationship between such a body and a Scottish Government, bearing in mind what currently exists in the UK, although I want how we do things to be different from how things are done at UK level.

**The Convener:** Mr Adam, do you want to come in on the back of that?

**George Adam (Paisley) (SNP):** Initially, I did not, but given where Gordon Lindhurst ended up going, I do now.

For me, what is important is real-world scenarios and delivery. What we do here in Parliament affects people's lives, so I want to ask about the delivery mechanisms that you will use. What will the Scottish social security service look like and how will it work? I want to get down to the brass tacks of the scenario.

**Jeane Freeman:** Members will know that, before the Holyrood elections, the Government decided that we would have a social security agency. The consultation asked for views on what the agency might look like and what key things people hope to see in the delivery of social security in Scotland. We have gone through stage 1 of our options appraisal. There is an accepted and agreed, and Treasury-approved—I think I am right; Mr Signorini will correct me if I am wrong—approach to how such matters are worked out and how robust choices are made. We have gone through stage 1 of the options appraisal and we are nearing the end of stage 2, which will lead to production of an outline business case. All that will allow the Scottish Government, myself and Ms Constance to reach a clear decision about the shape and structure of the social security agency. We intend to make the committee and Parliament aware of that decision around Easter. I cannot be more specific, because there are still matters to bottom out and determine, but we will certainly

have made a decision on exactly what it will look like before the summer.

Mr Adam is right to point out that we need to say exactly what it will look like, where it will be, how it will deliver its services, where decisions will be made and so on. In reaching that final view we will, of course, take account of what the consultation exercise has told us.

It is clear from the consultation exercise, as well as from evidence that the committee has heard, that people want the system to have a human face. They do not want the social security agency's approach to be digital by default; they want a range of communication platforms to be available, so that people can choose the communication that best meets their needs. They want speedier and more transparent decision making, a speedier appeals process for when decisions are disagreed with, and provision of comprehensive information and advice regardless of where in the country one lives. Without pre-empting our final decision, I think that it is entirely fair to say to members that I am absolutely mindful of all of that. We are looking to reach a decision on the shape of the social security agency, what it will look like and how people will encounter it, that will encapsulate many, if not all, of the clear demands and needs that people have expressed to us.

**George Adam:** I have previously asked about the delivery mechanism, as we are aware of the complex scenario of delivering benefits when information is on different databases, whether analogue or digital, and I know that there is not a big, mythical red button. Where are we with the information technology systems that will be needed to deliver?

**The Convener:** Mr Adam, I let you in to ask a supplementary.

**George Adam:** My question is based on the same—

**The Convener:** I am sorry, Mr Adam, but there are four members still waiting to ask a question. You can come in after they have asked their questions.

**Ruth Maguire (Cunninghame South) (SNP):** The minister mentioned in her statement that she thought that the application processes for the 11 benefits would be similar, and she will be aware of the evidence that the committee has heard about the stress and upset that has been caused by some of the complexity around applying. How can decisions be simplified and speeded up? Can the need for face-to-face assessments and paperwork be reduced for people who are entitled to disability payments?

**Jeane Freeman:** I will focus on disability benefits, because that is the part of the current

system that people find most stressful, and it is also the lengthiest. The disability benefits that will be devolved are benefits that are there to assist people with the additional financial demands that are placed on them as a consequence of their ill health or disability. It seems clear to me, therefore, that the information that you require to make a decision on eligibility and level of impact is largely information that already exists in two of our other key public services—our health service and our social care service. That is what I referred to at the end of my opening remarks.

We have begun discussions with colleagues and professional bodies in health and social care to look at whether this third public service, the social security service, could, with an individual's permission, access that information in order to do a number of things, including ensuring that the information that is available at the point at which decisions are first made is of good quality and is objective and professionally-based. The speed of the decision making could therefore be increased, because the evidence is all to hand. That means that, in relation to many of the conditions that folks come forward with and that are eligible for disability benefits, we could significantly reduce the number of face-to-face assessments that are required, and we could increase the opportunity for lifetime awards or genuine long-term awards.

That is the end result that I want. However, it requires considerably more discussion. Quite legitimately, there are difficulties and issues to work through about the nature of individual records, confidentiality and data protection. Further, there is no point, of course, in recruiting 2,000 individuals to experience panels if we do not ask for their views on that particular approach.

There seems to me to be a logic in what I want to achieve. We have already begun discussions to tease out the barriers and difficulties to achieving that—I am not a health or social care professional, so I would not necessarily know what they are. Can we overcome them? How might we set up that system so that the evidence that is actually needed—as opposed to evidence that enables us to take a general look at things—is flagged and easily delivered? Does that free up our health professionals, for example, to concentrate on the job that they want to concentrate on—the health of their patients—rather than on helping them to fill in appeal forms, and so on? I believe that it might do.

That is the route that we want to go down. It is not straightforward and it is not without issues to be discussed, but I am heartened by the willingness of colleagues in the Scottish Government and, most importantly, health and social care professionals to actively apply their thinking and experience to working out how we

might be able to do that. At this stage, we are not there, but it is a good road to go down.

**Ruth Maguire:** We probably intuitively think that general practitioners and others who provide healthcare are best placed to assess whether someone has a long-term condition, but I recognise the complexities of that in relation to data protection.

I want to ask about increasing awareness of eligibility for benefits—this question will probably apply to various benefits. How does the Scottish Government intend to do that? You spoke in your statement about targeting people where they are. Can you say a bit more about that?

**Jeane Freeman:** Before I answer your question, I clarify that the decision making on an individual application for any benefit will sit with the social security agency and its staff. We will not ask healthcare professionals or others to make decisions about whether someone is entitled to a benefit. That is an absolute assurance that I have given, and will continue to give, to those individuals. They hold evidence that can help decision making. The key point is how we properly and appropriately access that evidence.

10:45

In terms of benefit entitlement and take-up, a general advertising campaign might make us feel better and might win an award, but it will not necessarily hit the mark. We have therefore decided to phase our benefit take-up campaign. As I indicated, the first part of that will be focused on raising awareness of the fact that it is possible for people to be entitled to additional support even though they might be in employment. We will do a lot of that campaign through local radio and the local press, using case studies involving real folk to whom the support applies. We want folk to begin to think, "I wonder if I might be entitled." They will be pointed to a citizens advice telephone line that we will support specifically for the purpose of giving them more information.

In the second phase, we will target people where they are. For example, there is a low take-up of the sure start maternity grant, but there is little point in having a general advertising campaign for all expectant mothers about the grant in the hope that they will hear about it on the radio or whatever. We must target the campaign in the most important places for expectant or new mothers, which is where they go to see a health professional for antenatal and immediate postnatal services. The primary focus of an expectant mother is her health, her baby's health, the arrangements for the birth and so on. Health professionals can inject information into conversations about such matters by saying, for

example, "Do you know that additional financial support is available and that you might be entitled to it? Here is what you need to do"—and off we go.

That is what I mean when I talk about working with people where they are. We must look at the places where they initiate contact on subjects that they are focused on and ensure that we can weave into that conversation information about benefits that they might be entitled to and encourage them to consider that, while pointing them towards where they can get specific advice on how to apply and so on.

**Ruth Maguire:** Can I ask a quick final question, convener?

**The Convener:** It has to be quick, because other members want to come in.

**Ruth Maguire:** You mentioned the sure start grant, minister. What other benefits have a particularly low take-up? Is the funeral payment one of them?

**Jeane Freeman:** Yes. There is no information across all benefits about low take-up, but we know that there is low take-up of the sure start maternity grant, the funeral payment and, particularly for the younger age group, the carers allowance.

**The Convener:** I think that Pauline McNeill has a supplementary question on Ruth Maguire's point about assessments.

**Pauline McNeill (Glasgow) (Lab):** It is about appeals, minister. You have outlined the exciting prospect of a new agency that will employ the principles of dignity and respect, and ensure that people get the benefits that they are entitled to and that the process is simple and timely. I want to know whether you have given any thought to the appeals process. I suppose that what you are saying is that if you get the decision right the first time, there is less need for an appeals system. However, we obviously still need an appeals system.

I put it to you that the advertising and marketing of benefits should point out that, when people apply for benefits, there is an obligation on them to provide the right information. When people see that we are changing to a new system that emphasises dignity and respect, they will come forward. However, we will need to get across to them the fact that they have a responsibility, too. We can promote the fact that the aim is to get decisions right the first time, so people have an obligation to give the social security department as much information as possible. However, there will obviously be cases in which people want to appeal and, in a human rights-based approach, there will be an appeals process. From what we have heard, we know that the one that the DWP administers is

a disaster. People are unclear about it and it takes a long time. Will you comment on that?

**Jeane Freeman:** I agree with you that, in any system, we all have responsibilities. Therefore, individuals who come forward to our social security system of course have a responsibility to provide us with accurate information. I want to minimise the amount of work that the individual has to do in providing evidence and information by allowing speedier access of one public service to another.

There will need to be an appeals system and process. The consultation also asked about that. Key points that have come through concern the appeals process being clearly explained, operating more transparently and being quicker in its undertakings. We can deliver on all of those points and will devise our appeals process accordingly.

I am sure that members are aware that part of the devolution of powers is the devolution of a number of tribunals to Scotland. Those include the social security appeal tribunals. There are obviously time issues and questions but I do not foresee any difficulty with the tribunals being transferred in time for us—I am sure that that will work its way through, as best as I understand what is happening. Therefore, we will aim to devise an appeals process that people know about from the outset, in which people are clear about what they need to do, that is quicker and that makes its decisions transparently so that people are clear about the evidence that they need to take to the appeal tribunal and the basis on which the tribunal makes its decision, whatever that decision might be.

**Ben Macpherson:** Minister, you said before that it would have been easier to have had all the welfare powers rather than the lift-and-shift process that will be required to make the changes for the 15 per cent of spending that is being devolved. You also said that there is a large degree of complexity in establishing a new system and making it work with the existing one.

Will you update the committee on where you consider the biggest risks to be as we proceed over the next few months? What are the challenges ahead for delivering the new system?

**Jeane Freeman:** This is not a reflection on the DWP's intent, but one of the key challenges is to ensure that the data that is transferred to us is complete and accurate. By that, I mean that, when we take over and begin to deliver directly payments for benefit X, I do not want us to miss some people who are eligible for and due that support because the data was incomplete when it was transferred to us.

I say specifically that I am not suggesting that the DWP does not intend to transfer complete

data. I am reflecting—fairly, I think—the difficulties that the DWP faces as a result of the way that the system has evolved, the number of IT systems that need to operate together to produce information and the fact that industrial injuries disablement benefits and severe disablement benefits are paper based. In all of that, there is obviously room for gaps that folk might fall down. Therefore, as members would expect, officials in the social security directorate and on the programme board work very closely to a detailed risk register, which is a live document. It is important that we take actions to make sure that we mitigate that risk and consistently minimise it as we work our way through the process.

There are other areas of potential difficulty that we have not resolved—I mentioned two at the start of the meeting. As Scottish Government ministers, we cannot step away from those difficulties, throw our hands up and say, “Well, he said no, so we’ll just go away and no’ bother”. We have to keep pursuing those matters and find other ways to discuss them with our colleagues at UK level. We have to press and influence them as best we can. At my first committee appearance, I said that I was confident of the Scottish and the UK Governments’ shared intent to secure the smooth transfer of those benefits and powers. However, it would be foolish to deny that we come at that exercise from different political standpoints. There will be disagreements and we have arrived at two—that might be all, but there might be more. They are frustrating and they are risks, but we need to keep pursuing them to find ways to resolve matters as best we can.

**Mark Griffin (Central Scotland) (Lab):** I want to ask a couple of questions about the balance between primary and secondary legislation. The minister and the Government are doing a lot of work on setting up a new system—you are talking about the human rights-based approach, the charter, entitlement assessment, the level of payments and so on, which is a massive amount of work. How comfortable is the Government about doing all that work, then leaving it to secondary legislation that an incoming Government can tear up in four years’ time?

**Jeane Freeman:** I cannot imagine that possibility, Mr Griffin, but you are right that we should always plan for the unexpected. That is why we are putting into primary legislation the principles and the foundation that we believe are really critical to the social security service. It is a deliberate choice that the principles—the responsibility of ministers and what I refer to as the key pillars that apply to all the benefits—will be on the face of the bill and embodied in the charter. The regulations will be specific to individual benefits. The reason for that separation is to allow future Governments to make changes—should

they wish to—to levels of payment, eligibility criteria and so on for a particular benefit without having to change primary legislation and without opening the door to arguments about the founding principles. If a future Government wishes to change the founding principles, it will need to do so through changing the primary legislation.

We are aiming to embed in primary legislation some key aspects of the social security system that we want for Scotland and that the consultation responses have, I firmly believe, shown that people want. That would not stop a future Government changing key aspects, but it would mean that that Government would have to go through a very clear parliamentary process and that the decision would be for Parliament to make. However, should a future Government wish to alter eligibility criteria or other specifics for any one of the benefits, it should be able to do that through amendments to secondary, rather than primary, legislation, which will be quicker.

11:00

**Mark Griffin:** Will changes to regulations be subject to affirmative procedure or negative procedure?

**Jeane Freeman:** I think that that will be for individual Governments to determine.

**Adam Tomkins:** No—it will be in the bill.

**Chris Boyland (Scottish Government):** It will be in the bill.

**Jeane Freeman:** It will be in the bill. I am not very keen on the negative procedure.

**Mark Griffin:** Neither am I, so that is good.

**Jeane Freeman:** I cannot be definitive about it, because we have still to finalise what the bill will say, but I will say that I am not very keen to use negative procedure.

**Mark Griffin:** Okay—I am reassured. I hope that use of affirmative procedure will be specified.

I see the point about use of secondary legislation making it clearer for applicants to look at eligibility. You say that there will be regular consolidation to make sure that people do not have to look all over the place for bits of information. How regularly will the Government consolidate to ensure that a single source of information is continuously available for people who want to check entitlement?

**Chris Boyland:** We do not expect that there would be a set interval for consolidation; we want it to be done as regularly as the changes are required. The whole idea is to have regulations that can respond to systemic or other changes, so we would not want to set an interval of two years,

four years or whatever. We want to consolidate at the point at which it is needed.

**The Convener:** Minister, would you mind spending an extra couple of minutes with us?

**Jeane Freeman:** Not at all.

**The Convener:** Thank you very much.

**Adam Tomkins:** I want to go back to the Scottish social security agency. You said in response to one of George Adam's questions—in fact, it was his only question so far—that you would use the responses to the consultation to help you to shape your views about the social security agency. I read your analysis of those responses. Do you agree that there is an inconsistency in that 84 per cent of answers to the question,

“Should the social security agency administer all social security benefits in Scotland?”,

were yes, and 72 per cent of answers to the question,

“Should we, as much as possible, aim to deliver social security through already available public sector services and organisations?”,

were also yes? If you think that there is an inconsistency, how will you navigate your way through it?

**Jeane Freeman:** On the surface, that could appear to be an inconsistency, but I think that it reflects what I learned from the consultation exercise and the many meetings and discussions that I was party to, which is that people desire an efficient system, but they also desire one that has a human face, one that has an accessible and relatively local presence, and one that can accommodate the differences that exist across our country—despite the fact that we are a relatively small country of just over 5 million people—when it comes to local issues and so on.

I have said to others who have asked what the social security agency will look like that there is a circle that we must square. I believe that, when we get to the point of making our decision, we will have squared it; others will undoubtedly judge whether that is the case. We must make the best use of the funds that are available, which means that we do not want to spend unnecessarily on delivery, because that would take away from what is available for individuals who need and are entitled to our financial support.

However, as well as ensuring that we have efficiency in our system and that we achieve value for money in how we go about running it, we want a system that is able, through its everyday business, to address the concerns that people have raised about the current system, which relate to the digital-by-default approach, the lack of a

human face in dealing with people's inquiries and in decision making, the speed that matters are dealt with, and the feeling that the benefits system is inhuman and distant. That is the circle that we must try to square through the decisions that we make on the shape of the agency.

I am confident that we can do that. It will not be perfect; there is not a single decision on the matter that we could reach that would be perfect and that would not have niggles and issues around it, but I am confident that we will be able to have a good go at squaring the circle.

**Adam Tomkins:** Thank you.

**George Adam:** I am going to shock you, minister, by asking a very similar question to the one I asked about 10 minutes ago. That will have given you extra time to think about it.

For me, the scenario is that, on the day that we get all the powers, real people will need to have the money in their bank accounts. Where are we with IT at the moment? Will the committee have the opportunity to scrutinise that and the process that is being gone through? Government in general, throughout the world, does not have a great track record on IT systems. How will you make sure that you do not experience the pitfalls that have existed in the past with IT systems?

**Jeane Freeman:** There are a number of points to make in answer to that question. Our whole approach to everything is to design, test, build and deliver. Design involves using the available expertise, including that of people who are currently in receipt of benefits. We have taken that approach to IT and have factored in the key lessons that have been learned, and that are there for everyone to see, from previous IT programs—both those that worked and those that did not. The work on IT has begun.

We made this offer before, and I make it again: I am very happy for colleagues who are involved in that work to come and present it to the committee, to show members what they have done so far and to explain their approach and why they are taking it. I have seen a presentation that I hope would provide members not only with some assurance but with an opportunity to ask detailed questions to those who have the expertise to answer them.

The approach also factors in how we will take over delivery of the benefits incrementally. That is why I said, in my opening statement, that it is welcome that, in introducing the commencement order at Westminster, UK ministers had agreed with what we wanted, which was that executive power be transferred incrementally, too. That allows us to have a managed and staged incremental takeover of the 11 benefits. It also allows us to persistently and consistently, benefit by benefit, repeat the process of design, build, test

and deliver, learn lessons, and then do the next one. There is no big bang here; there is no point at which a switch will be flicked, with 1.4 million people depending on it being flicked the right way. We will do it step by step, including how we apply the IT.

As I said, convener, if members of the committee want to take up the offer of a presentation, I am very happy for that to happen. We will simply make the arrangements and members will be able to ask more detailed questions about the IT system and how lessons that have been learned are being applied to that work.

The final point that I should make is that in all that—behind the scenes, if we can call it that—there is a clear programme of project management, governance and a programme board. That brings in others, from outside the Government, to the exercise, just as we have brought in a wide range of stakeholders to the options appraisal exercise on the agency. When we get to the decision on that, I will cover it in more detail, but that whole system of project management, governance and a programme board gives other layers of assurance around the risks that Mr Macpherson mentioned and the staged process, so that we do not proceed just because we are impelled to do so, but because we know that we are ready to take the next step.

**The Convener:** Thank you very much, minister. I am very pleased that George Adam got his question in, because we now have the offer of being able to dig deep and see exactly how the system works. I am sure that the committee will do that.

Mark Griffin wants to ask a question. It will have to be just a short one, because we are running 10 minutes over time.

**Mark Griffin:** I will be quick. At the joint ministerial working group, there was discussion of the carers allowance feasibility study. Will the minister share that with the committee?

**Jeane Freeman:** As I think members know, we are keen to introduce the additional financial element for carers as soon as we can. If it is at all possible, we will do so on an interim basis, while the legislation is going through and the regulations are then applied.

We have asked the DWP to undertake a feasibility study on whether it could deliver that for us and what the costs would be. It has completed the study and given us the results only recently. Officials are now in discussions with the DWP around the detail of that and the costs.

At the same time, we are looking at other options that might allow us to deliver the top-up for

carers allowance—the additional amount—in advance of the legislation being completed. That is because I share colleagues' desire that we do that as quickly as possible. We are actively pursuing all the options, alongside the DWP one, that might allow us to do that.

**The Convener:** Thank you very much, minister; and thank you for giving us extra time. I close the meeting.

*Meeting closed at 11:12.*





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