



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

HEALTH AND SPORT COMMITTEE

Tuesday 22 November 2011

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HEALTH AND SPORT COMMITTEE
15th Meeting 2011, Session 4

CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

DEPUTY CONVENER

*Bob Doris (Glasgow) (SNP)

COMMITTEE MEMBERS

*Jackson Carlaw (West Scotland) (Con)

*Jim Eadie (Edinburgh Southern) (SNP)

*Mary Fee (West Scotland) (Lab)

*Richard Lyle (Central Scotland) (SNP)

*Fiona McLeod (Strathkelvin and Bearsden) (SNP)

*Gil Paterson (Clydebank and Milngavie) (SNP)

*Dr Richard Simpson (Mid Scotland and Fife) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Nicola Sturgeon (Deputy First Minister and Cabinet Secretary for Health, Wellbeing and Cities Strategy)

CLERK TO THE COMMITTEE

Douglas Wands

LOCATION

Committee Room 5

Scottish Parliament

Health and Sport Committee

Tuesday 22 November 2011

[The Convener *opened the meeting at 14:16*]

Welfare Reform Bill

The Convener (Duncan McNeil): This is our final evidence session on the legislative consent memorandum on the Welfare Reform Bill.

I forgot that the Health and Sport Committee meeting that I opened this morning was a different one. I remind everybody that this is the 15th meeting of the committee in the fourth session of the Scottish Parliament. As I usually do at the start of meetings, I remind everyone to turn off their mobile phones and BlackBerrys.

I welcome the Cabinet Secretary for Health, Wellbeing and Cities Strategy, Nicola Sturgeon MSP; Beverley Francis, who is head of the Scottish Government welfare reform team; and Chris Boyland, who is Welfare Reform Bill manager in the Scottish Government. The cabinet secretary will make some introductory remarks.

The Deputy First Minister and Cabinet Secretary for Health, Wellbeing and Cities Strategy (Nicola Sturgeon): Thanks very much, convener, and thank you for the opportunity to give evidence on a very important topic. I am grateful to this committee and to the other committees that are looking at the issue for the work that has been done to date. Although the Welfare Reform Bill is a United Kingdom bill, it is absolutely appropriate that it should be given a high degree of scrutiny in the Scottish Parliament, given the potential implications for people in Scotland.

As the committee knows, the UK Government's bill introduces radical and far-reaching proposals to reform the welfare benefits system. The Scottish Government has welcomed the principle of a welfare system that is simpler and makes work pay, but we also want one that is fairer, lifts people out of poverty and treats everybody with dignity. I am not convinced that the UK Government's welfare reforms to date have always lived up to that standard and, over a long period of time, I and other ministers have put on record our concerns about them. I am talking about measures such as uprating by the consumer prices index rather than the retail prices index, cuts to housing benefit and the work capability assessment that is being used with the migration of people from incapacity benefit to the employment and support allowance. Those things

have meant that many Scots who depend on benefits have seen their living standards fall and that they have been placed in a state of uncertainty about where their future income will come from.

We should be clear that universal credit, which is the centrepiece of the bill, is being introduced against a backdrop of cuts in the real value of benefits and restricted access to benefits as part of the UK Government's approach to deficit reduction. We also need to be mindful of the climate in which we are operating. Jobs are hard to come by, and the costs of food, energy and travel, for example, are rising. All that is placing particular strain on the household incomes of some of our poorest citizens.

As yet, the detail of the reforms that are introduced in the bill is not known to us. That is a source of some frustration to the Scottish Government. It has not been possible to do the sort of robust analysis that we would want to perform in order to understand exactly how the reforms will impact on Scottish people, devolved services and on the Scottish economy as a whole. We do not know, for instance, the levels at which universal credit will be paid, the rate at which it will be withdrawn in particular circumstances or the way in which the personal independence payment will work. We do not know the eligibility for PIP or the rates of benefit. What we know is that there is an expectation to reduce the budget by 20 per cent.

The UK Government bill is skeletal, and much of the detail of the reforms will come in the form of regulations that will be introduced in the period from the bill being enacted early next year until the implementation of universal credit begins in April 2013.

I want to raise an important point, which the committee will no doubt want to explore in detail. The matters on which legislative consent has been sought are largely technical matters; they are not germane to the meat of the bill. Nevertheless, a clear view of the total package in which we are being asked to play our part is fundamental to whatever decision we come to on the LCM.

Within the confines of the limited information that the Scottish Government has been given by the Department for Work and Pensions, we have already placed in the public domain various pieces of analysis about expected impacts. We have also consulted on arrangements for a successor scheme for the social fund, and we continue to work with key stakeholders through our welfare reform and housing benefit scrutiny groups. I know that you have already heard from many of those groups in your evidence sessions to date. We all share a determination to consider impact and how

we might respond collectively in Scotland to the impact of the reforms.

There is a high level of consensus about the potentially damaging impact of some of what is proposed, even if the principle underpinning the reforms is positive, and there is a frustration about the lack of detail from DWP ministers and the determination of UK ministers to push forward at pace with those changes, regardless of the missing detail.

I have been in contact with DWP ministers throughout this session and since the Parliament discussed the bill. I have expressed concerns and await answers to some of the key questions that we have raised. Obviously, until we have received those answers and have reflected on the committee's scrutiny of the bill, we will not be in a final position to consider what we should do in respect of the legislative consent that has been requested. Of course, the views of the committee will be an important part of the process of coming to that decision.

That is a brief overview. I am happy to answer questions and get into some of the detail behind what I have said.

Richard Lyle (Central Scotland) (SNP): I agree with your comments, cabinet secretary. This morning, Mr Neil Couling, the director of working age benefits at the Department for Work and Pensions, confirmed that £2.5 billion will be cut from the benefits system in Scotland. What meetings have you had with Mr Couling or the UK Government in relation to the Welfare Reform Bill? What did you discuss? What representations did you make on behalf of the Scottish people with regard to that massive cut?

Nicola Sturgeon: As I indicated in my opening remarks, there has been extensive discussion and engagement between the Scottish Government and the UK Government. As far as I can recall, I have not met Mr Couling personally. I have met Iain Duncan Smith and have spoken on the telephone to Lord Freud, who is leading the bill in the House of Lords. My officials are in regular contact with DWP officials about the issues that we have been seeking to pursue in the context of this bill.

I have commented, today and previously, on the overall policy direction of the UK Welfare Reform Bill, about which I have some concerns. I appreciate that we will not all agree on that. I agree with the simplification agenda and with the principle of encouraging people into work, but I have deep concerns about the impact of the reforms, particularly given the budget reductions and the drivers behind some of the reforms. I accept—albeit reluctantly, as it is something that I would desperately like to change—that these are

reserved matters. Although I would like it to be different, it is for the UK Government to make those decisions under the present constitutional set-up. Many of the Scottish Government's discussions have been about getting the maximum amount of information and as much detail as possible, to allow us to assess and prepare for the impact of the changes on Scottish people and on devolved services in Scotland.

We are considering how we might make progress on particular issues. We have been pushing hard, for example, on the issue of kinship carers and the opportunity that the bill presents to give them access to child-related benefits. We have also been keen to understand better the interrelationship between the changes to disability benefits as part of these reforms, and the Scottish Government's agenda on social care policy—particularly self-directed support. Those are the nitty-gritty areas on which we have been seeking to make progress.

I hinted in my opening remarks that I am mindful of the fact that, with these reforms, much of the devil will be in the detail of the regulations. It is therefore important for the Scottish Government to be involved in the regulations as they will affect Scotland, and I have been pressing the UK Government on that. I have been pushing for an amendment to the bill that would mean that Scottish Government consent was required to any regulations in so far as they affect Scotland. Those discussions are on-going, although the UK Government has not, to date, been willing to concede that point.

Richard Lyle: One of the concerns that was expressed this morning relates to housing benefit. Disabled people living in a two-bedroomed house will be disadvantaged or have their benefit cut. Mr Couling suggested that such people should move. Is that practicable?

Nicola Sturgeon: For many people, that would not be practicable, and I will give you two reasons for that. First, people with disabilities might be living in houses that had been specifically adapted to meet their needs. Simply saying to people in those circumstances that they must move house is not a practical or desirable option. Secondly, we know that we have issues of supply of one-bedroomed properties, for example, and that much larger numbers of the Scottish population need such properties than there are properties available. The UK Government needs to be mindful of not only its policy intention, but the realities in which it seeks to implement that policy.

Bob Doris (Glasgow) (SNP): For your information, cabinet secretary, and in case you missed this morning's meeting, we asked Neil Couling from the DWP whether the UK Government had made up its mind on the question

of the Scottish ministers consenting to subordinate legislation. He appeared to rule that out and to say that the UK Government had made a decision. It would be unfortunate if it were to do that publicly without first letting the Scottish Government know.

My colleague Mr Lyle talked about housing. Did you hear some of Mr Couling's comments this morning? He admitted that the policy on housing benefit reforms

"would struggle, in a theoretical sense".

When pushed as to what that would mean, he said that we should not worry, and talked about a "behavioural response possibility". That is a description straight out of "Yes, Minister". He said that people would have to find a lodger, move to a private let or just lose money. He also acknowledged that the majority of people would not move, and that they would therefore lose money. Is that acceptable?

Nicola Sturgeon: I shall take your two points in turn. Your first point was about the UK Government's position on a consent amendment to the bill. So that I am not misleading anyone here, let me say that the position of the UK Government was recently communicated to me by Iain Duncan Smith—who I have to say has been very constructive in all the discussions that I have had with him. The UK Government's position is that it is not convinced that such an amendment is appropriate, so I do not want to suggest that it is saying that it is open-minded to a consent amendment at this stage. However, it might be prepared to have further discussions, short of that, about the involvement of the Scottish Government in any future regulation making. Obviously, I would have to make a judgment at some point about whether that takes us far enough, given the extent of the detail.

14:30

Your second question was about housing. One of the frustrations that I have as a minister with responsibility for dealing with some of the consequences of changes to benefits in terms of people needing greater social care support or more advice on housing and benefits is that we have such limited detail.

I did not see this morning's evidence-taking session—I had other commitments—but my officials filled me in on some of the content of your discussion. I find myself in a position in which I feel that we are dependent on not only a lot of technical detail that has either not yet been decided or not yet been made known, but the need to wait and see what the responses to certain benefit changes might be. There will be behavioural responses to benefit changes—that is probably inevitable—but I do not like being in a

position in which we have to wait and see what they are in order to prepare and assess what the impact might be.

The Convener: I appreciate your clarification of the current position, because Mr Couling said in his submission and at this morning's meeting that the UK Government wants to work with the Scottish Government and involve it in the process. He also made the point that it is not the usual practice to include significant amounts of policy detail in a bill, because it is appropriate for much of the detail to be contained in regulations. I do not say whether his view is right or wrong; I merely seek your comment. Is that not the case for Scottish and UK legislation?

Nicola Sturgeon: To be fair, there is an element of truth in that. I have sat at this table with your predecessor committee and discussed legislation that has much of its detail in regulations. However, frequently, by the time the bill has reached stages 2 or 3, the committee has that information in draft form and we can have a meaningful discussion.

The issue at the moment is that a lot of that detailed information is not known to us. The issue is not just about the process; it is about the fact that large parts of the jigsaw puzzle are missing, so we are unable to assess what the impact might be.

The Convener: Mr Couling made the point that the bill is a framework.

Nicola Sturgeon: I am not denying that, but the public and stakeholders look to the Government to determine what will be the impact on Scotland of UK Government decisions. I am not saying that the approach that has been taken with the bill is a unique and unknown way of handling legislation; I am saying that I cannot assess the impact sufficiently to enable me to answer your questions, unless we get more of the detail. That is why I am asking for us to have a role in the regulation-making process later on, so that we have a right to be consulted in a way that enables us to manage the impact.

The Convener: Mr Couling set out this morning the position with regard to what will be in the bill and with regard to the fact that the UK Government will not ask the Scottish Government for permission. However, he conceded that there will be on-going discussion. Indeed, he made the point, on the issue of detailed involvement, that there had been 70 contacts between the UK Government and the Scottish Government. According to him, those meetings, which were all between officials, went swimmingly. He mentioned one meeting between you and Iain Duncan Smith and one phone call that you had with Lord Freud. There have been a lot of meetings. He also made

the point that we are now at a stage at which the legislation has progressed through the House of Lords and UK parliamentary committees. Why, in that case, do we still have a public perception that we have not got much of the detail?

Nicola Sturgeon: We do not have much of the detail. I am not saying that there has been no engagement; on the contrary, there has been engagement between the Scottish Government and the UK Government. As you would expect, the Scottish Government has been trying to find out what we need to know and the UK Government has been trying to be helpful, which it has been in many instances. The engagement has been constructive, but at this stage we are still lacking some of the key details. For example, we do not know the rates at which universal credit will be paid or the rate at which it will be withdrawn in certain circumstances; we do not know the precise structure of the personal independence payment or the levels and rates at which it will be paid; and we do not know how those different parts of the system will interact. I am not saying that there has been no engagement; I am saying that that process has not yet resulted in our feeling as if we have all the information that we need to assess the impact of the policies.

We have not made as much progress as I would have wanted us to make on issues such as kinship care. The bill is a perfect opportunity to right a wrong on kinship care and to recognise the particularly Scottish approach to it. I think that there are people in the UK Government who see the sense of that, but we have not yet managed to get to a point where they agree that they will make that change. We have had lots of engagement, but the outcome has not yet been as fruitful as it should or could have been.

The Convener: The committee has seen the papers from the Scottish Government and we support the idea that the bill is a good opportunity for kinship care. That is identified, as are the questions about child poverty. The detailed questions about rate levels, or what rates will be paid in the future and so on, do not appear. That was not the level of detail that was being sought in the meetings between UK and Scottish officials. Those 70 meetings were not in pursuance of what the rate would be for universal credit, or any such questions.

Nicola Sturgeon: You are right, but one of the things that we have been pursuing is an amendment to the bill that would give the Scottish Government a role when all that detail is being worked out through the regulations. That is the point that we have been pursuing with the UK Government in order to deal with the fact that big pieces of the jigsaw are missing.

Jackson Carlaw (West Scotland) (Con): The explanation that Mr Couling gave was that the UK Government would be concerned that, were there a statutory obligation in the bill for the Scottish Government to be consulted or to give permission as you describe, that could lead to an unreasonable delay in the implementation of reserved legislation. I understood you to say that although that might not unduly worry you, you appreciate the point that has been made and that there is something between that and the current position that you have to try to assess as being sufficiently meaningful for you to be satisfied. Can you clarify that in terms that are easy to understand?

Nicola Sturgeon: I understand the point that was made to justify the position of not agreeing to a consent amendment, if I can use that shorthand. I do not necessarily entirely agree with that position. I still believe that the optimal outcome would be to make such an amendment to the bill. I understand that there are precedents in other legislation for that approach. However, if the UK Government's position is such that it is not prepared to go down that road, then we will continue to have discussions to see what else might be possible, such as whether there is a role for the Scottish Government to be consulted on the regulations. However, we need to have those discussions and I need to reach a point where I make a judgment about whether we have protected the position of the Scottish Government sufficiently.

Jackson Carlaw: I am intrigued. It struck me at the meeting this morning, which was my first as a member of the Health and Sport Committee, that there is a distinction between broader concerns about the Welfare Reform Bill and other concerns. We heard from a number of organisations about general concerns about the bill and I think that you said that there was potential for damaging consequences. It seemed to me that some of the rhetoric that was being employed was informed by not understanding or not knowing—I think that that is the point that you have been addressing—the potential impact of some things in the bill.

There is a distinction between that aspect of the bill, though, and our responsibility in the Parliament to pass or not pass the legislative consent motion. Mr Couling characterised the legislative consent motion as something that the Westminster Government was doing in a spirit of co-operation to allow the Scottish ministers to be able to give effect to the Welfare Reform Bill in so far as they have certain provisions on their own account, and that if we did not want to do that there would then be a responsibility on the Scottish Government to introduce legislation to deal with matters otherwise.

What are the practical consequences of not agreeing to a legislative consent motion? You fell short of saying that the Government was encouraging that position, but I also understood you to say that, irrespective of the consequences—our having to resort to primary legislation and the fact that denying legislative consent may make no difference—you do not rule out voting against the legislative consent motion.

Nicola Sturgeon: There is a distinction between the broad policy and the particular issues on which we are being asked to give legislative consent. I talked about potentially damaging consequences because, as I said, much of the problem is that we do not have sufficient detail.

Consider the policy on which we have the most detail: the housing benefit changes that have been announced. It is estimated that something like 60,000 people in Scotland will be worse off by about £10 per week because of those changes, so we can drop the word “potentially” on housing benefit. It is harder to assess the impact in other areas because we do not know the detail but, on disability benefits, the UK Government has stated its objective of reducing the budget for disability living allowance—which will transfer to personal independence payments—by 20 per cent and it stands to reason that, to make those sums add up, a lot of people will be worse off. I used the word “potentially” but, in many respects, the damage will be actual. However, we are going off the point.

I provided the committee with technical notes on the five policy areas on which we will be asked for legislative consent. I know that the committee is aware—but it is worth stressing—that, as I said in my opening remarks, withholding legislative consent does not mean that the universal credit will not be introduced or that the DLA will not transfer to personal independence payments. Those are—unfortunately, to my mind—reserved matters, and I would not try to suggest that we can change the UK Government’s policy direction by withholding legislative consent.

The question for the Parliament is whether it is prepared to give consent to parts of a package without being able to take a view on the overall package. I have not taken a final decision on the Government’s position on legislative consent and will not do so until I have seen the outcome of the committee’s deliberations.

Jackson Carlaw: Are you characterising refusal to agree to the legislative consent motion as gesture politics, in the sense that it would not hinder the bill’s progress but would create an additional responsibility for the Scottish Government to deal with the consequences in a different way? I have always thought that you were above gesture politics, cabinet secretary, but is that what you are suggesting?

Nicola Sturgeon: No, I would not describe it as that. One of the consequences of the Parliament’s not giving legislative consent to the universal credit and personal independence payments is that the consequential amendments that we would be able to make by regulation—secondary legislation—would require to be made by primary legislation. The Parliament has greater powers of scrutiny over primary legislation than it does over secondary legislation and it may be that, not having the detail, it would welcome that greater scrutiny over changes—albeit consequential changes—that would require to be made.

The biggest practical consequence would be the need for primary rather than secondary legislation. The Government would have an obligation to ensure that we could handle the additional complications of that—that we had the additional time that was required for primary legislation—and that it could happen.

The change to industrial injuries disablement benefit affects a very small number of people. Trainees who are injured at work are currently paid benefit through a different route and we would be required to keep that route rather than merge it into the main stream, as would otherwise be the case. There are also some implications for the social mobility and child poverty commission, but some of those changes do not require legislative consent, so the situation would depend to some extent on the UK Government’s position on the matter.

I can go into a lot more detail if you want, but we have given all that detail to the committee in writing.

14:45

The Convener: On the broad timeline, there is a notion, which we know is not completely true, that the provisions will be phased in over a long time and that we have enough time to pursue legislative solutions here. What timeframes are we looking at?

Nicola Sturgeon: On the UK Government’s current timescale, the universal credit would be phased in between 2013 and 2017, so it is likely that there will be double running for a period, with some people in a new system and some people in the current system. To be frank, that requirement would also exist if we had to make the consequential changes by secondary legislation. We would need to ensure that there was alignment between the changes that we were making and the changes that were being made at the UK Government level. That requirement will exist in the complexities regardless of whether we give legislative consent and do things by

secondary legislation or whether the alternative approach is taken.

The Convener: So we have time, and we do not need to seek additional time from the UK Government for other options.

Nicola Sturgeon: If we were dealing with primary legislation, the timescales for that are longer than they are for secondary legislation, as all committee members know. We would need to factor that into our planning and still ensure that we aligned with the UK Government timescale.

The Convener: But there should be no impediment with the timescales that have been presented to us.

Nicola Sturgeon: We would need to work to ensure that that is the case. Obviously, the key thing with the universal credit is that the effect of the consequential amendments is to a large extent about ensuring access to passported benefits. As health secretary, I would not want people not to be able to get access to passported benefits, and I am pretty sure that members of the committee would not want that, either.

Dr Richard Simpson (Mid Scotland and Fife) (Lab): That leads in quite nicely to my question. This morning, Mr Couling said that the consequence of not passing a legislative consent motion would be that we would have to do primary legislation here, and you have confirmed that. Is it possible for us to pass a legislative consent motion that accepts certain parts of the bill, such as those on data sharing and industrial disablement, which you have already mentioned, and to seek amendments to other parts, such as on the social mobility and child poverty commission, which you have asked for amendments to, and the involvement in subordinate legislation? Do we have to pass a legislative consent motion on all or nothing, or can we pass a series of legislative consent motions or motions that seek amendments?

Nicola Sturgeon: As far as I am aware, there is nothing that would prevent Parliament from passing a partial legislative consent motion. It could agree to some of what requires consent and withhold consent on other aspects. Obviously, it would be up to the Parliament to decide whether that was the correct thing to do, but there is no technical reason why that could not be done.

Dr Simpson: That might simplify the need for primary legislation from us if we did not pass a legislative consent motion.

Nicola Sturgeon: Primary legislation would be required around what would be described as the most controversial areas, which are universal credit and the personal independence payments.

Dr Simpson: To be clear, we cannot do anything about them, but we can do something about the passported benefits that are a consequence of them.

Nicola Sturgeon: Yes.

Dr Simpson: I presume that the Government already has plans about which benefits it thinks should be passported and which should not. An issue that arose in the evidence this morning is that a number of disabled people will lose their benefits under the new system, but they will nevertheless require passported benefits basically to survive. An automatic passport system that is given under legislative consent may therefore not be adequate. Are you preparing possibly to go further in that regard, or will you just go for passported benefits in the new system?

Nicola Sturgeon: We have not taken final decisions on that. For clarity, the decisions that we will require to take in due course on what benefits are passported and in what circumstances will exist regardless of what Parliament decides to do about a legislative consent motion.

We have been working with stakeholders to consider the range of benefits. Different types of benefit will be affected by the changes—cash benefits; benefits in kind, such as free school meals; and benefits such as leisure discounts—so we have been working to understand that. We have taken part in the work that was done by the social security advisory committee on passported benefits and its report is due in January.

We have an opportunity—I think that this is what you are asking—to think differently about this rather than to accept the status quo. One of the complexities of the proposed changes is that, whereas previous benefit changes have tended to replace one benefit with another on a like-for-like basis, universal credit does not do that. Universal credit will be available to people who are in work and those who are out of work. That raises issues for us, but in short it gives us the opportunity to look innovatively at passported benefits while recognising the affordability constraints that we work within. That is the approach that we will take.

Dr Simpson: Do you intend to issue a consultation document on that? I know that you are having discussions with stakeholders; is the next step a consultation document?

Nicola Sturgeon: Yes. In due course, we will consult about the shape and nature of passported benefits, as we have done with the successor arrangements for the social fund.

Dr Simpson: Thank you.

We had a very interesting discussion this morning—I hope that I am not treading on Jim Eadie's toes here—on the difference between a

target and a forecast. You have already mentioned the 20 per cent cut. We had all felt that that was a target, but Mr Couling was very clear in saying, “No, that is not a target: we are trying to cut off the increase in DLA.” He said that DLA is rising at 5 per cent per annum, which is well ahead of the level that demographics would imply. He said that by forecasting a cut of 20 per cent, all that the UK Government is saying is that the current level of cash going into DLA will remain the same. This is slightly different from what I had understood before this morning’s session regarding the financial implications of the UK Government’s proposals. Can you enlighten us further?

Nicola Sturgeon: I am not here to speak for the UK Government—perhaps that is just as well. My previous understanding was more in line with yours. This is not meant as a criticism, but given everything that I know about the UK Government’s deficit reduction plans, my strong feeling is that there is a budget reduction driver in all this. However, I will look at Mr Couling’s evidence and see what that tells us, unless my officials can enlighten us any further.

Bob Doris: I have a couple of questions, the first of which relates to this morning’s evidence. We were quite clear this morning that whether or not the LCM is passed will make no difference to the welfare reforms coming to Scotland; technical changes will have to be conducted either at a Scottish level, or by subordinate legislation elsewhere. On that basis, I asked the witnesses from the disability rights groups whether they wanted us to pass the LCM, because of the wider welfare reform implications as opposed to the narrowness of the LCM itself. Inclusion Scotland, Capability Scotland and the Scottish Disability Equality Forum all said that they would still like us to vote down the LCM. How do you feel about their strength of opinion on that?

Nicola Sturgeon: I have great respect for all those organisations. I have read evidence from other organisations that take the opposite view. We—you as a committee, we as the Government and the Parliament as a whole—will need to reach a judgment on this.

On the day that Parliament had the debate, I judged that I had not made enough progress on the things that we were asking for and that I did not have enough information to stand up in Parliament and say, yes, we recommend that Parliament votes for the LCM. However, we continue to have discussions, the committee is taking evidence and we will reach that judgment in due course. All the stakeholder organisations that gave evidence here and worked closely with us in the welfare reform group have important things to say and a wealth of knowledge, and we should listen to them on all aspects of this.

Bob Doris: It is of course right to say that the third sector and voluntary sector have varying views on whether the LCM should be supported. To me, weighing up that argument involves a delicate balancing act. In regard to my personal view, you mentioned discussions on how the tax and benefits system impacts on kinship carers. You said that discussions had begun on how the reforms might affect the Scottish devolved policy on self-directed support that we want to implement. If the Scottish Government and the Scottish Parliament were not to support the LCM, do you think that that would affect the good will of the UK Government with regard to reaching an accommodation on kinship care and self-directed support, or do those matters stand up to scrutiny on their own merits as something that the UK Government should do, irrespective of how the Scottish Parliament disposes of the LCM?

Nicola Sturgeon: I like to think that, before we even get to that point, we will make progress on kinship carers. The case for what we are arguing for in that area is overwhelming, in my view. Without going into the detail of the discussions, I can say that there are elements in the DWP that think that our argument has merit. I therefore hope that we can make progress on that before we go much further.

Similarly, there has to be a commitment to explore the relationship between the UK reforms and the Government’s agenda on self-directed support, as well as on a range of other issues. The Scottish Government will continue to seek constructive discussions and engagement with the DWP and all other UK departments. To be fair to the DWP, there have been many instances of engagement, as I think that Duncan McNeil said. That engagement is there, but we do not always agree, and we often talk more about the areas on which we disagree than the others.

Bob Doris: Can I just clarify that you would expect such constructive engagement to continue, irrespective of how this Parliament and the Government decide to dispose of the LCM? Are you confident about that?

Nicola Sturgeon: I would certainly hope so, yes. From our part, we intend that to be the case.

The Convener: If we imagine this to be a negotiation between officials, yourselves and the UK department, were the issues of kinship care and child poverty the deal-breaker? You had not made progress on those issues, and they were the ones that really featured. Kinship care was raised in the Iain Duncan Smith meeting, was it not?

Nicola Sturgeon: Yes. The kind of issues that I am talking about are the issues that we have been pushing. Respecting that they are reserved issues—for the time being—we see an opportunity

to make progress on kinship care. We want an engagement on the interrelationships between this policy and our policy. We want to understand how vulnerable people will be treated in relation to universal credit. The key issue, however, has been our seeking to get an on-going role for the Scottish Government in creating the regulations and putting the flesh on the bones of the policy as it takes shape. That has been part of the package of measures that we have been seeking to progress.

The Convener: Yes, but Mr Couling expressed surprise at the idea of what was added to the LCM, to try to bring it up to date. I hope, like you, that the UK Government will come along and say, "You were right about kinship care", because that could make a difference. If the UK Government were to give us reassurance on child poverty strategies, and an assurance that it would keep us up to date on all the developments, would we have a deal on the LCM, from your point of view?

Nicola Sturgeon: Yes, if we make progress on all those things, and in particular if we make satisfactory progress on the role of the Scottish Government in creating the regulations, of course that would be taken into account. It would of course be a critical factor in coming to the final decision on an LCM, but to date we have not made that progress.

The Convener: But in regard to all the things that were or were not mentioned, or which are now being mentioned, what is on the list now?

15:00

Nicola Sturgeon: We have not changed the things that we have been seeking. We have concerns about the overall policy direction, but we accept that, for the time being, that is in the UK Government's gift, as Jackson Carlaw said. We do not agree with the direction of travel on many issues, but the ones on which we have sought to make progress are those that I have talked about. We have not yet made that progress. If we make it, that will be taken into account in our final decision.

Jackson Carlaw: I have a couple of points about Mr Couling's evidence. On kinship care, the words that he used, as the *Official Report* will probably show, were that his minister is sympathetic to the Scottish Government's view. I took that to mean that a productive discussion is taking place at some level.

In relation to a point that Richard Lyle made, Mr Couling said that the Government is seeking to find a way round the issue of adaptations so as not to require people who live in significantly adapted properties to move. Progress is, I hope, being made on that. Mr Couling also talked about responding to representations by the Scottish

Government. Therefore, there seems to be some reflection of the Scottish Government's intervention in the development of policy.

I have a question of fact. The cabinet secretary met Iain Duncan Smith in September, but there are on-going issues that you are seeking to resolve. Do you have any meetings with UK ministers scheduled or any outstanding requests to meet UK ministers in relation to the discussions to which we are referring?

Nicola Sturgeon: Your points about Mr Couling's evidence are encouraging. I do not want to go too far into the realms of private discussions, but his characterisation of ministerial sympathy on the issue of kinship care is certainly in accordance with my reading of the situation. However, that sympathy needs to be translated into real commitment.

On adaptations, I will look at the *Official Report*. I do not know what was said, but if it was as you outline, that would be welcome.

As you say, I met Iain Duncan Smith on 15 September. That meeting was followed up with a summary of what we talked about on 22 September. There have been lots of official discussions along the way. I wrote again to Iain Duncan Smith on 14 October and received a response from him on 14 November. In light of that response, I will seek to speak to him over the next period, but that is not yet scheduled.

Fiona McLeod (Strathkelvin and Bearsden) (SNP): I want to go back to technical issues. We have explored what will happen if we agree to or do not agree to the legislative consent motion. One issue on which you are pressing the UK Government is the involvement of the Scottish Government in subordinate legislation. Given that, as you said, many of the issues are unknown because they will be dealt with through subordinate legislation, what would be the consequences for policy making in Scotland if the Scottish Government was not involved in the subordinate legislation at UK level?

Nicola Sturgeon: That would obviously make things more difficult. I have made clear that I accept that we are talking about a reserved matter, but it is one that has big implications for devolved issues. Changes to eligibility for disability benefits or the rate at which those benefits are paid potentially have an impact on charges for social care and on who can access it. Such changes also have an implication for the health service and a big potential impact on advice services. Involvement in the subordinate legislation would allow us to plan our response and policy making in a much more managed way than if we did not have it.

Fiona McLeod: It is important to put it on the record that 350,000 people in Scotland are in receipt of disability living allowance and will be impacted on.

Dr Simpson: I am trying to get a list of things that we want in the bill. The cabinet secretary rightly listed the issue to do with kinship carers and we have heard that there might be progress on that. We had a response this morning on aids and adaptations, which was a welcome recognition of reality.

However, I asked a question this morning and was disappointed with the response. It was about somebody whose home is underoccupied and who therefore faces benefits cuts but who is unable to get a housing move. We heard from colleagues from a number of local authority areas that the chances of getting a one-bedroom flat were minimal or not very high. Various terms were used, but they all meant “not good.” The alternatives that Neil Couling offered as behavioural responses were moving house, getting work or taking a lodger. I posed the question, if you cannot get a move, no work is available and you are deemed to be a vulnerable person for whom a lodger would be inappropriate, will there be any mechanism by which the human impact on you can be taken into account? I regret to say that the answer was no: he felt that that was too difficult. Have you raised the issue? Could you still raise it to see whether we can get some such mechanism? The alternative is that we have a Scottish solution—money does not grow on trees, but other sources could be used—for that relatively small but nonetheless important group.

Nicola Sturgeon: I did not hear that evidence, although my officials recounted it to me. That exchange really brings into sharp relief some of the human consequences of the reforms. Without getting into a debate about the policy intention or the principles underpinning this, I would say that when you are dealing with housing, you are dealing with some very personal and sensitive issues. We need to be very mindful of the consequences.

One of the issues that we raised previously is how vulnerable people are dealt with. It is not just the underoccupancy issue that you raised. There are issues around the assumption that the application process for universal credit will be online and around the credit being paid monthly. There are issues about direct payments of housing benefit to individuals. Clearly there are a range of issues in there that bring the definition and treatment of a “vulnerable person” into sharp relief. Those issues have all been raised.

When I have had the chance to read the *Official Report* of this morning’s evidence, I will be happy to write to UK ministers about the specific point

that you raise to see whether we can have any further discussion on it.

Dr Simpson: That is very good of you. Thank you.

Bob Doris: It is a bit like groundhog day because we are referring to the evidence that we heard this morning. We heard that 40 per cent of appeals against work capability assessments were successful but that the success rate almost doubled when an advocate or representative was there. I asked the civil servant this morning whether there would be any financial support from the UK Government to Scotland to allow the Scottish Government, local authorities and the voluntary sector to meet their income maximisation responsibilities. You may not be surprised to hear that the answer that I got was negative. Are there on-going discussions to make the case for additional financial support to bolster that vital job?

Nicola Sturgeon: You can take it for granted that we will make that case. This goes back to an earlier discussion that we had. One of our big interests and responsibilities is to mitigate as far as we can some of the impact of the reforms. Without knowing all the detail we cannot yet assess the extent to which those mitigation measures will be required. I would expect demand for advice support to increase. I am not too surprised at the response that you got this morning, but that is one issue on which I am sure there will be discussion between the Scottish and UK Governments.

The Convener: I am sure that we will all benefit from reading the *Official Report*. Neil Couling also said that, from his 25 or 30 years’ experience in the area, he believed that the person who turned up for an appeal got a better result than people who had advocates representing them. I do not know whether he has information to share from right across the board, but there is an issue there. We as a committee will need to weigh up information that we are getting from campaigning groups, as against—

Nicola Sturgeon: I am getting into the realms of pure speculation here, both about what he might have said and about what he might have meant.

The Convener: That is why we all need to read the *Official Report*.

Nicola Sturgeon: It may be that somebody who turns up has a better chance of success than somebody who does not turn up, but somebody turning up with an adviser has a better chance than somebody just turning up on their own. I suspect that there is some truth in that.

The Convener: We will need to read the *Official Report* before we reach conclusions about what

the committee's report will say on any given area. There was to-ing and fro-ing on that issue.

I heard the word "mitigation", which is an issue that was covered by previous panels. We know that legislation is coming and we can anticipate many of its impacts on individuals and the Scottish economy. We also know that budgets are tight and that detail is lacking, as you said. When responsibility for council tax benefit is devolved and the budget for that is cut by 10 per cent, can we assume that, as John Dickie of the Child Poverty Action Group in Scotland requested, that cut will not be passed on to the poor?

Nicola Sturgeon: From the Government's record on trying to ensure that council tax does not financially penalise people who can least afford it, you can take it that we will do everything in our power to protect vulnerable people as much as we can. We support further devolution of the power to deal with council tax, but we would prefer it not to come with a 10 per cent cut. In the coming weeks, we will consult on how we handle that devolution from the UK to Scotland.

I will make a general point. I was going to say that it is not meant to be a constitutional point, but it is constitutional—I will not hide that. We operate within a fixed budget. Unless we get additional resources, anything that we can or will do to mitigate the impact will involve taking money from one part to another part of the budget.

It is perhaps a considerable irony that we must deal with the implications of policy on a reserved matter over which we have limited influence and control within a fixed budget over which we have little or no control. In many respects, that is the worst of all worlds.

The Convener: There are opportunities, which I welcome, to apply Scottish solutions to the problems.

Nicola Sturgeon: I referred to our consultation on the social fund successor arrangements, in which we are asking how to do that better. In response to Richard Simpson, I said that we have an opportunity to consider whether we can deal with passported benefits differently.

You can take as read our strong determination and instinct to protect the vulnerable and to find Scottish solutions for Scottish circumstances. However, when we are dealing with a fixed budget, financial mitigation involves taking money from somewhere else.

The Convener: What are the cost implications of the 10 per cent shortfall to the Scottish Government?

Nicola Sturgeon: Council tax benefit is worth £380 million to Scotland right now. I will let the

more arithmetically—[*Interruption.*] The figure is £38 million.

Gil Paterson (Clydebank and Milngavie) (SNP): I will follow up what the cabinet secretary said. Mr Couling told the committee that he predicted a £2.5 billion cut to Scotland.

Nicola Sturgeon: That is the cut to the total benefit bill and not just the cut to council tax benefit.

Gil Paterson: Yes—that is what will come out of Scotland. I do not mean to be cheeky, but how do we mitigate a £2.5 billion cut?

Nicola Sturgeon: In a fixed budget—members all know that it is about £30 billion—the challenge is significant. The total benefit bill in Scotland, including state pensions, is about £12 billion, so £2.5 billion will be a big chunk off that. The Scottish Government has devolved responsibilities and it will be our responsibility to work with stakeholders to do whatever we can to mitigate unintended or unwanted consequences of the changes. However, I would be remiss if I did not readily acknowledge the challenges that they pose for us.

The Convener: I will finish my point, which relates to the cut and efficiencies. Does the situation give us an opportunity to push forward public service reform? One witness said that efficiencies could be built in and that a single agency could operate in Scotland.

Nicola Sturgeon: Are you talking about council tax?

The Convener: Yes.

Nicola Sturgeon: We will consult on those things in due course. We would want to deal with a 10 per cent cut as far as possible without impacting on people who get benefit.

15:15

The Convener: Are there solutions that you have been looking at?

Nicola Sturgeon: Of course, but we will consult in due course on exactly how we deal with the cut. We have just been talking about a reduction in the benefit bill but, under our constitutional arrangements, if any Government seeks to make savings by supporting people into work or through better management of the benefit bill, we will not realise the benefits from that. We are not saving money to spend on prevention or on further supporting people out of benefits, and that is another frustration for us.

Dr Simpson: I have two questions, the first of which is just technical. The £380 million has presumably been more or less frozen in cash

terms for the past four years due to the council tax freeze. As the council tax has not risen—I am not suggesting that it should have as that was a very popular policy, but nevertheless it did not go up even by inflation—we have taken that money out of our own budget over the past four years. Can we have a calculation—not today, but at some point—of what that amount would have been if it had stayed the same in real terms?

Nicola Sturgeon: I am happy to provide the figures; I do not have the figures going back on benefit. I am not sure that that argument would cut much ice with people who have benefited from the council tax freeze—

Dr Simpson: No, and it might not cut much ice with the UK Government either but, in negotiating terms, one could say, “Can we go back to an amount in real terms, rather than sticking with the figure from four years ago?”

My other question is about the list of negotiations. We seem to have won on the cancer issue, and we have talked about kinship care, and aids and adaptations, but another thing that concerns me is the mobility allowance for people in residential care. Again, such a blanket approach seems to deny the rights of individuals—particularly those with learning disabilities but also younger people who need to be in residential care but for whom mobility is a critical part of their lifestyle.

Are we making representations on that issue? We would not want to take away that policy completely, because some people are not only care home-bound but bed-bound, and it would clearly be a bit of a nonsense for them to have a mobility allowance. However, it might be worth while to have discussions on some form of amelioration of that rather harsh policy with regard to those who are mobile and for whom mobility is important.

Nicola Sturgeon: I agree, and I am happy to take that point away. You have articulated the situation pretty well. People in care homes might rely on the mobility element of their benefit to get their weekly trip out of the care home, which can be their only way of connecting with the outside world. I agree with the importance of that and I am happy to look further at what we can do to raise the profile of the issue.

The Convener: I think that that is all, but Jim Eadie wants to come in briefly.

Jim Eadie (Edinburgh Southern) (SNP): Cabinet secretary, you will be aware of the research that was recently published by academics at Sheffield Hallam University, which showed what the impact of the welfare reform changes would be on Scotland and on other parts of the UK. It highlighted that 115,000 of our current

total of 275,000 men and women in receipt of incapacity benefits would have their benefits cut because of the introduction of tougher rules such as a tougher medical test; the retesting of existing claimants; new requirements to gauge work-related activity; and time limits on means-tested benefits. I am interested to know whether the Scottish Government has carried out—either through the welfare reform scrutiny group or by other means—an assessment of the economic and social impact that those changes would have on the people of Scotland.

Nicola Sturgeon: I have seen that research, and some Scottish modelling has been done on that basis. I can supply the committee with the impact analyses that we have carried out to the extent that they cover the point that you are making. My understanding of the UK Government’s position is that transitional support would be provided for people in the losing-out category to prevent cash reductions. However, we do not know at present the length of time for which that support will be available. I can certainly make available—if it is not already—the impact analysis work that we have done, which covers some of that area.

Jim Eadie: That is very helpful.

On a separate point, witnesses have said in evidence to the committee that they would like a stand-alone committee of the Scottish Parliament to continue to take an interest in the welfare reform changes as they are rolled out across Scotland. Do you have any views on what the Scottish Parliament could do to scrutinise the impact of those changes?

Nicola Sturgeon: That is a matter for the Parliament rather than for the Government. As cabinet secretary, I would strongly welcome on-going committee scrutiny from a stand-alone committee to scrutinise the implementation. It is important for the Government to have an on-going role in the implementation through regulations, and it is equally important for the Parliament to have an on-going scrutiny role. The journey does not end when the bill receives royal assent—indeed, in many respects, it only begins at that point. It is very important for the Parliament to oversee the implementation.

The Convener: That concludes our questions for today, although I just have one wee question on the other side of the equation. If there is a greater incentive to be more successful in getting people back into work, there will be a consequential improvement in what the Scottish Government has to spend in that area. Have there been any figures or estimates, or any policy work, on that?

Nicola Sturgeon: Do you mean on the benefits of getting people into work?

The Convener: Yes.

Nicola Sturgeon: I am not aware that any specific work has been done to quantify that, but I will certainly check to see whether it has, or whether there is some work that we could do.

The Convener: It was just that, when you mentioned that issue, I thought that there had been some discussion on policy. If there has been, we would welcome the information.

I thank you and your officials for your attendance this afternoon.

Nicola Sturgeon: Thank you.

The Convener: As previously agreed, the committee will now move into private session.

15:22

Meeting continued in private until 16:00.

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